

**ADDENDUM**

Document 00910

ADDENDUM NO. 1

Date of Addendum: 1-15-2025

PROJECT NAME: **Request for Proposal for Job Order Contracting Services**

PROPOSAL SUBMITTAL DATE: Thursday, January 30, 2025 (There is no change to the Proposal Submittal Date.)

FROM: City of Houston, General Services Department  
900 Bagby, 2<sup>nd</sup> Floor  
Houston, Texas 77002  
Attn: Eric Rhoden

TO: Prospective Proposers

This Addendum forms a part of the Request For Proposals (RFP) and will be incorporated into the Contract documents, as applicable. Insofar as the original RFP Documents and Attachments are inconsistent, this Addendum governs.

**CHANGES TO REQUEST FOR PROPOSAL (RFP)**

- Item 1. See attached revised advertisement which corrects the conflicting Submittal due dates listed in the advertisement posted to the City of Houton website and Houston Business Journal. Electronic Submissions are due at 10:30a.m., local time on January 30, 2025.
- Item 2: Replace the RFP Cover Page with the attached Cover Page which includes a correction to the Submittal Date.
- Item 3: Add the attached Contract to Section 8 of the RFP packet, Document 8 – Sample Contract.

END OF ADDENDUM NO. 1

DocuSigned by:  (JR)  
 Richard A. Vella  
 Assistant Director,  
 Real Estate, Design & Construction  
 General Services Department

1/15/2025

DATE

END OF DOCUMENT

**ADVERTISEMENT FOR  
JOB ORDER CONTRACTING SERVICES  
CITY OF HOUSTON**

The General Services Department will receive Request for Proposals (RFP) utilizing online bidding services via Civcast at <https://www.civcastusa.com/bids> for the following:

**Project Name:** Job Order Contracting Services

**Project Description:** Job Order Contracting Services are provided on an as-needed bases for minor commercial building construction, repair, rehabilitation, and alteration of city facilities.

**Proposal Date:** Thursday, January 30, 2025

**MWBE Goal:** 16%MBE 5%WBE

**Project Manager:** Eric Rhoden /832.393.8096

**Estimated Construction Budget:** Up to \$20 Million

**Pre-Proposal Meeting:** Tuesday, January 21, 2025 at 1:30p.m.  
City Hall, 901 Bagby Street, Houston, Texas  
Basement Level Floor, Conference Room 158

The City of Houston intends to utilize the Job Order Contracting process as authorized in Chapter 2269, Texas Government Code for the above procurement. The City will utilize online bidding services via Civcast at <https://www.civcastusa.com/bids>. Electronic Submissions are due at 10:30 a.m., local time on the Proposal Date. Follow submittal instructions on <https://www.civcastusa.com/>. Hard Copies will not be accepted for this Submission. Submissions will be opened, and the Respondents' names will be posted on Civcast on the Proposal Date. Respondents' names will be read aloud via Microsoft Teams dial up access on the same day at 11:00 am only. Microsoft Teams Number 1-936-755-1521 ID: 598 888 117#. All interested parties are invited to attend. Place and date of Submittal opening may be changed in accordance with Sections 15-45(c) City of Houston Code of Ordinances (City Code). All Respondents shall comply with Article II, Chapter 15, City of Houston Code of Ordinances.

The RFP may only be obtained electronically on Civcast. For more information, go to the City's website: <https://www.publicworks.houstontx.gov/contracting-services>.

All Addenda will be posted on the following website for your review: <https://www.civcastusa.com/>

This procurement is subject to "Hire Houston First" as set out in Chapter 15, Article XI, City Code. It is unlawful for any Contractor to contribute or offer any contribution to a candidate for City elective office during a certain period prior to and following a contract award. (Chapter 18, City Code). Contractor will be required to comply with Anti-discrimination provisions (Chapter 15, Article II, City Code), Pay or Play Program (Executive Order 1-7 and Ordinance 2007-0534), and the Minority, Women, Persons with Disabilities and Small Business Enterprise requirements (Chapter 15, Articles V and VI, City Code and Executive Order 1-2).

Dated: \_\_\_\_\_  
(Publish Friday 1-10-2025 and 1-17-2025)

cc: Cheryl Harris/Contract Bid Management Group

04-18-2024



**REQUEST FOR PROPOSALS  
FOR  
JOB ORDER CONTRACTING SERVICES**

**Submittal Date**  
**Thursday, January 30, 2025**

City of Houston  
General Services Department  
Design & Construction Division

**Advertised Goal: 16% MBE and 5% WBE**

**THE STATE OF TEXAS** §  
§  
**COUNTY OF HARRIS** §

**AGREEMENT FOR JOB ORDER CONTRACTING**

**PARTIES**

A. Address

**THIS AGREEMENT FOR JOB ORDER CONTRACTING** ("Agreement") for the minor construction, repair, rehabilitation and alteration of City Facilities is made on the Countersignature Date ("Effective Date") between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and [REDACTED] ("Contractor") a company authorized to do business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

<u>City</u>	<u>Contractor</u>
Director, General Services Department or Designee City of Houston P. O. Box 61189 Houston, Texas 77208-1189	[REDACTED]

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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- F. DRUG POLICY COMPLIANCE DECLARATION**

C. Parts Incorporated

All of the above-described sections and exhibits are incorporated into this Agreement.

D. Controlling Parts

The Sections, Exhibits, and Documents are intended to be complementary. What is set forth in one document is as binding as if set forth in each document. In some cases they each may address similar terms and requirements. If a conflict among the Sections, Exhibits and Documents arises, the following order of priority controls:

1. Sections
2. Exhibits
3. Documents

A Job Order may not alter the terms set forth in the Sections, Exhibits and Documents.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

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

[Redacted]

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

By: \_\_\_\_\_  
Name: [Redacted]  
Title: [Redacted]  
Tax Identification No. [Redacted]

ATTEST/SEAL:

**CITY OF HOUSTON, TEXAS**  
Signed by:

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

\_\_\_\_\_  
Mayor

APPROVED:

COUNTERSIGNED BY:

\_\_\_\_\_  
Director, General Services  
Department

\_\_\_\_\_  
City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

\_\_\_\_\_  
Senior Assistant City Attorney  
L.D. File

\_\_\_\_\_  
("Effective Date")



## II. DEFINITIONS

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

"Agreement" means this Agreement for Job Order Contracting between the Parties, including all Exhibits and Documents, and written amendments authorized by City Council and Contractor.

"Bonds" mean Performance Bond, Payment Bond, Maintenance Bond, and other instruments of Surety. When in singular form it refers to the individual instrument.

"CCODT" refers to the City's Contract Compliance Officer for Drug Testing.

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

"City Engineer" means the licensed technical representative who has been designated, in writing by the Director. When the term "City Engineer" is used in this Agreement, action by City Engineer is required unless City Engineer delegates his or her authority in writing.

"City Facility" means a Facility owned or operated by the City.

"Contract Price" means the amount stated in each Work Order.

"Contract Time" means the number of calendar days to substantially complete the Work as stated in each Work Order.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns and its authorized representative.

"Contractor's Representative" means individual who shall directly manage and direct the Work under this Agreement and who has authority to act for the Contractor.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Design Consultant" means the person, or firm under contract with the City to provide professional services during construction. Design Consultant means Design Consultant or its authorized representative. If a Design Consultant is not employed for services during construction, the City will perform the duties and responsibilities of the Design Consultant.

"Director" means the Director of the General Services Department or the person he or she designates.

"Documents" means the Contract Documents identified in Exhibit "C", as well as the Bonds, the Drawings and Specifications approved by the Director, appropriate addenda, and any other documents as they are specifically enumerated in this Agreement, plus approved changes, all of which are incorporated herein by reference for all purposes. Documents also include notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts,

analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications) that Contractor prepares or provides under this Agreement.

"Effective Date" means the date the City Controller countersigns the signature page of this Agreement.

"Facility" is defined in Section 271.111 (7) of the Texas Local Government Code, as amended from time to time.

"General Conditions" means Document 00700 of the City's Standard City Construction Documents.

"GSD" means the General Services Department.

"Job Order" means a written document which defines the Work to be accomplished in accordance with this Agreement. Upon written approval by the Director, the Job Order serves as a notice to proceed with the Work.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"Product" means materials, equipment, or systems incorporated into the Work.

"Subcontract" means any agreement entered into between the Contractor and a Subcontractor which is necessary and reasonable for services, labor, equipment, and/or materials required for the Agreement performance, including any changes.

"Subcontractor" means any individual, partnership, firm, corporation or joint venture who contracts with the Contractor to furnish services, labor, equipment and/or materials under this Agreement. As used herein, the terms subcontractor and supplier are synonymous.

"Surety" is the person authorized and admitted to write surety bonds in Texas, and who does so for Contractor under Section III.R. of this Agreement.

"Unit Price Book" or "UPB" means the "Total Bare Costs" column in the latest quarterly edition of the R. S. MEANS Facilities Construction Cost Data, with certain exceptions that are outlined in **Exhibit "B"**. The Houston, Texas City Cost Index "total weighted average" as of the date of each Work Order will be applied to the R.S. MEANS prices.

"Work" means all construction required by or reasonably inferable from the Agreement, Work Order, **Exhibit "A,"** and Documents, including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, Bonds, subcontracts, supervision, management, reports, incidentals, quality control, and all items listed in Section 3.1 of **Exhibit "B"** provided by Contractor to fulfill Contractor's obligations.

### III. DUTIES OF CONTRACTOR

#### A. Scope of Services

In consideration of the payment specified in each Work Order under this Agreement, Contractor shall provide all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, insurance, subcontracts, Bonds, supervision, management, reports, incidentals, and quality control necessary to perform construction management and construction work for the minor construction, repair, rehabilitation and alteration of City Facilities as defined in this Agreement, **Exhibit "A,"** and the applicable Job Order.

#### B. Duty to Inspect

(1) Upon issuance of a Job Order, Contractor shall acknowledge that it has taken all steps necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work, its cost, or performance time, including but not limited to:

- a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. The availability of labor, water, electric power, and roads;
- c. Uncertainties of weather, river stages, tides, or similar physical conditions;
- d. The conformation and conditions of the ground;
- e. The character of equipment and facilities needed preliminary to and during work performance;
- f. The location and/or relocation of existing utility lines, poles, and meters including the necessity for timely coordination with all involved utility owners. The requirement for obtaining City, County, State, or Federal permits and licenses necessitated by project right-of-way alignments and boundaries.

(2) The Contractor also shall acknowledge that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the City, as well as from the drawings and specifications made a part of this Agreement.

C. Invoicing

Contractor shall submit its invoices on forms approved in advance by the Director, accompanied by support documents as may be requested by the Director. Each invoice Contractor submits must be in duplicate and each copy must include required support documents. Each invoice must be identified by the Agreement name, Job Order number and City issued vendor number. All invoices are to be delivered or mailed to the following location:

The City of Houston  
General Services Department  
City Hall Annex, 2<sup>nd</sup> Floor  
900 Bagby Street  
Houston, Texas 77002

D. Drawings

Figure dimensions on Drawings shall govern over scale dimensions and detailed Drawings shall govern over general Drawings.

The City assumes no responsibility for errors or omissions caused by failure of Contractor or any of its Subcontractors to inspect and familiarize themselves with the Work and Agreement.

E. Personnel of Contractor

Contractor shall provide sufficient, fully qualified personnel to meet the performance requirements set forth in this Agreement. Contractor shall replace any of its personnel or Subcontractors whose work product is deemed unsatisfactory by the Director. Additionally, Contractor shall retain the following persons for the following areas of responsibility throughout the performance of this Agreement:

Person	Area of Responsibility

Contractor acknowledges that City is materially relying upon Contractor’s promises to use these persons in the performance of this Agreement. Contractor shall not remove or replace these persons from these areas of responsibility without the written consent of Director, which shall not be unreasonably withheld. Upon removal, any such persons shall be immediately replaced. Any replacement shall be with a person who has work experience and qualities equal to or better than the person is being replaced and who is acceptable to Director.

F. **RELEASE**

**CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

G. **INDEMNIFICATION**

(1) **SCOPE OF INDEMNIFICATION**

**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 THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

- (a) **CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN THIS PARAGRAPH III.G, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (b) **THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, 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 AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

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

(2) **INDEMNIFICATION PROCEDURES**

**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:

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

This notice does not stop 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) **DEFENSE OF INDEMNIFICATION CLAIMS**

- a. **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 Attorney. 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 Attorney 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.
- b. **Continued Participation:** If Contractor elects to defend the claim, the City Attorney 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:
  - i. 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;
  - ii. would require the City to pay amounts that Contractor does not fund in full, or
  - iii. 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.

H. **RELEASE AND INDEMNIFICATION - (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT)**

**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 THIS AGREEMENT 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.**

**CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE DIRECTOR'S PRIOR WRITTEN CONSENT.**

**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, AND DOCUMENTS 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 DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.**

I. Insurance

(1) With no intent to limit Contractor's liability under the indemnification provisions set forth above, Contractor shall provide and maintain in full force and effect during the term of this Agreement and all extensions and amendments thereto, at least the following insurance and available limits of liability.

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

(3) "Aggregate" amounts of coverage, for purposes of this Agreement, are agreed to be the amounts of coverage available during a fixed 12 month policy period. 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.

(4) Risks and Limits of Liability: The Contractor shall provide at a minimum the insurance coverages and limits of liability given in Table 1.

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

(6) Issuers of Policies: The 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 non-admitted insurer in the State of Texas. Each insurer shall be subject to approval by the Director in his or her sole discretion as to conformance with these requirements, pursuant to Subsection (5) above.

(7) 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 the original policy and all renewals or replacements during the term of this Agreement. The City's status as an additional insured under the Contractor's insurance does not extend to instances of sole negligence of the City unmixed with any fault of the Contractor.

(8) Deductibles: Contractor shall assume and bear any claims or losses to the extent of deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees.

(9) Cancellation: Contractor must give the Director in writing 30 days' advance written notice of any cancellation, non-renewal, or material change to the policy. 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 Director, at his or her sole discretion, may:

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

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

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

(12) Liability for Premium: Contractor shall be solely responsible for payment of all insurance premium requirements hereunder and the City will not be obligated to pay any premiums.

(13) Additional Requirements for Workers' Compensation Insurance Coverage: Contractor shall, in addition to meeting the obligations set forth in Table I, maintain throughout the term of the Agreement, Workers' Compensation coverage as required by statute, and Contractor shall specifically comply with all requirements set forth in this Section (13). The definitions set out below shall apply only for the purposes of this Section (13).

- a. Definitions:



- .1 *Certificate of Coverage*: A copy of a certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for the Contractor's, Subcontractor's or Supplier's employees providing services for the duration of this Agreement.
  - .2 *Duration of the Work*: includes the time from the start of the Work until the Contractor's work under the Agreement has been completed and accepted by the City.
  - .3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096)*: includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of such entity, or employees of any 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.
- b. Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meet the statutory requirements of Texas Labor Code, Section 401.011(44) for employees of Contractor providing services on the Work, for the duration of the Work.
  - c. The Contractor must provide a Certificate of Coverage to the City prior to being awarded the Agreement.
  - d. If the coverage period shown on the Contractor's original Certificate of Coverage ends during the duration of the Work, Contractor must file a new Certificate of Coverage with the City showing that coverage has been extended.
  - e. Contractor shall obtain from each person providing services on the Work, and provide to the Director:
    - .1 a 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, 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.
  - f. Contractor shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.
  - g. Contractor shall notify the Director in writing by certified mail or personal delivery, within ten days after the Contractor knew or should have known, of

any change that materially affects provision of coverage of any person providing services on the Work.

- h. Contractor shall post on site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. 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 the statutory requirements of Texas Labor Code, Section 401.011(44) for all of 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 to 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 the Contractor: (1) a Certificate of Coverage, prior to the other person's beginning work on the Work; and (2) a new Certificate of Coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current Certificate of Coverage ends during 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 the Director in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Work; and
  - .7 contractually require each person with whom it contracts, to perform as required by Subsections i.1-.7, with the Certificates of Coverage to be provided to the person for whom they are providing services.
- j. By signing this Agreement 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 the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier. Contractor shall not be 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.

- k. Contractor's failure to comply with these provisions is a breach of the Agreement by Contractor which entitles the City to declare the Agreement void if Contractor does not remedy the breach within 10 days after receipt of notice of breach from the Director.

(14) 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 Table 1. 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 Section (13) as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

(15) Proof of Insurance: Prior to beginning services and at any time during the term of this Agreement, Contractor shall furnish the Director with Certificates of Insurance, along with an Affidavit from the Contractor confirming that the Certificate accurately reflects the insurance coverage that will be available during the term of the Agreement. If requested in writing by the Director, Contractor shall furnish the Director with certified copies of Contractor's actual insurance policies. Failure of Contractor to provide certified copies, as requested, may be deemed, in the Director's or City Attorney's discretion, to constitute a breach of this Agreement.

(16) Notwithstanding the proof of insurance requirements set forth above, it is the intention of the Parties that Contractor, continuously and without interruption, maintain in force the required insurance coverages set forth below. Failure of the Contractor to comply with this requirement shall 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 this Agreement. Contractor agrees that the City shall never have waived or be estopped to assert a material breach of the Agreement 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.

**TABLE 1  
REQUIRED COVERAGES**

<b>COVERAGE</b>	<b>LIMIT OF LIABILITY</b>
Workers' Compensation:	Statutory Limits for Workers' Compensation
Employer's Liability:	Bodily Injury by Accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, and Products and Completed Operations (for a period of one year following completion of the Work).	Combined single limit of \$1,000,000 (each occurrence), subject to general aggregate of \$2,000,000; Products and Completed Operations, \$1,000,000 aggregate
Owners and Contractor's Protective Liability:	\$1,000,000 combined single limit each occurrence/aggregate
Installation Floater	Value of stored equipment or material, listed on Certificates of Payments, but not incorporated in the Work
Automobile Liability Insurance: (For automobiles furnished by Contractor in the course of his performance under the Agreement, including Owned, Non-owned and Hired Auto Coverage)	\$1,000,000 combined single limit each occurrence
Excess Coverage:	\$1,000,000 each occurrence/combined aggregate in excess of the limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

- (17) Contractor shall provide updated certificates of insurance to the Director upon request. Every certificate of insurance Contractor delivers in connection with this Agreement shall:
- a. be less than 12 months old;
  - b. include all pertinent identification information for the insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
  - c. include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and
  - d. 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.

