

Controller's Office

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

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

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

Ronald C. King
General Polk

Date: 11-11, 2014 City Controller of the City of Houston, Texas

FUND REF: 2310-2000-511020 AMOUNT: \$ 1,500,000.00 ^{SRO} ENCUMB. NO. 45-207811
OA 46-12936

City of Houston, Texas Ordinance No. 2014-988

AN ORDINANCE AWARDED A CONTRACT TO TIMES CONSTRUCTION, INC. FOR ASPHALTIC PAVEMENT REPAIR SERVICES CITYWIDE FOR THE PUBLIC WORKS AND ENGINEERING DEPARTMENT; PROVIDING A MAXIMUM CONTRACT AMOUNT; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY

* * * *

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

MR De
HS

Section 1. Having duly advertised for and received competitive bids for the contract described in the title of this ordinance, the City Council hereby finds and determines that the lowest responsible and secure bid was submitted by **Times Construction, Inc.** in the amount of **\$7,500,000.00** (which amount is only an estimate if unit prices are included in the bid proposal of said bidder) and that such bid is the most advantageous for the City. Such contract is hereby awarded to said bidder.

Section 2. The City Council hereby approves and authorizes the Contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents (including any related surety bonds) on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 3. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such contract, agreement, or other undertaking in the event of changed circumstances.

Section 4. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 5. The total allocation for the contract, agreement or other undertaking approved and authorized hereby shall never exceed **\$7,500,000.00** unless and until this sum is increased by ordinance of City Council.


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

PASSED AND ADOPTED this 5th day of November, 20 .

APPROVED this _____ day of _____, 20_____.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is NOV 11 2014.



City Secretary

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: NOV 11 2014

Prepared by Strategic Procurement Division, Art Lopez at Extension 3-8731

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

10-14-14

Brenda Lopez

Date

Legal Assistant

(Basic Form GMS159:AWARD-APPROV-SUPP. ALLOCAT. ORD.; Approved by City Attorney 10/95 _____)

AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
	ABSENT	DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

MAY 017 Rev. 01/14

AGREEMENT BETWEEN THE CITY OF HOUSTON AND CONTRACTOR

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

Contractor: Times Construction, Inc.

Address: 2900 Wesleyan, Suite No. 625, Houston, TX 77020

Project No.: S50-C24977

The Project Title: Work Order Contract for Asphaltic Pavement Repair Services
Citywide for the Public Works and Engineering Department

The Project Location: City Wide

The City Engineer is: N/A
(Address for Written Notice) 900 Bagby Street, Houston, Texas 77002

The Architect/Engineer is:
(Address)

THE OWNER AND THE CONTRACTOR AGREE AS SET FORTH BELOW:

ARTICLE 1 WORK OF THIS CONTRACT

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

ARTICLE 2 CONTRACT TERM AND CONTRACT TIME

- 2.1 The effective date is the date of countersignature by the City Controller. The Contract Term shall begin on the date specified in the Notice to Proceed and shall continue for a **one-year initial period. Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for four, successive one-year terms on the same terms and conditions.** If the Director of the City Department elects not to renew this Agreement, the City Purchasing Agent or designee shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then current term.
- 2.2 The Date of Commencement of the Work, as defined in General Conditions, is the date from which the Contract Time is measured, which date is established by the Work Order.
- 2.3 The Contractor shall achieve substantial completion of the Work during the Contract Time, subject to adjustments as provided in Contract Documents.
- 2.4 Contract Term shall not exceed one year, except as otherwise provided herein. During this time, the City from time-to-time may issue Work Orders specifying the Work to be completed and Contract Time within which the Contractor must achieve Substantial Completion.

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

**ARTICLE 3
THE CONTRACT PRICE**

- 3.1 The City's duty to pay money to the Contractor for any purpose under the Contract is limited in its entirety by this Article 3.
- 3.2 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 3.3 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **\$1,500,000.00** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 3.4 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

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

**ARTICLE 4
PAYMENTS**

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

**ARTICLE 5
MISCELLANEOUS PROVISIONS**

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

**ARTICLE 6
ENUMERATION OF CONTRACT DOCUMENTS**

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

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

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

Times Construction, inc.:
CONTRACTOR:

(If Joint Venture)

By: *H. Zafaranian*
Name: Hossein Zafaranian
Title: President
Date: October 3, 2014
Federal I.D. No. 76-0480100

By: _____
Name:
Title:
Date:

CITY OF HOUSTON, TEXAS

APPROVED:

SIGNED:

By: *John Swells*
[City Purchasing Agent]

By: _____
[Mayor]

ATTEST/SEAL:

COUNTERSIGNED:

By: _____
[City Secretary]

By: _____
[City Controller]

Date Countersigned:

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

10-14-14
Date

Dorinda Perry
Legal Assistant

EXHIBIT "A"
DEFINITIONS

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

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

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

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

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

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

"Contract Term" is defined in Article 2.

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

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

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

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

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

EXHIBIT "B"
SCOPE OF WORK/ TECHNICAL SPECIFICATIONS
FOR
ASPHALTIC PAVEMENT REPAIR SERVICES

1.0 PROJECT GENERAL:

- 1.1 The Contractor shall be required to furnish all labor, materials, equipment and supplies, and shall perform all work necessary for asphaltic pavement repair services citywide. The work will consist of using asphaltic material for repairing pavement failure, filling excavated and/or damaged areas of roadway, for the mitigation of pavement hazards, and/or improvement of existing pavement. A pavement repair will be used to keep the asphalt from cracking or breaking any further, level uneven roadway, and to preserve the overall quality of the street.
- 1.2 Performance of Work:
- 1.2.1 Work will be assigned to Contractor through work orders distributed by Public Works and Engineering (PWE), Street and Drainage Division personnel.
 - 1.2.2 Work orders will be grouped by areas as designated in the Houston Harris County Key Map (by Key Map, Inc.).
 - 1.2.3 The Contractor shall be required to complete work orders within 30 days of receipt and is responsible to ensure staffing appropriate to complete work within this timeframe.
 - 1.2.4 The Contractor shall be required to notify Department of Public Works and Engineering's (PW&E) designee upon receipt of work orders if there are conditions that might hinder the required 30 day timeframe and provide plan for how the work will be accomplished.
 - 1.2.5 The Contractor shall be responsible for appropriate traffic control and safety measures for all locations where work will be performed.
 - 1.2.6 In repair of pavement, the contractor shall be responsible for the repair areas to be cut square, removal of any and all damaged materials within the patch area accordingly, ensure a stable/solid base where newly placed repair materials can hold its repair, and discard all waste from the job site.
 - 1.2.7 The Contractor shall be required to clear old and damaged materials from the designated work area. The damaged work area must be compacted and filled, 2" below street level, applying SS-1 and leaving the asphalt patch repair up enough for the roller to compact it. The street repair shall be at the same grade level (or not to exceed ¼ inch above) the surrounding pavement. Patch sizes are as stated below:
 - 1.2.7.1 0-30 S.F. - Small
 - 1.2.7.2 30-60 S.F. - Medium
 - 1.2.7.3 60 S.F. + = Large

- 1.2.8 Compaction of the subgrade and placement of asphalt shall be performed in a manner as to prevent settlement of restored surfaces. Irregularities, which develop in the restored pavement section as a result of improper placement or compaction, shall be corrected by the contractor at no additional expense to the City.
- 1.2.9 Any pavement undermined and/or otherwise disturbed, shall be edged with a method acceptable to the City or sawed as straight as possible and removed so the patched pavement will be restored to a uniform surface conforming to the grade and section existing prior to commencement of work without ragged edges, spall or loose material. If there has been settlement of the edge of pavement at the cut, the settled portion shall not be corrected by an overlap. The edges of the existing pavement shall receive a tack coat before new asphalt is placed.
- 1.2.10 All excavated areas shall be backfilled and compacted at end of each day prior to opening to vehicular traffic. This work shall occur prior to the completion of work on any day unless otherwise approved by PWE designee.
- 1.2.11 The Contractor shall be required to provide immediate corrective repairs as requested within 3 consecutive working days where PW Representative has identified work as substandard. If the contractor fails to provide immediate correction; the City, will order the necessary repairs to be made at the expense of the contractor.

2.0 MATERIALS:

- 2.1 Materials for pavement patching shall be furnished by the contractor in accordance with Section 02741 in the CITY OF HOUSTON STANDARD SPECIFICATION MANUAL. Aggregate base, tack coat, surface and base asphalt concrete materials and method of installation shall be in accordance with Section 02741, Part 3, EXECUTION.

(located at the website below)

http://edocs.publicworks.houstontx.gov/documents/specifications/2012_standard_specifications.pdf

3.0 PRICE ADJUSTMENT:

- 3.1 Producer Price Index (PPI)
Price adjustments will be based on the Producer Price Index for Asphalt Paving and Roofing Materials (Group), Asphalt Paving (Item), Series ID PCU32412 as published by the U.S. Department of Labor, Bureau of Labor Statistics.
- 3.2 Adjustment Frequency
A price adjustment review will be conducted **annually**. If the PPI changed up or down compared to the twelve months prior, an adjustment will be done. The price adjustment will become effective on the 10th of the month.

REVISED GENERAL TERMS AND CONDITIONS FOR ASPHALTIC PAVEMENT

3.3 Methodology

3.3.1 Formula:

Price adjustments shall be calculated by applying the simple percentage method to the PPI data. This method is defined as dividing the index value at the time of the calculation by the index value of the base period (**one year earlier**), then multiplying the percentage by the base price.

Example

Award date: February 15, 2012
Bid Price: \$40.00
PPI for February 2012: 252.1
PPI for February 2013: 257.6
First price adjustment: March 10th 2013
Calculation: $(\text{PPI } 02/13 - \text{PPI } 02/12) / \text{PPI } 02/12 = \text{Percentage of Increase}$
Old Price * 1 * Percentage of Increase = New Price
 $(257.6 - 252.1) / 252.1 = .0218$
 $\$40.00 * 1 * .0218 = \40.87

3.4 Adjustment Request

The supplier will notify the City of Houston in writing *annually* the changes in the PPI. The supplier must either state that there were no changes in the PPI and no price adjustment will be requested/implemented at this time, or the supplier will use the formula referenced in Sub-section 3.3.1 to calculate the new price. The supplier's price adjustment notification, accompanied by the applicable PPI data, must be sent to the following address:

City Purchasing Agent
P.O. Box 1562
Houston, Texas 77251

3.4.1 If the City Purchasing Agent approves the price adjustment request, the supplier will be notified in writing of such approval.

3.4.2 If, at any time after approving a price increase, the City Purchasing Agent determines that the City can obtain the same item at a lower price from a different source without violating the State bid law, the City may then purchase the item from the lower price source without any obligation to the Supplier.

4.0 MEASUREMENT AND PAYMENT:

4.1 The Contractor shall be responsible for the repair of approximately estimated total of 750,000 (square feet) per contract year of asphaltic pavement at various locations.

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

4.3 Payment shall be made at the unit price shown in to Exhibit "H", entitled Fees and Costs of the Contract.

5.0 TOLERANCES:

5.1 The completed pavement will be checked longitudinally and transversely for smoothness. All humps and/or depressions exceeding the specified dimensions shall be corrected. The Contractor shall be required to correct all defective work and shall be required to remove and replace with new materials at no additional cost to the City.

5.2 The Contractor shall be required to perform asphaltic pavement repair shall be when the ambient temperature is greater than 40 degrees Fahrenheit.

- 5.3 Traffic shall not be open until the asphalt has obtained a minimum time for curing which ensures proper pavement performance.
- 5.4 Traffic shall not be open until the asphalt has obtained a minimum of 15 minutes for curing.
- 5.5 The contractor shall be required to warrant all work rendered by a minimum of one calendar year from the date the work was first performed on each job.

6.0 WORK SCHEDULE, SAFETY, FACILITY SECURITY AND TRAFFIC CONTROL:

- 6.1 All work shall be performed between the hours of 6:00 a.m. and 4:00 p.m., Monday through Friday, unless otherwise authorized. (Holidays as prescribed by the City Council not included)
- 6.2 The Contractor shall be responsible for ensuring a safe work environment in accordance with rules and regulations of O.S.H.A., T.C.E.Q. and other governmental agencies for all persons entering the work area, i.e., traffic cones or traffic signs for street construction and others applicable.
- 6.3 If it is necessary, for whatever reason, to stop work and leave an open excavation, adequate safety signs, barricades and/or steel plates shall be placed to establish a secure area at no expense to the City.

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

6.5 TRAFFIC CONTROL

6.5.1 Traffic control for the work contained in this contract shall be the responsibility of the Contractor. All traffic control and protection; including **but not limited** to placement, removal, material, labor and devices shall be as needed and provided by the Contractor (i.e. barricades, competent flagman, etc.). Traffic controls will be utilized to provide a safe work place and maintain quality work procedures. All traffic control devices, methods, and layouts must comply with the City of Houston standards.

6.5.2 Traffic Control: Traffic control on two-lane type (non-divided) highways. The contractor shall supply and be responsible for all labor including a competent and certified flagger, equipment, signs, sign supports, cones and any other materials necessary. All temporary traffic control devices and flagger control shall conform to the current addition of the Manual of Uniform Traffic Control Devices. Pages 531 through 546.

6.5.3 Flagmen must be certified by Metropolitan Transit Authority of Harris County, Texas (METRO). Flagmen shall wear safety apparel and be equipped with devices as prescribed in section 6E01 and section 6E02. Flagging procedures shall be in accordance with section 6E04. Flagging stations shall be located such that approaching road users will have sufficient distance to stop at an intended stopping point and as further described in section 6E05. Flagmen shall be dedicated to traffic control duties only. If relief for the flagger is required, another person shall assume the duties and responsibilities until the flagger returns.

6.5.4 PERMITS: Successful Contractor shall be responsible for securing any and all permits for proposed work. Any fee charged for these permits should be the responsibility of the Contractor and not the City of Houston.

