

HARRIS COUNTY

FLOOD CONTROL DISTRICT

CONTRACT CONDITIONS

HARRIS COUNTY FLOOD CONTROL DISTRICT



GENERAL CONDITIONS

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00 72 00 - GENERAL CONDITIONS

ARTICLE 1 - DEFINITION OF TERMS

1.1 Defined Terms.

- A. Whenever used in the Contract Documents the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. Acts of God – A hurricane, tropical storm, major flood, or other similar extreme weather event that results in a governmental declaration of disaster.
 2. Activity – A discrete part of a Project that can be identified for planning, scheduling, monitoring, and controlling the project. Activities included in a schedule consume time and resources.
 3. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.
 4. Additional Work -- New or unforeseen work will be classified as Additional Work when the Engineer determines that it is not covered by the Contract.
 5. Application for Payment -- Form prepared by the District for partial or final payments during the course of the Work and accompanied by supporting documentation from the Contractor required by the Contract Documents. In its discretion, the District may request the Contractor to prepare the Application for Payment and submit to the District for review and approval.
 6. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
 7. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.
 8. Bid Guarantee -- The bid bond, cashier's check, or certified check to be made by the Bidder, which is to accompany the Bid as a guaranty of good faith to enter into a written Contract.
 9. Bidder -- The individual or entity who submits a Bid directly to the District.
 10. Bidding Documents – Invitation for Bids, Instructions to Bidders, Bid Forms, and Addenda issued by the Engineer and/or Purchasing Agent to assist Bidders with Bid preparation; used in conjunction with the Contract Documents.
 11. Certificate of Substantial Completion – A certificate issued by the District to the Contractor when there is Substantial Completion.

12. Change Order -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price and/or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
13. Claim -- A demand or assertion by the Engineer or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim. A Claim does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.
14. Commissioners Court -- The Commissioners Court of Harris County, Texas and the governing body of the District.
15. Contract -- The entire integrated written agreement between the District and Contractor concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
16. Contract Documents -- Change Orders, Contract, Special Conditions to the General Conditions, Contract Specific Specifications, Drawings, Special Provisions to the Standard Specifications, General Conditions, Standard Specifications, Bidding Documents, and other documents listed in the Contract and incorporated into the Contract.
17. Contract Price -- Amount to be paid by the District to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents and including all applicable taxes and costs.
18. Contract Specific Specifications -- The written requirements consisting of technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work.
19. Contract Time -- The number of days or the date stated in the Contract Documents to achieve Substantial Completion.
20. Contractor -- The individual or entity with which the District has contracted for performance of the Work.
21. Contractor's Designated On-Site Field Superintendent ("Field Superintendent") -- The Contractor's Designated On-Site Field Superintendent will be identified by the Contractor and shall not be changed without prior written consent of the Engineer.
22. County -- Harris County, Texas.
23. County Auditor -- County Auditor of Harris County, Texas.
24. County Judge -- County Judge of Harris County, Texas.

25. Critical Path – A sequence of logically tied Activities that represents the longest path within a Project, which determines the shortest possible duration. Any delay of activity completion along this path will proportionately affect the completion date of the Project.
26. Critical Path Method (CPM) Schedule – A scheduling method that uses a network diagram to depict the Project and the sequences of tasks required to complete it, which are known as paths. Once the paths are defined, the duration of each path is calculated by an algorithm to identify the Critical Path, which determines the total duration of the Project.
27. Critical Supply Shortage -- An unusual shortage in materials that is (a) supported by documented proof that Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices (as determined by the District) entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Contractor at the time it submitted its Bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.
28. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
29. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
30. Demobilization -- The complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel from the Site.
31. District – Harris County Flood Control District, also known as HCFCD. The District is a Texas political subdivision created by Acts 1937, 45th Leg., R.S. ch. 360, pursuant to Article XVI, Section 59 of the Texas Constitution. The District's governing body is the Commissioners Court and its Contracts are procured through the Purchasing Agent.
32. Drawings -- That part of the Contract Documents prepared by the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor Submittals are not Drawings as so defined.
33. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
34. Engineer -- Whenever not qualified, shall mean the District's Executive Director, designee, or other person authorized to act for and on behalf of the District, acting

either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them. On all questions concerning the acceptance of materials, machinery, the classifications of material, the execution of work, conflicting interest of the contractors performing related work and the determination of costs, the decision of the Engineer, duly authorized by the Commissioners' Court, shall be binding and final upon both parties.

35. Force Majeure Event -- An event that materially affects a party's performance required by the Contract Documents and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics, or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; (6) a Critical Supply Shortage; and (7) acts or failures to act of utility owners, including, but not limited to, the delay in the removal or relocation of utilities, not under the control of the District. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and other actions of County, State or Federal Authorities in their roles as regulatory agencies.
36. Gantt Chart Schedule – A method of planning and scheduling a project utilizing a horizontal bar chart with a separate bar for each major portion of the Work or operation to make the schedule an effective tool for planning and monitoring the progress of the Work.
37. General Conditions – The District's latest version of its General Conditions and this document.
38. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time, or any substance or material identified as hazardous under any state or federal statute governing handling, disposal and/or cleanup of any such substance or material, whichever is more restrictive.
39. Holiday – The Holidays as approved by Commissioners Court.
40. Milestone – A key or critical point in time for reference or measurement on the Project.
41. Negative Float – The amount of time beyond a project's scheduled completion that a task within the project requires. Total float is the amount of time a task within a project can be delayed without endangering the project deadline.
42. Notice of Award -- The written or electronic notice by the Purchasing Agent to the Successful Bidder stating that upon timely compliance by the Successful Bidder

with the conditions precedent listed therein, the County will sign and deliver the Contract.