J. Warranties

(1) Contractor warrants to the City that Products furnished under the Agreement shall be free of defects in title, of good quality, and new, unless otherwise required or permitted by the Agreement. Contractor warrants that the Products and the Work shall be free of defects not inherent in the quality required or permitted, and that the Products and the Work shall conform with requirements of the Agreement.

(2) Contractor further warrants that the Work will be free of concentrations of 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. Excepted from this warranty are those hazardous substances specified for use under the Agreement.

(3) Contractor further warrants that the Work shall be performed in a thorough and workmanlike manner.

(4) Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered nonconforming work. Contractor's warranty excludes remedy for damage or defect caused by abuse by person or persons other than those for whom Contractor is responsible, improper or insufficient maintenance by the City, improper operation, or normal wear and tear under normal usage, and excludes claims that hazardous material was incorporated into the Work, if that material was specified in the Agreement. If required by the Director, Contractor shall furnish satisfactory evidence as to kind, quality, and title of Products and that Products conform to the requirements of the Agreement.

(5) In the event of a defect in a specified Product, either during construction or warranty period, Contractor shall take appropriate measures with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay.

(6) Contractor warrants that title to all work covered by Contractor's invoice will pass to the City upon incorporation in the Work or upon Contractor's receipt of payment, whichever occurs first. Such title shall be free of all liens, claims, security interests or other interests, ("Encumbrances") and if not, upon written demand from the Director, Contractor shall immediately take legal action necessary to remove Encumbrances.

K. Confidentiality

Contractor and its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "Information") that they receive, prepare, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall establish procedures to ensure confidentiality of the Information and to prevent its unauthorized use and disclosure. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors who perform work under this Agreement, which bind them to the terms in this Section.

L. Conflicts of Interest

If an actual or potential conflict arises between the City's interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director by fax transmission, e-mail, or telephone. If the Director consents to Contractor's continued representation of the other clients, he or she shall notify Contractor in writing. If the Director does not issue written consent within 3 business days after receipt of Contractor's notice, Contractor shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

M. Ownership and Use of Contract Documents

(1) Drawings, Specifications, and other Documents prepared by the City or its Design Consultant are instruments of service through which the Work, to be executed by Contractor, is described. Contractor may retain one Agreement record set.

(2) Neither Contractor nor Subcontractor shall own or claim a copyright to Documents contained in the Agreement or any part thereof.

(3) Documents contained in the Agreement, prepared by the City or by its Design Consultant, and copies furnished to Contractor, are for use solely with respect to the Work. They shall not be used by Contractor or Subcontractor on other projects or for additions to the Work outside the scope of the Work without the specific written consent of the Director, and Design Consultant, when applicable.

(4) Contractor or Subcontractors are granted a limited license to use and reproduce applicable portions of the Agreement appropriate to and for use in execution of their work under the Agreement.

N. Permits, Fees, and Notices

(1) Unless otherwise provided in the Agreement, Contractor shall secure and pay for all construction permits, licenses, and inspections necessary for proper execution and completion of the Work. Such costs must be included in the Coefficient set out in **Exhibit "B"**.

(2) If Contractor observes that portions of the Agreement are at variance therewith, Contractor shall promptly notify the Director in writing, and necessary changes shall be accomplished by appropriate modification.

O. Compliance with Laws

Contractor shall comply with all applicable local, state and federal laws and regulations, and the City Charter and Code of Ordinances.

P. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

Q. Minority and Small Business Enterprises

Contractor shall comply with the City’s Minority Business Enterprise (“MBE”) programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinance. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least (a) 16% of the value of this Agreement to Minority Business Enterprises and (b) an additional 5% of the value of this Agreement to Women Business Enterprises. 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.

Contractor shall require written subcontracts with all MWBE subcontractors and suppliers contain the following:

[Name of MWBE 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”).

[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform: (i) audits of the books and records of the subcontractor; and (ii) 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 4 years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Within five Business Days of execution of this subcontract, 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.

Any controversy between the Parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

R. Bonds

Each year during the term of this Agreement, Contractor shall furnish a Performance Bond and Payment Bond for \$500,000 conditioned on Contractor’s full and timely performance of the Agreement and payment of Subcontractors. Prior to Work Orders in excess of the penal sum of the performance and payment bonds being issued, Contractor shall provide additional performance and payment bonds equal to or greater than the additional amounts. Contractor shall also furnish a Maintenance Bond to secure the warranty in Section III.J. The Bond(s) must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas (“Surety”). If the amount of the bond exceeds \$100,000, the Surety must be listed on the

current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list. Each Bond must state that it may not be canceled, materially modified, or nonrenewed unless the Surety gives the Director 30 days' advance written notice. In such event, Contractor must provide an equivalent replacement Bond before cancellation, modification or nonrenewal of the original Bond.

S. Drug Abuse Detection and Deterrence

- (1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- (2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"),
  - (a) a copy of its drug-free workplace policy,
  - (b) the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit "D,"** together with a written designation of all safety impact positions and,
  - (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit "E."**

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its notice to proceed or if no notice to proceed is issued, on the first day Contractor begins work under this Agreement.

- (3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- (4) Contractor shall require that its subcontractors comply with the Executive Order and Contractor shall secure and maintain the required documents for City inspection.

T. Environmental Laws

- (1) Contractor shall comply with all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they may be amended



from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment, including but not be limited to:

- (a) the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.;
- (b) the Safe Drinking Water Act, 44 U.S.C. Section 300(f) et seq.;
- (c) the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.;
- (d) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613;
- (e) the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;
- (f) the Clean Air Act as amended, 42 U.S.C. 7401 et seq.;
- (g) the Clean Water Act, 33 U.S.C., Section 1251, et seq.;
- (h) the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;
- (i) the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.;

and those substances defined as hazardous waste or as hazardous substances under the laws of Texas and/or the United States or in regulations promulgated under these laws (collectively, "Environmental Laws"). In addition, Contractor shall comply with all safety precautions set forth in the Documents relating to Hazardous Substances and Safety of the Environment, Persons, and Property.

(2) Within 10 days of receipt of an invoice, Contractor shall reimburse the City for any fines or penalties that may be levied against the City by the Environmental Protection Agency, the Texas Commission on Environmental Quality, or any other governmental agency for Contractor's (or its agents' and employees') failure to comply with the Environmental Laws.

(3) Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from City Facilities, or any other areas or facilities subject to this Agreement, except in strict compliance with the Environmental Laws. "Hazardous Materials" include:

- (a) all substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws,
- (b) asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or
- (c) any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed of, or released.

(4) Contractor will not be held responsible for hazardous materials at City Facilities existing prior to execution of the Agreement. Abatement of such hazardous materials will be

handled by the City or its subcontractor. Contractor shall notify the City if hazardous materials are suspected in existing systems or City Facilities with which it comes into contact. Contractor shall be responsible for handling any and all hazardous materials that are part of the services provided for under this Agreement.

(5) City Facilities are subject to the Texas Pollution Discharge Elimination System Program (TPDES), and the regulations, 40 CFR Part 122, relating to stormwater discharges, for operations at City Facilities. Contractor is familiar with these TPDES stormwater regulations, and shall conduct operations in accordance with 40 CFR Part 122, as amended from time to time. Contractor understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

(6) Close cooperation is necessary to ensure compliance with any TPDES stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Contractor shall implement "Best Management Practices" as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Contractor as defined in the federal stormwater regulations.

(7) The City's TPDES stormwater discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this Agreement. Contractor shall be bound by all applicable portions of the permit.

(8) Contractor shall implement the TPDES requirements as part of the Coefficient set out in **Exhibit "B"**, unless otherwise agreed to in writing between the City and Contractor. Contractor shall meet all deadlines that may be imposed or agreed to by the City and Contractor. Time is of the essence.

(9) If either party asks, the other party shall provide any non-privileged information submitted to a government entity(ies) under applicable TPDES stormwater regulations.

(10) Contractor appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City's permit.

(11) Contractor shall participate in any City organized task force or other work group established to coordinate stormwater activities at City Facilities.

(12) The City may enter upon Contractor's premises at any time for purposes of inspection to ensure that Contractor is complying with this Section and any other provisions in this Agreement without committing a trespass.

(13) The City's remedies with regard to Environmental Requirements are cumulative and survive termination of this Agreement.

U. Pay or Play Program Requirements

The requirement and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Contract for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and

condition. The City of Houston Office of Business Opportunity has granted a modification of the Pay or Play Program requirements. With the following:

- (1) The Pay or Play applies to only the prime contractor.
- (2) The Retroactive requirement is waived.

V. Waiver of Attorney Fees and Interest

(1) Neither the City nor Contractor may recover attorney fees for any claim brought in connection with this Agreement.

(2) Neither the City nor the Contractor may recover interest for any damages claim brought in connection with this Agreement.

W. Anti-Boycott of Israel

Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

X. Zero Tolerance Policy for Human Trafficking and Related Activities

The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

#### IV. DUTIES OF CITY

A. Payments and Completion

- (1) Estimates for Payment

The City shall pay and Contractor shall accept fees as provided in Exhibit "B". The fees must only be paid from Allocated Funds, as provided in Section IV.C below.

(2) Certificates for Payment

a. Unless otherwise provided in the Agreement or Work Order, payments for completed work, if approved in advance by the Director for properly stored Products, is conditioned upon compliance with procedures satisfactory to the City to protect the City's interests. Procedures will include applicable insurance, storage, and transportation to the site for materials and equipment stored off site. Contractor is responsible for maintaining materials and equipment until Substantial Completion of the Work.

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

(3) Computations of Certificates for Payment

a. Subject to provisions of the Agreement, Work Orders and Documents, the amount of each Certificate of Payment shall be calculated as follows:

- .1 that portion of the Job Order price allocable to completed Work based on the line items completed and the extension of their unit prices (as calculated in **Exhibit "B"**) multiplied by the quantities incorporated into the Work, less retainage of five percent;
- .2 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 the Director, less retainage of 15 percent;
- .3 less any previous payments made by the City.

(4) Decisions to Withhold Certification

a. The Director 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 the Director's opinion there is reason to believe that:

- .1 non-conforming work has not been remedied;
- .2 the Work cannot be completed for the unpaid balance of the Work Order;
- .3 there is damage to the City or another contractor;
- .4 the Work will not be completed within the Contract Time and the unpaid balance would not be adequate to cover actual and liquidated damages;
- .5 probable evidence that third party claims will be filed in court, or otherwise;
- .6 Contractor has failed to make payments to Subcontractors for labor, materials or equipment; or
- .7 Contractor has persistently failed to carry out the Work in accordance with the Agreement, Work Order and Documents.

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

c. The Director may decline to certify payment and may withhold a request for payment in whole or in part upon failure of the Contractor to submit the initial construction schedule or monthly schedule updates as required by the Work Order and this Agreement.

(5) Payments

a. Subject to the approval of the Director, the City will pay the amount certified by the Director within 30 days after issuance of a Certificate for Payment; provided, however, for Work Orders completed within 45 days, Contractor will not be paid until 30 days after the City's receipt of Contractor's invoice and issuance of a Certificate of Final Completion and a final Certificate of Payment.

b. Early Payment Discount: The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Texas Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:

- Payment Time - 10 Days: 2% Discount
- Payment Time - 20 Days: 1% Discount

If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

c. The City has no obligation to pay or to facilitate the payment to a Subcontractor except as may otherwise be required by law. Contractor will comply with the prompt payment requirements of Chapter 2251 of the Government Code. State law requires payment of Subcontractors by Contractor within 10 days of Contractor's receipt of payment from the City.

d. The City may, on request and at the discretion of the Director, furnish to Subcontractor information regarding the percentages of completion or the amounts applied for by the Contractor, and the action taken thereon by the City because of Work done by the Subcontractor.

e. Contractor shall prepare and submit to the Director, on the City's form, a Certification of Payment to Subcontractors to be attached to each monthly estimate for payment.

f. 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 Agreement, Job Order and the Documents.

(6) Date of Substantial Completion

a. When the Contractor considers Work, or a portion thereof designated by the City Engineer, to be substantially complete for a Job Order, the Contractor shall prepare and submit to the City, a comprehensive punch list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct the items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to comply with the Job Order, the Documents, and this Agreement.

b. By submitting the list to the City, Contractor represents that work on the punch list shall be completed within seven days.

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

d. Prior to City Engineer issuing a Certificate of Substantial Completion, Contractor shall also provide:

- .1 A 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 the City so confirms, the City may, upon request by Contractor, add the inspection to the punch list in Section c. above and issue a Certificate of Substantial Completion.

e. When the Work or designated portion thereof is determined by the City to be sufficiently complete, in accordance with the Job Order, the Documents, and this Agreement so the City can occupy or utilize the Work, or designated portion thereof, for the purpose for which it is intended, the City may prepare a Certificate of Substantial Completion which incorporates the punch list in Subparagraph c. above and establishes 1) the 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 the Contractor shall complete all items on the list of items to be corrected accompanying the Certificate.

f. Warranties required by the Job Order, Documents, and Agreement shall commence on the Date of Substantial or Final Completion of the Work whichever is earliest unless otherwise provided in the Certificate of Substantial Completion. Warranties may not commence on items not completed.

g. Contractor shall complete or correct the items in Section c. above 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 of the General Conditions.

(7) Partial Occupancy or Use

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

b. Immediately prior to such partial occupancy or use, the City Engineer and Contractor shall jointly inspect the area to be occupied or the portion of the Work to be used in order to determine and record the condition of the Work.

c. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of work not complying with requirements of the Job Order, the Documents, and this Agreement.

(8) Final Completion and Final Payment

a. Contractor shall review the Job Order and inspect the Work prior to Contractor notification to the City Engineer that the Work is complete and ready for final inspection, Contractor shall submit an affidavit that the Work has been inspected, that Work is complete in accordance with requirements of the Job Order, the Documents, and this Agreement.

b. Within five business days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance under a Job Order, the City Engineer will make final inspection. When the City Engineer finds the Work completed in accordance with the Job Order, the Documents, and this Agreement, the City Engineer will, within three business days, issue a 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 terms and conditions of the Job Order, the Documents, and this Agreement. Upon acceptance, the City Engineer may approve a final Certificate for Payment.

c. Should Work be found not in compliance with requirements of the Job Order, the Documents, and this Agreement, City Engineer will notify Contractor in writing of items of non-compliance. Upon inspection and acceptance of the corrections by the City Engineer, compliance with all procedures in Section (8)b. above, and Contractor's submission of the items set out in Section (8)(d) below, the City Engineer will issue a Certificate of Final Completion as provided in Section (8)b. above.

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

- .1 an affidavit that payrolls, invoices for materials and equipment, and other indebtedness of the Contractor connected with the Work (less amounts withheld by the City) have been paid or otherwise satisfied. If required by the City Engineer, Contractor shall submit further proof including waiver or release of lien or claims from laborers or Suppliers of Products;
  - .2 Maintenance Bond and other required Bonds, copies of record documents, maintenance manuals, tests, inspections, and approvals.
- e. Upon City Engineer's issuance of a Certificate of Final Completion, Contractor may request an increase in payment to 100 percent of the Job Order prices less accrued liquidated damages.
- f. If final completion is materially delayed through no fault of the Contractor, and the City Engineer so confirms, the City may, upon application by the Contractor and certification by the City Engineer, and without terminating the Job Order and Agreement, make payment of the balance due for that portion of the Work fully completed and accepted.
- g. If the remaining balance due for Work not fully completed or corrected is less than the retainage stipulated in the Job Order, Documents, and this Agreement, Contractor shall submit to the City Engineer written consent of Surety to payment of the 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 shall not constitute a waiver of Claims.
- h. The City will make final payment to the Contractor within 30 days after acceptance, subject to limitations, if any, as stated in the Job Order. For Job Orders completed within 45 days, the City shall pay Contractor within 30 days after receipt of Contractor's invoice and issuance of a Certificate of Final Completion and a final Certificate of Payment.
- i. Acceptance of final payment by Contractor shall constitute a waiver of Claims, whether known or unknown, by Contractor, except those previously made in writing and identified by Contractor as unsettled as the time of final Application for Payment.

(9) Liquidated Damages

a. The Contractor, the Surety, and the City agree that failure to complete the Work under a Job Order within Contract Time will cause damages to the City and that actual damages from the harm are difficult to estimate accurately. Therefore, the Contractor, the Surety, and the City agree that the Contractor and the Surety will be liable for and shall pay to the City the amount stipulated in the Job Order as liquidated damages and that the amount of damages fixed therein is a reasonable forecast of just compensation for the harm to the City resulting from failure to complete the work within Contract Time. The amount specified by the City in each Job Order will be paid for each day of delay beyond the time for completion until the Date of Substantial completion, not to exceed \$200 per day.



b. The amount of liquidated damages, payable by Contractor or Contractor's Surety, if applicable, is for each and every day of delay beyond the Contract Time in the Job Order until the Work is accepted by the City Engineer as substantially complete.

c. Contractor shall pay to the City an amount equal to \$1,200 per diesel operating vehicle or pieces of motorized equipment per incident of high sulfur diesel fuel usage.

B. Taxes

(1) Contractor shall pay all sales, consumer, use, and similar taxes for the Work, or portions thereof, provided by Contractor that it is legally required to pay, whether or not in effect on the Effective Date of this Agreement.

(2) Contractor shall obtain, and require Subcontractors to obtain, all necessary permits from the State and from local taxing authorities to perform contractual obligations under the Agreement, including sales tax permits.

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

(4) Materials incorporated into the Work are exempt from state sales tax according to provisions of the Texas Tax Code, Chapter 151, Subsection H.

C. Limit of Appropriation

(1) The City's duty to pay money to Contractor for any purpose under this Agreement is limited in its entirety by the provisions of this Section.