7.0 COMPLETION OF WORK ORDERS:

- 7.1 The Contractor shall notify the Street and Drainage Division (SDD) Representative and/or Contract Technical Representative (CTR) before the initiation of the project.
 - 7.1.1 City personnel shall be authorized to observe all materials and work performed.
 - 7.1.2 Such observation will not relieve the Contractor from any obligation to perform the work in accordance with the requirements of these specifications.
- 7.2 Any extension of the original completion date must be with the prior approval in writing from the Street and Drainage Division (SDD) and/or CTR.
- 7.3 Any deficiency listed by the City representative shall be corrected by the contractor before final acceptance of the work (work order) is granted and the invoices are approved for payment.

8.0 LIABILITY:

- 8.1 All work shall be accomplished in such a manner as to prevent damage to the City of Houston facilities, equipment, roads, grounds, utilities, processes, etc. or to any private property to include but not limited to driveways, sidewalks, curbs, gutters, vehicles, mailboxes, or to any other existing utilities.
- 8.2 The Contractor shall be liable for any damage to electrical, water, gas, etc. which occurs during the performance of work under this contract.
- 8.3 When such damage is due to the failure of the Contractor to take precautionary actions, or to exercise sound judgment, or fail to utilize proven construction practices, the Contractor shall restore, repair, or replace equipment.
 - 8.3.1 The restoration, repair or replacement shall be to a state that it had been before the damage occurred without additional charge to the City of Houston.
- 8.4 No additional compensation for repairs will be allowed.
- 8.5 If necessary, actual costs of repairs, or replacement, may be withheld from contract payment by the City of Houston or the Contractor may issue a credit payment to the City.

9.0 SEQUENCE OF WORK ORDER EXECUTION:

- 9.1 The Contractor must respond with its construction cost quotation within three (3) working days after receiving the cost estimation from the department. The contractor's quotation must include a breakdown for the service to be provided, including the quantity and total cost for each line item. The unit cost for each line item shall be as shown in the contract "Fees and Costs" schedule.
- 9.2 If the Contractor's construction cost quotation is acceptable, the Street and Drainage Division (SDD) Representative and/or CTR will issue a Work Order authorizing the Contractor to perform work at the specified site.
 - 9.2.1 The Contractor will not commence work on the project until the SDD has approved the submitted schedule of work. The Contractor must also obtain approval of the schedule of work prior to mobilization to the site.

9.3 The Contractor must start the construction within thirty (30) working days after the Work Order is issued. The specified response time includes the time required for building inspection, underground utility lines staking and material requisition. However, the Contractor agrees to start a specified construction work within five (5) working days or less if an emergency condition exists.

9.3.1 The Contractor shall be required to have a weekly progress meeting with the CTR or its representative to discuss schedule updates.

9.4 Existing utilities

9.4.1 It is the responsibility of the Contractor to contact all utility companies to field mark their underground lines in the area of the proposed concrete work prior to construction.

9.4.2 If a utility in an existing building is to be interrupted due to alteration work, the scheduled interruption must be coordinated with and be approved by the Street and Drainage Division (SDD) Representative and/or CTR at least three (3) working days before the proposed construction. All requests must put in writing by the Contractor, and all approvals must be in writing.

10.0 **PERFORMANCE BOND AND PAYMENT BOND:**

The Contractor(s) shall be required to provide a Performance and Payment Bond ***in the amount of the Estimated Expenditure (\$1,500,000.00), per Contract Year*** if the award is in excess of \$25,000.00. The Performance and/or Payment Bond shall be in the same form as that distributed by the City, and attached hereto, all duly executed by this bidder (as "Principal") and by an incorporated surety company licensed to do business in the State of Texas. If the amount of the bond is greater than \$100,000.00 the surety must hold a certificate of authority from the United States Secretary of the Treasury.

The Contractor(s) shall be required to provide a Performance and/or Payment Bond as outlined above, which will be delivered to the City Purchasing Agent of the City, on or before the tenth (10th) day following the day the bidder receives notice from the City.

11.0 **MAINTENANCE BOND:**

The Contractor shall furnish a Maintenance Bond ***in the amount of the Estimated Expenditure (\$1,500,000.00), per Contract Year*** in the form required by the City (samples attached). One bond, also referred to as the One Year Maintenance Bond, will be conditioned upon Contractor's repair, replacement or restoration of any work or any portion of the work which is found to be defective or fails in any way to comply strictly with this contract or the plans and specifications for such work within a period of one (1) year from the date of acceptance of such work by the City Council or after the date that the "CO", or his designee in writing, determines, in a written notice to the Contractor, to be the date upon which the project is both substantially complete and available for the full and beneficial occupancy or use of the City.

12.0 **MWBE COMPLIANCE:**

The Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. The Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **12% MBE and 7% WBE** of the value of this Agreement to MWBEs. The Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO"), and will comply with them.

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

13.0 CITY CONTRACTORS' PAY OR PLAY PROGRAM:

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

14.0 GENERAL CONDITIONS:

14.1 The Project's specifications listed in the Technical Specification contains modifying criteria related to working conditions, paid/unpaid items, etc. which supersede and/or represent an addendum to the respective City of Houston Standard Construction Specifications / Details. The most restrictive/critical rule between the two specifications of Technical Specification and Standard Construction Specifications will prevail for the construction requirement(s) of this project.

14.2 In addition to the Technical Specifications, the City of Houston Standard Construction Specifications is attached, as well as the Construction Detail(s) is attached. It is the Contractor's responsibility to verify the correct dimensions, materials, construction methods and other items referred in said Construction Specifications/Details for the specified bid items prior to bidding on this Project regardless of whether the documents are attached or not.

15.0 POST AWARD MEETING:

15.1 Once the contract has been approved by City Council, PW&E will schedule a Post Award Meeting with the successful Contractor and PW&E End Users. The meeting will include procurement, PW&E contacts, vendor invoicing, vendor payment, and all other matters related to contract administration.

16.0 CONTRACT COMPLIANCE:

16.1 The City of Houston reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that acceptable level of service are provided.

16.2 Monitoring may take the form of, but not necessarily limited to:

16.2.1 Site visits

16.2.2 Review of deliveries received for accuracy and timeliness

16.2.3 Review of contractor's invoices for accuracy

16.3 The responsibility for monitoring compliance rests with the department Contract Compliance Section

17.0 ADDITIONS & DELETIONS:

17.1 The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the

City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore, will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

18.0 ESTIMATED QUANTITIES NOT GUARANTEED:

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

19.0 INTERLOCAL AGREEMENT:

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

20.0 WARRANTY OF SERVICES:

20.1 *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the Street and Drainage Division (SDD) Representative and/or CTR by which the City assumes for itself, approval of specific services, as partial or complete performance of the Contract must be in writing.

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

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

20.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the Contract price.

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

END OF SECTION

**SECTION B-1
WAGE SCALE FOR ENGINEERING CONSTRUCTION**

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

Document 00820

WAGE SCALE FOR ENGINEERING CONSTRUCTION

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

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**LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES
FOR
2014 ENGINEERING CONSTRUCTION**

Ordinance No. 2009-247 passed March 25, 2009

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 5 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 Mayor's Office Of Business Opportunity ("OBO") to use an additional labor classification not listed in Exhibit "A" and specify the proposed new classification. OBO shall determine whether a proposed classification is already covered in Exhibit "A", and, if it is, specify which classification is appropriate. OBO's decision is conclusive. If OBO decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered by Exhibit "A". Such determination must be decided in accordance with procedures established by OBO, and in compliance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91, 2006-168 and 2009-247 subject to City Council approval.
- 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 weekly compliance statement with no work 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 except Federally Funded Contract.
- 2.2 Payrolls must clearly indicate whether the worker worked inside or outside the building area.
- 2.3 Payrolls must be numbered and clearly marked: the first payroll as No. 1; etc. Payroll for the final week worked on the job should be marked "FINAL".
- 2.4 Payrolls must have "Week Ending" dates.
- 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 each worker acknowledging the worker's responsibility for payment of Federal Income Tax and FICA.
- 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.
- 2.10 A poster of the Prevailing Wage Rate Schedule should be clearly displayed on each job site, 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 course of 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
2014

CLASSIFICATION	RATE	CLASSIFICATION	RATE
Asphalt Distributor Operator	\$14.06	Milling Machine Operator - Fine Grade	\$13.53
Asphalt Paving Machine Operator	\$14.32	Mixer Operator	\$10.33
Asphalt Raker	\$12.36	Motor Grader Operator- Rough	\$14.23
Asphalt. Shoveler	\$11.68	Motor Grader Operator	\$15.69
Broom or Sweeper Operator	\$12.68	Oiler	\$12.12
Bulldozer Operator	\$11.81	Painter-Structures	\$18.62
Carpenter- Rough	\$12.49	Pavement Marking Machine Operator	\$11.18
Concrete Finisher- Paving	\$12.98	Pile Driveman.	\$14.95
Concrete Finisher- Structures	\$12.98	Pipe Layer	\$12.12
Concrete Paving Curbing Machine Operator	\$11.71	Reinforcing Steel Setter - Paving	\$15.15
Concrete Paving Finishing Machine Operator	\$13.07	Reinforcing Steel Setter - Structure	\$14.39
Concrete Paving Joint Sealer Operator	\$11.00	Roller Operator, Pneumatic - Self-propelled	\$11.57
Concrete Paving. Saw Operator	\$13.99	Roller Operator, Steel Wheel, Flat Wheel/Tamping	\$11.57
Concrete Paving Spreader Operator.	\$10.44	Roller Operator, Steel Wheel, Plant Mix Pavement	\$11.92
Concrete Rubber . . .	\$9.00	Scraper Operator	\$13.47
Crane Clamshell Backhoe Derrick, Dragline, Shovel Operator	\$12.71	Servicer	\$13.97
Crusher and Screening Plant Operator	\$11.29	Sign Installer - PGM	\$8.54
Electrician * 3 Journeyman 2 Apprentice	\$27.11	Slip Form Machine Operator	\$11.07
Flagger	\$10.33	Spreader Box Operator	\$13.58
Form Builder/Setter- Structures	\$12.23	Structural Steel Worker	\$14.39
Form Liner- Paving and Curb	\$12.34	Tractor Operator - Crawler Type	\$13.68
Form Setter- Paving and Curb	\$12.34	Tractor Operator- Pneumatic	\$10.07
Foundation Drill Operator - Crawler Mounted	\$17.43	Transit Mixer Truck Driver	\$11.00
Foundation Drill Operator - Truck Mounted	\$15.89	Truck Driver, Lowboy-float	\$16.03
Front Loader Operator	\$13.32	Truck Driver, Single-Axle - Heavy	\$11.46
Laborer Common	\$11.02	Truck Driver, Single-Axle - Light	\$11.48
Laborer- Utility	\$11.73	Truck Driver, Tandem Axle Semi-Trailer	\$12.27
Manhole Builder	\$9.00	Work Zone Barricade Servicer	\$11.67
Mechanic	\$16.96	Welders - Receive rate prescribed for craft performing operation to which welding is incidental	

* Apprentices- must be in an approved USDOL Program and cannot exceed ratios

**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 make adjustments to 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 make adjustments to 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. May oil grease, service and make adjustments to 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 slipforming 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 *3 Journeyman 2 Apprentice

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 slipforming 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 and 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 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

CITY OF HOUSTON
STANDARD DOCUMENT

WAGE SCALE AND PAYROLL REQUIREMENTS
FOR ENGINEERING CONSTRUCTION

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 directs 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, make 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 (helper) 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 (helper) 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 (helper) 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.

CITY OF HOUSTON
STANDARD DOCUMENT

WAGE SCALE AND PAYROLL REQUIREMENTS
FOR ENGINEERING CONSTRUCTION

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 service 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 operate 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 _____

(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: _____

Witness/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 _____

(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: _____

Witness/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"
EQUAL EMPLOYMENT OPPORTUNITY

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

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

Contractor shall ensure that all subcontracts with M/W/SBE subcontractors and suppliers are clearly labeled **"THIS CONTRACT IS SUBJECT TO MEDIATION"** and contain the following terms:

1. El Dorado Services, LLC (MBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director ("the Director").
2. El Dorado Services, LLC (MBE 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 (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action or the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

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

The MWSBE policy of the City of Houston will be discussed during the pre-proposal conference. For information, assistance, and/or to receive a copy of the City's Affirmative Action Policy and/or Ordinance, contact the Office of Business Opportunity Division at 832.393.0600, 611 Walker Street, 7th Floor, Houston, Texas 77002.

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

Contractor shall ensure that all subcontracts with M/WSBE subcontractors and suppliers are clearly labeled **"THIS CONTRACT IS SUBJECT TO MEDIATION"** and contain the following terms:

4. **MVA Construction, LLC** (WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director ("the Director").
5. **MVA Construction, LLC** (WBE 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 (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action or the applicable statute of limitations.
6. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

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

The MWSBE policy of the City of Houston will be discussed during the pre-proposal conference. For information, assistance, and/or to receive a copy of the City's Affirmative Action Policy and/or Ordinance, contact the Office of Business Opportunity Division at 832.393.0600, 611 Walker Street, 7th Floor, Houston, Texas 77002.

EXHIBIT "DD"
CITY OF HOUSTON
OFFICE OF BUSINESS OPPORTUNITY & CONTRACT COMPLIANCE
M/WBE UTILIZATION REPORT

Report Period _____

PROJECT NAME & NUMBER: _____

AWARD DATE: _____

PRIME CONTRACTOR: _____

CONTRACT No.: _____

ADDRESS: _____

CONTRACT AMOUNT: _____

LIAISON/PHONE No.: _____

M/WBE GOAL: _____

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

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

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

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

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

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

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

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

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

Date 10/3/2014

Contractor Name Hossein Zafaranian

Signature 

Title President

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

I, _____
(Name)(Print/Type) (Title)

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

Date Contractor Name

Signature

Title

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

I, Hosesin Zafaranian

(NAME) (PRINT/TYPE)

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

10/3/2014

DATE

Hossein Zafaranian

CONTRACTOR NAME



SIGNATURE

President

TITLE

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION

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

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from 03/30/14 to 09/30/14, 20 .