43. Notice to Proceed -- A written or electronic notice given by the Engineer to Contractor fixing the date on which the Contractor may proceed with the Work and when Contract Times will commence to run.
44. Payment Bond -- A surety bond in the amount of the Contract, solely for the protection of all claimants supplying labor, equipment, and material in the prosecution of the work provided for in the Contract.
45. Performance Bond -- A surety bond in the amount of the Contract conditioned upon the faithful performance of the work in accordance with the Contract Documents.
46. Potential Contract Change (or Potential Change Order) – A request by the Contractor or the District to initiate the Change Order process.
47. Project -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
48. Punch List – A list of items on the Project, prepared by the Engineer and confirmed by the Contractor, which remain to be replaced or completed in accordance with the requirements for completion of the Work.
49. Purchasing Agent -- The Purchasing Agent of Harris County, Texas.
50. Request for Information (“RFI”) -- A request made electronically or in writing by the Contractor when additional information, clarification, or interpretation of the Contract Documents is needed. A response to an RFI will be addressed electronically or in writing by the Engineer. If the Contractor believes that the RFI requires additional Contract Time and/or an adjustment to the Contract Price, the Contractor shall follow the Change Order provisions of Article 9.1 and submit a Potential Contract Change.
51. Sample -- A physical example furnished by the Contractor to illustrate materials, equipment, or workmanship; to establish standards by which the Work will be judged.
52. Schedule of Submittals -- A schedule of required submittals and the time requirements to facilitate scheduled performance of related construction activities.
53. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
54. Site -- Lands or areas indicated in the Contract Documents upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands designated for the use of Contractor.
55. Special Conditions to the General Conditions – Revisions to the General Conditions setting forth requirements particular to the Work.

56. Special Provisions to the Standard Specifications – Revisions to the Standard Specifications setting forth requirements particular to the Work.
57. Standard Specifications – The Harris County Flood Control District Standard Construction Specifications and Details (latest edition). The Contractor shall follow, among other things, the detail sheets in the Standard Specifications.
58. Subcontractor -- An individual or entity having a direct contract with the Contractor or with any other Subcontractor for performance of any portion of the Work at the Site.
59. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work, including, but not limited to, materials and equipment.
60. Substantial Completion – The time at which the Work, or a designated portion of the Work, is complete in accordance with the Contract Documents, at the sole discretion of the District.
61. Successful Bidder -- The Bidder submitting a responsive Bid to whom the District makes an award.
62. Supplier -- A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
63. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
64. Unit Price Work -- Work to be paid for based on unit prices as provided by the Contractor in its bid or as adjusted in accordance with the Contract Documents.
65. Warranty -- A written guarantee provided to the District by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this state, whichever is longer.
66. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.2 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
- B. Furnish, Install, Perform, Provide.
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Contractor is implied.
- C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents.

- A. Within ten (10) Days after receipt of the Notice of Award, Contractor shall furnish and file with the Purchasing Agent the necessary Performance Bond, Payment Bond, and certificates of insurance and endorsements, as well as any other documents specified in the Notice of Award and Contract Documents.

2.2 Bonds.

- A. The Performance Bond and Payment Bond shall be on the forms prescribed by the Purchasing Agent in the Contract Documents, duly executed by a responsible corporate surety listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." The responsible corporate surety shall be authorized to do business in the State of Texas and acceptable to the Purchasing Agent. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price. The Performance Bond and the Payment Bond must be accompanied by a valid power of attorney providing evidence that the person signing on behalf of the surety is authorized to so act.

2.3 Evidence of Insurance.

- A. Prior to commencing any work but no later than ten (10) Days after receipt of the Notice of Award, the Contractor shall submit or cause to be submitted any and all certificates of insurance and endorsements, showing that the Contractor has the required insurance, to the attention of the Purchasing Agent and as otherwise required by the Engineer. Such insurance is to be provided at the sole cost and expense of the Contractor. No Work shall be performed until all the required insurance has been received and approved.

2.4 Execution of the Contract.

- A. Should the Commissioners Court be of the opinion that a Contract should be entered into and approved, it shall authorize the County Judge or other named person as agent to execute acceptance by the District in accordance with the latest version of the Harris County Local Procurement Policy. Thereupon, the Purchasing Agent as agent shall, in strict accordance with the latest version of the Harris County Local Procurement Policy accept and approve on behalf of the District any required Performance Bond, Payment Bond, and certificates of insurance and endorsements, which may be properly presented on the prescribed form and indicate such acceptance and approval on the face of such bonds and insurance. The Contract shall not become effective or binding upon the District unless and until County Auditor's certification required by law is made. A corporation to which an award is made will be required to furnish evidence of the authority of the officer(s) executing the Contract.

2.5 Contractor's Failure to Perform.

- A. If the Bidder to whom the award is made fails to furnish a required Performance Bond, Payment Bond, or certificates of insurance and endorsements as herein provided, the Commissioners' Court may rescind its award and acceptance of Contractor's Bid and make an award to the next lowest responsive and responsible Bidder who shall fulfill every stipulation embraced herein as if the first award were made to it. If this should occur, the Bidder to whom the award was first made shall at the option of the District, be required to pay to the District the difference between its Bid and that of the next lowest responsive and responsible Bidder up to the maximum amount provided in the Bid Guarantee for the Project.
- B. At the sole discretion of the District, the Contract Time may begin to run ten (10) Days from the Notice of Award, regardless of whether the Bidder supplies the documents and certifications to the District as required by this Article in a timely manner.