(2) 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 \$0.00 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. The City has not allocated supplemental funds or made a supplemental allocation for this Agreement.

(3) The Original Allocation is 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.

## V. TERM AND TERMINATION OR SUSPENSION OF THE AGREEMENT

### A. Agreement Term

- (1) This Agreement is effective on the Countersignature Date and shall remain in effect for two (2) consecutive years, unless sooner terminated under this Agreement (the “Initial Term”). Contractor acknowledges that time is of the essence of this Agreement.

Upon expiration of the Initial Term, and so long as the City has sufficient funds, this Agreement will be automatically renewed for three (3) successive one-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

- (2) If the Contractor requests an extension of time to complete Contractor’s performance, then the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

### B. Termination by City for Convenience

- (1) The Director may, without cause, and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination by seven days written notice.

- (2) After receipt of a Notice of Termination, and except as otherwise approved by the Director, Contractor shall conform to the requirements of Section V.D.(3).

- (3) After receipt of such a Notice of Termination, Contractor shall submit to the City its termination claim, in the forms required by the Director. Such claim shall 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 the Director in writing. If Contractor fails to submit its termination claim within the time allowed, in accordance with Section V.B.(4) below, the City Engineer will determine, on the basis of available information, the amount, if any, due to the Contractor because of the termination, and such determination will be final and binding on the Parties. The City will then pay to the Contractor the amount so determined.

- (4) The City Engineer will determine, on the basis of information available to the City Engineer, the amount due, if any, to Contractor by reason of the termination as follows:

- a. Contract Price for all Work completed in accordance with a Job Order and/or the entire Agreement up to the date of termination determined in the manner prescribed for payments in Section IV.A., except no retainage shall be 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.
- b. Reasonable termination expenses, including costs for settling and paying Subcontractor 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 attorney fees.

No amount will be 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.

(5) Contractor shall promptly remove from the site construction equipment, tools, and temporary facilities, except such temporary facilities that City may wish to purchase and retain.

(6) Contractor shall cooperate with the City during the transition period.

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

C. Suspension by City for Convenience

(1) The City 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 such period of time as City may determine.

(2) An adjustment shall be made in Contract Time equivalent to the length of time of suspension.

D. Termination by City for Cause

(1) Each of the following acts or omissions of Contractor or occurrences shall constitute an "Event of Default" under the Agreement:

- a. Contractor refuses or fails to supply enough properly skilled workers or proper Products;
- b. Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- c. Contractor is guilty of material breach of any duty or obligation of Contractor under the Agreement;
- d. Contractor has had any other contract with the City terminated for cause at any time subsequent to the Effective Date of the Agreement; or
- e. Contractor fails to utilize Low Sulfur Diesel Fuel, as provided in the Agreement.

(2) If an Events of Default occurs, City may, at its 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 in which to cure the Event of Default. If after the cure period, Contractor has failed and/or refused to cure said Event of Default, then the City may deliver a second written notice to Contractor giving notice of the termination of the Agreement or of the termination of the Contractor's performance under the Agreement ("Notice of Termination"). If City Engineer issues a Notice of Termination, then City Engineer may, subject to any prior rights of Surety:

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

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

- a. stop the Work on the date and to the extent specified in the Notice of Termination;
- b. place no further orders or subcontracts for materials, equipment or services;
- c. terminate all orders and subcontracts to the extent that they relate to performance of the work terminated;
- d. assign to the City, in the manner, at the times, and to the extent directed by the City Engineer, all rights, title, and interest of Contractor, under the supply orders and subcontracts. The City may settle or pay any or all claims arising out of termination of the orders and subcontracts;
- e. settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
- f. take such 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
- g. secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.

(4) If the City terminates the entire Agreement or terminates Contractor's performance under the Agreement for any one or more of the reasons stated in Section V.D.(1) above, Contractor may not receive any further payment until the Work is complete, subject to provisions of Section V.D.(5) below.

(5) If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Agreement, 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 Agreement or termination of Contractor's performance under the Agreement. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.

E. Termination by Contractor

(1) Contractor may terminate a Job Order only (1) if the Work is stopped for a period of 30 days through no act or fault of the Contractor, Subcontractor, or their agents or employees, or other persons performing portions of the Work under contract with Contractor, and (2) for any of the following reasons:

- a. issuance of an order of a court or other public authority having jurisdiction;
- b. act of government, such as a declaration of national emergency, making material unavailable;
- c. if repeated suspensions, delays, or interruptions by the City constitute in the aggregate more than 100 percent of the total number of days scheduled for completion of the Job Order, and if Contractor delivers written notice to the City Engineer describing the reason for termination of a Job Order, giving the proposed termination date, and granting the City a reasonable opportunity to respond and cure any City default before the termination is effective.

(2) If a Job Order is terminated pursuant to this provision, Contractor shall comply with the requirements of Section V.B.(2)-(7) above.

## VI. MISCELLANEOUS

### A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractors' performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

### B. Force Majeure

- (1) Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure that was not within the control of the party claiming such inability to perform and that could not have been avoided by its exercise of due diligence and care. In this Agreement, Force Majeure means fires, natural disasters, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- (2) This relief is not applicable unless the party claiming the inability to perform does the following:
  - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible; and
  - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
- (3) The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- (4) If the Force Majeure continues for more than 7 days, the Director may terminate this Agreement by giving 7 days written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.**
- (5) The Director shall determine when a Force Majeure condition has been removed. Contractor shall then provide all services and parts required under this Agreement in accordance with the Fee Schedule in **Exhibit "B"**.
- (6) Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement 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 this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement 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.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in Section I.A. of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Captions

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law.

J. Inspections and Audits

Representatives of the City have the right to perform, or to have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or state law or regulation.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

O. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.



P. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Q. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, 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.

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 Agreement.

Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

R. Dispute Resolution

Any disputes or claims arising under the Agreement shall be resolved in accordance with the Resolution of Claims and Disputes provision in the General Conditions.

S. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

T. Indebtedness

**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.**

**[Remainder of Page Intentionally Left Blank]**

## EXHIBIT "A"

### PERFORMANCE/WORK STATEMENT

#### 1.0 GENERAL INFORMATION

This Agreement is for the minor construction, repair, rehabilitation or alteration of City Facilities for work of a recurring nature where the delivery times and quantities are indefinite, and Job Orders are issued on the basis of pre-described and pre-priced tasks. The maximum amount of Work to be awarded during the term of the Agreement is twenty million dollars (**\$20,000,000.00**). Each Job Order will have a maximum amount of four-hundred and fifty thousand dollars (**\$450,000**).

#### 1.1 SERVICES

In consideration of the payment specified in this Agreement and in each Job Order, Contractor shall furnish all labor, materials, tools, supplies, equipment, transportation, insurance, Bonds, subcontracts, supervision, management, reports, incidentals, and quality control, and shall perform all operations necessary and required for construction management and construction work, which will be defined in each Job Order. Contractor shall perform the Work in accordance with the requirements set forth in this Agreement.

#### 1.2 PROJECT DESCRIPTION

The Director will issue Job Orders on an as-needed basis as may be required. Work will be done in a wide variety of trades including, but not limited to, carpentry, masonry, concrete, paving, roofing, excavation, steam fitting, plumbing, sheet metal, painting, demolition, welding, HVAC, electrical, mechanical, carpeting, flooring, drywall finishing, hardware, doors, glazing, landscaping and telecommunications cabling services. The specific work requirements will be identified in the Job Orders.

#### 2.0 JOB ORDERS

2.1 Contractor shall perform the Work under this Agreement only upon the issuance of a written Job Order signed by the Director. Job Orders shall be issued in accordance with the requirements specified in this Agreement.

2.2 Job Orders issued prior to and in effect at the time of the expiration of this Agreement shall continue to be in effect and performed by the Contractor until such time as all requirements have been met and a written acceptance of the Work performed has been made by the City Engineer.

2.3 Job Orders must set forth the following:

2.3.1 Job Order Number;

2.3.2 Agreement Number and the Contractor's name and address number;

- 2.3.3 Project (Work) name;
  - 2.3.4 City Council District;
  - 2.3.5 Work Breakdown Structure (WBS);
  - 2.3.6 Funding code applicable to the Job Order;
  - 2.3.7 Dates of commencement and completion of the Work;
  - 2.3.8 Balance of funds remaining on the Agreement;
  - 2.3.9 The period of performance and schedule of work requirements;
  - 2.3.10 Total amount stated for the Work to be conducted;
  - 2.3.11 The place of performance of Work;
  - 2.3.12 The Work to be performed;
  - 2.3.13 Such other information as directed by the Director;
- 2.4 Job Orders may be amended by a revised or a new Job Order.
- 2.5 For any work required under this Agreement, the Director shall issue a written Job Order as follows:
- 2.5.1 As the need exists for performance under the terms of this Agreement, the Director will issue a Request for Proposal (RFP) to the Contractor for an existing requirement. On receiving the RFP, the Contractor shall respond within two (2) business days, or as otherwise instructed by the Director:
    - 1. Visiting the proposed site with the Director; or
    - 2. Establishing contact with the Director to further define the scope of the requirement.
    - 3. Establish/submit the scope of work within four (4) working days of site visit for review prior to a proposal submission.
  - 2.5.2 After joint definition of the scope of the individual requirement, the Contractor shall prepare a proposal for accomplishment of the task. The basis for establishing the value of the work to be performed shall be the UPB. The Contractor shall submit its proposal within seven (7) business days after joint definition of the scope of the requirement, or as mutually agreed with the Director. If the Contractor cannot submit its proposal within seven (7) business days due to any subcontractor or supplier limitations, it is the Contractor's responsibility to inform the Director in writing prior to the expiration of the seven (7) business day period.
  - 2.5.3 After receiving the Contractor's proposal, the Director shall review it for completeness, and will reach agreement with the Contractor on pricing, schedule, MWBE participation and all other terms, before issuance of a Job Order.
  - 2.5.4 If it is approved by the Director, a Job Order will be issued.
  - 2.5.5 If the Job Order is not issued after receipt of Contractor's proposal, the City is not obligated to reimburse the Contractor for any costs incurred in the preparation of the proposal.

### 3.0 SCHEDULING AND COMPLETION OF WORK

- 3.1 Each executed Job Order constitutes a notice to proceed, which specifies when Work is to begin. Any preliminary work started or materials ordered or purchased before receipt of the executed Job Order are at the risk and expense of Contractor. Contractor shall diligently perform the Work to completion within the time set forth in the Job Order. The period of performance includes allowance for mobilization, holidays, weekend days, inclement weather, and cleanup.
- 3.1.1 Contractor shall deliver materials and equipment without interfering with facility's operations and personnel.
- 3.1.2 Contractor shall move furniture of up to 50 pounds and portable office equipment in the immediate work area and replace them in their original location, at no cost to the City. If the furniture and portable office equipment cannot be replaced in their original location, the Director will designate new locations.
- 3.1.3 The Contractor shall take all precautions to ensure that no damage to private or public property results from its operations. Contractor must repair or replace items damaged by it at no cost to the City.
- 3.2 The Contractor shall enter and submit a schedule showing the actual progress every 30 calendar days, or as directed by the Director. If, in the opinion of the Director, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Director, without additional cost to the City. In this circumstance, the Director may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedule or schedules in chart form as the Director deems necessary to demonstrate how the approved rate of progress will be regained.
- 3.3 Failure of the Contractor to comply with the requirements of the Director shall be grounds for a determination by the Director that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, the Director may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of this Agreement.

### 4.0 QUALITY ASSURANCE/QUALITY CONTROL PROGRAM

Contractor shall submit to the Director, for approval, a Quality Assurance/Quality Control Plan within 15 calendar days after the Effective Date of this Agreement. This Plan should address all aspects of quality control including responsibility for monitoring work, documentation, trend analysis, corrective action and interface with the City. In some cases,

Contractor's Quality Control personnel may be required to have professional or discipline-specific certifications.

5.0 CONTRACTOR REPRESENTATIVE

- 5.1 At all times during performance and until the Work is completed and accepted, the Contractor shall manage, supervise, and direct the Work under this Agreement. The Contractor's Representative must be knowledgeable in multiple disciplines, including, but not limited to, electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.
- 5.2 Prior to the start of the Agreement performance, the Contractor shall advise the Director in writing of the Contractor Representative's contact phone numbers. The Contractor's Representative will have management responsibility for the total Agreement effort to receive and act on technical matters and resolve problems of a contractual nature.
- 5.3 Prior to substituting another individual for the Contractor's Representative, the Contractor shall notify the Director reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the impact on the Work. No such substitution shall be made by the Contractor without first securing the Director's written approval.

6.0 CITY FURNISHED UTILITIES

The City shall provide free of charge to Contractor utilities that are available at each site for work performed under this Agreement.

6.1 WATER

The City shall furnish to Contractor from existing City facilities and without cost to Contractor, a supply of water necessary to perform work under the Agreement. The City will not furnish or install any required supply connections and piping for the purpose of implementing the availability of the water supply. Contractor shall determine the extent to which existing City water supply source is adequate for the needs of this Agreement.

All taps, connections, and accessory equipment required in making the water supply source available will be accomplished by and at the expense of Contractor. All related work must be coordinated, scheduled, and performed as directed and approved by the Director. Taps, connections, and accessory equipment must be maintained by Contractor in a workmanlike manner in accordance with the rules and regulations of the City. Upon completion of the Agreement, Contractor shall remove all taps, connections and accessories at its expense so as to leave the water supply source and facility in its original condition. Such removal is subject to the Director's approval.

6.2 ELECTRICITY

The City shall furnish to Contractor from existing City facilities and without cost to Contractor, electricity necessary for the performance of work under the Agreement.

The City will in no case furnish or install any electrical facility or accessory for the purpose of this Agreement. Contractor shall determine the extent to which existing City electrical facilities are adequate for the needs of this Agreement.

All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of Contractor. All related work must be coordinated, scheduled and performed as directed and approved by the Director. Contractor must maintain taps, connections, and accessory equipment in a workmanlike manner in accordance with the rules and regulations of the City and the Airports. Upon completion of the Agreement, Contractor shall remove all taps, connections and accessories at its expense so as to leave the electrical power source and facility in its original condition. Such removal is subject to the Director's approval.

7.0 WORK BY THE CITY

The City reserves the right to undertake or award contracts for the performance of the same or similar type work as contemplated herein, and to do so will not breach or otherwise violate the Agreement.

8.0 ARCHITECTURAL AND ENGINEERING SERVICES

A Job Order Contract or a Job Order issued under the Agreement may require architectural and/or engineering services that constitute the practice of architecture or engineering under Texas law. Such services are not included within the scope of the Agreement and will be provided by the City or its designee.

9.0 USE OF LOW SULFUR DIESEL FUEL

Contractor and Subcontractor(s) shall use Low Sulfur Diesel Fuel (500 ppm or the applicable standard set by State or Federal Law and/or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content) in all diesel operating vehicles and motorized equipment utilized in performing the Work. Contractor and Subcontractors shall not use a high sulfur type diesel fuel in diesel operating vehicles or motorized equipment used in performing the Work. Off-road Low Sulfur Diesel Fuel may be used in lieu of the on-road Low Sulfur Diesel Fuel. Upon request by the Director, Contractor shall provide proof that Contractor and Subcontractors are using Low Sulfur Diesel Fuel.

10.0 SAFETY

**10.1** Contractor shall secure the site and be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Agreement and shall abide by all City rules, regulations, and programs with regard to safety. Contractor shall submit a safety program to the Director prior to mobilization for the Work, and shall be solely responsible for the safety, efficiency, and adequacy of the ways, means, and methods and for damage which might result from failure or improper construction, maintenance, or operation performed by **Contractor.**

**10.2 Contractor** and/or Subcontractor(s) shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act (OSHA) of 1970 and subsequent amendments all applicable federal, state, and local laws, ordinances and regulations, and the Agreement during the performance of this Work. The Contractor shall adhere, to applicable OSHA Standards, Part 1926 – Safety and Health Regulations for Construction, Part 1910 – Occupational Safety and Health Standards, the Texas Hazard Communication Standard and the Texas Underground Facility Damage Prevention and Safety Act along with any other applicable standards and/or requirements. The Contractor shall apply and/or adopt Parts 1910 and 1926 along with applicable Subparts as the safety standards for the performance of Work. **THE CONTRACTOR SHALL INDEMNIFY THE CITY FOR FINES, PENALTIES, AND CORRECTIVE MEASURES THAT RESULT FROM THE ACTS OF COMMISSION OR OMISSION OF THE CONTRACTOR, ITS SUBCONTRACTORS, AGENTS, EMPLOYEES, AND ASSIGNS FOR THEIR FAILURE TO COMPLY WITH SUCH SAFETY RULES AND REGULATIONS.**

11.0 PREVAILING WAGE RATES

11.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic, as amended from time to time.

11.1.1 The prevailing wage rates in effect at the time the Agreement is executed applicable to the Work may be any one or a combination of the following as specifically identified in Division 00 of City of Houston’s Front End General Conditions:

- City Prevailing Wage Rates
- .1 Building Construction Rates
  - .2 Engineering Construction Rates
  - .3 Asbestos Worker Rates

11.2 Each week Contractor shall submit to the City of Houston Office of Business Opportunity, certified copies of payrolls showing classification and wages paid by the Contractor and all Subcontractors for each employee under the Agreement, for any day included in the applicable Job Orders.

12.0 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

Contractor agrees to comply with, and assure that it and Subcontractor or any other third party contractor under this Agreement complies with all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable Federal, State and City regulations, including any amendments thereto.