H.Z. A written Drug Free Workplace Policy has been implemented and employees notified.
 Initials The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

H.Z. Written drug testing procedures have been implemented in conformity with the Mayor's
 Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

N/A Collection/testing has been conducted in compliance with federal Health and Human
 Initials Services (HHS) guidelines.

H.Z. Appropriate safety impact positions have been designated for employee positions
 Initials performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 1.

N/A From to the following test has occurred
 Initials (Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

N/A Any employee who tested positive was immediately removed from the City worksite
 Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

H.Z. I affirm that falsification or failure to submit this declaration timely in accordance with
 Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

10/3/2014
 (Date)

Hossein Zafaranian
 (Typed or Printed Name)
Hossein Zafaranian
 (Signature) President
 (Title)

**EXHIBIT "H"
FEES AND COSTS**

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE
YEAR ONE			
1.	Saw cut 3" Asphalt and 6" Limestone Sub base.	LF	\$6.00
2.	Additional saw cut for every 1" extra depth above 3" asphalt and 6" sub base.	LF	\$2.00
3.	Saw cut concrete up to 5" thick.	LF	\$5.50
4.	Additional cost of sawing concrete after the first 5".	LF	\$1.50
5.	Removal of asphalt up to 2" thick.	FT2	\$0.95
6.	Additional cost of removing asphalt for every additional one inch after the first 3" thick.	FT2	\$1.20
7.	Removal of sub base up to 6".	FT2	\$1.75
8.	Additional cost for removal of the sub base for every additional one inch after the first 6".	FT2	\$1.00
9.	Installing 6" limestone thick sub base.	FT2	\$2.50
10.	Additional cost for each 1" additional sub base thickness after the first 6".	FT2	\$0.50
11.	Installing 2" asphalt.	FT2	\$3.00
12.	Additional cost for each 1" additional asphalt thickness after the first 2".	FT2	\$0.75
13.	Installing cement stabilized sand.	FT3	\$3.00
14.	Lime for stabilization of subgrade.	LB	\$8.00
15.	Traffic Control Systems for each site.	EA	\$250.00
16.	Certified Flagmen.	HR	\$50.00
17.	Uniformed Police Officer.	HR	\$100.00
18.	Cost of Annual Performance, Payment and Maintenance bonds.	LS	\$50,000.00
<p>Price adjustments for Option Years, 2 through 5 will be based on the Producer Price Index for Asphalt Paving and Roofing Materials (Group), Asphalt Paving (Item), Series ID PCU32412 as published by the U.S. Department of Labor, Bureau of Labor Statistics. (See the price adjustment formula on Contract Page No. 25 of 31)</p>			

A.2.

PRICE ADJUSTMENT:

Producer Price Index (PPI):

Price adjustments will be based on the Producer Price Index for Asphalt Paving and Roofing Materials (Group), Asphalt Paving (Item), Series ID PCU32412 as published by the U.S. Department of Labor, Bureau of Labor Statistics.

Adjustment Frequency:

A price adjustment review will be conducted **annually**. If the PPI changed up or down compared to the twelve months prior, an adjustment will be done. The price adjustment will become effective on the 10th of the month.

REVISED GENERAL TERMS AND CONDITIONS FOR ASPHALTIC PAVEMENT

Methodology:

Formula:

Price adjustments shall be calculated by applying the simple percentage method to the PPI data. This method is defined as dividing the index value at the time of the calculation by the index value of the base period (**one year earlier**), then multiplying the percentage by the base price.

Example

Award date: February 15, 2012

Bid Price: \$40.00

PPI for February 2012: 252.1

PPI for February 2013: 257.6

First price adjustment: March 10th 2013

Calculation: $(\text{PPI } 02/13 - \text{PPI } 02/12) / \text{PPI } 02/12 = \text{Percentage of Increase}$

Old Price * 1 * Percentage of Increase = New Price

$(257.6 - 252.1) / 252.1 = .0218$

$\$40.00 * 1 * .0218 = \40.87

Adjustment Request

The supplier will notify the City of Houston in writing **annually** the changes in the PPI. The supplier must either state that there were no changes in the PPI and no price adjustment will be requested/implemented at this time, or the supplier will use the formula referenced in Sub-section 3.3.1 to calculate the new price. The supplier's price adjustment notification, accompanied by the applicable PPI data, must be sent to the following address:

City Purchasing Agent
P.O. Box 1562
Houston, Texas 77251

If the City Purchasing Agent approves the price adjustment request, the supplier will be notified in writing of such approval.

If, at any time after approving a price increase, the City Purchasing Agent determines that the City can obtain the same item at a lower price from a different source without violating the State bid law, the City may then purchase the item from the lower price source without any obligation to the Supplier.

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



**City of Houston
Certification of Compliance with
Pay or Play Program**

Form POP-2



Contractor Name: Times Construction, Inc. \$ 7,500,000.00
(Contractor/Subcontractor) (Amount of Contract)

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

Project No.: [GFS/CIP/AIP/File No.] S-50C24977

Project Name: [Legal Project Name] Asphaltic Pavement Repair Services Citywide

POP Liaison Name: Hossein Zafarianian

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534 and Executive Order 1-7, Contractor/Subcontractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for all covered employees. The Contractor/Subcontractor may also Pay on behalf of some covered employees and Play on behalf of other covered employees.

The Contractor/Subcontractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program requirements of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program) The criteria of the program is as follows:

The Contractor/Subcontractor agrees to "Pay" \$1.00 per hour for work performed by covered employees under the contract with the City. If independent contract labor is utilized the Contractor/Subcontractor agrees to report hours worked by the independent contract laborer and pay \$1.00 per hour for work performed.

Otherwise the Contractor/Subcontractor agrees to "Play" by providing health benefits to each covered employee. The health benefits must meet the following criteria:

1. The employer will contribute no less than \$150 per employee per month toward the total premium cost for single coverage only; and
2. The employee contribution, if any amount, will be no greater than 50% of the total premium cost and no more than \$150 per month.
3. Pursuant to E.O. 1-7 section 4.04 a contractor is deemed to have complied with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month.

Please select whether you choose to:	Pay	Play	Both
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The Contractor/Subcontractor will file compliance reports with the City, which will include activity for covered employees subject to the program, in the form and to the extent requested by the administering department. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Note: The Contractor is responsible to the City for the compliance of covered employees of covered subcontractors and only forms that are accurate and complete will be accepted.

*Estimated Number of:	Prime Contractor	Sub-Contractor
Total Employees on City Job	2	
Covered Employees	2	
Non-Covered Employees	0	
Exempt Employees	0	

*Required

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

Contractor (Signature)

Hossein Zafarianian, President

Name and Title (Print or type)

October 7, 2014
 Date

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

Document 00610

PERFORMANCE BOND

THAT WE, Times Construction, Inc., as Principal, (the "Contractor"), and the other subscriber hereto, The Hanover Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston (the "City"), a municipal corporation, in the penal sum of **\$1,500,000.00** for the payment of which sum, well and truly to be made to the City, its successors and assigns, Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City for S50-C24977 – Asphaltic Pavement Repair Services Citywide for the Public Works and Engineering Department, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

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

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

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

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

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

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


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

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


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

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

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

By: 
Name: Negar Rowe
Title: Secretary

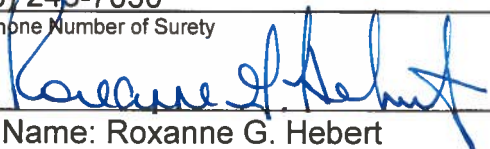
Times Construction, Inc.
Name of Contractor

By: 
Name: HOSSEIN ZAFARIAN
Title: PRESIDENT
Date: September 29, 2014


ATTEST/SURETY WITNESS:
(SEAL)

By: 
Name: Mary Rifaat
Title: Account Manager
Date: September 29, 2014

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

(713) 243-7050
Telephone Number of Surety
By: 
Name: Roxanne G. Hebert
Title: Attorney-in-Fact
Date: September 29, 2014

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

10-14-14
Date

END OF DOCUMENT

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

POWERS OF ATTORNEY
CERTIFIED COPY

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

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

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

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

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

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

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




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



Robert Thomas, Vice President


Joe Brenstrom, Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

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

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


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

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

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

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

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 29th day of September 2014.

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



Glen Margosian, Vice President

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

Document 00612

ONE-YEAR MAINTENANCE BOND

THAT WE, Times Construction, Inc., as Principal, hereinafter called Contractor, and the other subscriber hereto, The Hanover Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of **\$1,500,000.00**, for the payment of which sum well and truly to be made to the City of Houston and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:


WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Houston for S50-C24977 – Asphaltic Pavement Repair Services Citywide for the Public Works and Engineering Department, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

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


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

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

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

By: 
Name: Nigor Rowe
Title: Secretary

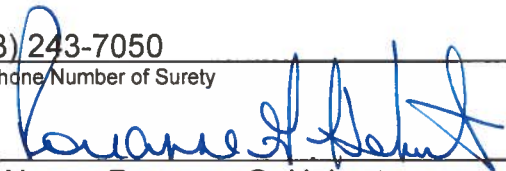
Times Construction, Inc.
Name of Contractor

By: 
Name: HOSSEIN R. AFA
Title: PRESIDENT
Date: September 29, 2014

ATTEST/SURETY WITNESS:
(SEAL)

By: 
Name: Mary Rifaat
Title: Account Manager
Date: September 29, 2014

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

(713) 243-7050
Telephone Number of Surety
By: 
Name: Roxanne G. Hebert
Title: Attorney-in-Fact
Date: September 29, 2014

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

10-14-14
Date

END OF DOCUMENT

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

POWERS OF ATTORNEY
CERTIFIED COPY

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

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

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

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

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

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

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



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

Robert Thomas, Vice President

Joe Brenstrom, Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

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

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

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

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

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

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

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 29th day of September 2014.

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

Glenn Margosian, Vice President

IMPORTANT NOTICE

To obtain information or make a complaint:
You may call The Hanover Insurance Company/
Citizens Insurance Company of America's toll-free
telephone number for information or to make a
complaint at:

1-800-608-8141

You may also write to The Hanover Insurance Company/
Citizens Insurance Company of America at:

440 Lincoln Street
Worcester, MA 01615

You may contact the Texas Department of Insurance
to obtain information on companies, coverages,
rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium
or about a claim you should contact the agent or the
company first. If the dispute is not resolved, you may
contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This
notice is for information only and does not become
a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:
Usted puede llamar al numero de telefono gratis de
The Hanover Insurance Company/Citizens Insurance
Company of America's para informacion o para
someter una queja al:

1-800-608-8141

Usted tambien puede escribir a The Hanover Insurance
Company/Citizens Insurance Company of America al:

440 Lincoln Street
Worcester, MA 01615

Puede comunicarse con el Departamento de Seguros
de Texas para obtener informacion acerca de
compañias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un
reclamo, debe comunicarse con el agente o la com-
pania primero. Si no se resuelve la disputa, puede
entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo
para proposito de informacion y no se convierte en
parte o condicion del documento adjunto.

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

Document 00611

STATUTORY PAYMENT BOND

THAT WE, Times Construction, Inc., as Principal, hereinafter called Contractor and the other subscriber hereto, The Hanover Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound unto the City of Houston, a municipal corporation, in the sum of **\$1,500,000.00** for the payment of which sum, well and truly to be made to the City of Houston, and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a contract in writing with the City of Houston for S50-C24977 – Asphaltic Pavement Repair Services Citywide for the Public Works and Engineering Department all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein;

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


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

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

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


Times Construction, Inc.
Name of Contractor

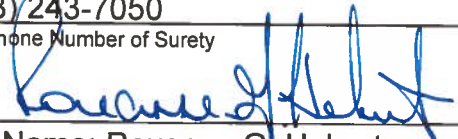
By: 
Name: Negar Rowe
Title: Secretary

By: 
Name: HOSSEIN DATARANIAN
Title: PRESIDENT
Date: September 29, 2014

ATTEST/SURETY WITNESS:
(SEAL)

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

By: 
Name: Mary Rifaat
Title: Account Manager
Date: September 29, 2014

(713) 243-7050
Telephone Number of Surety
By: 
Name: Roxanne G. Hebert
Title: Attorney-in-Fact
Date: September 29, 2014

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.

 10-14-14
Legal Assistant Date

END OF DOCUMENT

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

POWERS OF ATTORNEY
CERTIFIED COPY

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

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

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

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

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

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

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



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


Robert Thomas, Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.


Joe Brenstrom, Vice President

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



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



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

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

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

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

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 29th day of September 2014.

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



Glenn Margosian, Vice President

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

Document 00700

GENERAL CONDITIONS

August 1, 2013 EDITION

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ARTICLE 1 - GENERAL PROVISIONS

1.1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 EXECUTION, CORRELATION, AND INTENT

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

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

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

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

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

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

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

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

1.3 OWNERSHIP AND USE OF DOCUMENTS

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

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

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

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

1.4 INTERPRETATION

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

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

ARTICLE 2 - THE CITY

2.1 LIMITATIONS OF THE CITY'S OFFICERS AND EMPLOYEES

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

2.2 DUTIES OF THE CITY

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

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

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

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

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

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

2.3 AVAILABILITY OF LAND AND USE OF SITE

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

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

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

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

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

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

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

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

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

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

ARTICLE 3 - CONTRACTOR

3.1 *RESPONSIBILITIES*

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

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

3.2 *REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONTRACTOR*

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

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

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

3.3 *SUPERVISION AND CONSTRUCTION PROCEDURES*

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

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

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

3.4 SUPERINTENDENT

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

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

3.5 LABOR

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

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

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

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

voluntary arbitration. Business Enterprise subcontracts complying with City Code of Ordinances Chapter 15, Article II must contain the terms set out in Subparagraph 3.5.3.2. If Contractor is an individual person, as distinguished from a corporation, partnership, or other legal entity, and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

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

- .1 (Business Enterprise) may not delegate or subcontract more than 50 percent of work under this subcontract to any other subcontractor without the express written consent of the Director.
- .2 (Business Enterprise) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the Subcontractors and Suppliers, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. (Business Enterprise) shall keep the books and records available for this purpose for at least four years after the end of its performance under this subcontract. Nothing in this Section shall affect the time for bringing a cause of action nor the applicable statute of limitations.
- .3 Within five business days of execution of this subcontract, Contractor and (Business Enterprise) shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.
- .4 As concluded by the parties to this subcontract, and as evidenced by their signature to this subcontract, any controversy between the parties involving the construction or application of the terms of this subcontract may submitted to arbitration, under the Texas General Arbitration Act (TEX. CIV. PRAC. & REM. CODE ANN., Ch 171 - "Act"). Arbitration will be conducted

according to procedures agreed upon by both parties to the subcontract. All arbitrations will be conducted in Houston, Texas unless the parties agree to another location in writing.