2.6 Substitution Requests, Schedule of Submittals, and Schedule.

- A. Substitution Requests. Within fifteen (15) Days after Notice of Award (unless otherwise specified in the Contract Documents), Contractor shall provide all substitution requests as further described in Article 5.19.
- B. Schedule of Submittals. Contractor shall submit to the Engineer a Schedule of Submittals that conforms with the requirements of Article 5.17.

C. Schedule. Contractor shall submit a preliminary and baseline schedule that conforms with the requirements of Article 8.2.

2.7 Preconstruction Conference; Designation of Authorized Representatives; Notice to Proceed; Project Communication.

A. Upon award of Contract and before any Work at the Site is started, a preconstruction conference attended by the District, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Submittals and Shop Drawings, processing applications for payment, and maintaining required records. At this conference the Contractor will provide a list of Subcontractors including addresses and phone numbers, a list of personnel contacts, and a list of personnel authorized and designated by the Contractor, signed by a representative of the Contractor authorized to do business on behalf of the Contractor, to sign Contract Documents, including Change Orders and final estimates. The Contractor shall also provide a preliminary schedule in accordance with Article 8.2.

B. At this conference the Engineer and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

C. At the discretion of the District, the parties will partner to create a dispute resolution ladder to facilitate open communication and close cooperation that involves both Contractor and District personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives, resolve issues, and implement actions as required. The dispute resolution ladder will provide the authority for both Contractor and District personnel at all levels with parameters and procedures for escalating disputes.

D. During the preconstruction conference, the District will solicit input from the Contractor on a reasonable date to start the Contract Time, however, the District shall reserve all rights in establishing the start date. After the preconstruction conference, the District shall issue a Notice to Proceed that establishes a commencement date for the Work, which shall be not more than sixty (60) Days from award of the Contract unless otherwise agreed to by the parties.

E. During the Project, all communications with the District, including the submittal of documents, shall be as required by the District.

2.8 Subcontractor Mobilization Meeting.

A. If requested by the Engineer, prior to the start of each Subcontractor's Site Work, the Contractor, the involved Subcontractor, and Engineer shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.9 Authority of Engineer.

- A. The Work shall be done under the direct observation of the Engineer and to the Engineer's satisfaction. The Contractor shall furnish and deliver to designated delivery points all material called for under its Contract at such times and in such quantities as may be directed by the Engineer. The Engineer shall decide any and all questions which may arise as to the quality or acceptability of materials furnished, work performed, and rate of progress of the Work; all questions which may arise as to the interpretation of the Contract Documents; and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor. The Engineer's decisions under this provision shall be final and binding on both parties hereto. The Contractor shall promptly comply with instructions from the Engineer. Compliance with instructions from the Engineer shall be a condition precedent to any payment under the Contract.

2.10 Mobilization.

- A. Unless otherwise agreed to by the District, the Contractor shall mobilize to the Site and commence Work within ten (10) Days of the District issuing the Notice to Proceed. Should the Contractor fail to comply with the foregoing timeline, the Commissioners Court reserves the right to rescind the Contract for the Contractor's failure to perform. If the Contract is rescinded, the Contract shall extinguish, and the Contractor shall not be entitled to any compensation under the Contract or damages related to the rescission.
- B. The scope of Work for mobilization, including among other things, construction preparation and final Site cleanup and restoration, shall be in accordance with the Contract Documents. Payment for mobilization shall be in accordance with the Contract Documents.

ARTICLE 3 -EXAMINATION OF SITE; CONTRACT DOCUMENTS; INTENT

3.1 Examination of Drawings, Specifications, and Site of Work.

- A. Examination of Contract Documents; Project Site. Pursuant to the Bidding Documents, Contractor's submittal of a Bid is conclusive evidence the Contractor, among other things, examined the Contract Documents thoroughly, visited the Project site to become familiar with conditions that may affect costs, progress, performance or furnishing of the Work, and considered County, District, federal, state, and local laws, regulations, ordinances, and requirements that may affect costs, progress, performance, or furnishing of the Work. Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents (including the Standard Specifications), the Project Site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer in the form of an RFI of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained that Contractor is aware of or should have known about, Contractor shall bear any and all resulting costs, including, without limitation, the cost of

correction. In no case shall the Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.

- B. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- C. Quality of Parts, Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds, and the Contractor must use all diligence to inform itself fully as to the required construction and finish.
- D. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents, including the requirement to comply with all Applicable Laws, the Engineer may at any time, before or after completion of the Work, to include after the Warranty period, order the improper Work removed, remade, or replaced by the Contractor at the Contractor's expense.

3.2 Intent of Contract Documents.

- A. The Contract Documents are complementary; what is required by any one will be binding as if required by all. The Contract Documents are intended to describe the Work. The Contract is to be carried out under the observation of the Engineer and the Engineer's assistants unless otherwise indicated.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the District.
- C. The Contractor shall furnish, unless otherwise provided in the Contract Documents, all supervision, materials, implements, machinery, equipment, tools, supplies, and labor necessary to the prosecution and completion of the Project.
- D. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in these General Conditions.
- E. If connections to utilities for equipment/fixtures are not shown in the Contract Documents but are necessary to operate the equipment/fixtures, the utilities service connection installation is part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.
- F. Organization of the Contract Documents into divisions, sections, articles, and arrangement of drawings shall not control the Contractor in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- G. Any construction items shown on the Drawings, but not listed as a separate bid item, shall be installed as indicated with the cost included in the bid item for the

related construction item. It is understood that all costs for Work shown or required by the Contract Documents for which there is not a specific bid item are included in the bid item price for the various construction items.