**EXHIBIT "B"**  
**FEES**

1.0 Unit Price Book (UPB) Pre-priced Items

- 1.1 Payment for work performed during standard working hours shall be based on the Coefficient factor of prices in the UPB. \_\_\_\_\_ multiplied times the sum of applicable unit
- 1.2 Payment for work performed during non-standard working hours shall be based on the Coefficient factor of \_\_\_\_\_ multiplied times the sum of applicable unit prices in the UPB.
- 1.3 Standard hours of work will be from 7:00 AM to 7:00 PM, CST, Monday through Friday, unless alternate standard hours are agreed to for an individual Work Order. Hours worked before 7:00 AM and after 7:00 PM, Monday through Friday, and all hours worked on Saturdays, Sundays and City holidays will be considered non-standard hours. The Contractor will be required to notify the Director in writing, a minimum of 24 hours in advance when planning to work non-standard work hours, which must be approved in advance by the Director. Any work necessary during non-standard hours to maintain project schedules, due to Contractor delay, shall be performed without additional cost to the City. Other Work to be performed during non-standard hours that is directed by the Director shall be at the Coefficient for non-standard working hours.
- 1.4 The Coefficient factor shall be "net" (e.g. 1.0) or a percentage decrease from (e.g. .95) or increase to (e.g. 1.2) the unit prices in the Unit Price Book.
- 1.5 The actual pricing will be based on the unit rates contained in the UPB, including applicable Coefficient factor set forth above and the quantities agreed to by the Contractor and the Director.

2.0 Non-Prepriced Items

- 2.1 Payment for work performed during standard working hours shall be based on the Coefficient factor of \_\_\_\_\_ multiplied times the sum of the cost of non-pre-priced items not contained in the UPB.
- 2.2 Payment for work performed during non-standard working hours shall be based on the Coefficient factor of \_\_\_\_\_ multiplied times the sum of the cost of non-pre-priced items not contained in the UPB.
- 2.3 For work where pricing cannot be determined by the UPB, the Contractor shall furnish, unless otherwise directed, a breakdown in sufficient detail to permit an analysis of all material, labor, equipment, and subcontract costs. Any amount claimed for Subcontractor(s) shall require price quotations from at least three sources, unless otherwise directed, and be supported by a similar cost breakdown, which shall show Subcontractor(s) by prime, and others. All costs claimed are subject to negotiation.

- 2.4 Surveying Costs
- 2.5 The total cost of the building permits plus 2% to be included in the proposal as a separate item.
- 2.6 “Temporary Security” sub section of “Temporary Barriers and Enclosures” section of “General Requirement” Division of the UPB.
- 2.7 Moving equipment services.
- 2.8 Pressure washing services.

3.0 Coefficient

- 3.1 The Contractor’s price coefficient factor must include all costs including but not limited to the following:
  - (1) Overhead.
  - (2) Profit (prime and subcontractors).
  - (3) Insurance.
  - (4) Compliance with all laws including but not limited to environmental laws, protection and safety.
  - (5) Tax laws.
  - (6) General purpose equipment and tools of the trade.
  - (7) Moving of City property for access to area of the work.
  - (8) Administrative Work.
  - (9) Submittals.
  - (10) Price quotations.
  - (11) Daily Clean-Up.
  - (12) All waste and excess materials (not demolition waste).
  - (13) Permits, licenses, badges and fees (not building permits).
  - (14) Mobilization, De-mobilization, and close-out for total contract and each Job Order.
  - (15) Project management and supervision.
  - (16) Quality Control.
  - (17) Office supplies, equipment, hardware, software and staffing.
  - (18) Costs of Performance, Payment and Maintenance Bonds.
  - (19) Interest associated with funding of equipment and payroll.
  - (20) Depreciation of mobile offices, if applicable.
  - (21) Employee wages, payroll taxes, insurance and fringe benefits.
  - (22) Risk of lower than expected contract dollar volume.
  - (23) Risk of high inflation costs.
  - (24) Risk of poor subcontractor performance and re-performance.
  - (25) Other risks of doing business.
  - (26) Business taxes, contributions, memberships, corporate headquarters support (legal, financial, etc.).
  - (27) The cost of final clean-up and removal and hauling of trash, debris and rubbish. The City will not pay nor accept line items for final clean-up or rubbish hauling, etc., on Job Orders, unless it is explicitly excluded by the line items in the UPB.
  - (28) Any and all Subcontractor Costs.
  - (29) Other incidentals.

- 3.2 Where prices are listed as minimum, average, and maximum for the same work the average prices shall be used. Where prices are listed for minimum and maximum for the same work, items whose daily output indicates one crew day or more of work shall use minimum prices. Items whose daily output indicates less than one crew day shall use maximum prices.
- 3.3 All prices in the UPB are for completed-in-place construction.
- 3.4 Costs for expendable supplies, lubricants, wear and tear on tools are incidental to the UPB cost of construction and will not be paid separately.
- 3.5 Costs for preparation of reports, correspondence and documentation required by law or this Agreement shall be included in the Coefficient factor. The Coefficient shall also include costs described as costs to provide submittals, interface with the City, and coordination with occupants.
- 3.6 Except for cabling related Work, line item descriptions which list material or equipment to be brand name or manufacturer "Type" will be considered as "Or Equal," but will contain all the essential salient characteristics of the brand name or manufacturer's material or equipment.
- 3.7 UPB Exclusions. The following sections of the UPB General "Requirement" Division are excluded (i.e., all of these services are included in the Contractor's Coefficient):
  - a. "Summary of Work"
  - b. "Allowances" with one exception: Overtime of a maximum of 10% of the applicable project labor costs will be allowed for projects with a City Requested Overtime Requirement.
  - c. "Project Management and Coordination"
  - d. "Construction Progress Documentation"
  - e. "Regulatory Requirements"
  - f. "Quality Control"
  - g. "Protective Equipment" sub section of "Construction Aids"
  - h. "Equipment Mobilization" sub section of "Construction Aids"
  - j. "Project Identification"
  - k. "Examination and Preparation"
  - l. "Cleaning and Waste Management"
  - m. "Protecting Installed Construction"
  - n. "Commissioning"

**EXHIBIT "C"**

**CONTRACT DOCUMENTS**

The Documents identified below are attached to this Exhibit and incorporated into this Agreement for all purposes.

**A. JOB ORDER CONTRACT DOCUMENTS**

1. The Unit Price Book, R. S. MEANS Facilities Construction Cost Data, latest quarterly edition in effect at the time a Work Order is issued, which uses the CSI numbering structure and pricing customized and localized for the Houston area.

**B. STANDARD CITY CONSTRUCTION DOCUMENTS**

<u>DOC NO</u>	<u>DOC TITLE</u>
00501	Resolution of Corporation
00601	Drug Policy Compliance Agreement
00602	Contractor's Drug-free Workplace
00605	List of Safety Impact Positions
00610	Performance Bond
00611	Statutory Payment Bond
00612	One-year Maintenance Bond
00620	Affidavit of Insurance
00624	Affidavit of Compliance with Affirmative Action Program
00630	Certification of Agreement to Comply with Pay or Play Program (POP-2)
00700	General Conditions
00800	Supplementary Conditions
00820	Wage Scale for Engineering Construction
00821	Wage Scale for Building Construction

## Document 00820

**WAGE SCALE AND PAYROLL REQUIREMENTS FOR ENGINEERING  
CONSTRUCTION****Wage Scale Requirements**

- 1.1 Contractor and its Subcontractors must pay the general prevailing wage rates for building construction for each craft or type of worker or mechanic employed in the execution of any building construction or repair under the Contract in accordance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91 and 2006-168, and 2009- 247 all as amended from time to time. City Council has determined the prevailing wage rate in the locality in which the work is being performed, which is set forth in Exhibit "A".
- 1.2 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.3 In bidding, Contractor warrants and represents that it has carefully examined the classifications for each craft or type of worker needed to execute the Contract and determined that such classifications in Exhibit "A" include all necessary categories to perform the work under the Contract.
- 1.4 The wage scale for engineering construction is to be applied to all site work greater than five feet from an exterior wall of new building under construction or from an exterior wall of an existing building.
- 1.5 If Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform work under the Contract, it must submit with its bid a request to the Contract Compliance Division of the Office Of Business Opportunity ("OBO") to use an additional labor classification not listed in Exhibit "A" and specify the proposed new classification. OBO shall determine whether a proposed classification is already covered in Exhibit "A", and, if it is, specify which classification is appropriate. OBO's decision is conclusive. If OBO decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered by Exhibit "A". Such determination must be decided in accordance with procedures established by OBO, and in compliance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91, 2006-168 and 2009-247 subject to City Council approval.
- 1.6 Contractor must not use any labor classification not covered by Exhibit "A" until such classification is established and approved for use by OBO.
- 1.7 A Contractor or Subcontractor who violates Chapter 2258 of the Texas Government Code must pay to the City, \$60 per each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates set forth in Exhibit "A".
- 1.8 The City may withhold money required to be withheld under Chapter 2258 of the Texas

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**WAGE SCALE AND PAYROLL REQUIREMENTS  
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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 for the applicable craft and level.

**Certified Payroll Requirements**

- 2.1 Employees are paid weekly and payrolls are submitted weekly using the City of Houston's electronic payroll submission module, unless the prime Contractor has been instructed to do otherwise by the Office of Business Opportunity. When no work is done after a Contractor has started work, the Contractor is required to submit a weekly compliance statement indicating no work was performed. The payrolls must reflect the exact work and classification of the workers, the exact amount that they were paid. Workers must be paid the contracted amount (prevailing wage rates). The Contractor will be penalized \$60.00 a day for each employee who is underpaid per Texas Government Code §2258.023 for all contracts.
- 2.2 Payrolls must be submitted electronically & indicate whether the worker worked inside or outside the building area when both wage rates are applicable to the contract.
- 2.3 Payrolls must be submitted each week until all work by the contractor is complete and the electronic payroll submission is marked as final in the system.
- 2.4 Payrolls must cover a seven day period from the start of the work week and must be consecutive seven day periods until all work is complete.
- 2.5 Payrolls must have employees' names, addresses, last four digits of the social security numbers, and job classifications. The job classifications must be the same as the classifications on the prevailing wage rate schedule.
- 2.6 A payroll deduction authorization form must be submitted for each employee for any deductions other than Federal and FICA taxes.
- 2.7 Employees must be paid overtime (time and a half) for all hours worked over 40 hours a week on both federally and City-funded contracts.

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- 2.8 The Contractor has the responsibility to comply with all Internal Revenue Service rules and regulations. Contractors who submit certified payrolls with **Owner Operators (truckers)** must submit a signed tax liability statement from Owner Operator acknowledging their responsibility for Federal Income Tax and FICA reporting obligations.
- 2.9 If the Contractor wants to use the apprentice wage rates for an employee, the apprenticeship certificates must be submitted to the Office of Business Opportunity in advance of the employee working on the project and appearing on the payroll. You must comply with the listed number of journeymen to apprentices as listed.
- 2.10 A poster of the Prevailing Wage Rate Schedule should be clearly displayed on each job site from the time the project starts until the work is completed, or in case of annual service agreements, in the Contractor's office.
- 2.11 The Contractor shall submit the "Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "B") to the Monitoring Authority listed in Document 00495 prior to final execution of the contract.
- 2.12 During the 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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WAGE SCALE AND PAYROLL REQUIREMENTS  
FOR ENGINEERING CONSTRUCTION

**EXHIBIT "A"**

Wage Determination Publication Date:

**January 5, 2018**

for

General Decision Number **TX180056 01/05/2018 TX56**

Superseded General Decision Number TX20170056

State: Texas  
Construction Type: Highway  
Counties: Austin, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto and Waller Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/05/2018

\* SUTX2011-013 08/10/2011



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WAGE SCALE AND PAYROLL REQUIREMENTS  
FOR ENGINEERING CONSTRUCTION

LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES FOR ENGINEERING  
CONSTRUCTION 2018

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	\$13.07	Pile Driverman.	\$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
<b>Electrician * 3 Journeyman 2 Apprentice Allowed</b>	\$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	\$13.17	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

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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

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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.

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**CITY OF HOUSTON  
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FOR ENGINEERING CONSTRUCTION****Laborer, Common**

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

**Laborer, Utility**

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

**Manhole Builder**

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

**Mechanic**

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

**Milling Machine Operator, Fine Grade**

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

**Mixer Operator**

Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. May occasionally place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operate and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs

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FOR ENGINEERING CONSTRUCTION**

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, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.

**Reinforcing Steel Setter, Paving**

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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,

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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.

**Traveling Mixer Operator**

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

**Truck driver, lowboy-Float**

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

**Truck driver, Single Axle, Heavy**

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

**Truck driver, Single Axle-Light**

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



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**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.

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FOR ENGINEERING CONSTRUCTION

EXHIBIT "B"

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

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

E-Mail Address: \_\_\_\_\_

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.

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

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.

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WAGE SCALE AND PAYROLL REQUIREMENTS  
FOR ENGINEERING CONSTRUCTION

EXHIBIT "C"

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

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

E-Mail Address: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

END OF DOCUMENT

**Document 00821**

**WAGE SCALE AND PAYROLL REQUIREMENTS  
FOR BUILDING 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 building construction is to be applied to work on a building including an area within 5 feet of the exterior wall.
- 1.5 If Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform work under the Contract, it must submit with its bid a request to the Contract Compliance Division of the Office of Business Opportunity ("OBO") to use an additional labor classification not listed in Exhibit "A" and specify the proposed new classification. OBO shall determine whether a proposed classification is already covered in Exhibit "A", and, if it is, specify which classification is appropriate. OBO's decision is conclusive. If OBO decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered by Exhibit "A". Such determination must be decided in accordance with procedures established by OBO, and in compliance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91, 2006-168, and 2009-247 subject to City Council approval.
- 1.6 Contractor must not use any labor classification not covered by Exhibit "A" until such classification is established and approved for use by OBO.
- 1.7 A Contractor or Subcontractor who violates Chapter 2258 of the Texas Government Code must pay to the City, \$60 per each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates set forth in Exhibit "A".

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FOR BUILDING CONSTRUCTION**

- 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 for the applicable craft and level.

**Certified Payroll Requirements**

- 2.1 Employees are paid weekly and payrolls are submitted weekly using the City of Houston's electronic payroll submission module, unless the prime Contractor has been instructed to do otherwise by the Office of Business Opportunity. When no work is done after a Contractor has started work, the Contractor is required to submit a weekly compliance statement indicating no work was performed. The payrolls must reflect the exact work and classification of the workers, the exact amount that they were paid. Workers must be paid the contracted amount (prevailing wage rates). The Contractor will be penalized \$60.00 a day for each employee who is underpaid per Texas Government Code §2258.023 for all contracts.
- 2.2 Payrolls must be submitted electronically & indicate whether the worker worked inside or outside the building area when both wage rates are applicable to the project.
- 2.3 Payrolls must be submitted each week until all work by the contractor is complete and the electronic payroll submission is marked as final in the system.
- 2.4 Payrolls must cover a seven day period from the start of the work week and must be consecutive seven day periods until all work is complete.
- 2.5 Payrolls must have employees' names, addresses, last four digits of the social security numbers, and job classifications. The job classifications must be the same as the classifications on the prevailing wage rate schedule.
- 2.6 A payroll deduction authorization form must be submitted for each employee for

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WAGE SCALE AND PAYROLL REQUIREMENTS  
FOR BUILDING CONSTRUCTION

any deductions other than Federal and FICA taxes and court ordered child support.

- 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 Owner Operator acknowledging their responsibility for Federal Income Tax and FICA reporting obligations.
- 2.9 If the Contractor wants to use the apprentice wage rates for an employee, the apprenticeship certificates must be submitted to the Office of Business Opportunity in advance of the employee working on the project and appearing on the payroll. Contractor must comply with posted number of journeymen to apprentices or helpers as listed on the wage rate.
- 2.10 A poster of the Prevailing Wage Rate Schedule should be clearly displayed on each job site from the time the project starts until the work is completed, or in case of annual service agreements, in the Contractor's office.
- 2.11 The Contractor shall submit the "Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "B") to the Monitoring Authority listed in Document 00495 prior to final execution of the contract.
- 2.12 During the course of the work, 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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WAGE SCALE  
FOR BUILDING CONSTRUCTION

**EXHIBIT "A"**

Wage Determination Publication Date:

**January 12, 2018**

for

General Decision Number **TX180303 01/12/2018 TX303**

Superseded General Decision Number TX20170303

State: Texas  
Construction Type: Building  
County: Harris County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/05/2018
1	01/12/2018

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WAGE SCALE  
FOR BUILDING CONSTRUCTION

LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES FOR BUILDING  
CONSTRUCTION 2018