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

3.6 PREVAILING WAGE RATES

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

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

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

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

3.7 LABOR CONDITIONS

3.7.1 In the event of labor disputes affecting Contractor or Contractor's employees, Contractor

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

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

3.8 DRUG DETECTION AND DETERRENCE

3.8.1 It is the policy of the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on the City's premises is prohibited. By executing the Contract, Contractor represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Mayor's Policy is on file in the office of the City Secretary. Copies of Executive Order may be obtained at the location specified in the Advertisement for Bids.

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

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

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

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

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

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

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

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

3.9 MATERIALS & EQUIPMENT

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

3.9.1.1 Contractor, Subcontractors, and Suppliers shall use Ultra Low Sulfur Diesel Fuel in all diesel operating vehicles and motorized equipment utilized in performing the Work. Ultra Low Sulfur

Diesel Fuel is defined as diesel fuel having 15 ppm or the applicable standard set by state or federal law or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content. Off-road Ultra Low Sulfur Diesel Fuel may be used in lieu of on-road Ultra Low Sulfur Diesel Fuel. Contractor shall provide, upon request by City Engineer, proof that Contractor, Subcontractors, and Suppliers are using Ultra Low Sulfur Diesel Fuel.

3.9.2 Contractor shall provide Products that are:

- .1 new, unless otherwise required or permitted by the Contract, and
- .2 of specified quality.

If required by City Engineer, Contractor shall furnish satisfactory evidence, including reports of required tests, as to kind and quality of Products.

3.9.3 Contractor shall store Products in a safe, neat, compact, and protected manner. Contractor shall also store Products delivered during the work, along the right-of-way:

- .1 so as to cause the least inconvenience to property owners, tenants, and general public; and
- .2 so as not to block access to, or be closer than, three feet to any fire hydrant.

Contractor shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by Contractor, Contractor shall, at its sole expense, restore the damaged property to at least its original condition.

3.9.3.1 Contractor shall obtain City Engineer's approval for storage areas used for Products for which payment has been requested under Paragraph 9.6.1. Contractor shall provide the City access to the storage areas for inspection purposes. Products, once paid for by the City, become the property of the City and may not be removed from place of storage, without City Engineer's written permission except for a movement to the site. Contractor's Installation Floater, required under Section 11.2, shall cover all perils, including loss or damage to Products during storage, loading, unloading, and transit to the site.

3.10 PRODUCT OPTIONS AND SUBSTITUTIONS

3.10.1 For Products specified by reference standards or by description only, Contractor may provide any Product meeting those standards or description.

- 3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, Contractor may submit a request for substitution for any manufacturer not named.
- 3.10.3 City Engineer will consider requests for substitutions only within the first 15 percent of Contract Time, or first 90 days after date of Notice to Proceed, whichever is less.
- 3.10.4 Contractor shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract.
- 3.10.5 A request for substitution constitutes a representation that Contractor:
- .1 has investigated the proposed Product and determined that it meets or exceeds the quality level of the specified Product;
 - .2 shall provide the same warranty for the substitution as for the specified Product;
 - .3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;
 - .4 confirms that cost data is complete and includes all related costs under the Contract;
 - .5 waives Claim for additional costs or time extensions that may subsequently become apparent; and
 - .6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.
- 3.10.6 City Engineer will not consider and will not approve substitutions when:
- .1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or
 - .2 acceptance will require revision to the Contract.
- 3.10.7 City Engineer may reject requests for substitution, and his decision will be final and binding on the Parties.
- 3.11 CASH ALLOWANCES
- 3.11.1 Contract Price includes Cash Allowances as identified in the Contract.
- 3.11.2 The City will pay the actual costs of Cash Allowance item exclusive of profit, overhead or administrative costs. If actual costs exceed the Cash Allowance, City Engineer must approve a Change Order for the additional costs.
- 3.12 WARRANTY
- 3.12.1 Contractor warrants to the City that Products furnished under the Contract are:
- .1 free of defects in title;
 - .2 of good quality; and
 - .3 new, unless otherwise required or permitted by the Contract.
- If required by the City Engineer, Contractor shall furnish satisfactory evidence as to kind, quality and title of Products, and that Products conform to requirements of the Contract.
- 3.12.2 In the event of a defect in a Product, either during construction or warranty period, Contractor shall take appropriate action with manufacturer of Product to assure correction or replacement of defective Product with minimum delay.
- 3.12.3 Contractor warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract. Contractor further warrants that the Work has been performed in a thorough and workmanlike manner.
- 3.12.4 Contractor warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.
- 3.12.5 Work not conforming to requirements of Section 3.12, including substitutions not properly approved and authorized, may be considered nonconforming work.
- 3.12.6 Contractor's warranty excludes remedy for damage or defect caused by:
- .1 improper or insufficient maintenance by the City;
 - .2 normal wear and tear under normal usage; or
 - .3 claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.

3.12.7 Contractor warrants that title to all work covered by Contractor's request for payment passes to the City upon incorporation into the Work or upon Contractor's receipt of payment, whichever occurs first. The Contractor further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from City Engineer, Contractor shall immediately take legal action necessary to remove Encumbrances.

3.13 TAXES

3.13.1 Contractor shall pay all sales, consumer, use, and similar taxes, which are in effect or scheduled to go into effect on or before bids are received, related to work provided by Contractor.

3.13.2 Contractor shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from the state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits.

3.13.3 The City is exempt from the Federal Transportation and Excise Tax. Contractor shall comply with federal regulations governing the exemptions.

3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.

3.14 PERMITS, FEES, AND NOTICES

3.14.1 Unless otherwise provided in the Contract, Contractor shall secure and pay for all construction permits, licenses, and inspections:

- .1 necessary for proper execution and completion of the Work; and
- .2 legally required at time bids are received.

3.15 CONSTRUCTION SCHEDULES

3.15.1 On receipt of Notice to Proceed, Contractor shall promptly prepare and submit construction schedule for the Work for City Engineer's review. The schedule must reflect the minimum time required to complete the Work not to exceed Contract Time.

3.15.2 Contractor shall give 24-hour written notice to City Engineer before commencing work or resuming work where work has been stopped.

Contractor shall also give the same notice to inspectors.

3.15.3 Contractor shall incorporate milestones specified in Summary of Work Specification into the construction schedule. Contractor's failure to meet a milestone, as determined by City Engineer, may be considered a material breach of the Contract.

3.15.4 Each month, Contractor shall submit to City Engineer a copy of an updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of the Work within Contract Time.

3.15.5 Contractor shall keep a current schedule of submittals that coordinates with the construction schedule, and shall submit the initial schedule of submittals to City Engineer for approval.

3.16 DOCUMENTS AND SAMPLES AT THE SITE

3.16.1 Contractor shall maintain at the site, and make available to City Engineer, one record copy of Drawings, Specifications, and Modifications. Contractor shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, Contractor shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to City Engineer prior to final inspection as required in Paragraph 9.11.4.

3.16.2 Contractor shall maintain all books, documents, papers, accounting records, and other relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of the City for review and audits during the Contract term and for the greater of three years following Date of Substantial Completion or until all litigation or audits are fully resolved.

3.16.3 Contractor shall provide to City Attorney all documents and records that City Attorney deems necessary to assist in determining Contractor's compliance with the Contract, with the exception of those documents made confidential by federal or state law or regulation.

3.17 MANUFACTURER'S SPECIFICATIONS

3.17.1 Contractor shall handle, store, and Install Products and perform all work in the manner

required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Contractor shall report conflict to City Engineer for resolution prior to proceeding with the affected work.

3.17.2 References in the Contract to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of bids, or in the case of a Modification, as of date of Modification.

3.18 *SHOP DRAWINGS, PRODUCT DATA,
AND SAMPLES*

3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of Contractor submittals is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to conform to information given and design concept expressed in the Contract.

3.18.2 Contractor shall submit to Project Manager for review the Shop Drawings, Product Data, and Samples, which are required by the Contract. Review by Project Manager is subject to limitations of Paragraph 4.1.4. Contractor shall transmit the submittals to the Project Manager with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of the City or of separate contractors. Contractor shall transmit submittals in time to allow a minimum of 30 days for Project Manager's review prior to date Contractor needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by Project Manager in advance of submittal.

3.18.3 Contractor shall certify that the content of submittals conforms to the Contract without exception by affixing Contractor's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, Contractor represents, and Contractor's stamp of approval shall state, that Contractor has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract.

3.18.4 Contractor may not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by

the Project Manager. Contractor shall perform work in accordance with the review.

3.18.5 If Contractor performs any work requiring submittals prior to review and acceptance of the submittals by Project Manager, such work is at Contractor's risk and the City is not obligated to accept work if the submittals are later found to be unacceptable.

3.18.6 If, in the opinion of Project Manager, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by the Contractor, then submittals may be returned to the Contractor for correction and resubmittal.

3.18.7 Contractor shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by Project Manager on previous submittals.

3.18.8 Contractor is not relieved of responsibility for deviations from requirements of the Contract by Project Manager's review of Shop Drawings, Product Data, or Samples unless Contractor has specifically informed Project Manager in writing of the deviation at the time of the submittal, and Project Manager has given written approval of the deviation.

3.18.9 When professional certification of performance criteria of Products is required by the Contract, the City may rely upon accuracy and completeness of the calculations and certifications.

3.18.10 For Product colors or textures to be selected by the City, Contractor shall submit all samples together to allow preparation of a complete selection schedule.

3.18.11 Contractor shall submit informational submittals, on which Project Manager is not expected to take responsive action, as required by the Contract.

3.18.12 Submittals made by Contractor which are not required by the Contract may be returned to Contractor without action.

3.19 *CULTURAL RESOURCES AND
ENDANGERED SPECIES*

3.19.1 Contractor may not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural

artifacts, relics, vestiges, remains, or objects of antiquity. If Contractor discovers one of these items, Contractor shall immediately notify City Engineer and further comply with the requirements of 13 Tex. Admin. Code Chs. 25 and 26 (2002), or successor regulation. Contractor shall protect site and cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by City Engineer.

3.19.2 Should either threatened or endangered plant or animal species be encountered, Contractor shall cease work immediately in the area of encounter and notify City Engineer.

3.20 CUTTING AND PATCHING

3.20.1 Contractor is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other contractors. Contractor shall coordinate the Work with work of other contractors to minimize conflicts, as provided in Article 6.

3.20.2 Contractor may not endanger work by cutting, digging, or other action, and may not cut or alter work of other contractors except by written consent of City Engineer and affected contractor.

3.21 CLEANING

3.21.1 Contractor shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from Contractor's operations, whether on-site or off-site. Unless otherwise authorized in writing by City Engineer, Contractor shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.

3.21.2 Failure of Contractor to maintain a clean site, including access streets, is the basis for City Engineer to issue a Notice of Noncompliance. Should compliance not be attained within the time period in the Notice of Noncompliance, City Engineer may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due Contractor.

Contractor shall legally dispose off-site, all waste materials and other excess materials resulting from Contractor's operations.

3.22 SANITATION

3.22.1 Contractor shall provide and maintain sanitary facilities at site for use of all construction

forces under the Contract. Newly-constructed or existing sanitary facilities may not be used by Contractor.

3.23 ACCESS TO WORK AND TO INFORMATION

3.23.1 Contractor shall provide the City, Design Consultant, testing laboratories, and governmental agencies which have jurisdictional interests, access to the Work in preparation and in progress wherever located. Contractor shall provide proper and safe conditions for the access.

3.23.2 If required by City Engineer, Contractor shall furnish information concerning character of Products and progress and manner of the Work, including information necessary to determine cost of the Work, such as number of employees, pay of employees, and time employees worked on various classes of the Work.

3.24 TRADE SECRETS

3.24.1 Contractor will not make any claim of ownership of trade secrets as to products used in the Work, or preparation of any mixture for the Work. City Engineer will at all times have the right to demand and Contractor shall furnish information concerning materials or samples of ingredients of any materials used, or proposed to be used, in preparation of concrete placed or other work to be done. Mixtures, once agreed on, shall not be changed in any manner without knowledge and consent of City Engineer. The City will make its best efforts to protect confidentiality of proprietary information.

3.25 INDEMNIFICATION

3.25.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE CONTRACT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR

- SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS .1 through .3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- .2 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT;
- .3 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

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

3.25.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF CONTRACTOR FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000.

3.26 *RELEASE AND INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT*

3.26.1 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THE CONTRACT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

3.26.2 CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT WITHOUT THE CITY ENGINEER'S PRIOR WRITTEN CONSENT.

3.26.3 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER:

- .1 OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR
- .2 IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.

IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR PRODUCT, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

3.27 *INDEMNIFICATION PROCEDURES*

3.27.1 *Notice of Indemnification Claims:* If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within 10 days. The notice must include the following:

- .1 a description of the indemnification event in reasonable detail,
- .2 the basis on which indemnification may be due, and
- .3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

3.27.2 *Defense of Indemnification Claims:*

- .1 *Assumption of Defense:* Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to

settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnified loss.