3.3 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of the Engineer, Contractor, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the District, the County, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 Reporting and Resolving Discrepancies; Order of Precedence.

A. Reporting Discrepancies.

1. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to the Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from the Engineer before proceeding with any Work affected thereby. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, then Contractor shall promptly submit a written RFI to the Engineer. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Contractor before receipt of an amendment or supplement shall be at Contractor's own risk.

B. Resolving Discrepancies; Order of Precedence.

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any

conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

- a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).
2. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:
- a. Permits from other agencies as may be required by law;
 - b. Change Orders or Pending Change Orders, most recent first;
 - c. Addenda, most recent first;
 - d. Contract;
 - e. Special Conditions to the General Conditions;
 - f. Contract Specific Specifications;
 - g. Drawings;
 - h. Special Provisions to the Standard Specifications;
 - i. General Conditions;
 - j. Standard Specifications;
 - k. Instructions to Bidders;
 - l. Invitation for Bids;
 - m. Contractor's Bid (Bid Forms);
 - n. Referenced standard specifications.
3. With reference to the Drawings, the order of precedence shall be as follows:
- a. Figures govern over scaled dimensions;
 - b. Detail drawings govern over general drawings;
 - c. Addenda/Change Order drawings govern over Drawings;
 - d. Drawings govern over standard drawings.
4. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality, and most expensive shall apply, at the discretion of the Engineer. In the case of any conflict between any Applicable

Laws, including but not limited to federal requirements, incorporated into the Contract Documents and other sections of the Contract Documents, the more stringent requirements shall govern, unless otherwise directed by the Engineer.

3.5 Amending and Supplementing Contract Documents.

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work, or to modify the terms and conditions thereof, only by Change Order or written amendment to the Contract duly executed by the parties.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to the District, by one or more of the following ways:
 - 1. The Engineer's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or
 - 2. The Engineer's issuance of a response to an RFI.
- C. However, no review or RFI response will reduce or modify the Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

3.6 Reuse of Documents.

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Contract Documents, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer of Record or its consultants, including electronic media editions; or
 - 2. reuse any such Drawings, Contract Documents, other documents, or copies thereof on extensions of the Project or any other project without written consent of the District and Engineer of Record and specific written verification or adaptation by Engineer of Record.
- B. The prohibitions of this Article will survive final payment or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 -INDEMNIFICATION; INSURANCE

4.1 Indemnification.

- A. Contractor shall provide indemnification and defense as set forth in the Contract.

4.2 Insurance.

- A. Contractor shall obtain and maintain, at its sole cost and expense, the insurance as set forth in the Contract.

ARTICLE 5 -REGULATORY REQUIREMENTS; CONTRACTOR RESPONSIBILITIES

5.1 Self-Performance.

- A. Unless otherwise indicated in the Bidding Documents, the Contractor shall perform, with its own organization, Work amounting to at least twenty-five percent (25%) of the Contract Price.

5.2 Laws to be Observed.

- A. **THE CONTRACTOR IS ASSUMED TO BE FAMILIAR WITH AND AT ALL TIMES SHALL OBSERVE AND COMPLY WITH ALL FEDERAL, STATE, DISTRICT, COUNTY AND CITY LAWS, ORDINANCES AND REGULATIONS IN ANY MANNER AFFECTING THE CONDUCT OF THE WORK, AND SHALL INDEMNIFY AND SAVE HARMLESS THE DISTRICT, THE COUNTY, AND THEIR OFFICERS, OFFICIALS, AND REPRESENTATIVES AGAINST ANY CLAIM ARISING FROM THE VIOLATION OF, OR FAILURE TO COMPLY WITH ANY SUCH LAWS, ORDINANCES, OR REGULATIONS, BY THE CONTRACTOR OR ITS EMPLOYEES. A VIOLATION OF ANY FEDERAL, STATE, COUNTY, OR CITY LAW, ORDINANCE, OR REGULATION SHALL BE A BREACH OF THE CONTRACT, AND THE DISTRICT MAY TERMINATE FOR CAUSE.**

5.3 Permits and Licenses.

- A. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work, unless otherwise specified in the Contract Documents. This includes, but is not limited to, utility taps and hook-ups. The District, the County, and their officers and officials shall not be liable for any delays or damages, including, but not limited to, an extension of the Contract Time, for the time required by the Contractor to obtain permits and licenses.
- B. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections identified as the District's responsibility in the Contract Documents. Inspections required by the County shall not be considered the District's responsibility or within the District's authority unless otherwise noted in the Contract Documents.
- C. Before acceptance of the Work, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the Engineer.

5.4 Taxes.

- A. The Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with Applicable Laws in performance of public work contracts.

5.5 Public Convenience.

- A. General.

1. The Contractor's operations shall cause no unnecessary inconvenience to the public or businesses in the vicinity of the Work. The Contractor shall have no greater length or quantity of Work under construction than can be properly prosecuted with a minimum of inconvenience to the public and other contractors engaged in adjacent or related work. The Contractor shall provide continuous and unobstructed access to the adjacent properties unless otherwise specified in the Special Provisions or approved by Engineer. Work requiring traffic lane closures shall only be performed between the hours specified in the Contract Documents. Traffic shall be permitted to pass through the Work site, unless otherwise specified in the Contract Documents. No later than completion of each day's work or as soon as there is no active work in the area, the Contractor shall be responsible for leaving the work area free of hazards and shall also provide all necessary temporary signs, warning devices, and barricades.