Worker Classification	Ratio	Base Rate	Fringe Benefit	Wage Total
Asbestos Worker/Insulator *	Ratio 1/1 - Apprentice	\$23.26	\$12.92	\$36.18
Asbestos Abatement Worker (ceilings, walls, floors only)	Ratio 1/3 – Helpers \$9.10	\$14.00	\$0.00	\$14.00
Boilermaker *	Ratio 5/1 - Apprentice	\$28.00	\$22.35	\$50.35
Brick Layer * (see Mason Tender Brick)	Ratio 1/3 – Mason Tender Brick	\$18.87	\$0.00	\$18.87
Carpenter * (including acoustical ceiling work)	Ratio 2/1 - Apprentice	\$23.05	\$8.78	\$31.83
Cement Mason/Concrete Finisher *	Ratio 1/3 Mason Tender	\$13.93	\$0.00	\$13.93
Drywall Finisher/Taper *	Ratio 1/3 – Helpers \$8.54	\$16.27	\$3.66	\$19.93
Drywall Hanger, * incl. metal stud's installation	Ratio 1/3 – Helpers \$9.46	\$17.44	\$3.93	\$21.37
Electrician (Excludes Low Voltage Wiring and Installation of Alarms)	Ratio 3/2 - Apprentice	\$32.25	\$9.14	\$41.39
Electrician (Alarm Installation Only) *	Ratio 1/1 - Apprentice	\$17.97	\$3.37	\$21.34
Elevator Mechanic *	Ratio 1/1 - Apprentice	\$39.24	\$29.99	\$69.23
Formbuilder/ Formsetter *	Ratio 1/3 – Helpers \$7.67	\$12.77	\$0.00	\$12.77
Glazier *	Ratio 1/3 – Helper \$11.51	\$23.27	\$7.12	\$30.39
Insulator * (Batt and Foam)	Ratio 1/3 – Helper \$6.50	\$14.87	\$0.73	\$15.60
Ironworker *(Reinforcing)	Ratio 1/3 – Helper \$7.83	\$12.14	\$0.00	\$12.14
Ironworker *(Structural)	Ratio 1/3 – Helper \$10.19	\$23.27	\$7.12	\$30.39
Lather *	Ratio 1/3 – Helper \$13.38	\$19.73	\$0.00	\$19.73
Painter * (Brush, Roller, and Spray)	Ratio 1/3 – Helper \$7.42	\$17.24	\$4.41	\$21.65
Pipe Fitter *(HVAC Pipe only)	Ratio 1/1 - Apprentice	\$33.53	\$11.11	\$44.64
Pipe Fitter *(Excluding HVAC)	Ratio 1/3 – Helper \$12.40	\$31.73	\$10.31	\$42.04
Plasterer *	Ratio 1/3 Plaster Tenders	\$19.92	\$1.00	\$20.92
Plasterer Tender – Laborer – (Plaster's Helper)		\$12.90	\$2.51	\$15.41
Plumber *	Ratio 3/2 - Apprentice	\$34.35	\$9.79	\$44.14
Roofer *	Ratio 1/3 – Helper \$7.85	\$15.40	\$0.00	\$15.40
Sheet Metal Worker *(incl. HVAC duct and system install.)	Ratio 2/1 - Apprentice	\$25.67	\$12.39	\$38.06
Sprinkler Fitter * (Fire sprinklers)	Ratio 1/1 – Apprentice	\$29.03	\$15.84	\$44.87
Tile Finisher *	Ratio 1/3 – Helper \$8.08	\$12.00	\$0.00	\$12.00
Tile Setter *	Ratio 1/3 – Helper \$10.91	\$16.17	\$0.00	\$16.17
Truck Driver		\$14.18	\$0.00	\$14.18
<b>Laborers:</b>				
Common Laborer		\$11.76	\$0.00	\$11.76
Mason Tender (Bricklayer's Helper)		\$13.47	\$0.00	\$13.47
Mason Tender (Cement /Concrete Finisher's Helper)		\$10.47	\$0.00	\$10.48
Pipe Layer		\$12.94	\$0.00	\$12.94
Plaster Tender (Plasterer's helper)		\$12.90	\$2.51	\$15.41
<b>Power Equipment Operator:</b>				
Asphalt Paver		\$16.03	\$0.00	\$16.03
Backhoe – Power Equipment Operator		\$13.94	\$0.00	\$13.94
Crane – Power Equipment Operator		\$34.85	\$9.85	\$44.70
Forklift – Power Equipment Operator		\$16.00	\$0.00	\$16.00
Slab and Wall Saw – Power Equipment Operator		\$15.54	\$3.83	\$19.37
Welders - Receive rate prescribed for craft performing operation in which welding is incidental				
* When Apprentices are shown, Helpers cannot be utilized. See Definitions for allowable journeymen to apprentice /helpers.				



**Building Construction Prevailing Wages Classification Definitions**

**Asbestos Worker/Insulator \*** - Ratio 1 Journeyman /1 Apprentice (1 Journeyman / 1 Apprentice)  
(Including application of all insulating materials, protective coverings, coatings and finishing to all type of mechanical systems). Applies insulating material to exposed surfaces of structures, such as air ducts, hot and cold pipes, storage tanks, and cold storage rooms: Reads blueprints and selects required insulation material (in sheet, tubular, or roll form), such as fiberglass, foam rubber, styrofoam, cork, or urethane, based on material's heat retaining or excluding characteristics. Brushes adhesives on or attaches metal adhesive-backed pins to flat surfaces as necessary to facilitate application of insulation material. Measures and cuts insulation material to specified size and shape for covering flat or round surfaces, using tape measure, knife, or scissors. Fits, wraps, or attaches required insulation material around or to structure, following blueprint specifications. Covers or seals insulation with preformed plastic covers, canvas strips, sealant, or tape to secure insulation to structure, according to type of insulation used and structure covered, using staple gun, trowel, paintbrush, or caulking gun.

**Asbestos Abatement Worker \*** (Ceilings, Floors, & Walls only) Ratio 1 Journeyman /3 Helpers  
Removes asbestos from ceilings, walls, beams, boilers, and other structures, following hazardous waste handling guidelines: Assembles scaffolding and seals off work area, using plastic sheeting and duct tape. Positions mobile decontamination unit or portable showers at entrance of work area. Builds connecting walkway between mobile unit or portable showers and work area, using hand tools, lumber, nails, plastic sheeting, and duct tape. Positions portable air evacuation and filtration system inside work area. Sprays chemical solution over asbestos covered surfaces, using tank with attached hose and nozzle, to soften asbestos. Cuts and scrapes asbestos from surfaces, using knife and scraper. Shovels asbestos into plastic disposal bags and seals bags, using duct tape. Cleans work area of loose asbestos, using vacuum, broom, and dustpan. Places asbestos in disposal bags and seals bags, using duct tape. Dismantles scaffolding and temporary walkway, using hand tools, and places plastic sheeting and disposal bags into transport bags. Seals bags, using duct tape, and loads bags into truck.

**Boilermaker \*** - Ratio 5 Journeymen /1 Apprentice  
Assembles, analyzes defects in, and repairs boilers, pressure vessels, tanks, and vats in field, following blueprints and using hand tools and portable power tools and equipment: Locates and marks reference points for columns or plates on foundation, using master straightedge, squares, transit, and measuring tape, and applying knowledge of geometry. Attaches rigging or signals crane operator to lift parts to specified position. Aligns structures or plate sections to assemble boiler frame, tanks, or vats, using plumb bobs, levels, wedges, dogs, or turnbuckles. Hammers, flame cuts, files, or grinds irregular edges of sections or structural parts to facilitate fitting edges together. Bolts or arc-welds structures and sections together. Positions drums and headers into supports and bolts or welds supports to frame. Aligns water tubes and connects and expands ends to drums and headers, using tube expander. Bells, beads with power hammer, or welds tube ends to ensure leak proof joints. Bolts or welds casing sections, uptakes, stacks, baffles, and such fabricated parts as chutes, air heaters, fan stands, feeding tube, catwalks, ladders, coal hoppers, and safety hatch to frame, using wrench. Installs manholes, hand holes, valves, gauges, and feed water connection in drums to complete assembly of water tube boilers. Assists in testing assembled vessels by pumping water or gas under specified pressure into vessel and observing instruments for evidence of leakage. Repairs boilers or tanks in field by unbolting or flame cutting defective sections or tubes, straightening plates, using torch or jacks, installing new tubes, fitting and welding new sections and replacing worn lugs on bolts. May rivet and caulk sections of vessels, using pneumatic riveting and caulking hammers.

**Bricklayer \*** (See Mason Tender) - Ratio 1 Journeyman /3 Mason Tender Brick

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**WAGE SCALE  
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Lays building materials, such as brick, structural tile, and concrete cinder, glass, gypsum, and terra cotta block (except stone) to construct or repair walls, partitions, arches, sewers, and other structures: Measures distance from reference points and marks guidelines on working surface to lay out work. Spreads soft bed (layer) of mortar that serves as base and binder for block, using trowel. Applies mortar to end of block and positions block in mortar bed. Taps block with trowel to level, align, and embed in mortar, allowing specified thickness of joint. Removes excess mortar from face of block, using trowel. Finishes mortar between brick with pointing tool or trowel. Breaks bricks to fit spaces too small for whole brick, using edge of trowel or brick hammer. Determines vertical and horizontal alignment of courses, using plumb bob, gauge line (tightly stretched cord), and level. Fastens brick or terra cotta veneer to face of structures, with tie wires embedded in mortar between bricks, or in anchor holes in veneer brick. May weld metal parts to steel structural members. May apply plaster to walls and ceiling, using trowel, to complete repair work.

**Carpenter \*** (Including Acoustical Ceiling Work) - Ratio 2 Journeymen /1 Apprentice

Constructs, erects, installs, and repairs structures and fixtures of wood, plywood, and wallboard, using carpenter's hand tools and power tools, and conforming to local building codes: Studies blueprints, sketches, or building plans for information pertaining to type of material required, such as lumber or fiberboard, and dimensions of structure or fixture to be fabricated. Selects specified type of lumber or other materials. Prepares layout, using rule, framing square, and calipers. Marks cutting and assembly lines on materials, using pencil, chalk, and marking gauge. Shapes materials to prescribed measurements, using saws, chisels, and planes. Assembles cut and shaped materials and fastens them together with nails, dowel pins, or glue. Verifies trueness of structure with plumb bob and carpenter's level. Erects framework for structures and lays subflooring. Builds stairs and lays out and installs partitions and cabinetwork. Covers sub floor with building paper to keep out moisture and lays hardwood, parquet, and wood-strip-block floors by nailing floors to sub floor or cementing them to mastic or asphalt base. Applies shock-absorbing, sound-deadening, and decorative paneling to ceilings and walls. Fits and installs prefabricated window frames, doors, doorframes, weather stripping, interior and exterior trim, and finish hardware, such as locks, letter drops, and kick plates. Constructs forms and chutes for pouring concrete. Erects scaffolding and ladders for assembling structures above ground level. May weld metal parts to steel structural members.

**Cement Mason/Concrete Finisher \*** ( Mason Tender Cement/Concrete) - Ratio 1 Journeyman /3

**Mason Tender Cement**

Finisher; concrete floater Smooths and finishes surfaces of poured concrete floors, walls, sidewalks, or curbs to specified textures, using hand tools or power tools, including floats, trowels, and screeds: Signals concrete deliverer to position truck to facilitate pouring concrete. Moves discharge chute of truck to direct concrete into forms. Spreads concrete into inaccessible sections of forms, using rake or shovel. Levels concrete to specified depth and workable consistency, using hand held screed and floats to bring water to surface and produce soft topping. Smooths, and shapes surfaces of freshly poured concrete, using straightedge and float or power screed. Finishes concrete surfaces, using power trowel, or wets and rubs concrete with abrasive stone to impart finish. Removes rough or defective spots from concrete surfaces, using power grinder or chisel and hammer, and patches holes with fresh concrete or epoxy compound. Molds expansion joints and edges, using edging tools, jointers, and straightedge. May sprinkle colored stone chips, powdered steel, or coloring powder on concrete to produce prescribed finish. May produce rough concrete surface, using broom. May mix cement, using hoe or concrete-mixing machine. May direct sub grade work, mixing of concrete, and setting of forms.

**Drywall Finisher/Taper** - Ratio 1Journeyman /3 Helpers

Wallboard and plasterboard; sheetrock taper; taper and bedder; taper and floater. Seals joints between plasterboard or other wallboards to prepare wall surface for painting or papering; Mixes

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sealing compound by hand or with portable electric mixer, and spreads compound over joints between boards, using trowel, broad knife, or spatula. Presses paper tape over joint to embed tape into compound and seal joint, or tapes joint, using mechanical applicator that spreads compound and embeds tape in one operation. Spreads and smooth's cementing material over tape, using trowel or floating machine to blend joint with wall surface. Sands rough spots after cement has dried. Fills cracks and holes in walls and ceiling with sealing compound. Installs metal molding at corners in lieu of sealant and tape. Usually works as member of crew. May apply texturing compound and primer to walls and ceiling preparatory to final finishing, using brushes, roller, or spray gun. May countersink nails or screws below surface of wall prior to applying sealing compound, using hammer or screwdriver.

**Drywall Hanger** - Ratio 1 Journeyman /3 Helpers

Dry-wall installer; gypsum dry-wall systems installer. Plans gypsum drywall installations, erects metal framing and furring channels for fastening drywall, and installs drywall to cover walls, ceilings, soffits, shafts, and movable partitions in residential, commercial, and industrial buildings: Reads blueprints and other specifications to determine method of installation, work procedures, and material, tool, and work aid requirements. Lays out reference lines and points for use in computing location and position of metal framing and furring channels and marks position for erecting metalwork, using chalk line. Measures, marks, and cuts metal runners, studs, and furring channels to specified size, using tape measure, straightedge and hand and portable power cutting tools. Secures metal framing to walls and furring channels to ceilings, using hand and portable power tools.

Measures and marks cutting lines on drywall, using square, tape measure, and marking devices. Scribes cutting lines on drywall, using straightedge and utility knife and breaks board along cut lines. Fits and fastens board into specified position on wall, using screws, hand tools, portable power tools, or adhesive. Cuts openings into board for electrical outlets, vents, or fixtures, using keyhole saw or other cutting tools. Measures, cuts, assembles, and installs metal framing and decorative trim for windows, doorways, and vents. Fits, aligns, and hangs doors and installs hardware, such as locks and kick plates (Includes Installing Metal Studs).

**Electrician** \* Ratio 3 Journeymen /2 Apprentice

Plans layout, installs, and repairs wiring, electrical fixtures, apparatus, and control equipment: Plans new or modified installations to minimize waste of materials, provide access for future maintenance, and avoid unsightly, hazardous, and unreliable wiring, consistent with specifications and local electrical codes. Prepares sketches showing location of wiring and equipment, or follows diagrams or blueprints, ensuring that concealed wiring is installed before completion of future walls, ceilings, and flooring. Measures, cuts, bends, threads, assembles, and installs electrical conduit, using tools, such as hacksaw, pipe threader, and conduit bender. Pulls wiring through conduit. Splices wires by stripping insulation from terminal leads, using knife or pliers, twisting or soldering wires together, and applying tape or terminal caps. Connects wiring to lighting fixtures and power equipment, using hand tools. Installs control and distribution apparatus, such as switches, relays, and circuit-breaker panels, fastening in place with screws or bolts, using hand tools and power tools. Connects power cables to equipment, such as electric range or motor, and installs grounding leads. Tests continuity of circuit to ensure electrical compatibility and safety of components, using testing instruments, such as ohmmeter, battery and buzzer, and oscilloscope. Observes functioning of installed equipment or system to detect hazards and need for adjustments, relocation, or replacement (Including Pulling Wire and Low Voltage Wiring and Installation of Fire Alarms, Security Systems, Telephones, and Computers).

**Elevator Mechanic** \* - Ratio 1 Journeyman /1 Apprentice

*FOOTNOTES: a. - Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Paid Holidays: New Year's*

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*Day; Memorial Day; Independence Day Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day.*

Erector; elevator installer; elevator mechanic. Assembles and installs electric and hydraulic freight and passenger elevators, escalators, and dumbwaiters, determining layout and electrical connections from blueprints: Studies blueprints and lays out location of framework, counterbalance rails, motor pump, cylinder, and plunger foundations. Drills holes in concrete or structural steel members with portable electric drill. Secures anchor bolts or welds brackets to support rails and framework, and verifies alignment with plumb bob and level. Cuts prefabricated sections of framework, rails, and other elevator components to specified dimensions, using acetylene torch, power saw, and disk grinder. Installs cables, counterweights, pumps, motor foundations, escalator drives, guide rails, elevator cars, and control panels, using hand tools. Connects electrical wiring to control panels and electric motors. Installs safety and control devices. Positions electric motor and equipment on top of elevator shaft, using hoists and cable slings.

**Formbuilder/Formsetter** - Ratio 1 Journeyman /3 Helpers

Constructs built-in-place or prefabricated wooden forms, according to specifications, for molding concrete structures: Studies blueprints and diagrams to determine type and dimension of forms to be constructed. Saws lumber to blueprint dimensions, using handsaw or power saw, and nails lumber together to make form panels. Erects built-in-place forms or assembles and installs prefabricated forms on construction site according to blueprint specifications, using hand tools, plumb rule, and level. Inserts spreaders and tie rods between opposite faces of form to maintain specified dimensions. Anchors and braces forms to fixed objects, using nails, bolts, anchor rods, steel cables, planks, and timbers.

**Glazier** - Ratio 1 Journeyman /3 Helpers

Installs glass in windows, skylights, store fronts, and display cases, or on surfaces, such as building fronts, interior walls, ceilings, and tabletops: Marks outline or pattern on glass, and cuts glass, using glasscutter. Breaks off excess glass by hand or with notched tool. Fastens glass panes into wood sash with glazier's points, and spreads and smoothes putty around edge of panes with knife to seal joints. Installs mirrors or structural glass on building fronts, walls, ceilings, or tables, using mastic, screws, or decorative molding. Bolts metal hinges, handles, locks, and other hardware to prefabricated glass doors. Sets glass doors into frame and fits hinges. May install metal window and doorframes into which glass panels are to be fitted. May press plastic adhesive film to glass or spray glass with tinting solution to prevent light glare. May install stained glass windows.

**Insulator (Batt and Foam)** - Ratio 1 Journeyman /3 Helpers

Applies batt and form insulation to walls, ceilings and other surfaces according to manufacturers specifications and blue print instructions. May use sealants such as cement plaster or asphalt compound to seal insulation; may spread concrete over floor slabs to form wearing floor: brushes adhesives, cuts insulating materials to specified shape to cover surfaces; uses tape or other sealants to adhere insulation to surfaces. May use staple gun, towel, paintbrushes and caulking guns.

**Ironworker (Reinforcing)** - Ratio 1 Journeyman/3 Helpers

Positions and secures steel bars in concrete forms to reinforce concrete; places rods in forms, spacing and fastening together with wire and pliers. Cuts bars using hacksaw, bar cutters or acetylene torch. Bends steel rods with hand tools or rod bending machine; reinforces concrete with wire mesh; welds reinforcing bars together.

**Ironworker (Structural)** - Ratio 1 Journeyman /3 Helpers

Erector; ironworker; steel erector; structural-iron erector; structural-iron worker; structural steel erector.

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Performs any combination of following duties to raise, place, and unite girders, columns, and other structural-steel members to form completed structures or structure frameworks, working as member of crew: Sets up hoisting equipment for raising and placing structural-steel members. Fastens steel members to cable of hoist, using chain, cable, or rope. Signals worker operating hoisting equipment to lift and place steel member. Guides member, using tab line (rope) or rides on member to guide it into position. Pulls, pushes, or pries steel members into approximate position while member is supported by hoisting device. Forces members into final position, using turnbuckles, crowbars, jacks, and hand tools. Aligns rivet holes in member with corresponding holes in previously placed member by driving drift pins or handle of wrench through holes. Verifies vertical and horizontal alignment of members, using plumb bob and level.