.2 *Continued Participation:* If Contractor elects to defend the claim, the City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it:

- .1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;
- .2 would require the City to pay amounts that Contractor does not fund in full; or
- .3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.28 **CONTRACTOR DEBT**

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1

AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THE CONTRACT.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 **CONTRACT ADMINISTRATION**

4.1.1 City Engineer will provide administration of the Contract and City Engineer is authorized to issue Change Orders, Work Change Directives, and Minor Changes in the Work.

4.1.2 City Engineer may act through Project Manager, Design Consultant, or Inspector. When the term "City Engineer" is used in the Contract, action by City Engineer is required unless City Engineer delegates his authority in writing. The City Engineer may not delegate authority to render decisions under Section 4.4.

The City does not have control over or charge of, and is not responsible for, supervision, construction, and safety procedures enumerated in Section 3.3. The City does not have control over or charge of and is not responsible for acts or omissions of Contractor, Subcontractors, or Suppliers.

4.1.3 The City and Design Consultant may attend project meetings and visit the site to observe progress and quality of the Work. The City and Design Consultant are not required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work.

4.1.4 Project Manager will review and approve or take other appropriate action on Contractor's submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract.

4.1.5 Project Manager's review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of Contractor.

4.1.6 Project Manager's review of submittals does not relieve Contractor of its obligations under Sections 3.3, 3.12, and 3.18. Review does not constitute approval of safety precautions or, unless otherwise specifically stated by Project Manager in writing, of construction means, methods, techniques, sequences, or procedures. Project Manager's review of a specific item does not indicate approval of an assembly of which the item is a component.

4.1.7 Based on field observations and evaluations, Project Manager will process Contractor's progress payments, certify amounts due Contractor, and issue Certificates for Payment in the amount certified.

4.1.8 Project Manager will receive and forward to City Engineer for his review and records, written warranties and related documents required by the Contract and assembled by Contractor.

4.1.9 Upon written request by Contractor or Project Manager, City Engineer will resolve matters of interpretation of or performance of the Contract, which are not Claims. City Engineer's decisions are final and binding on the Parties.

4.1.10 City Engineer may reject work which does not conform to the Contract.

4.1.11 When City Engineer considers it necessary to implement the intent of the Contract, City Engineer may require additional inspection or testing of work in accordance with Paragraphs 13.6.3 and 13.6.4, whether such work is fabricated, installed, or completed.

4.2 COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT

4.2.1 Except as otherwise provided in the Contract or when authorized by City Engineer in writing, Contractor shall communicate with Project Manager. Contractor shall communicate with Design Consultant, Design Consultant's subconsultants, and separate contractors through Project Manager. The City will communicate with Subcontractors and Suppliers through Contractor.

4.3 CLAIMS AND DISPUTES

4.3.1 *Documentation by Project Manager:* Contractor shall submit Claims, including those alleging an error or omission by Project Manager or Design Consultant, to Project Manager for documentation and recommendation to City Engineer.

4.3.2 *Decision of City Engineer:* Upon submission of Claim by Project Manager or Contractor, City Engineer will resolve Claims in accordance with Section 4.4.

4.3.3 *Time Limits on Claims:* Claims by Contractor must be made within 90 days after occurrence of event giving rise to the Claim.

4.3.4 *Continuing the Contract Performance:* Pending final resolution of a Claim including referral to non-binding mediation, unless otherwise agreed in writing, Contractor shall proceed diligently with the performance of the Contract and the City will continue to make payments in accordance with the Contract.

4.3.4.1 Pending final resolution of a Claim including referral to non-binding mediation, Contractor is responsible for safety and protection of physical properties and conditions at site.

4.3.5 *Claims for Concealed or Unknown Conditions:* Concealed or unknown physical conditions include utility lines, other man-made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions arising from Contractor operations, or failure of Contractor to properly protect and safeguard subsurface facilities. Concealed conditions also include naturally-occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from groundwater, rain, or flood.

4.3.5.1 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions which differ materially from:

- .1 those indicated by the Contract; or
- .2 conditions which Contractor could have discovered through site inspection, geotechnical testing, or otherwise;

then Contractor will give written notice to City Engineer no later than five days after Contractor's first observation of the condition and before condition is disturbed. Contractor's failure to provide notice constitutes a waiver of a Claim.

4.3.5.2 City Engineer will promptly investigate concealed or unknown conditions. If City Engineer determines that conditions at the site are not materially different and that no change in Contract Price or Contract Time is justified, City Engineer will notify Contractor in writing, stating reasons. If City Engineer determines the conditions differ materially and cause increase or decrease in Contractor's cost or time required for performance of part of the Work, City Engineer will recommend an adjustment in Contract Price or Contract Time, or both, as provided in Article 7. Opposition by a Party to the City Engineer's determination must be made within 21

days after City Engineer has given notice of the decision. If the Parties cannot agree on adjustment to Contract Price or Contract Time, adjustment is subject to further proceedings pursuant to Section 4.4.

4.3.6 *Claims for Additional Cost:* If Contractor wishes to make a Claim for increase in Contract Price, Contractor shall give written notice before proceeding with work for which Contractor intends to submit a Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

4.3.6.1 Contractor may file a Claim in accordance with Section 4.4 if Contractor believes it has incurred additional costs, for the following reasons:

- .1 written interpretation of City Engineer;
- .2 order by City Engineer to stop the Work when Contractor is not at fault;
- .3 suspension of the Work by City Engineer;
- .4 termination of the Contract by City Engineer; or
- .5 The City's non-compliance with another provision of the Contract.

4.3.6.2 No increase in Contract Price is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to Contractor caused by failure of the City to provide information and services, or to make land and materials available, when required of the City under the Contract. Any increase claimed is subject to the provisions of Section 4.4 and Article 7.

4.3.6.3 The City is not liable for Claims for delay when Date of Substantial Completion occurs prior to expiration of Contract Time.

4.3.7 *Claims for Additional Time:* If Contractor wishes to make a Claim for an increase in Contract Time, Contractor shall give written notice as provided in Section 8.2. In case of continuing delay, only one Claim is necessary.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 City Engineer will review Claims and take one or more of the following preliminary actions within 30 days of receipt of Claim:

- .1 submit a suggested time to meet and discuss the Claim with City Engineer;
- .2 reject Claim, in whole or in part, stating reasons for rejection;

- .3 recommend approval of the Claim by the other Party;
- .4 suggest a compromise; or
- .5 take other actions as City Engineer deems appropriate to resolve the Claim.

4.4.2 City Engineer may request additional supporting data from claimant. Party making Claim shall, within 10 days after receipt of City Engineer's request, submit additional supporting data requested by City Engineer.

4.4.3 At any time prior to rendering a written decision regarding a Claim, City Engineer may refer Claim to non-binding mediation. If Claim is resolved, City Engineer will prepare and obtain all appropriate documentation. If Claim is not resolved, City Engineer will take receipt of Claim and begin a new review under Section 4.4.

4.4.4 If Claim is not referred to or settled in non-binding mediation, City Engineer may conduct a hearing and will render a written decision, including findings of fact, within 75 days of receipt of Claim, or a time mutually agreed upon by the Parties in writing. City Engineer may notify Surety and request Surety's assistance in resolving Claim. City Engineer's decision is final and binding on the Parties.

4.5 CONDITION PRECEDENT TO SUIT; WAIVER OF ATTORNEY FEES AND INTEREST

4.5.1 Neither the City nor Contractor may recover attorney fees for any claim brought in connection with this Contract.

4.5.2 Neither the City nor the Contractor may recover interest for any damages claim brought in connection with this Contract except as allowed by TEXAS LOCAL GOVERNMENT CODE Chapter 2251.

4.6 INTERIM PAYMENT WAIVER & RELEASE

4.6.1 In accordance with section 4.3, the Contractor shall use due diligence in the discovery and submission of any Claim against the City related to the Contractor's work.

4.6.2 The Contractor shall submit any Claim to the City not later than the 90th day after the occurrence of the event giving rise to the Claim.

4.6.3 Any failure to timely comply with the requirements of section 4.6.2 waives and releases any Claim when the Contractor submits an application for payment after the 90th day.

4.6.4 This waiver does not cover any retainage. In case of any conflict of law, this language shall be revised to the minimum extent necessary to avoid legal conflict. This waiver is made specifically for the benefit of the City.

ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS

**5.1 AWARD OF SUBCONTRACTS
OTHER CONTRACTS FOR
PORTIONS OF THE WORK**

5.1.1 Contractor may not contract with a Subcontractor, Supplier, person, or entity that City Engineer has made a reasonable and timely objection to.

5.1.2 If City Engineer has a reasonable objection to person or entity proposed by Contractor, Contractor shall propose another with whom City Engineer has no reasonable objection.

5.1.3 Contractor shall execute contracts with approved Subcontractors, Suppliers, persons, or entities before the Subcontractors or Suppliers begin work under the Contract.

5.1.4 Contractor shall notify City Engineer in writing of any proposed change of Subcontractor, Supplier, person, or entity previously accepted by the City.

5.1.5 Contractor shall make timely payments to Subcontractors and Suppliers for performance of the Contract. Contractor shall protect, defend, and indemnify the City from any claim or liability arising out of Contractor's failure to make the payments. Disputes relating to payment of Business Enterprise Subcontractors or Suppliers will be submitted to arbitration in same manner as other disputes under Business Enterprise subcontracts. Failure of Contractor to comply with decisions of arbitrator may be determined by City Engineer a material breach leading to termination of the Contract.

**5.2 CONTRACTOR RESPONSIBILITY
FOR SUBCONTRACTORS**

5.2.1 Contractor is responsible to the City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with Contractor.

5.2.2 Contractor shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this Section 5.2. Contractor shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.

5.2.3 The City's approval of Subcontractor or Suppliers does not relieve Contractor of its obligation to perform, or to have performed to the full satisfaction of the City, the Work required by the Contract.

5.2.4 Unless there is a contractual relationship between Contractor and a Subcontractor or Supplier to the contrary, Contractor shall withhold no more retainage from Subcontractors or Suppliers than City withholds from Contractor under this Agreement. However, once a Subcontractor or Supplier completes performance, Contractor shall release all retainage to that Subcontractor or Supplier regardless if City continues to retain under this Agreement.

5.2.5 Prior to a Subcontractor or Supplier commencing performance for Contractor, Contractor shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, such as claim filing procedures under the McGregor Act. Subcontractors and Suppliers must certify to the City Engineer that Contractor has fulfilled the requirements of this Section.

**ARTICLE 6 - CONSTRUCTION BY THE CITY OR
BY SEPARATE CONTRACTORS**

**6.1 THE CITY'S RIGHT TO PERFORM
CONSTRUCTION AND TO AWARD
SEPARATE CONTRACTS**

6.1.1 The City may perform on-site construction operations related to the Work and as part of the Project with the City's workforce or with separate contractors.

6.2 COORDINATION

6.2.1 The City will coordinate activities of the City's workforce and of each separate contractor with work of Contractor, and Contractor shall cooperate with the City and separate contractors.

6.2.1.1 Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so by the Project Manager. Contractor shall make revisions to construction schedule and Contract Price deemed necessary after joint review and mutual agreement. Construction schedules shall then constitute schedules to be used by Contractor, separate contractors, and the City, until subsequently revised.

6.2.2 Contractor shall afford to the City and to separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.

6.2.3 If part of Contractor's work depends on proper execution of construction or operations by the City or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to City Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Contractor to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that the City's or separate contractor's completed or partially completed construction is fit and proper to receive Contractor's work, except as to discrepancies or defects not then reasonably discoverable.

6.3 MUTUAL RESPONSIBILITY

6.3.1 The responsible party bears the costs caused by delays, by improperly timed activities, or by nonconforming construction.

6.3.2 Contractor shall promptly remedy damage caused by Contractor to completed or partially completed construction or to property of the City or separate contractor.

6.3.3 Claims or disputes between Contractor and other City contractors, or subcontractors of other City contractors, working on the Project must be submitted to binding arbitration in accordance with Construction Industry Arbitration Rules of the American Arbitration Association upon demand by any party to the dispute or by the City.

6.4 THE CITY'S RIGHT TO CLEAN UP

6.4.1 If dispute arises among Contractor, separate contractors, and the City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in Section 3.21,

the City may clean up and allocate cost among those responsible, as determined by City Engineer.

ARTICLE 7 - CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in scope of the Work, subject to limitations in Article 7 and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by:

- .1 Change Order;
- .2 Work Change Directive; or
- .3 Minor Change in the Work.

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

- .1 a single Change Order that exceeds five percent of Original Contract Price,
 - .2 a Change Order which, when added to previous Change Orders, exceeds five percent of Original Contract Price,
 - .3 a Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of the Original Contract Price, even if the net increase to the Original Contract Price is five percent or less.
- In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved by City Council, or the addition of types of goods or services not bid as unit price items.

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

7.1.3 Contractor shall proceed promptly to execute changes in the Work provided in Modifications, unless otherwise stated in the Modification.

7.2 WORK CHANGE DIRECTIVES

7.2.1 A Work Change Directive cannot change Contract Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on Contract Price or Contract Time.

7.2.2 Failure by Contractor to commence work identified in a Work Change Directive within the time specified by City Engineer, or to complete the work in a reasonable period of time, may be determined by City Engineer to be a material breach of Contract.

7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with Paragraph 9.6.1.

7.2.4 If Contractor signs a Work Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement by the Parties to adjustments in Contract Price and Contract Time are immediately recorded as a Change Order.

7.2.5 City Engineer, by Work Change Directive, may direct Contractor to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of the City and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is entitled to an adjustment in Contract Price equal to actual costs determined in accordance with Article 7.

7.3 *ADJUSTMENTS IN CONTRACT PRICE*

7.3.1 Adjustments in Contract Price are accomplished by Change Order and are based on one of the following methods:

- .1 mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;
- .2 unit prices stated in the Contract or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or

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

.4 as provided in Paragraph 7.3.2.