B. Traffic Control.

1. If required by the Special Conditions, traffic control plans shall be prepared in accordance with the Contract Documents and at Contractor's expense, and traffic control shall be performed at Contractor's expense in accordance with the requirements of the District. Traffic Control plans generated by the Contractor shall be in accordance with the Contract Documents, Harris County Standards, Texas Manual on Uniform Traffic Control Devices, and traffic control requirements of any governmental entity with jurisdiction on the Project. The plans are subject to District approval, in addition to any other approval required by any governmental entity with jurisdiction on the Project. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by the District shall be included in the Contractor's Bid. Traffic Control plans not subject to a governmental entity shall be prepared by a roadway engineer or similar and signed and sealed by that person.
2. Unless provided otherwise in the Contract Documents, the Contractor is solely responsible for furnishing, erecting, and maintaining suitable barricades, warning signs, flares, barriers, cones, lights, flags, signals, flagmen, and other traffic control devices as are or may be necessary to adequately protect the Work and warn, advise, and safeguard the traveling public over the entire length of the Project, including, but not limited to, sections of the project which the Contractor closes to traffic. The Contractor's responsibility in this regard extends for the entire duration of the Project, from the start of construction until acceptance by the Engineer. All barricades, signs, and other types of devices necessary for traffic control and to protect the Work shall be in accordance with the Texas Manual on Uniform Traffic Control Devices, requirements of any governmental entity with jurisdiction on the Project, or permit requirements.

C. Detours on Projects Involving Public Roads.

1. Detours and temporary structures necessary for public travel during the prosecution of the Work will be indicated in the Contract Documents, and the cost shall be included in the Bid and Contract price.
2. The Contractor shall provide a properly signed and marked means of ingress and egress for residents and businesses along any closed section of the Work and

shall provide property owners a means of access to a public road. No section of the Work shall be closed to traffic until so directed by the Engineer.

3. If the Project includes existing curbside mailboxes, and access for mail delivery will be impacted by the Work, the Contractor shall either provide access or relocate the mailboxes for mail delivery. The Contractor shall prepare a plan to address said access or relocation and submit the plan to the District for approval.
4. Where possible, construction of all drainage ditches and drainage culvert crossings shall be completed prior to main roadway construction.

5.6 Safety.

A. General Safety. The Contractor shall comply with all Applicable Laws, including, but not limited to, any and all regulations of the federal, state, and local government applicable to the Project for safety.

B. Safety Representative; Safety Plan. Contractor shall designate an experienced safety representative at the Project. Contractor shall provide the Engineer the name and contact information of the safety representative in writing. At the request of the District, the Contractor shall submit a safety plan for the Project. Review of the safety plan by the District will only be in regards to compliance with the Contract Documents and will not constitute approval by the District or relieve the Contractor from complying with any and all federal, state, or local safety regulations applicable to the Project for safety.

C. Work Site Safety and Protection

1. Contractor shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Contractor shall take all necessary precautions to provide the necessary protection to prevent damage, injury, or loss to:
 - a. all persons on the Project or who may be affected by the Work;
 - b. all the Work, including materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - c. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
2. Contractor shall comply with all Applicable Laws relating to the safety and protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

3. If death, serious injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Engineer or other representative. The Contractor must promptly report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or adjacent to the site, giving full details and statements of witnesses.
4. All damage, injury, or loss to any property, caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity, directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor.

5.7 Sanitary Provisions.

- A. The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with Applicable Laws. Contractor shall provide drinking water, sanitary temporary toilet buildings, and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly. The toilets and hand washing facilities shall be always maintained in a sanitary condition. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by OSHA shall be the responsibility of the Contractor.

5.8 Environmental Protection.

The Contractor shall be responsible for compliance with all applicable environmental protection requirements, codes, regulations, laws, and ordinances.

- A. Disturbed Areas. The Contractor shall recognize the environmental requirements of the Project. Disturbed areas shall be strictly limited to boundaries established by the Engineer. Particular attention is drawn to the avoidance of any pollution to or from any "on-site" waterways, including, but not limited to, bayous, streams, sewers, wells or other water sources. Contractor shall prevent erosion of soil and excess runoff of surface or subsurface water from the construction site during the construction period. Contractor shall construct temporary ground cover as needed to retain existing drainage patterns external to the construction site. The Contractor shall legally dispose of all solid waste materials and other materials removed from the site by transporting to disposal areas that are approved by state and local authorities. No burning shall be permitted unless otherwise noted.
- B. Air Pollution Control. Contractor shall comply with all air pollution control rules, regulations, ordinances, and statutes. Contractor shall not discharge smoke, dust, or other air contaminants into the atmosphere in violation of any applicable laws, rules, and regulations.
- C. Dust Control. As required by the Contract Documents, Contractor, at its expense, shall, among other things, maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all

other work areas free from dust. Contractor shall prevent exposing adjacent public and private roads and property to dust and immediately remediate said exposure at its sole expense.