**Lather** - Ratio 1 Journeyman /3 Helpers

Fastens wooden, metal, or rockboard lath to walls, ceilings, and partitions of buildings to provide supporting base for plaster, fireproofing, or acoustical material, using hand tools and portable power tools: Erects horizontal metal framework to which laths are fastened, using nails, bolts, and studgun. Drills holes in floor and ceiling, using portable electric tool, and drives ends of wooden or metal studs into holes to provide anchor for furring or rockboard lath. Wires horizontal strips to furring to stiffen framework. Cuts lath to fit openings and projections, using hand tools or portable power tools. Wires, nails, clips, or staples lath to framework, ceiling joists, and flat concrete surfaces. Bends metal lath to fit corners, or attaches preformed corner reinforcements. Wires plasterer's channels to overhead structural framework to provide support for plaster or acoustical ceiling tile.

**Painter (Brush, Roller, and Spray)** - Ratio 1 Journeyman /3 Helpers

Applies coats of paint, varnish, stain, enamel, or lacquer to decorate and protect interior or exterior surfaces, trimmings, and fixtures of buildings and other structures: Reads work order or receives instructions from supervisor or homeowner regarding painting. Smooths surfaces, using sandpaper, brushes, or steel wool, and removes old paint from surfaces, using paint remover, scraper, wire brush, or blowtorch to prepare surfaces for painting. Fills nail holes, cracks, and joints with caulk, putty, plaster, or other filler, using caulking gun and putty knife. Selects premixed paints, or mixes required portions of pigment, oil, and thinning and drying substances to prepare paint that matches specified colors. Removes fixtures, such as pictures and electric switchcovers, from walls prior to painting, using screwdriver. Spreads dropcloths over floors and room furnishings, and covers surfaces, such as baseboards, doorframes, and windows with masking tape and paper to protect surfaces during painting. Paints surfaces, using brushes, spray gun, or paint rollers. Simulates wood grain, marble, brick, or tile effects. Applies paint with cloth, brush, sponge, or fingers to create special effects. Erects scaffolding or sets up ladders to perform tasks above ground level.

**Pipe fitter \*** (HVAC Pipe Only) - Ratio 1 Journeymen /1 Apprentice (See Schedule included)

Lays out, assembles, installs, and maintains pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems, applying knowledge of system operation, and following blueprints: Selects type and size of pipe, and related materials and equipment, such as supports, hangers, and hydraulic cylinders, according to specifications. Inspects work site to determine presence of obstructions and to ascertain that holes cut for pipe will not cause structural weakness. Plans installation or repair to avoid obstructions and to avoid interfering with activities of other workers. Cuts pipe, using saws, pipe cutter, hammer and chisel, cutting torch, and pipe cutting machine. Threads pipe, using pipe threading machine. Bends pipe, using pipe bending tools and pipe bending machine. Assembles and installs variety of metal and nonmetal pipes, tubes, and fittings, including iron, steel, copper, and plastic. Connects pipes, using threaded, caulked, soldered, brazed, fused, or cemented joints, and hand tools. Secures pipes to structure with brackets, clamps, and hangers, using hand tools and power tools. Installs and maintains hydraulic and pneumatic components of machines and

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equipment, such as pumps and cylinders, using hand tools. Installs and maintains refrigeration and air-conditioning systems, including compressors, pumps, meters, pneumatic and hydraulic controls, and piping, using hand tools and power tools, and following specifications and blueprints. Increases pressure in pipe system and observes connected pressure gauge to test system for leaks.

**Pipe Fitter \* (Excluding HVAC Pipe) – Ratio 1 Journeymen /3 Helpers**

Lays out, assembles, installs, and maintains pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems, applying knowledge of system operation, and following blueprints: Selects type and size of pipe, and related materials and equipment, such as supports, hangers, and hydraulic cylinders, according to specifications. Inspects work site to determine presence of obstructions and to ascertain that holes cut for pipe will not cause structural weakness. Plans installation or repair to avoid obstructions and to avoid interfering with activities of other workers. Cuts pipe, using saws, pipe cutter, hammer and chisel, cutting torch, and pipe cutting machine. Threads pipe, using pipe-threading machine. Bends pipe, using pipe bending tools and pipe bending machine. Assembles and installs variety of metal and nonmetal pipes, tubes, and fittings, including iron, steel, copper, and plastic. Connects pipes, using threaded, caulked, soldered, brazed, fused, or cemented joints, and hand tools. Secures pipes to structure with brackets, clamps, and hangers, using hand tools and power tools. Installs and maintains hydraulic and pneumatic components of machines and equipment, such as pumps and cylinders, using hand tools. Installs and maintains refrigeration and air-conditioning systems, including compressors, pumps, meters, pneumatic and hydraulic controls, and piping, using hand tools and power tools, and following specifications and blueprints. Increases pressure in pipe system and observes connected pressure gauge to test system for leaks. May weld pipe supports to structural steel members. May observe production machines in assigned area of manufacturing facility to detect machinery malfunctions. May operate machinery to verify repair. May modify programs of automated machinery, such as robots and conveyors, to change motion and speed of machine, using teach pendant, control panel, or keyboard and display screen of robot controller and programmable controller. May be designated Steam Fitter (construction) when installing piping systems that must withstand high pressure

**Plasterer \* See Plaster Tender - Ratio 1 Journeyman /3 Plaster Tenders**

Applies coats of plaster to interior walls, ceilings, and partitions of buildings, to produce finished surface, according to blueprints, architect's drawings, or oral instructions, using hand tools and portable power tools: Directs workers to mix plaster to desired consistency and to erect scaffolds. Spreads plaster over lath or masonry base, using trowel, and smoothes plaster with darby and float to attain uniform thickness. Applies scratch, brown, or finish coats of plaster to wood, metal, or board lath successively. Roughens undercoat with scratcher (wire or metal scraper) to provide bond for succeeding coats of plaster.

**Plumber \* (Excluding HVAC Pipe) - Ratio 3 Journeymen /2 Apprentice**

Assembles, installs, and repairs pipes, fittings, and fixtures of heating, water, and drainage systems, according to specifications and plumbing codes: Studies building plans and working drawings to determine work aids required and sequence of installations. Inspects structure to ascertain obstructions to be avoided to prevent weakening of structure resulting from installation of pipe. Locates and marks position of pipe and pipe connections and passage holes for pipes in walls and floors, using ruler, spirit level, and plumb bob. Cuts openings in walls and floors to accommodate pipe and pipe fittings, using hand tools and power tools. Cuts and threads pipe, using pipe cutters, cutting torch, and pipe-threading machine. Bends pipe to required angle by use of pipe-bending machine or by placing pipe over block and bending it by hand. Assembles and installs valves, pipe fittings, and pipes composed of metals, such as iron, steel, brass, and lead, and nonmetals, such as glass, vitrified clay, and plastic, using hand tools and power tools. Joins pipes by use of screws, bolts, fittings,

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solder, plastic solvent, and caulks joints. Fills pipe system with water or air and reads pressure gauges to determine whether system is leaking. Installs and repairs plumbing fixtures, such as sinks, commodes, bathtubs, water heaters, hot water tanks, garbage disposal units, dishwashers, and water softeners. Repairs and maintains plumbing by replacing washers in leaky faucets, mending burst pipes, and opening clogged drains.

**Roofer** - Ratio 1 Journeyman/3 Helpers

Covers roofs with roofing materials other than sheet metal, such as composition shingles or sheets, wood shingles, or asphalt and gravel, to waterproof roofs: Cuts roofing paper to size, using knife, and nails or staples it to roof in overlapping strips to form base for roofing materials. Installs gutters and down spouts. Aligns roofing material with edge of roof, and overlaps successive layers, gauging distance of overlap with chalk line, gauge on shingling hatchet, or by lines on shingles. Fastens composition shingles or sheets to roof with asphalt, cement, or nails. Punches holes in slate, tile, terra cotta, or wooden shingles, using punch and hammer. Cuts strips of flashing and fits them into angles formed by walls, vents, and intersecting roof surfaces. When applying asphalt or tar and gravel to roof, mops or pours hot asphalt or tar onto roof base. Applies alternate layers of hot asphalt or tar and roofing paper until roof covering is as specified. Applies gravel or pebbles over top layer, using rake or stiff bristled broom.

**Sheet metal worker** \* Ratio 2 Journeymen /1 Apprentice (Including Setting HVAC Duct & System Installs)

Fabricates, assembles, installs and repairs sheet metal products, including sheet metal roof (also see Roofer). Operates soldering and welding equipment to join together sheet metal parts. Seals seams and joints with sealant. Installs roof sheets, trims, flashing, gutters down spouts and other related items. Performs other related duties.

**Sprinkler Fitter (Fire)** \* - Ratio 1 Journeyman /1 Apprentice

Lays out, assembles, installs, and maintains pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems, applying knowledge of system operation, and following blueprints: Selects type and size of pipe, and related materials and equipment, such as supports, hangers, and hydraulic cylinders, according to specifications. Inspects work site to determine presence of obstructions and to ascertain that holes cut for pipe will not cause structural weakness. Plans installation or repair to avoid obstructions and to avoid interfering with activities of other workers. Cuts pipe, using saws, pipe cutter, hammer and chisel, cutting torch, and pipe cutting machine. Threads pipe, using pipe-threading machine. Bends pipe, using pipe bending tools and pipe bending machine. Assembles and installs variety of metal and nonmetal pipes, tubes, and fittings, including iron, steel, copper, and plastic. Connects pipes, using threaded, caulked, soldered, brazed, fused, or cemented joints, and hand tools. Secures pipes to structure with brackets, clamps, and hangers, using hand tools and power tools. Installs and maintains hydraulic and pneumatic components of machines and equipment, such as pumps and cylinders, using hand tools. Installs and maintains refrigeration and air-conditioning systems, including compressors, pumps, meters, pneumatic and hydraulic controls, and piping, using hand tools and power tools, and following specifications and blueprints. Increases pressure in pipe system and observes connected pressure gauge to test system for leaks. May weld pipe supports to structural steel members. May observe production machines in assigned area of manufacturing facility to detect machinery malfunctions.

May operate machinery to verify repair. May modify programs of automated machinery, such as robots and conveyors, to change motion and speed of machine, using teach pendant, control panel, or keyboard and display screen of robot controller and programmable controller.

**Tile Finisher** - Ratio 1 Journeyman /3 Helpers

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Supplies and mixes construction materials for TILE SETTER (construction) 861.381-054, applies grout, and cleans installed tile: Moves tiles, tile setting tools, and work devices from storage area to installation site manually or using wheelbarrow. Mixes mortar and grout according to standard formulas and request from TILE SETTER (construction), using bucket, water hose, spatula, and portable mixer. Supplies TILE SETTER (construction) with mortar, using wheelbarrow and shovel. Applies grout between joints of installed tile, using grouting trowel. Removes excess grout from tile joints with wet sponge and scrapes corners and crevices with trowel. Wipes surface of tile after grout has set to remove grout residue and polish tile, using nonabrasive materials. Cleans installation site, mixing and storage areas, and installation machines, tools, and equipment, using water and various cleaning tools. Stores tile setting materials, machines, tools, and equipment. May apply caulk, sealers, acid, steam, or related agents to caulk, seal, or clean installed tile, using various application devices and equipment. May modify mixing, grouting, grinding, and cleaning procedures according to type of installation or material used. May assist TILE SETTER (construction) to position and secure metal lath, wire mesh, or felt paper prior to installation of tile. May cut marked tiles to size, using power saw or tile cutter.

**Tile Setter - Ratio 1 Journeyman /3 Helpers**

Applies tile to walls, floors, ceilings, and promenade roof decks, following design specifications: Examines blueprints, measures and marks surfaces to be covered, and lays out work. Measures and cuts metal lath to size for walls and ceilings with tin snips. Tacks lath to wall and ceiling surfaces with staple gun or hammer. Spreads plaster base over lath with trowel and levels plaster to specified thickness, using screed. Spreads concrete on sub floor, with trowel and levels it with screed. Spreads mastic or other adhesive base on roof deck, using serrated spreader to form base for promenade tile. Cuts and shapes tile with tile cutters and biters. Positions tile and taps it with trowel handle to affix tile to plaster or adhesive base.

**Truck Driver**

Drives truck with capacity of more than 3 tons, to transport materials to and from specified destinations: Drives truck to destination, applying knowledge of commercial driving regulations and area roads. Prepares receipts for load picked up. Collects payment for goods delivered and for delivery charges. May maintain truck log, according to state and federal regulations. May maintain telephone or radio contact with supervisor to receive delivery instructions. May load and unload truck. May inspect truck equipment and supplies, such as tires, lights, brakes, gas, oil, and water. May perform emergency roadside repairs, such as changing tires, installing light bulbs, tire chains, and spark plugs. May position blocks and tie rope around items to secure cargo during transit.

**Laborers****Common Laborer**

Performs any combination of the following tasks in erecting, repairing and wrecking buildings; dig, spread and level dirt and gravel; lift carry and hold building materials, tools and supplies; clean tools, equipment, materials and work areas; mix, pour and spread concrete, asphalt, gravel and other materials; join, wrap and seal sections of pipe; routine non-machine tasks such as removing forms from set concrete, filling expansion joints with asphalt, and placing culverts in trench. May also signal construction equipment operators; measure distances from grade stakes, drive stakes and stretch lines; bolt, nail align and block up under forms; mix and finish poured concrete, erect scaffolding; spread paint or coating to seal surfaces; caulking compounds to seal surfaces; remove projections from concrete, and mount pipe hangers.

**Mason Tender Brick (Bricklayer's Helper)**



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Lay pipe for storm or sanitation sewers, drains, and water mains. Perform any combination of the following tasks: grade trenches or culverts, position pipe, or seal joints.

**Plaster Tender** (Plaster's Helper)

Tends machine that pumps plaster or stucco through spray gun for application to ceilings, walls, and partitions of buildings: Starts and stops machine on signals from PLASTERER (construction). Fills hopper of machine with plaster. Turns valves to regulate pump and compressor. Assists in erecting scaffolds.

**Power Equipment Operator:****Asphalt Paver** (operator)

Operator; bituminous-paving-machine operator; blacktop-paver operator; blacktop spreader; mechanical-spreader operator; paving-machine operator, asphalt or bituminous. Operates machine that spreads and levels hot-mix bituminous paving material on sub grade of highways and streets: Bolts extensions to screed to adjust width, using wrenches. Lights burners to heat screed. Starts engine and controls paving machine to push dump truck and maintain constant flow of asphalt into hopper. Observes distribution of paving material along screed and controls direction of screed to eliminate voids at curbs and joints. Turns valves to regulate temperature of asphalt flowing from hopper when asphalt begins to harden on screed.

**Backhoe** (operator)

Operates power-driven machine, equipped with movable shovel, to excavate or move coal, dirt, rock, sand, and other materials: Receives written or oral instructions from supervisor regarding material to move or excavate. Pushes levers and depresses pedals to move machine, to lower and push shovel into stockpiled material, to lower and dig shovel into surface of ground, and to lift, swing, and dump contents of shovel into truck, car, or onto conveyor, hopper, or stockpile. Observes markings on ground, hand signals, or grade stakes to remove material, when operating machine at excavation site.

**Crane** (operator)

Operates electric-, diesel-, gasoline-, or steam-powered guy-derrick or stiff-leg derrick (mast supported by fixed legs or tripod), to move products, equipment, or materials to and from quarries, storage areas, and processes, or to load and unload trucks or railroad cars: Pushes and pulls levers and depresses pedals to raise, lower, and rotate boom and to raise and lower load line in response to signals.

**Forklift** (operator)

Drives gasoline-, liquefied gas-, or electric-powered industrial truck equipped with lifting devices, such as forklift, boom, scoop, lift beam and swivel-hook, fork-grapple, clamps, elevating platform, or trailer hitch, to push, pull, lift, stack, tier, or move products, equipment, or materials in warehouse, storage yard, or factory: Moves levers and presses pedals to drive truck and control movement of lifting apparatus. Positions forks, lifting platform, or other lifting device under, over, or around loaded pallets, skids, boxes, products, or materials or hooks tow trucks to trailer hitch, and transports load to designated area. Unloads and stacks material by raising and lowering lifting device.

**Slab & Wall Saw** (See Related Power Equipment Operator Above)

Use associated power equipment operators already defined.

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**Apprentices**

Apprentices may be used in any of the crafts listed above where noted, if they are currently certified in a program recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor, providing the proper ratio between journeyman and apprentice is observed. Apprentice certification certificates must be supplied with the first weekly payroll upon which the apprentice's name appears.

**Helper (65% of the journeyman classification)**

(Must not exceed 3 helpers to 1 journeyman)

A Helper is a semi-skilled worker (rather than a skilled journeyman) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying, and furnishing equipment, supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related semi-skilled tasks as directed by the journeyman. A helper may use the tools of the trade at and under the direction of the journeyman. The particular duties performed by a helper vary according to area practice. The journeyman must work in close proximity to the location of the helper's work area. The helpers wage rate shall be calculated at no less than 65% of the prevailing wage for that journeyman's classification.

Helper who assists more than one journeyman craft should be listed with the notation indicating each journeyman craft classification they assist.