7.3.2 If Contractor does not agree with a change in Contract Price or Contract Time or the method for adjusting them specified in the Work Change Directive within 21 days from date of the Work Change Directive's issuance, method and adjustment are determined by City Engineer. If Project Manager or Contractor disagree with City Engineer's determination they then may file a Claim in accordance with Section 4.4.

7.3.2.1 If City Engineer determines a method and adjustment in Contract Price under Paragraph 7.3.2, Contractor shall provide, in a form as City Engineer may prescribe, appropriate supporting data for items submitted under Paragraph 7.3.2. Failure to submit the data within 21 days of request for the data by City Engineer shall constitute waiver of a Claim.

7.3.2.2 Unless otherwise provided in the Contract, costs for the purposes of this Paragraph 7.3.2 are limited to the following:

- .1 costs of labor, including labor burden as stated below for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and Workers' Compensation insurance;
 - .1 the maximum labor burden applied to costs of labor for changes in the Work is 55 percent;
- .2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or

- others, with prior approval of City Engineer;
- .4 costs of premiums for Bonds and insurance and permit fees related to the change in the Work;
- .5 additional costs of direct supervision of work and field office personnel directly attributable to the change; and
- .6 allowances for overhead and profit as stated below.
- .1 the maximum allowances for overhead and profit on increases due to Change Orders:
- .2 for changes in the Work performed by Contractor and Subcontractors, allowance for overhead and profit are applied to an amount equal to cost of all additions less cost of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Subcontractors are applied to an amount equal to the sum of all increases to the Work by applicable Subcontractors.

7.3.3 If the City deletes or makes a change, which results in a net decrease in Contract Price, the City is entitled to a credit calculated in accordance with Paragraphs 7.3.1 and 7.3.2 and Subparagraphs 7.3.2.1, and 7.3.2.2.1 through 7.3.2.2.5. When both additions and credits covering related work or substitutions are involved in a change, allowance for overhead and profit is figured on the basis of a net increase, if any, with respect to that change in accordance with Subparagraph 7.3.2.2.6.

7.3.4 When Contractor agrees with the determination made by City Engineer concerning adjustments in Contract Price and Contract Time, or the Parties otherwise reach agreement upon the adjustments, the agreement will be immediately recorded by Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 A Minor Change in Work is binding on the Parties. Contractor shall acknowledge, in a written form acceptable to City Engineer, that there is no change in Contract Time or Contract Price and shall carry out the written orders promptly.

ARTICLE 8 - TIME

8.1 PROGRESS AND COMPLETION

8.1.1 Time is of the essence in the Contract. By executing the Contract, Contractor agrees that Contract Time is a reasonable period for performing the Work.

8.1.2 *Computation of Time:* In computing any period of time prescribed or allowed by the General Conditions, the day of the act, event, or default after which designated period of time begins to run is not to be included. Last day of the period so computed is to be included, unless it is a Sunday or Legal Holiday, in which event the period runs until end of next day which is not a Sunday or Legal Holiday. Sundays and Legal Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.

8.1.3 Contractor may not commence the Work prior to the effective date of insurance and Bonds required by Article 11.

8.1.4 Contractor shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Date of Substantial Completion within Contract Time.

8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in Paragraph 8.2.1, Contractor shall promptly submit at the request of Project Manager, updated construction schedule to City Engineer for approval. Contractor's failure to submit updated schedule may, at City Engineer's discretion, constitute a material breach of the Contract. Contractor shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within Contract Time.

8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Contractor may not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday, without giving City Engineer 24-hour prior written notice and receiving written consent of City Engineer.

8.2 DELAYS AND EXTENSIONS OF TIME

8.2.1 Contractor may request extension of Contract Time for a delay in performance of work

that arises from causes beyond control and without fault or negligence of Contractor. Examples of these causes are:

- .1 acts of God or of the public enemy,
- .2 acts of government in its sovereign capacity,
- .3 fires,
- .4 floods,
- .5 epidemics,
- .6 quarantine restrictions,
- .7 strikes,
- .8 freight embargoes,
- .9 unusually severe weather; and
- .10 discovery of Pollutants or Pollutant Facilities at the site.

8.2.2 For any reason other than those listed in Section 4.3.6.2, if the Contractor's work is delayed in any manner or respect, the Contractor shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or increased expense to the Contractor's work, except for an extension of time as provided in this provision.

8.2.3 Contractor may request an extension of Contract Time for delay only if:

- .1 delay is caused by failure of Subcontractor or Supplier to perform or make progress; and
- .2 cause of failure is beyond control of both Contractor and Subcontractor or Supplier.

8.2.4 Claims relating to Contract Time must be made in accordance with Paragraph 4.3.7.

8.2.5 Claims for extending or shortening Contract Time are based on written notice promptly delivered by the Party making Claim to other Party. Claim must accurately describe occurrence generating Claim, and a statement of probable effect on progress of the Work.

8.2.6 Claims for extension of Contract Time are considered only when a Claim is filed within the time limits stated in Paragraph 4.3.3.

- .1 Notwithstanding paragraph 4.3.3, an extension of time for delays under this paragraph may be granted only upon written application by the Contractor within 48 hours from the claimed delay.

8.2.7 Written notice of Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of

the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by City Engineer in accordance with Section 4.4.

8.2.8 Adjustments to Contract Time are accomplished by Change Order.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 UNIT PRICE WORK

9.1.1 Where the Contract provides that all or part of the Work is based on Unit Prices, the Original Contract Price includes, for all Unit Price work, an amount equal to the sum of Unit Prices times Unit Price Quantities for each separately identified item of Unit Price work.

9.1.2 Each Unit Price includes an amount to cover Contractor's overhead and profit for each separately identified item.

9.1.3 The Contractor may not make a Claim against the City for excess or deficiency in Unit Price Quantities provided in the Contract, except as provided in Subparagraph 9.1.4.1. Payment at the prices stated in the Contract is in full for the completed work. Contractor is not entitled to additional payment for materials, supplies, labor, tools, machinery and all other expenditures incidental to satisfactory completion of the Work.

9.1.4 City Engineer may increase or decrease quantities of the Work within limitations stated in Paragraph 7.1.2. Contractor is entitled to payment for actual quantities of items provided at Unit Prices set forth in the Contract.

9.1.5 Where the final quantity of work performed by Contractor on Major Unit Price Work item differs by more than 25 percent from quantity of the item stated in the Contract, a Party may request an adjustment in Unit Price, for the portion that differs by more than 25 percent, by a Change Order under Section 7.3.

9.2 ESTIMATES FOR PAYMENT, UNIT PRICE WORK

9.2.1 Following the day of each month indicated in the Contract, Project Manager will prepare a Certificate for Payment for the preceding monthly period based on estimated units of work completed. Prior to preparing Certificate of Payment, Contractor shall have submitted to City Engineer on a form

approved by the Director of the Mayor's Office of Business Opportunity, evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Certificate for Payment is prepared.

9.2.2 Before final completion, City Engineer will review and confirm with Contractor the actual final installed Unit Price quantities. City Engineer's determination of actual final installed Unit Price quantities will be included in the final Certificate for Payment and any previous underpayments and overpayments will be reconciled with the actual final Unit Price quantities. Contractor shall file written notice of intent to appeal, if any, City Engineer's determination within 10 days of receipt of final Certificate for Payment. Upon expiration of the 10-day period, City Engineer's decision is final and binding on the Parties. If Contractor submits notice within the 10-day period, Contractor shall submit a Claim in accordance with Section 4.4.

9.3 STIPULATED PRICE WORK

9.3.1 For work contracted on a Stipulated Price basis, 10 days before submittal of first Application for Payment, Contractor shall submit to City Engineer a Schedule of Values allocated to various portions of the Work, prepared in the form and supported by the data as City Engineer may require to substantiate its accuracy. This schedule, as approved by City Engineer, is used as a basis for approval of Contractor's Applications for Payment.

9.4 APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK

9.4.1 For work contracted on a Stipulated Price basis, Contractor shall submit Applications for Payment to City Engineer each month on a form acceptable to City Engineer in accordance with Schedule of Values. Application must indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment.

9.4.2 Applications for Payment must be supported by substantiating data as City Engineer may require and must reflect retainages as provided below. Evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is submitted must accompany each Application for Payment on a form approved by the Director of Mayor's Office of Business Opportunity. Application must be sworn and notarized.

9.5 CERTIFICATES FOR PAYMENT

9.5.1 City Engineer will, within 10 days after the date specified in the Contract for Unit Price work, or upon receipt of Contractor's Application for Payment for Stipulated Price work, issue a Certificate for Payment for work based on amount which City Engineer determines is properly due, with copy to Contractor.

9.5.2 Unless otherwise provided in the Contract, payment for completed work and for properly stored Products is conditioned upon compliance with procedures satisfactory to City Engineer to protect the City's interests. Procedures will include applicable insurance, storage, and transportation to site for materials and equipment stored off-site. Contractor is responsible for maintaining materials and equipment until Date of Substantial Completion.

9.5.3 Contractor shall document its use of Ultra Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Contractor's use.

9.6 COMPUTATIONS OF CERTIFICATES FOR PAYMENT

9.6.1 Subject to the provisions of the Contract, the amount of each Certificate for Payment is calculated as follows:

- .1 that portion of Contract Price allocated to completed work as determined by:
 - .1 multiplying the percentage of completion of each portion of the Work listed in the Schedule of Values by the value of that portion of the Work, or
 - .2 multiplying Unit Price quantities Installed times the Unit Prices listed in the Contract;
- .2 plus progress payments for completed work that has been properly authorized by Modifications;
- .3 less retainage of five percent;
- .4 plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by Project Manager, less 15 percent;
- .5 less any previous payments by the City.

9.7 DECISIONS TO WITHHOLD CERTIFICATION

9.7.1 City Engineer may decline to certify payment and may withhold payment in whole or in part to the extent reasonably necessary to protect the City if, in City Engineer's opinion, there is reason to believe that:

- .1 nonconforming work has not been remedied;
- .2 the Work cannot be completed for unpaid balance of Contract Price;
- .3 there is damage to the City or another contractor;
- .4 the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;
- .5 probable evidence that third party claims will be filed in court, in arbitration, or otherwise;
- .6 Contractor has failed to make payments to Subcontractors or Suppliers for labor, material, or equipment; or
- .7 Contractor has persistently failed to carry out work in accordance with the Contract.
- .8 Contractor has not paid Subcontractors or Suppliers because of a payment dispute; or
- .9 Contractor has failed to provide satisfactory evidence described in Paragraphs 9.2.1, 9.4.2, and 9.8.2.

9.7.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.7.3 City Engineer may decline to certify payment and may withhold request for payment in whole or in part upon failure of Contractor to submit initial construction schedule or monthly schedule updates, as required in Paragraphs 3.15.1 and 3.15.3.

9.8 PROGRESS PAYMENTS

9.8.1 The City will make payment, in an amount certified by City Engineer, within 20 days after City Engineer has issued a Certificate for Payment.

9.8.2 The City has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may otherwise be required by law. Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. State law requires payment of Subcontractors and Suppliers by Contractor within 7 calendar days

of Contractor's receipt of payment from the City, unless there is a payment dispute between Contractor and a Subcontractor or Supplier evidenced on a form approved by the Director of Mayor's Office of Business Opportunity and submitted to the City Engineer each month with Application for Payment or Estimate for Payment.

9.8.2.1 The City may, upon request and at the discretion of City Engineer, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by Contractor, and action taken thereon by the City because of work done by the Subcontractor.

9.8.2.2 Contractor shall prepare and submit to City Engineer a Certification of Payment to Subcontractors and Suppliers form to be attached to each monthly Estimate for Payment or Application for Payment.

9.8.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by the City, does not constitute acceptance of work which is not in accordance with the Contract.

9.9 DATE OF SUBSTANTIAL COMPLETION

9.9.1 When Contractor considers the Work, or a portion thereof designated by City Engineer, to be substantially complete, Contractor shall prepare and submit to Project Manager a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not alter the responsibility of Contractor to comply with the Contract.

9.9.1.1 By submitting the punch list to Project Manager, Contractor represents that work on the punch list will be completed within the time provided for in Subparagraph 9.9.4.3.

9.9.2 Upon receipt of Contractor's punch list, Project Manager will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If Project Manager's inspection discloses items not on Contractor's punch list, the items must be added to the punch list of items to be completed or corrected. If Project Manager's inspection reveals that Contractor is not yet substantially complete, Contractor shall complete or correct the deficiencies and request another inspection by Project Manager. The City may recover the costs of re-inspection from Contractor.

9.9.3 Prior to City Engineer's issuing a Certificate of Substantial Completion, Contractor shall also provide:

- .1 Certificate of Occupancy for new construction, or Certificate of Compliance for remodeled work, as applicable, and
- .2 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of Contractor, and City Engineer so confirms, City Engineer may, upon request by Contractor, add the inspection to the punch list in Paragraph 9.9.2 and issue a Certificate of Substantial Completion.

9.9.4 When the Work, or designated portion thereof, is determined by City Engineer to be sufficiently complete in accordance with the Contract so the City can occupy or utilize the Work, or designated portion thereof, for the purpose for which it is intended, City Engineer will prepare a Certificate of Substantial Completion that incorporates the punch list in Paragraph 9.9.2 and establishes:

- .1 Date of Substantial Completion;
- .2 responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance; and
- .3 fixed time within which Contractor shall complete all items on punch list of items to be corrected accompanying the certificate.

9.9.5 Warranties required by the Contract shall commence on the Date of Substantial Completion unless otherwise provided by City Engineer in Certificate of Substantial Completion. Warranties may not commence on items not substantially completed.

9.9.6 After Date of Substantial Completion and upon application by Contractor and approval by City Engineer, the City may make payment, reflecting adjustment in retainage, if any, as follows:

- .1 with the consent of Surety, the City may increase payment to Contractor to 96 percent of Contract Price, less value of items to be completed and accrued liquidated damages.

9.9.7 Contractor shall complete or correct the items in Paragraph 9.9.2 within the time period set out in the Certificate of Substantial Completion. If Contractor fails to do so, the City may issue a Notice

of Noncompliance and proceed according to Section 2.5.