- D. Excessive Noise. Contractor shall use only such equipment on the Work, and in such state of repair, so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by OSHA. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations, and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers, or transit equipment that may or may not be owned by the Contractor.
- E. Storm Water. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Work. Therefore, the Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom. Contractor shall keep itself and all Subcontractors, staff, and employees fully informed of and in compliance with all Applicable Laws that may impact or be implicated by the performance of the Work, including all applicable provisions regulating discharges of storm water. This includes all applicable requirements of the Texas Pollution Discharge Elimination System and any applicable District or state water quality permits or requirements.
- F. Hazardous Waste.
1. The District, the County, and their officers and officials shall not be responsible for any Hazardous Waste brought to the site by the Contractor. If the Contractor: (i) introduces and/or discharges a Hazardous Waste onto the site in a manner not specified by the Contract Documents, and/or (ii) disturbs a Hazardous Material identified in the Contract Documents; the Contractor shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. The District, in its sole discretion, may require the Contractor to retain an independent testing laboratory at Contractor's cost.
 2. If the Contractor encounters a Hazardous Waste which may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify the Engineer (and promptly thereafter confirm such notice in writing). The Engineer shall verify the presence or absence of the Hazardous Waste reported by the Contractor. In the event such material or substance is found to be present, the Engineer shall verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as state or federal hazardous waste.

When the material falls below such levels, Work in the affected area shall resume upon direction by the Engineer.

3. **Contractor shall indemnify and hold harmless the District and the County from and against claims, damages, losses and expenses, arising from a Hazardous Waste on the Project site, if such Hazardous Waste exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of Texas or federal hazardous waste, and was either i) shown on the Contract Documents or Information Available to Bidders; or (ii) brought to the site by Contractor. Nothing in this paragraph shall obligate the Contractor to indemnify the District or the County in the event of the sole negligence of the District or the County, their officers, agents, or employees.**

5.9 Cultural Artifacts.

- A. The Contractor shall prevent the removal or disturbance of any historical, archaeological, architectural, or other cultural artifacts, including, but not limited to, relics, vestiges, remains, or objects of antiquity. In the event such items are discovered on the Site, the Contractor shall immediately notify the Engineer, and the site and the material shall be protected by the Contractor from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the Engineer.

5.10 District Field Office and Restroom.

- A. If specified in the Contract Documents, the Contractor shall provide and maintain at its own expense an on-site restroom and field office for the exclusive use of the Engineer and their staff for all projects ninety (90) Days and over in duration. The restroom and field office shall be placed at a location approved by the Engineer. The office will be a minimum of 200 square feet in size and be mounted on skids, wheels, or other approved mobility. The office shall have a ceiling not less than 7 feet in height and shall be of weather-tight construction. The inside walls of the office shall be lined with paneling or other material approved by the Engineer; shall have no fewer than four double hung windows, a door with hasp for padlock, and a floor covered in tile or other material approved by the Engineer; and shall be a minimum of 8 inches above the ground. The office shall have: a closet at least 3 feet wide, 1-1/2 feet deep, and 7 feet in height; a sloped top stand-up height table (minimum 30 inches by 60 inches) and stool; one kneehole desk (minimum 30 inches by 60 inches); 3 desk chairs; not less than 12 stackable or folding meeting chairs; and a lockable two-drawer legal size file cabinet. The Contractor shall also provide two racks for holding Drawings and an office sign 24 inches x 36 inches, painted as directed by the Engineer. All exterior openings shall be screened. Field office and restroom may be a fixed location such as an apartment or storefront as approved by the Engineer. Contractor will provide a water cooler with bottled drinking water, and Contractor shall maintain bottled water in a fresh and safe condition. A minimum of three parking spaces with clear and safe access must be available for use by the District during normal working hours. The office shall be wired and furnished with electricity, shall be air-conditioned and heated, shall have secure, password protected WiFi and/or high-speed wireless internet service solely for use by the District, and contain a working telephone with a separate line and a printer/scanner for District's use. The restroom must be maintained and cleaned to

the approval of the Engineer, to include maintaining a supply of paper towels, toilet paper, and hand soap. The field office and restroom must be cleaned weekly, or as determined by the Engineer, in order to maintain a clean and safe working environment.

- B. The field office and restroom shall be completely equipped, fully functional, and ready for use within ten (10) Days of the commencement date of the Work stated in the Notice to Proceed and must be maintained for the duration of the entire Project until all punch list items are complete. If the field office and/or restroom are not complete and ready for use as required by the foregoing, damages may be assessed at \$200 per each Day, to be assessed until they are installed and fully functional. If the field office and/or restroom are not properly maintained as described above, the District shall notify the Contractor of the deficiency. If the deficiency is not corrected within three (3) Days, damages may be assessed in the amount of \$100 per each Day at the discretion of the Engineer.
- C. This building and the items furnished with the building shall remain the Contractor's property and shall be removed by the Contractor at the end of the Project. No direct payment will be made for the structure or the furnishings.

5.11 Cooperation of Contractor; Contractor's Field Superintendent.

- A. The Contractor shall give the Work constant attention to facilitate the progress thereof and shall cooperate with the Engineer in every way possible. Before starting the Work, the Contractor shall designate in writing a full time Field Superintendent who shall have complete authority to act on behalf of and obligate the Contractor. An alternative Field Superintendent may be designated as well. Both the Field Superintendent and alternate, if designated, (hereinafter styled "Superintendent"), shall have a minimum of eight (8) years' experience in similar construction work unless otherwise approved by the District. The Superintendent shall be present at the Work site whenever work by the Contractor or Subcontractors is in progress or whenever actions of the elements necessitate Superintendent's presence to take measures necessary to protect the Work, persons, or property, regardless of the amount of Work conducted by Subcontractors. The Superintendent must be authorized to receive orders and act on behalf of the Contractor, and able to proficiently speak, read and write in English. The Contractor shall give the Engineer full opportunity to inspect the Work at all stages, and where there have been any Work stoppages, Contractor shall give the Engineer at least twenty-four (24) hour notice before resuming operations. Contractor shall take no advantage of errors or omissions.
- B. If the Superintendent is absent for any part of any day that work is being performed, then \$150.00 per day (for each such occurrence) may be back charged to the Contractor and deducted from the pay estimate. Repetitive occurrences could be grounds for notifying the bonding company.