**WELDERS** - Receive rate prescribed for craft performing operation to which welding is incidental.

**Pipe fitters \* Apprentice Schedule (Excluding HVAC Pipe)**

Journeyman	Indentured Apprentice	Apprentice Applicant	Total
1	1	0	1 to 1
3	2	1	3 to 3
5	3	2	5 to 5
8	4	3	8 to 7
12	5	4	12 to 9
16	6	5	16 to 11
20	7	6	20 to 13
25	8	7	25 to 15
30	9	8	30 to 17
40	10	9	40 to 19
50	11	10	50 to 21

NOTE: Continue after 50 Journeyman — ONE (1) Indentured Apprentice and one (1) Apprentice Applicant for every ten (10) Journeyman

**\* When Apprentices are shown, Helpers cannot be utilized**

APPRENTICES (see definitions)

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FOR BUILDING CONSTRUCTION****Registered Apprenticeship Ratios****For All Apprentices**

Apprentice duties consist but are not limited to reading blue prints, lay out, fabrication, installation, and assembly. Other duties are the setting up and operation of fabrication machines, using hand tools, power tools, lifting/handling devices, sealing if necessary according to their particular craft. Apprentices also are trained in the preparation process of a job that include but not limited to staging, planning, distribution, and sectioning of materials. Apprentices may be used in any of the crafts listed where noted on the Prevailing Wage Rate Schedule, if they are currently certified in a program recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor, providing the proper ratio between journeyman and apprentice is observed. Apprentice certification certificates must be supplied with the first weekly payroll upon which the apprentice's name appears. Helpers or Laborers cannot be utilized when Apprentices are shown

**Asbestos Worker / Insulator**

City of Houston allows the use of 1 Journeyman and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 2th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1 Journeyman w/ 1 Apprentice
- 2 Journeymen w/ 2 Apprentices

**Boilermakers**

City of Houston allows the use of 5 Journeymen and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 6th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1-5 Journeymen w/ 1 Apprentice
- 6-10 Journeymen w/ 2 Apprentices

**Carpenter**

City of Houston allows the use of 2 Journeymen and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 4th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1-2 Journeymen w/ 1 Apprentice
- 3-4 Journeymen w/ 2 Apprentices
- 5-6 Journeymen w/ 3 Apprentices

**Electrician**

City of Houston allows the use of 3 Journeymen and 2 Apprentices, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 3rd Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman. All Journeymen and Apprentices must hold a current license from the State of Texas.

- 1 Journeyman w/ 1 Apprentice
- 2 Journeymen w/ 1 Apprentice
- 3 Journeymen w/ 2 Apprentices

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- 4 Journeymen w/ 3 Apprentices
- 5 Journeymen w/ 3 Apprentices
- 6 Journeymen w/ 4 Apprentices
- 7 Journeymen w/ 4 Apprentices
- 8 Journeymen w/ 4 Apprentices
- 9 Journeymen w/ 4 Apprentices
- 10 Journeymen w/ 5 Apprentices

**Plumbers**

City of Houston allows the use of 3 Journeymen and 2 Apprentices, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 3rd Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman. All Journeymen and Apprentices must hold a current license from the State of Texas.

- 1 Journeyman w/ 1 Apprentice
- 2 Journeymen w/ 1 Apprentice
- 3 Journeymen w/ 2 Apprentices
- 4 Journeymen w/ 3 Apprentices
- 5 Journeymen w/ 3 Apprentices
- 6 Journeymen w/ 4 Apprentices
- 7 Journeymen w/ 4 Apprentices
- 8 Journeymen w/ 4 Apprentices
- 9 Journeymen w/ 4 Apprentices
- 10 Journeymen w/ 5 Apprentices

**Sprinkler Fitter**

City of Houston allows the use of 1 Journeyman and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 2th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1 Journeyman w/ 1 Apprentice
  - 2 Journeymen w/ 2 Apprentices
- Sheetmetal Worker**

City of Houston allows the use of 2 Journeymen and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 4th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1-2 Journeymen w/ 1 Apprentice
- 3-4 Journeymen w/ 2 Apprentices
- 5-6 Journeymen w/ 3 Apprentices

**Pipefitter**

City of Houston allows the use of 1 Journeymen and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 4th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1 Journeyman w/ 1 Apprentice

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- 2 Journeymen w/ 1 Apprentice
- 3 Journeymen w/ 2 Apprentices
- 4 Journeymen w/ 3 Apprentices
- 5 Journeymen w/ 3 Apprentices
- 6 Journeymen w/ 4 Apprentices
- 7 Journeymen w/ 4 Apprentices
- 8 Journeymen w/ 4 Apprentices
- 9 Journeymen w/ 4 Apprentices
- 10 Journeymen w/ 5 Apprentices

HELPER (see definitions)

(Must not exceed 3 helpers to 1 journeyman)

A Helper is a semi-skilled laborer (rather than a skilled journeyman) who works under the direction of and assists a journeyman. Under the journeyman’s direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying, and furnishing equipment, supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related semi-skilled tasks as directed by the journeyman. A helper may use the tools of the trade at and under the direction of the journeyman. The particular duties performed by a helper vary according to area practice. The journeyman must work in close proximity to the location of the helpers work area. The helper’s wage rate shall be calculated at no less than 65% of the prevailing wage for that journeyman’s classification. Helper who assists more than one journeyman craft should be listed with the notation indicating each journeyman craft classification they assist.

**Welders**

Receive rate prescribed for craft performing operation is which welding is incidental

**Pipefitters** \* Apprentice Schedule (Excluding HVAC Pipe)

NOTE: Continue after 50 Journeyman - ONE (1) Indentured Apprentice and one (1) Apprentice Applicant for every ten (10) Journeyman

	Indentured	Apprentice	
Journeyman	Apprentice	Applicant	Total
1	1	0	1 to 1
3	2	1	3to 3
5	3	2	5 to 5
8	4	3	8 to 7
12	5	4	12 to 9
16	6	5	16 to 11
20	7	6	20 to 13
25	8	7	25 to 15
30	9	8	30 to 17
40	10	9	40 to 19
50	11	10	50 to 21

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**When Apprentices are shown, Helpers cannot be utilized**

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**If there are questions as to the classification of a worker, contact the Contract Compliance Officer in writing with a description of the work to be performed. After reviewing the Contract Compliance Officer will respond in writing with the classification and wage rate to be paid the worker in question.**

**Fringe Benefits**

If the worker is not receiving fringe benefits, they must be paid in cash if noted on the prevailing wage schedule along with the base rate. The term wages means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law. The prevailing wages (including fringe benefits) as adopted for this contract are based upon a survey performed under the Davis-Bacon Act. Thus, determinations regarding fringe benefits, to the extent practicable, will be based upon the standards set forth in the following federal regulations.

**Title 29, Code of Federal Regulations, Part 4  
Labor Standards for Federal Service Contracts****(29 CFR 4.169-4.171)****29 CFR 4.170 - Furnishing fringe benefits or equivalents.**

(a) General. Fringe benefits required under the Act shall be furnished, separate from and in addition to the specified monetary wages, by the contractor or subcontractor to the employees engaged in performance of the contract, as specified in the determination of the Secretary or his authorized representative and prescribed in the contract documents. Section 2(a)(2) of the Act provides that the obligation to furnish the specified benefits "may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary." The governing rules and regulations for furnishing such equivalents are set forth in Sec. 4.177 of this subpart. An employer cannot offset an amount of monetary wages paid in excess of the wages required under the determination in order to satisfy his fringe benefit obligations under the Act, and must keep appropriate records separately showing amounts paid for wages and amounts paid for fringe benefits.

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(b) Meeting the requirement, in general. The various fringe benefits listed in the Act and in Sec. 4.162(a) are illustrative of those which may be found to be prevailing for service employees in a particular locality. The benefits which an employer will be required to furnish employees performing on a particular contract will be specified in the contract documents. A contractor may dispose of certain of the fringe benefit obligations which may be required by an applicable fringe benefit determination, such as pension, retirement, or health insurance, by irrevocably paying the specified contributions for fringe benefits to an independent trustee or other third person pursuant to an existing "bona fide" fund, plan, or program on behalf of employees engaged in work subject to the Act's provisions. Where such a plan or fund does not exist, a contractor must discharge his obligation relating to fringe benefits by furnishing either an equivalent combination of "bona fide" fringe benefits or by making equivalent payments in cash to the employee, in accordance with the regulations in Sec. 4.177.

**29 CFR 4.171 – "Bona fide" fringe benefits.**

(a) To be considered a "bona fide" fringe benefit for purposes of the Act, a fringe benefit plan, fund, or program must constitute a legally enforceable obligation, which meets the following criteria:

(1) The provisions of a plan, fund, or program adopted by the contractor, or by contract as a result of collective bargaining, must be specified in writing, and must be communicated in writing to the affected employees. Contributions must be made pursuant to the terms of such plan, fund, or program. The plan may be either contractor-financed or a joint contractor employee contributory plan. For example, employer contributions to Individual Retirement Accounts (IRAs) approved by IRS are permissible. However, any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with Sec. 4.168. No contribution toward fringe benefits made by the employees themselves, or fringe benefits provided from monies deducted from the employee's wages may be included or used by an employer in satisfying any part of any fringe benefit obligation under the Act.

(2) The primary purpose of the plan must be to provide systematically for the payment of benefits to employees because death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like.

(3) The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan.

(4) Except as provided in paragraph (b), the contractor's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that the contractor will not be able to recapture any of the contributions paid in nor in any way divert the funds to its own use or benefit.

(5) Benefit plans or trusts of the types listed in 26 U.S.C. 401(a) which are disapproved by the Internal Revenue Service as not satisfying the requirements of section 401(a) of the Internal Revenue Code or which do not meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. and regulations thereunder, are not deemed to be "bona fide" plans for purposes of the Service Contract Act.

(6) It should also be noted that such plans must meet certain other criteria as set forth in Sec. 778.215 of 29 CFR part 778 in order for any contributions to be excluded from

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computation of the regular rate of pay for overtime purposes under the Fair Labor Standards Act (Secs. 4.180-4.182).

(b)(1) Unfunded self-insured fringe benefit plans (other than fringe benefits such as vacations and holidays which by their nature are normally unfunded) under which contractors allegedly make "out of pocket" payments to provide benefits as expenses may arise, rather than making irrevocable contributions to a trust or other funded arrangement as required under Sec. 4.171(a)(4), are not normally considered "bona fide" plans or equivalent benefits for purposes of the Act.

(2) A contractor may request approval by the Administrator of an unfunded self-insured plan in order to allow credit for payments under the plan to meet the fringe benefit requirements of the Act. In considering whether such a plan is bona fide, the Administrator will consider such factors as whether it could be reasonably anticipated to provide the prescribed benefits, whether it represents a legally enforceable commitment to provide such benefits, whether it is carried out under a financially responsible program, and whether the plan has been communicated to the employees in writing. The Administrator in his/her discretion may direct that assets be set aside and preserved in an escrow account or that other protections be afforded to meet the plan's future obligation.

(c) No benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security, is a fringe benefit for purposes of the Act.

(d) The furnishing to an employee of board, lodging, or other facilities under the circumstances described in Sec. 4.167, the cost or value of which is creditable toward the monetary wages specified under the Act, may not be used to offset any fringe benefit obligations, as such items and facilities are not fringe benefits or equivalent benefits for purposes of the Act.

(e) The furnishing of facilities which are primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor is not the furnishing of a "bona fide" fringe benefit or equivalent benefit or the payment of wages. This would be true of such items, for example, as relocation expenses, travel and transportation expenses incident to employment, incentive or suggestion awards, and recruitment bonuses, as well as tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business, and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, by the contractor's Government contract, by law, or by the nature of the work to wear such items. See also Sec. 4.168.

(f) Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues, may not be used to offset any wages or fringe benefits specified in the contract, as such items are not "bona fide" wages or fringe benefits or equivalent benefits for purposes of the Act.



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EXHIBIT "B"

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

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

E-mail address \_\_\_\_\_

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.

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

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.

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EXHIBIT "C"

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

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

E-mail address \_\_\_\_\_

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

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

(Specify work subcontractor will be performing on this project)

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

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

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

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

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

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

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

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

END OF DOCUMENT

**EXHIBIT "D"**

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_, \_\_\_\_\_,  
(Name) (Title)

as an owner or officer of \_\_\_\_\_ (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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "E"**

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

I, \_\_\_\_\_, \_\_\_\_\_,  
(Name) (Title)

as an owner or officer of \_\_\_\_\_ (Contractor)  
(Name of Company)

have authority to bind the Contractor with respect to its bid, and 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 \_\_\_\_\_.  
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

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

**EXHIBIT "F"**

**DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_ as an owner or  
(Name) (Print/Type) (Title)  
officer of \_\_\_\_\_ (Contractor) (Name of Company), have personal knowledge and full  
authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_.

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

\_\_\_\_\_ 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.

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

\_\_\_\_\_ 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 \_\_\_\_\_.

\_\_\_\_\_ From \_\_\_\_\_ [Start date] to \_\_\_\_\_ [End date] the following test has occurred:  
Initials

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

\_\_\_\_\_ 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.

\_\_\_\_\_ 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.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

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

\*\*\*\*\*

*List of Changes:*

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

- 12-10-2010: *Inserted phrase into definition of Claim (§1.1.7) defining what a Claim can constitute*
- 01-14-2011: *Insertion of terms "Business Enterprise" and "Business Enterprise Policy" into definition section (§1.1) and insertion of those terms in §3.5, as appropriate, and deletion of old §3.5.3*
- 01-18-2011: *Renaming of §4.5; renumbering of Table of Contents due to introduction of "Interim Payment Waiver & Release" as a separate section (§4.6)*
- 01-31-2011: *Edit of Section 4.6, "Interim Payment Waiver & Release" to reflect language suggestions of Litigation Division of Legal Dept.*
- 02-09-2011: *Edit of language in definitions of "Business Enterprise" and "Business Enterprise Policy"*
- 10-12-2011: *Amended Section 8.2, related to delays and extensions of time, to strengthen language suggested in 2011 Construction Law CLE.*
- 10-19-2011: *General reformatting of entire document for consistency; updating of header re: date; insertion of "Mayor's Office of Business Opportunity", as appropriate, to reflect name change*
- 10-27-2011: *Added a definition for "Mayor's Office of Business Opportunity"; amended Section 8.2.2 to refer to Section 4.3.6.2; replaced MWBE with "Business Enterprise", where appropriate; added "persons, or entities" to Section 5.1 to broaden applicable provisions; updated issue date to proposed Issue date of November 1, 2011.*
- 10-31-2011: *edited definition of "Business Enterprise"*
- 07-01-2013: *Edited Section 3.5.3 to remove the binding arbitration requirement for contractor and subcontractor claims, per change in Office of Business Opportunity policy.*
- 07-25-2013: *Removed Section 4.5.1, regarding conditions precedent to suit.*
- 11-01-2014: *Changed Section 3.5.2 to reflect a move away from arbitration to mediation to resolve subcontractor disputes; removed requirement for City Engineer's decision before a suit may be brought from Section 4.5.2; included language in Section 5.1.3 requiring submission of written contracts with Subcontractors within 30 days of Notice to Proceed issuance; changed Section 11.2 to reflect required insurance coverages updated for new fiscal year; added more explicit language regarding the City's Additional Insured status in Section 11.2.4 ("Insured Parties") and the City's waiver of subrogation requirement in Section 11.2.7 ("Subrogation").*
- 01-01-2015: *Changed the Automobile Insurance requirement from \$2,000,000 to \$1,000,000.*
- 07-01-2015: *Changed language in Article 11 to reflect new insurance requirements.*
- 07-10-2015: *Edited Section 9 and Section 14 to make electronic submission of certified payrolls mandatory.*
- 08-14-2015: *Edited Section 11 to reflect new standard insurance language for City contracts.*
- 07-01-2016: *Edited Section 3.5.4 to bring Pay or Play provisions up to date; updated Section 11 to make current required insurance coverages for FY2017.*
- 05-19-2017: *Reinserted Section 4.5.1, regarding conditions precedent to suit, and retitled Section 4.5, "Condition Precedent to Suit; Waiver of Attorney Fees and Interest".*
- 11-27-2017: *Inserted new Section 13.13, "Anti-Boycott of Israel", as per Texas House Bill 89, effective September 1, 2017. Inserted new Section 13.14, "Zero Tolerance for Human Trafficking and Related Activities", as per City of Houston Executive Order 1-56, "Zero Tolerance for Human Trafficking in City Service Contracts and Purchasing", effective immediately upon signature in October, 2017.*

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Document 00700

## **GENERAL CONDITIONS**

November 28, 2017 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:

- 1.1.6.1 a change in the Work;
- 1.1.6.2 a change in Contract Price, if any; and
- 1.1.6.3 a change in Contract Time, if any.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**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.

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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, as set out in Chapter 15, Article V of the City of Houston Code of Ordinances.

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

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

3.5.3.2.1 (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 City's OBO Director (the "Director").

3.5.3.2.2 (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 provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

3.5.3.2.3 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.

3.5.4 The requirements and terms of the City of Houston Pay or Play Program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into the Contract for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions. **IF CONTRACTOR DOES NOT PAY IN**

ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF THE DATE CITY ENGINEER SENDS CONTRACTOR WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS CONTRACT, AND CONTRACTOR WAIVES ANY RECOURSE.

### 3.6 *PREVAILING WAGE RATES*

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

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

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

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

### 3.7 *LABOR CONDITIONS*

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

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

### 3.8 *DRUG DETECTION AND DETERRENCE*

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

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

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

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

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

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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:

3.9.2.1 new, unless otherwise required or permitted by the Contract, and

3.9.2.2 of specified quality.

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

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

3.9.3.1 so as to cause the least inconvenience to property owners, tenants, and general public; and

3.9.3.2 so as not to block access to, or be closer than, three feet to any fire hydrant.

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

3.9.3.1 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:

3.10.5.1 has investigated the proposed Product and determined that it meets or exceeds the quality level of the specified Product;

3.10.5.2 shall provide the same warranty for the substitution as for the specified Product;

3.10.5.3 shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to the City;

3.10.5.4 confirms that cost data is complete and includes all related costs under the Contract;

3.10.5.5 waives Claim for additional costs or time extensions that may subsequently become apparent; and

3.10.5.6 shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.

3.10.6 City Engineer will not consider and will not approve substitutions when:

3.10.6.1 they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or

3.10.6.2 acceptance will require revision to the Contract.

3.10.7 City Engineer may reject requests for substitution, and his decision will be final and binding on the Parties.

### 3.11 *CASH ALLOWANCES*

3.11.1 Contract Price includes Cash Allowances as identified in the Contract.

3.11.2 The City will pay the actual costs of Cash Allowance item exclusive of profit, overhead or administrative costs. If actual costs exceed the Cash Allowance, City Engineer must approve a Change Order for the additional costs.