9.10 *PARTIAL OCCUPANCY OR USE*

9.10.1 The City may occupy or use any completed or partially completed portion of the Work at any stage, provided the occupancy or use is consented to by Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of Contractor to partial occupancy or use may not be unreasonably withheld.

9.10.2 Immediately prior to the partial occupancy or use, Project Manager and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.

9.10.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of work not in compliance with requirements of the Contract.

9.11 *FINAL COMPLETION AND FINAL PAYMENT*

9.11.1 Contractor shall review the Contract and inspect the Work prior to Contractor notification to City Engineer that the Work is complete and ready for final inspection. Contractor shall submit affidavit that the Work has been inspected and that the Work is complete in accordance with requirements of the Contract.

9.11.2 Project Manager will make final inspection within 15 days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance. If Project Manager finds the Work has been completed in accordance with the Contract, Contractor shall submit items set out in Paragraph 9.11.4 and, for stipulated price contracts, a final Application for Payment. City Engineer will, within 10 days, issue Certificate of Final Completion stating that to the best of City Engineer's knowledge, information, and belief, the Work has been completed in accordance with the Contract, and will recommend acceptance of the Work by City Council.

9.11.3 Should work be found not in compliance with requirements of the Contract, City Engineer will notify Contractor in writing of items of noncompliance. Upon inspection and acceptance of the corrections by Project Manager, compliance with all procedures of Paragraph 9.11.2, and Contractor's submission of the items set out in Paragraph 9.11.4, the City Engineer will issue Certificate of Final

Completion to Contractor as provided in Paragraph 9.11.2.

9.11.4 Contractor shall submit the following items to City Engineer before City Engineer will issue a Certificate of Final Completion:

- .1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by the City, have been paid or otherwise satisfied. If required by City Engineer, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;
- .2 certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to the City;
- .3 written statement that Contractor knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract;
- .4 consent of Surety to final payment; and
- .5 copies of record documents, maintenance manuals, tests, inspections, and approvals.

Upon City Engineer's issuance of a Certificate of Final Completion, Contractor may request increase in payment to 99 percent of Contract Price, less accrued liquidated damages.

9.11.5 If Contractor fails to submit required items in Paragraph 9.11.4 within 10 days of Project Manager's inspection of the Work under Paragraph 9.11.2 or Paragraph 9.11.3, City Engineer may, but is not obligated to:

- .1 deduct liquidated damages accrued from monies held;
- .2 proceed to City Council for acceptance of the Work, minus some or all of the items Contractor fails to submit under Paragraph 9.11.4; and,
- .3 upon acceptance by City Council of the portion of the Work completed, make final payment as set out in Paragraph 9.11.8.

9.11.6 If final completion is materially delayed through no fault of Contractor, or by issuance of Change Orders affecting date of final completion, and City Engineer so confirms, the City may, upon application by Contractor and certification by City

Engineer, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.

9.11.7 If remaining balance due for work not corrected is less than retainage stipulated in the Contract, Contractor shall submit to City Engineer written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of Claims.

9.11.8 The City will make final payment to Contractor within 30 days after acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract.

9.11.9 Acceptance of final payment by Contractor shall constitute a waiver of all Claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled at time of final Application for Payment.

9.12 LIQUIDATED DAMAGES

9.12.1 Contractor, Surety, and the City agree that failure to complete the Work within Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Contractor, Surety, and the City agree that Contractor and Surety are liable for and shall pay to the City the amount stipulated in Supplementary Conditions as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Contractor's failure to complete the Work within Contract Time. The amount stipulated will be paid for each day of delay beyond Contract Time until Date of Substantial Completion.

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

ARTICLE 10 - SAFETY PRECAUTIONS

10.1 SAFETY PROGRAMS

10.1.1 Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the

Contract. Contractor shall submit a safety program to City Engineer prior to mobilizing for the Work, and is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for damage which might result from failure or improper construction, maintenance, or operation performed by Contractor.

10.2 *POLLUTANTS AND POLLUTANT FACILITIES*

10.2.1 If Contractor encounters material on-site which it reasonably believes to be a Pollutant or facilities which it reasonably believes to be a Pollutant Facility, Contractor shall immediately stop work in affected area and immediately notify City Engineer, confirming the notice thereafter in writing.

10.2.2 If City Engineer determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.

10.2.3 If City Engineer determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.

10.2.4 Contractor is not required to perform, unless authorized by Change Order, work relating to Pollutants or Pollutant Facilities except for that work relating to Pollutants or Pollutant Facilities specified in the Contract.

10.3 *SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY*

10.3.1 Contractor shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:

- .1 employees performing work on-site, and other persons who may be affected thereby;
- .2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Contractor or Subcontractor; and
- .3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.

10.3.2 Contractor shall give notices and comply with applicable laws, ordinances, rules,

regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.

10.3.2.1 Contractor shall comply with requirements of Underground Facility Damage Prevention and Safety Act TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).

10.3.2.2 Contractor shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

10.3.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.3.4 Contractor shall designate responsible member of Contractor's organization at site whose duty is prevention of accidents. This person will be Contractor's Superintendent unless otherwise designated by Contractor in writing to City Engineer.

10.3.5 Contractor shall prevent windblown dust and may not burn or bury trash debris or waste products on-site. Contractor shall prevent environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.

10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.

10.3.7 Contractor shall promptly remedy damage and loss to property referred to in Subparagraphs 10.3.1.2 and 10.3.1.3, caused in whole or in part by Contractor, or Subcontractors, which is not covered by insurance required by the Contract. Contractor is not required to remedy damage or loss attributable to the City, Design Consultant, or other contractors.

10.4 *EMERGENCIES*

10.4.1 In emergencies affecting safety of persons or property, Contractor shall act at Contractor's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by Contractor because of emergencies are determined as provided in Article 7.

ARTICLE 11 - INSURANCE AND BONDS

11.1 *GENERAL INSURANCE
REQUIREMENTS*

11.1.1 With no intent to limit Contractor's liability under indemnification provisions set forth in Paragraphs 3.25 and 3.26, Contractor shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.

11.1.2 If any of the following insurance is written as "claims made" coverage and the City is required to be carried as additional insured, then Contractor's insurance shall include a two-year extended discovery period after last date that Contractor provides any work under the Contract.

11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.

11.2 *INSURANCE TO BE PROVIDED BY
CONTRACTOR*

11.2.1 *Risks and Limits of Liability:* Contractor shall provide at a minimum insurance coverage and limits of liability set out in Table 1.

11.2.1.1 If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.

11.2.2 *Form of Policies:* Insurance may be in one or more policies of insurance, form of which is subject to approval by City Engineer. It is agreed, however, that nothing City Engineer does or fails to do with regard to insurance policies relieves Contractor from its duties to provide required coverage and City Engineer's actions or inactions will never be construed as waiving the City's rights.

11.2.3 *Issuers of Policies:* Issuer of any policy shall have:

- .1 a Certificate of Authority to transact business in Texas, or
- .2 have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, and the issuer must be

an eligible nonadmitted insurer in the State of Texas.

Each insurer is subject to approval by City Engineer in City Engineer's sole discretion as to conformance with these requirements, pursuant to Paragraph 11.2.2.

11.2.4 *Insured Parties:* Each policy, except those for Workers' Compensation and Owner's and Contractor's Protective Liability, must name the City, its officers, agents, and employees as additional insured parties on original policy and all renewals or replacements during term of the Contract. The City's status as additional insured under Contractor's insurance does not extend to instances of sole negligence of the City unmixed with any fault of Contractor.

11.2.5 *Deductibles:* Contractor assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against the City, its officers, agents, or employees.

11.2.6 *Cancellation:* Contractor shall notify the Director in writing 30 days prior to any cancellation or material change to Contractor's insurance coverage. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the City Engineer, at his or her sole discretion, may:

- .1 immediately suspend Contractor from any further performance under this Contract and begin procedures to terminate for default, or
- .2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Contract.

11.2.7 *Subrogation:* Each policy except Owner's and Contractor's Protective Liability must contain endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against the City, its officers, agents, or employees.

11.2.8 *Endorsement of Primary Insurance:* Each policy, except Workers' Compensation policies, must contain an endorsement that the policy is primary insurance to any other insurance available to additional insured with respect to claims arising hereunder.

11.2.9 *Liability for Premium:* Contractor is solely responsible for payment of all insurance

premium requirements hereunder and the City is not obligated to pay any premiums.

11.2.10 *Additional Requirements for Workers' Compensation Insurance Coverage:* Contractor shall, in addition to meeting the obligations set forth in Table 1, maintain throughout the term of the Contract Workers' Compensation coverage as required by statute, and Contractor shall specifically comply with requirements set forth in Paragraph 11.2.10. The definitions set out below shall apply only for purposes of this Paragraph 11.2.10.

11.2.10.1 Definitions:

- .1 *Certificate of Coverage:* A copy of certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for Contractor's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.
- .2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until Contractor's work under the Contract has been completed and accepted by City Council.
- .3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096):* includes all persons or entities performing all or part of services Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of the entity, or employees of entity which furnishes persons to provide services on the Work. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

11.2.10.2 Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for employees of

Contractor providing services on the Work, for duration of the Work.

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

11.2.10.4 If coverage period shown on Contractor's original Certificate of Coverage ends during duration of the Work, Contractor shall file new Certificate of Coverage with the City showing that coverage has been extended.

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

- .1 Certificate of Coverage, prior to that person beginning work on the Work, so the City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and
- .2 no later than seven days after receipt by Contractor, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.

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

11.2.10.7 Contractor shall notify City Engineer in writing by certified mail or personal delivery, within 10 days after Contractor knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.

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

11.2.10.9 Contractor shall contractually require each person with whom it contracts to provide services on the Work to:

- .1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of TEX. LAB. CODE ANN., Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;

- .2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
- .3 provide Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;
- .4 obtain from each other person with whom it contracts, and provide to Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.
- .5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;
- .6 notify City Engineer in writing by certified mail or personal delivery within 10 days after person knew, or should have known, of change that materially affects provision of coverage of any person providing services on the Work; and
- .7 contractually require each person with whom it contracts to perform as required by Paragraphs 11.2.10.1 through 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.

11.2.10.10 By signing the Contract or providing or causing to be provided a Certificate of Coverage, Contractor is representing to the City that all employees of Contractor who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier. Contractor is not allowed to self-insure Workers' Compensation. Contractor may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.

11.2.10.11 Contractor's failure to comply with Paragraph 11.2.10 is a breach of the Contract by Contractor, which entitles the City to declare the Contract void if Contractor does not remedy breach within 10 days after receipt of notice of breach from City Engineer.

11.2.11 *Subcontractor Insurance Requirements:* Contractor shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the requirements of Paragraph 11.2. The amount must be commensurate with the amount of the subcontract, but not less than \$500,000 per occurrence. Contractor shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000, to provide proof of Commercial General Liability and Automobile Liability insurance coverage meeting the above requirements. Contractor shall comply with all requirements set out under Paragraph 11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

TABLE 1
REQUIRED COVERAGE

(Coverage)	(Limit of Liability)
.1 Workers' Compensation	Statutory Limits for Workers' Compensation
.2 Employer's Liability	Bodily Injury by Accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)

.3 Commercial General Liability: Including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of six years following completion of the Work).	Combined single limit of \$1,000,000 (each occurrence), subject to general aggregate of \$2,000,000; Products and Completed Operations \$1,000,000 aggregate.
.4 Owner's and Contractor's Protective Liability	\$1,000,000 combined single limit each Occurrence/aggregate
.5 Installation Floater (Unless alternative coverage approved by City Attorney)	Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work
.6 Automobile Liability Insurance: (For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	\$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
.7 Excess Coverage	\$1,000,000 each occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability
Defense costs are excluded from face amount of policy. otherwise indicated.	Aggregate Limits are per 12-month policy period unless

11.3 PROOF OF INSURANCE

11.3.1 Prior to commencing services and at time during the term of the Contract, Contractor shall furnish City Engineer with Certificates of Insurance, along with Affidavit from Contractor confirming that Certificate accurately reflects insurance coverage that is available during term of the Contract. If requested in writing by City Engineer, Contractor shall furnish City Engineer with certified copies of Contractor's actual insurance policies. Failure of Contractor to provide certified copies, as requested, may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

11.3.2 Notwithstanding the proof of insurance requirements, Contractor shall continuously maintain in effect required insurance coverage set forth in Paragraph 11.2. Failure of Contractor to comply with this requirement does constitute a material breach by Contractor allowing the City, at its option, to immediately suspend or terminate work, or exercise any other remedy allowed under the Contract. Contractor agrees that the City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by Contractor, its agents, employees, or assigns.

11.3.3 Contractor shall provide updated certificates of insurance to the Director upon request.

The Contractor shall be responsible for delivering a current certificate of insurance in the proper form to the Director as long as Contractor is required to furnish insurance coverage under Paragraph 11.2.

11.3.4 Every certificate of insurance Contractor delivers in connection with this Contract shall

- .1 be less than 12 months old;
- .2 include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
- .3 include in the Certificate Holder Box the Project name and reference numbers, contractor's email address, and indicates the name and address of the Project Manager;
- .4 include the Contractor's email address in the Certificate Holder Box;
- .5 include the Project reference numbers on the City address so the Project reference number is visible in the envelope window; and
- .6 be appropriately marked to accurately identify all coverages and limits of the policy, effective and expiration dates, and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability.

11.4 *PERFORMANCE AND PAYMENT BONDS*

11.4.1 For Contracts over the value of \$25,000, Contractor shall provide Bonds on the City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract pursuant to Chapter 2253 of the Government Code. The Bonds must be for 100 percent of Original Contract Price and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Contractor's usual source and cost for the Bonds are included in Contract Price.

11.5 *MAINTENANCE BONDS*

11.5.1 *One-year Maintenance Bond:* Contractor shall provide Bond on standard City One-year Maintenance Bond form, providing for Contractor's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during one-year correction period required in Paragraph 12.2. The Maintenance Bond must be for 100 percent of the Original Contract Price.