5.12 Character of Workmen and Equipment.

- A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or anyone not skilled in the Work assigned to him or her.

- B. Any Field Superintendent, foreman, or workman employed by the Contractor or by any Subcontractor, who in the opinion of the Engineer or the Engineer's authorized representative does not perform their Work in a proper and skillful manner or is disrespectful, intemperate, disorderly or otherwise objectionable shall, at the written request of the Engineer, be forthwith removed from the job site by the Contractor or any Subcontractor employing such foreman or workman and shall not be employed again on any portion of the Work without the prior written consent of the Engineer. Should the Contractor fail to remove such person or persons, or fail to furnish suitable and sufficient machinery, equipment or force for the proper prosecution of the Work, the Engineer may withhold all estimates which are or may become due, or may suspend the Work until the Contractor replaces such workmen with persons to properly and satisfactorily perform the Work in the manner prescribed in these Contract Documents.
- C. Contractor shall comply with all District policies that require background checks of Contractor's employees, including, but not limited to, fingerprinting and criminal history.

5.13 Protection Against Claims of Subcontractors Laborers Materialmen and Furnishers of Machinery Equipment and Supplies.

- A. **The Contractor shall indemnify, defend, and save the District, the County, their officers, directors, agents, employees, and successors and assigns harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools and all supplies, including commissary, incurred in the furtherance of the performance of the Contract. When so desired by the District, the Contractor shall furnish satisfactory evidence that all obligations of the nature herein above designated have been paid, discharged, or waived.**

5.14 Labor.

A. Hours of Work.

1. The Site may be occupied by the District during the course of the Project, and the Contractor shall sequence its Work so as to not interfere with normal activities of the District outside the Work area during the Project.
2. Except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, which are defined as hours between 7:00 a.m. and 6:00 p.m. Monday through Sunday ("Working Hours"). Contractor shall provide notification in writing to the Engineer at least forty-eight (48) hours in advance of working on Saturdays, Sundays, or Holidays so inspections may be performed. Contractor will furnish the Engineer a schedule for said work. Notwithstanding the foregoing, the Contractor may work outside of Working Hours in the case of emergency or for the safety or protection of persons or property at the Site or adjacent thereto.
3. Contractor is solely responsible for the payment of any and all overtime compensation during the Project, including, but not limited to, when performing

Work during the Working Hours. The District is not responsible to Contractor or Contractor's employees for payment of any overtime compensation or any additional payments pursuant to the Fair Labor Standards Act, 29 U.S.C. Section 207 9a(1), as amended; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, et al., as amended; any provisions of the TEXAS LABOR CODE ANN., as amended; or the Contract Work Hours and Safety and Standards Act (40 U.S.C. §§ 3701-3708). Contractor shall be solely responsible for full compliance with the foregoing state and federal laws.

B. Prevailing Wage Rates.

1. Contractor is aware of the provisions of Chapter 2258 of the Texas Government Code, which requires the payment of prevailing wage rates and the performance of other requirements on certain "public works" ("Prevailing Wage Laws"). Since the Work is being performed as part of an applicable "public works", as defined by the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor or any subcontractor shall forfeit, as a penalty to District, sixty dollars (\$60.00) for each calendar day, or portion thereof, in which the worker subject to prevailing wage is paid less than the stipulated prevailing wage rates for any work done under the Contract by Contractor or any subcontractor. Contractor and any subcontractor shall keep a record showing the names and occupations of all workers and the actual per diem wages paid to each worker. These records must be open during Working Hours for inspection by the officers and agents of District. District reserves the right for its agents to visit the project site and to interview Contractor, its subcontractors and employees of each on any day or time, as often as desired during the Contract period, without prior notification. All initial determinations of the classification of workers or the appropriate prevailing wage shall be made by the Harris County Contract Compliance Officer and his determinations shall be binding. The Prevailing Wage Laws shall not be construed to relieve Contractor from any obligations under federal law. The Contractor shall post the wage scale at all times at the Site in a prominent place where it can be easily seen by the workers. **CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD COUNTY, DISTRICT, AND THEIR ELECTED OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FREE AND HARMLESS FROM ANY CLAIMS, LIABILITIES, COSTS, PENALTIES, OR INTEREST ARISING OUT OF ANY FAILURE OR ALLEGED FAILURE TO COMPLY WITH THE PREVAILING WAGE LAWS.**

5.15 Subcontractors.

- A. At the preconstruction conference and once a month as part of the Application for Payment, the Contractor is required to furnish a list of Subcontractors proposed for principal portions of the Work. Contractor shall not employ Subcontractors, whether initially or as a replacement, against whom District may have reasonable objection. Subcontractors will not be replaced by the Contractor, without written approval by the District. The Contractor will respond to any rejection of Subcontractors by submitting an acceptable substitute to the District. No agreement to do any part of the Work will be made between the Contractor and any Subcontractor, person, or organization which has been rejected by the Engineer. Similarly, the Contractor is not required to contract with any Subcontractor, person, or organization to which it has reasonable objection. The District's acceptance of any Subcontractor under this

Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

- B. Subcontractors shall be qualified, sufficiently experienced, and appropriately licensed and specifically qualified where required by the Contract Documents.
- C. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Work. Contractor shall be as fully responsible to the District for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by its Subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any Subcontractor and the District.
- D. Contractor shall be solely responsible for supervision, scheduling, and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with the District through the Contractor.
- F. The Contractor shall promptly make payments to all persons supplying labor and materials or furnishing it any equipment in the execution of the Contract. Neither the District nor the Engineer has any obligation to pay or see to the payment of any monies to any Subcontractor, except as may otherwise be required by law.
- G. No Subcontractor shall, under any circumstances, relieve the Contractor of its liabilities and obligations under this Contract should such Subcontractor fail to perform the work undertaken by it in a satisfactory manner.