### 3.12 *WARRANTY*

3.12.1 Contractor warrants to the City that Products furnished under the Contract are:

3.12.1.1 free of defects in title;

3.12.1.2 of good quality; and

3.12.1.3 new, unless otherwise required or permitted by the Contract.

If required by the City Engineer, Contractor shall furnish satisfactory evidence as to kind, quality and title of Products, and that Products conform to requirements of the Contract.

3.12.2 In the event of a defect in a Product, either during construction or warranty period, Contractor shall take appropriate action with manufacturer of Product to assure correction or replacement of defective Product with minimum delay.

3.12.3 Contractor warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract. Contractor further warrants that the Work has been performed in a thorough and workmanlike manner.

3.12.4 Contractor warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.

3.12.5 Work not conforming to requirements of Section 3.12, including substitutions not properly approved and authorized, may be considered nonconforming work.

3.12.6 Contractor's warranty excludes remedy for damage or defect caused by:

3.12.6.1 improper or insufficient maintenance by the City;

3.12.6.2 normal wear and tear under normal usage; or

3.12.6.3 claim that hazardous material was incorporated into the Work, if that material was specified in the Contract.

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

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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:

3.14.1.1 necessary for proper execution and completion of the Work; and

3.14.1.2 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:

3.25.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS .1 through .3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.25.1.2 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED

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CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT;

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

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

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

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

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

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

3.26.3 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN 60

DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER:

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

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

3.27 *INDEMNIFICATION PROCEDURES*

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

- 3.27.1.1 a description of the indemnification event in reasonable detail,
- 3.27.1.2 the basis on which indemnification may be due, and
- 3.27.1.3 the anticipated amount of the indemnified loss.

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

3.27.2 *Defense of Indemnification Claims:*

- 3.27.2.1 *Assumption of Defense:* Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense

expenses constitute an indemnified loss.

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

3.27.2.2.1 would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;

3.27.2.2.2 would require the City to pay amounts that Contractor does not fund in full; or

3.27.2.2.3 would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**3.28 CONTRACTOR DEBT**

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

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:

4.3.5.1.1 those indicated by the Contract; or

4.3.5.1.2 conditions which Contractor could have discovered through site inspection, geotechnical testing, or otherwise;

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

4.3.5.2 City Engineer will promptly investigate concealed or unknown conditions. If City Engineer determines that conditions at the site are not materially different and that no change in Contract Price or Contract Time is justified, City Engineer will notify Contractor in writing, stating reasons. If City Engineer determines the conditions differ materially and cause increase or decrease in Contractor's cost or time required for performance of part of the Work, City Engineer will recommend an adjustment in Contract Price or Contract Time, or both, as provided in Article 7. Opposition by a Party to the City Engineer's determination must be made within 21 days after City Engineer has given notice of the decision. If the Parties cannot agree on adjustment to Contract Price or Contract Time, adjustment is subject to further proceedings pursuant to Section 4.4.

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

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

- 4.3.6.1.1 written interpretation of City Engineer;
- 4.3.6.1.2 order by City Engineer to stop the Work when Contractor is not at fault;
- 4.3.6.1.3 suspension of the Work by City Engineer;
- 4.3.6.1.4 termination of the Contract by City Engineer; or
- 4.3.6.1.5 The City's non-compliance with another provision of the Contract.

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

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

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

**4.4 RESOLUTION OF CLAIMS AND DISPUTES**

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

- 4.4.1.1 submit a suggested time to meet and discuss the Claim with City Engineer;
- 4.4.1.2 reject Claim, in whole or in part, stating reasons for rejection;
- 4.4.1.3 recommend approval of the Claim by the other Party;
- 4.4.1.4 suggest a compromise; or
- 4.4.1.5 take other actions as City Engineer deems appropriate to resolve the Claim.

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

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

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

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

4.5.1 A final decision by the City Engineer is a condition precedent to file suit in any jurisdiction for a claim made in connection with this Contract.

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

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

**4.6 INTERIM PAYMENT WAIVER &  
RELEASE**

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

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

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

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

## ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS

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

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

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

5.1.3 Contractor shall execute contracts with approved Subcontractors, Suppliers, persons, or entities before the Subcontractors or Suppliers begin work under the Contract. All such contracts must be executed and sent to the OBO Director and Contracting Department within 30 days after the date of the Notice to Proceed and must include provisions set forth in Articles 3 and 5 of this Document.

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

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

### 5.2 *CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS*

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

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### 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:

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

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

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

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

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

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

### 7.2 *WORK CHANGE DIRECTIVES*

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

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

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

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

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

### 7.3 *ADJUSTMENTS IN CONTRACT PRICE*

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

- 7.3.1.1 mutual acceptance of fixed price, properly itemized and supported by sufficient data to permit evaluation;
- 7.3.1.2 unit prices stated in the Contract or subsequently agreed upon;
- 7.3.1.3 cost to be determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or
- 7.3.1.4 as provided in Paragraph 7.3.2.

7.3.2 If Contractor does not agree with a change in Contract Price or Contract Time or the

method for adjusting them specified in the Work Change Directive within 21 days from date of the Work Change Directive's issuance, method and adjustment are determined by City Engineer. If Project Manager or Contractor disagree with City Engineer's determination they then may file a Claim in accordance with Section 4.4.

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

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

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



of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Subcontractors are applied to an amount equal to the sum of all increases to the Work by

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

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:

8.2.1.1 acts of God or of the public enemy;

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- 8.2.1.2 acts of government in its sovereign capacity;
- 8.2.1.3 fires;
- 8.2.1.4 floods;
- 8.2.1.5 epidemics;
- 8.2.1.6 quarantine restrictions;
- 8.2.1.7 strikes;
- 8.2.1.8 freight embargoes;
- 8.2.1.9 unusually severe weather; and
- 8.2.1.10 discovery of Pollutants or Pollutant Facilities at the site.

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

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

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

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

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

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

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

8.2.7 Written notice of Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by City Engineer in accordance with Section 4.4.

8.2.8 Adjustments to Contract Time are accomplished by Change Order.

## ARTICLE 9 - PAYMENTS AND COMPLETION

### 9.1 *UNIT PRICE WORK*

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

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

9.1.3 The Contractor may not make a Claim against the City for excess or deficiency in Unit Price Quantities provided in the Contract, except as provided in Subparagraph 9.1.4. Payment at the prices stated in the Contract is in full for the completed work. Contractor is not entitled to additional payment for materials, supplies, labor, tools, machinery and all other expenditures incidental to satisfactory completion of the Work.

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

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

### 9.2 *ESTIMATES FOR PAYMENT, UNIT PRICE WORK*

9.2.1 Following the day of each month indicated in the Contract, Project Manager will prepare a Certificate for Payment for the preceding monthly period based on estimated units of work completed. Prior to preparing Certificate of Payment, Contractor shall have submitted to City Engineer, on a form approved by the Director of the Office of Business Opportunity, evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Certificate for Payment is prepared,

including evidence of electronic submission of certified payrolls.

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

### 9.3 *STIPULATED PRICE WORK*

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 the Office of Business Opportunity. Evidence of electronic submission of certified payrolls must be included. Application must be sworn and notarized.

### 9.5 *CERTIFICATES FOR PAYMENT*

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

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

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

### 9.6 *COMPUTATIONS OF CERTIFICATES FOR PAYMENT*

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

9.6.1.1 that portion of Contract Price allocated to completed work as determined by:

9.6.1.1.1 multiplying the percentage of completion of each portion of the Work listed in the Schedule of Values by the value of that portion of the Work, or

9.6.1.1.2 multiplying Unit Price quantities Installed times the Unit Prices listed in the Contract;

9.6.1.2 plus progress payments for completed work that has been properly authorized by Modifications;

9.6.1.3 less retainage of five percent;

9.6.1.4 plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by Project Manager, less 15 percent;

9.6.1.5 less any previous payments by the City.

### 9.7 *DECISIONS TO WITHHOLD CERTIFICATION*

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

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

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

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

#### 9.8 *PROGRESS PAYMENTS*

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

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

calendar days of Contractor's receipt of payment from the City, unless there is a payment dispute between Contractor and a Subcontractor or Supplier evidenced on a form approved by the Director of Mayor's Office of Business Opportunity and submitted to the City Engineer each month with Application for Payment or Estimate for Payment. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

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

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

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

#### 9.9 *DATE OF SUBSTANTIAL COMPLETION*

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

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

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

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and request another inspection by Project Manager. The City may recover the costs of re-inspection from Contractor.

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

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

9.9.3.2 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If Contractor calls for inspection in a timely manner and the inspection is delayed through no fault of Contractor, and City Engineer so confirms, City Engineer may, upon request by Contractor, add the inspection to the punch list in Paragraph 9.9.2 and issue a Certificate of Substantial Completion.

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

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

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

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

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

9.9.7 Contractor shall complete or correct the items in Paragraph 9.9.2 within the time period set out in the Certificate of Substantial Completion. If Contractor fails to do so, the City may issue a Notice of Noncompliance and proceed according to Section 2.5.

9.10 *PARTIAL OCCUPANCY OR USE*

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

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

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

9.11 *FINAL COMPLETION AND FINAL PAYMENT*

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

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

9.11.3 Should work be found not in compliance with requirements of the Contract, City Engineer will notify Contractor in writing of items of

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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:

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

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

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

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

9.11.6 If final completion is materially delayed through no fault of Contractor, or by issuance of Change Orders affecting date of final completion, and City Engineer so confirms, the City may, upon application by Contractor and certification by City Engineer, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.

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

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

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

## 9.12 *LIQUIDATED DAMAGES*

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

- 10.3.1.1 employees performing work on-site, and other persons who may be affected thereby;
- 10.3.1.2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Contractor or Subcontractor; and
- 10.3.1.3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks,

pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.

10.3.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.

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

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

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 maintain the insurance coverages in the listed amounts, as set out in Table 1.

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

11.2.3 *Insurance Coverage:* At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all

policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

11.2.4 *Form of insurance:* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide. Each insurer is subject to approval by City Engineer in City Engineer's sole discretion as to conformance with these requirements.

11.2.5 *Required Coverage:* The City shall be an Additional Insured under this Contract, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.

11.2.6 *Deductibles:* Contractor assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for



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same against the City, its officers, agents, or employees.

11.2.7 *Notice:* **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

11.2.8 *Subrogation:* Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Each policy, except professional liability, must contain an endorsement waiving such claim.

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

11.2.10 *Liability for Premium:* Contractor is solely responsible for payment of all insurance premium requirements hereunder and the City is not obligated to pay any premiums.

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

11.2.12 Definitions:

11.2.12.1 *Certificate of Coverage:* A copy of certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for Contractor's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.

11.2.12.2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until Contractor's work under the Contract has been

completed and accepted by City Council.

11.2.12.3 *Persons providing services for the Work (Subcontractor in Texas Labor Code § 406.096):* includes all persons or entities performing all or part of services Contractor has undertaken to perform on the Work, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of the entity, or employees of entity which furnishes persons to provide services on the Work. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Work. Services do not include activities unrelated to the Work, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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

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

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

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

11.2.16.2 no later than seven days after receipt by Contractor, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.

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

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

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

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

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

11.2.20.2 provide to Contractor, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;

11.2.20.3 provide Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;

11.2.20.4 obtain from each other person with whom it contracts, and provide to Contractor: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2)

new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current Certificate of Coverage ends during duration of the Work.

11.2.20.5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;

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

11.2.20.7 contractually require each person with whom it contracts to perform as required by Paragraphs 11.2.10.1 through 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.

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

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

11.2.23 *Subcontractor Insurance Requirements:* Contractor shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the requirements of Paragraph 11.2. The amount must be commensurate with the amount of the subcontract, but not less than \$500,000 per occurrence.

Contractor shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000, to provide proof of Commercial General Liability and Automobile Liability insurance coverage meeting the above requirements.

Contractor shall comply with all requirements set out under Paragraph 11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

TABLE 1  
REQUIRED COVERAGE

(Coverage)	(Limit of Liability)
.1 Workers' Compensation	<ul style="list-style-type: none"> <li>Statutory Limits for Workers' Compensation</li> </ul>
.2 Employer's Liability	<ul style="list-style-type: none"> <li>Bodily Injury by Accident \$500,000 (each accident)</li> <li>Bodily Injury by Disease \$500,000 (policy limit)</li> <li>Bodily Injury by Disease \$500,000 (each employee)</li> </ul>
.3 Commercial General Liability: Including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work).	<ul style="list-style-type: none"> <li>Combined single limit of \$1,000,000 (each occurrence), subject to general aggregate of \$1,000,000;</li> <li>Products and Completed Operations \$2,000,000 aggregate.</li> </ul>
.4 Owner's and Contractor's Protective Liability	<ul style="list-style-type: none"> <li>\$1,000,000 combined single limit each Occurrence/ aggregate</li> </ul>
.5 Installation Floater (Unless alternative coverage approved by City Attorney)	<ul style="list-style-type: none"> <li>Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work</li> </ul>
.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)	<ul style="list-style-type: none"> <li>\$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos</li> </ul>
.7 Excess Coverage	<ul style="list-style-type: none"> <li>\$1,000,000 each occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability</li> </ul>
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

11.3 *PROOF OF INSURANCE*

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

may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

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

breach of the Contract because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by Contractor, its agents, employees, or assigns.

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

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

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

11.4 **PERFORMANCE AND PAYMENT BONDS**

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:

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

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

11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is

based on information published in Federal Register covering the date on which Bond was executed.

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

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

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

## 11.7 *DELIVERY OF BONDS*

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:

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

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

### 13.5 RIGHTS AND REMEDIES

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

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

### 13.6 TESTS AND INSPECTIONS

13.6.1 Contractor shall give City Engineer, Construction Manager, and Design Consultant timely notice of the time and place where tests and inspections are to be made. Contractor shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

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

- 13.6.2.1 inspections or tests covered by Paragraph 13.6.3;
- 13.6.2.2 those otherwise specifically provided in the Contract; or

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

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

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

13.7 *INTEREST*

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.

13.13 *ANTI-BOYCOTT OF ISRAEL*

13.13.1 Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

13.14 *ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & RELATED ACTIVITIES*

13.14.1 The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 *TERMINATION BY THE CITY FOR CAUSE*

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

14.1.1.1 Contractor refuses or fails to supply enough properly skilled workers or proper Products;

14.1.1.2 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;

14.1.1.3 Contractor is guilty of material breach of any duty or obligation of Contractor under the Contract, including, but not limited to, failure to submit certified payrolls electronically;

14.1.1.4 Contractor has had any other contract with the City terminated for cause at any time subsequent to the effective

- date of the Contract as set out in the Agreement; or
- 14.1.1.5 Contractor fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Paragraph 3.9.1.1.
- 14.1.2 If an Event of Default occurs, City Engineer may, at his option and without prejudice to any other rights or remedies which the City may have, deliver a written notice to Contractor and Surety describing the Event of Default and giving the Contractor 10 days to cure the Event of Default. If after the cure period, Contractor has failed or refused to cure the Event of Default, then City Engineer may deliver a second written notice to Contractor giving notice of the termination of the Contract or of the termination of Contractor's performance under the Contract ("Notice of Termination"). If City Engineer issues a Notice of Termination, then City Engineer may, subject to any prior rights of Surety and any other rights of the City under the Contract or at law:
- 14.1.2.1 request that Surety complete the Work; or
- 14.1.2.2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor; and
- 14.1.2.3 finish the Work by whatever reasonable method City Engineer may deem expedient.
- 14.1.3 After Contractor's receipt of a Notice of Termination, and except as otherwise directed in writing by City Engineer, Contractor shall:
- 14.1.3.1 stop the Work on the date and to the extent specified in the Notice of Termination;
- 14.1.3.2 place no further orders or subcontracts for Products or services;
- 14.1.3.3 terminate all orders and subcontracts to the extent that they relate to performance of work terminated;
- 14.1.3.4 assign to the City, in the manner, at the times, and to the extent directed by City Engineer, all rights, title, and interest of Contractor, under the terminated supply orders and subcontracts. The City may settle or pay claims arising out of termination of the orders and subcontracts;
- 14.1.3.5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
- 14.1.3.6 take action as may be necessary, or as City Engineer may direct, for protection and preservation of property related to the Work that is in possession of Contractor, and in which the City has or may acquire an interest; and
- 14.1.3.7 secure the Work in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.
- 14.1.4 If the City terminates the Contract or terminates Contractor's performance under the Contract for any one or more of the reasons stated in Paragraph 14.1.1, Contractor may not receive any further payment until the Work is complete, subject to Paragraph 14.1.5.
- 14.1.5 If the unpaid balance of Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to Contractor. If the costs of finishing the Work exceed the unpaid balance, Contractor shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to the City. The amount to be paid to Contractor or the City will be certified by City Engineer in writing, and this obligation for payment shall survive termination of the Contract or termination of Contractor's performance under the Contract. Termination of the Contractor for cause shall not relieve the Surety from its obligation to complete the project.
- 14.2 ***TERMINATION BY THE CITY FOR CONVENIENCE***
- 14.2.1 City Engineer may, without cause and without prejudice to other rights or remedies of the City, give Contractor and Surety a Notice of Termination with a seven days written notice.
- 14.2.2 After receipt of the Notice of Termination, and except as otherwise approved by City Engineer, Contractor shall conform to requirements of Paragraph 14.1.3.
- 14.2.3 After receipt of the Notice of Termination, Contractor shall submit 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:

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

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

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

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

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

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

### 14.3 *SUSPENSION BY THE CITY FOR CONVENIENCE*

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

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

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

14.3.3.1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Contractor is responsible; or

14.3.3.2 adjustment is made or denied under another provision of the Contract.

### 14.4 *TERMINATION BY CONTRACTOR*

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

14.4.1.1 issuance of an order of a court or other public authority having jurisdiction;

14.4.1.2 act of government, such as a declaration of national emergency which makes material unavailable; or

14.4.1.3 if repeated suspensions, delays, or interruptions by the City as described in Paragraph 14.3 constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less;

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

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

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