11.6 *SURETY*

11.6.1 A Bond that is given or tendered to the City pursuant to the Contract must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.

11.6.2 If a Bond is given or tendered to the City pursuant to the Contract in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

11.6.3 If the amount of a Bond is greater than \$100,000, Surety shall:

- .1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,

.2 Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.

11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.

11.6.5 Each Bond given or tendered to the City pursuant to the Contract must be on City forms with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.

11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

11.6.7 Contractor shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.

11.7 *DELIVERY OF BONDS*

11.7.1 Contractor shall deliver required Bonds to the City within time limits stated in Notice of Intent to Award and prior to Date of Commencement of the Work.

ARTICLE 12 - UNCOVERING AND CORRECTION OF THE WORK

12.1 *UNCOVERING OF THE WORK*

12.1.1 If a portion of the Work has been covered which City Engineer has not specifically requested to observe prior to its being covered, City Engineer may request to see such work and it must be uncovered by Contractor. If such work is in accordance with the Contract, the costs of uncovering and covering such work are charged to the City by Change Order. If such work is not in

accordance with the Contract, Contractor shall pay for uncovering and shall correct the nonconforming Work promptly after receipt of Notice of Noncompliance to do so.

12.2 CORRECTION OF THE WORK

12.2.1 Contractor shall promptly correct or remove work rejected by City Engineer or work failing to conform to requirements of the Contract, whether observed before or after Date of Substantial Completion and whether fabricated, Installed, or completed.

12.2.2 Contractor bears costs of correcting the rejected or nonconforming work including additional testing and inspections, and compensation for Design Consultant's services and expenses made necessary thereby.

12.2.3 If within one year after Date of Substantial Completion, or after date for commencement of warranties established under Paragraph 9.9.5 or by other applicable special warranty required by the Contract, whichever is later in time, any of the Work is found not to be in accordance with the requirements of the Contract, Contractor shall correct such work promptly after receipt of Notice of Noncompliance to do so.

12.2.4 One-year correction period for portions of the Work completed after Date of Substantial Completion will begin on the date of acceptance of that portion of the Work. This obligation under this Paragraph survives acceptance of the Work under the Contract and termination of the Contract.

12.2.5 The one-year correction period does not establish a duration for the Contractor's general warranty under Paragraph 3.12. The City retains the right to recover damages from the Contractor as long as may be permitted by the applicable statute of limitations.

12.2.6 If Contractor does not proceed with correction of the nonconforming work within time fixed by Notice of Noncompliance, the City may correct nonconforming work or remove nonconforming work and store salvageable Products at Contractor's expense. Contractor shall pay the costs of correction of nonconforming work and removal and storage of salvageable Products to the City. If Contractor does not pay costs of the correction or removal and storage within 10 days after written notice, the City may sell the Products at auction or at private sale. The City will account for proceeds thereof after deducting costs and damages that would have been borne by Contractor, including compensation for services of Design Consultant and

necessary expenses. If the proceeds of sale do not cover costs which Contractor should have borne, Contractor shall pay the value of the deficiency to the City.

12.2.7 Contractor bears cost of correcting work originally installed by Contractor, the City, or by separate contractors and damaged by Contractor's correction or removal of Contractor's work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If City Engineer prefers to accept work which is not in accordance with requirements of the Contract, City Engineer may do so only by issuance of Change Order, instead of requiring its removal and correction. City Engineer will determine Contract Price reduction. The reduction will become effective even if final payment has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAWS

13.1.1 The Contract is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

13.1.2 Venue for any litigation relating to the Contract is Harris County, Texas.

13.2 SUCCESSORS

13.2.1 The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this Paragraph 13.2.1 does not alter the restrictions on assignment and disposal of assets set out in Paragraph 13.3.1. The Contract does not create any personal liability on the part of any officer or agent of the City.

13.3 BUSINESS STRUCTURE AND ASSIGNMENTS

13.3.1 Contractor may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets without City Engineer's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and

address of the assignee and a clear identification of the fees to be paid to the assignee.

13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Contract.

13.4 WRITTEN NOTICE

13.4.1 All notices required or permitted by the Contract must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or facsimile with confirmation copy mailed to receiving Party. Notice is sufficient if made or addressed with proper postage to the address stated in the Agreement for each Party ("Notice Address") or faxed to the facsimile number stated in the Agreement for each Party. The notice is deemed delivered on the earlier of:

- .1 the date the Notice is actually received;
- .2 the third day following deposit in a United States Postal Service post office or receptacle; or
- .3 the date the facsimile is sent unless the facsimile is sent after 5:00 p.m. local time of the recipient and then it is deemed received on the following day.

Any Party may change its Notice Address or facsimile number at any time by giving written notice of the change to the other Party in the manner provided for in this Paragraph at least 15 days prior to the date the change is affected.

13.5 RIGHTS AND REMEDIES

13.5.1 Duties and obligations imposed by the Contract and rights and remedies available thereunder are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.5.2 No act or failure to act by the City or Contractor is a waiver of rights or duties afforded them under the Contract, nor is the act or failure to act constitute approval of or acquiescence in a breach of the Contract. No waiver, approval or acquiescence is binding unless in writing and, in the case of the City, signed by City Engineer.

13.6 TESTS AND INSPECTIONS

13.6.1 Contractor shall give City Engineer, Construction Manager, and Design Consultant timely notice of the time and place where tests and inspections are to be made. Contractor shall

cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.6.2 The City will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract except:

- .1 inspections or tests covered by Paragraph 13.6.3;
- .2 those otherwise specifically provided in the Contract; or
- .3 costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.2.2.

13.6.3 Contractor is responsible for and shall pay all costs in connection with inspection or testing required in connection with City Engineer's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation into the Work.

13.6.4 Neither observations by the City, Construction Manager, or Design Consultant, nor inspections, tests, or approvals by others, relieves Contractor from Contractor's obligations to perform the Work in accordance with the Contract.

13.7 INTEREST

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

13.8 PARTIES IN INTEREST

13.8.1 The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.

13.9 ENTIRE CONTRACT

13.9.1 The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.

13.10 WRITTEN AMENDMENT

13.10.1 Changes to the Contract that cannot be effected by Modifications, must be made by written amendment, which will not be effective until approved by City Council.

13.11 *COMPLIANCE WITH LAWS*

13.11.1 Contractor shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.

13.11.2 Contractor shall comply with all applicable federal, state, and city laws, rules and regulations.

13.12 *SEVERABILITY*

13.12.1 If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 *TERMINATION BY THE CITY FOR CAUSE*

14.1.1 Each of the following acts or omissions of Contractor or occurrences shall constitute an "Event of Default" under the Contract:

- .1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;
- .2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- .3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Contract;
- .4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or
- .5 Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Paragraph 3.9.1.1.

14.1.2 If an Event of Default occurs, City Engineer may, at his option and without prejudice to any other rights or remedies which the City may have, deliver a written notice to Contractor and Surety describing the Event of Default and giving the Contractor 10 days to cure the Event of Default. If after the cure period, Contractor has failed or refused to cure the Event of Default, then City Engineer may deliver a second written notice to Contractor giving notice of the termination of the Contract or of the termination of Contractor's performance under the Contract ("Notice of Termination"). If City Engineer issues a Notice of Termination, then City Engineer may, subject to any

prior rights of Surety and any other rights of the City under the Contract or at law:

- .1 request that Surety complete the Work; or
- .2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor; and
- .3 finish the Work by whatever reasonable method City Engineer may deem expedient.

14.1.3 After Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by City Engineer, Contractor shall:

- .1 stop the Work on the date and to the extent specified in the Notice of Termination;
- .2 place no further orders or subcontracts for Products or services;
- .3 terminate all orders and subcontracts to the extent that they relate to performance of work terminated;
- .4 assign to the City, in the manner, at the times, and to the extent directed by City Engineer, all rights, title, and interest of Contractor, under the terminated supply orders and subcontracts. The City may settle or pay claims arising out of termination of the orders and subcontracts;
- .5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
- .6 take action as may be necessary, or as City Engineer may direct, for protection and preservation of property related to the Work that is in possession of Contractor, and in which the City has or may acquire an interest; and
- .7 secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.

14.1.4 If the City terminates the Contract or terminates Contractor's performance under the Contract for any one or more of the reasons stated in Paragraph 14.1.1, Contractor may not receive any further payment until the Work is complete, subject to Paragraph 14.1.5.

14.1.5 If the unpaid balance of Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of

written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to Contractor or the City will be certified by City Engineer in writing, and this obligation for payment shall survive termination of the Contract or termination of Contractor's performance under the Contract. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.

14.2 *TERMINATION BY THE CITY FOR CONVENIENCE*

14.2.1 City Engineer may, without cause and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination with a seven days written notice.

14.2.2 After receipt of the Notice of Termination, and except as otherwise approved by City Engineer, Contractor shall conform to requirements of Paragraph 14.1.3.

14.2.3 After receipt of the Notice of Termination, Contractor shall submit to the City its termination Claim, in forms required by City Engineer. The Claim will be submitted to the City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by City Engineer in writing. If Contractor fails to submit its termination Claim within the time allowed, in accordance with Paragraph 14.2.4, City Engineer will determine, on the basis of available information, the amount, if any, due to Contractor because of termination, and City Engineer's determination is final and binding on the Parties. The City will then pay to Contractor the amount so determined.

14.2.4 City Engineer will determine, on the basis of information available to City Engineer, the amount due, if any, to Contractor for the termination as follows:

- .1 Contract Price for all work performed in accordance with the Contract up to the date of termination determined in the manner prescribed for monthly payments in Article 9, except no retainage is withheld by the City either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.
- .2 Reasonable termination expenses, including costs for settling and paying Subcontractor and Supplier claims arising out of termination of the Work, reasonable cost of preservation and

protection of the City's property after termination, if required, and the cost of Claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of Contractor, or litigation costs, including attorneys' fees.

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

14.2.5 Contractor shall promptly remove from the site any construction equipment, tools, and temporary facilities, except the temporary facilities which City Engineer may wish to purchase and retain.

14.2.6 Contractor shall cooperate with City Engineer during the transition period.

14.2.7 The City will take possession of the Work and materials delivered to the site, in storage, or in transit, as of date or dates specified in the Notice of Termination, and is responsible for maintenance, utilities, security, and insurance, as stated in Notice of Termination.

14.3 *SUSPENSION BY THE CITY FOR CONVENIENCE*

14.3.1 City Engineer may, without cause, after giving Contractor and Surety 24-hour prior written notice, order Contractor to suspend, delay, or interrupt the Work in whole or in part for a period of time as City Engineer may determine.

14.3.2 An adjustment will be made in Contract Time equivalent to the time of suspension.

14.3.3 Adjustment will be made to Contract Price for increases in the cost of performance of the Work, including profit on increased cost of performance caused by suspension, delay, or interruption of the Work in accordance with Paragraph 7.3. No adjustment will be made to the extent that:

- .1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or
- .2 adjustment is made or denied under another provision of the Contract.

14.4 *TERMINATION BY CONTRACTOR*

14.4.1 Contractor may terminate the Contract

if the Work is stopped for a period of 30 days through no act or fault of Contractor, directly related to one of these events:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 act of government, such as a declaration of national emergency which makes material unavailable; or
- .3 if repeated suspensions, delays, or interruptions by the City as described in Paragraph 14.3 constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less;

No termination will be effective for the above reasons if Contractor delivers written notice to City Engineer describing the reason for termination, giving the proposed termination date, and granting the City a reasonable opportunity to respond and cure any City default before termination is effective.

14.4.2 If the Contract is terminated pursuant to this Paragraph 14.4, Contractor shall comply with the requirements of Paragraphs 14.2.2 through 14.2.7.

END OF DOCUMENT

EXHIBIT "N"
CITY OF HOUSTON SUPPLEMENTAL CONDITIONS
DOCUMENT 00800

ARTICLE 1 - GENERAL PROVISIONS:

- 1.1 *DEFINITIONS: Insert the following Paragraph 1.1.9.1, and 1.1.23, and reorder the remaining definitions accordingly.*
- 1.1.9.1 The firm of N/A 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 bidders 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>.

ARTICLE 3 - THE CONTRACTOR:

- 3.5 *LABOR: Insert the following Paragraphs, 3.5.3.1.1 and 3.5.3.1.2.*
- 3.5.3.1.1 If the Original Contract Price is greater than One Million Dollars, Contractor shall make Good Faith Efforts to comply with the City ordinances regarding Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Persons with Disabilities Business Enterprises (PDBE) and Small Business Enterprise (SBE) participation goals which are as follows;
- .1 the MBE goal is 12% percent,
- .2 the WBE goal is 7% percent, and
- .3 the PDBE goal is 0% percent.
- .4 The bidder may substitute SBE participation of no more than four percent of the MBE goal, the WBE goal, or portions of the MBE Goal and WBE Goal.
- 3.5.3.1.2 The MBE, WBE, PDBE, and SBE goals are specific to this Agreement. The Contractor shall make reasonable efforts to achieve these goals.
- 3.5.3.1.3 Failure by Contractor to comply with the goals for MBE, WBE, SBE, or PDBE is a material breach of the Agreement, which may result in termination of the Agreement, or such other remedy permitted as the City deems appropriate.

ARTICLE 8-TIME:

8.1 *PROGRESS AND COMPLETION:*

8.1.6.1 Contractor shall credit the City by Change Order for inspection services for overtime work or work performed on Sundays or Legal Holidays. The amount Contractor credits the City will be [\$50.00 per hour] *actual costs* per inspector for inspection services.

ARTICLE 9 - PAYMENTS AND COMPLETION:

9.1 References to Unit Prices in individual Specification sections are not applicable to the Contract, Include payment for portions of the Work required by these sections in the Stipulated Price for the Contract.

9.12 LIQUIDATED DAMAGES:

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 «LiquidatedDamages» \$1,200.00 per day.

END OF DOCUMENT

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08-01-2013