5.16 Progress Meetings.

- A. The Contractor and District shall schedule and hold a regular progress meeting one week prior to each scheduled Application for Payment and at other times as requested by Engineer or as required by progress of the Work. The Contractor and Engineer shall attend each meeting. The Contractor or Engineer may at their discretion request attendance by representatives of Contractor's Suppliers, manufacturers, and Subcontractors. The Engineer will preside at the progress meetings and will arrange for keeping and distributing the minutes. The Contractor will ensure that the Field Superintendent, or higher management, is present at each meeting, as approved by the Engineer. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Contractor shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

5.17 Submittals.

- A. Schedule of Submittals. Within ten (10) Days after the Pre-Construction Meeting (unless otherwise specified in the Contract Documents), Contractor will prepare and

deliver a Schedule of Submittals to the Engineer that has been fully integrated with the progress schedule and identifies each Submittal required by the Contract Documents as well as the date on which Contractor will deliver each Submittal to the Engineer. Each Submittal must be delivered to the Engineer at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Contractor is responsible for any schedule delays resulting from the Submittal process.

B. Submittal Procedures.

1. Contractor will abide the following procedures for each Submittal, Shop Drawing, and Sample required by the Contract Documents:
 - a. Submittals must be transmitted electronically as required by District provided document management software.
 - b. Unless otherwise numbered by electronic document management software, transmittals will be sequentially numbered.
 - c. Each Submittal will identify the Project, Contractor, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification Section number appropriate to Submittal.
 - d. By transmitting a Submittal, Contractor certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction Work, and that coordination of information is according to requirements of the Work and Contract Documents.
 - e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.
 - f. When Submittal is returned to Contractor with comments for revision, Contractor shall promptly address the Engineer's comments and resubmit. Contractor shall identify changes made since previous submission. Delays resulting from incorrect submittals are not the responsibility of the District.
 - g. The Engineer's review of Shop Drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called the Engineer's attention to such deviations at time of submission, and the Engineer has taken no exception to the deviation. The Engineer's review of shop drawings shall not relieve Contractor from responsibility for errors in Shop Drawings.
 - h. Submittals not required by the Contract Documents or requested by the District will not be acknowledged or processed.
 - i. Incomplete Submittals will not be reviewed by the District. Delays resulting from incomplete submittals are not the responsibility of the District.

- j. Contractor shall not be entitled to any extension of the Contract Times as a result of the Submittal process.
2. Where a Submittal, Shop Drawing, or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to the Engineer review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. Schedule Milestone for Submittals. Contractor must submit all Submittals required by the Contract Documents in accordance with the Schedule of Submittals. If Contractor fails to submit the Submittals in accordance with the Schedule of Submittals, Contractor will be solely liable for any delays or impacts caused by the delayed Submittal, whether direct or indirect. Contractor will be liable for the time calculated from the date the submittal is due until the date a compliant Submittal is made. A compliant Submittal will be one that is complete and satisfies the requirements of the Contract Documents.

5.18 Shop Drawings and Sample Submittal Procedures.

- A. Before submitting each Shop Drawing or Sample, Contractor shall have:
 1. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 2. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 3. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 4. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- B. With each submittal, Contractor shall give the Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to the Engineer for review and approval of each such variation.
- C. Shop Drawings.
 1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the Engineer the services, materials, and equipment Contractor proposes to provide and to enable the Engineer to review the information for assessing

conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.
 3. Shop Drawings for steel structures shall consist of shop details, erection, and other working Drawings showing details, dimensions, sizes of members, and other information necessary for the complete fabrication and erection of the metal work.
 4. Shop Drawings of concrete structures shall consist of such detailed drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings furnished by the Engineer. These may include drawings for false-work, bracing, centering and form work, masonry layout diagrams, and diagrams for bent reinforcement.
 5. Contractor shall make revisions and provide additional information when required by authorities having jurisdiction.
- D. Samples. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended, and other data as required to enable the Engineer to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns, and finish selection.
- E. District's Review.
1. The Engineer will review Shop Drawings and Samples in accordance with the Schedule of Submittals. The Engineer's review and acceptance will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. The Engineer review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 3. The Engineer's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample.
- F. Resubmittal Procedures. Contractor shall make corrections required by the Engineer and shall return corrected Shop Drawings and submit, as required, new

Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Engineer on previous submittals.

5.19 Requests for Substitutions.

- A. For the purposes of this Article, the term “substitution” shall mean the substitution of any material, method, or service substantially equal to or better in every respect to that indicated in the Contract Documents or otherwise referenced herein.
- B. Words which have well known technical, or trade meanings have those meanings in relation to materials or Work described in the Contract Documents. Where materials or equipment are specified by a trade or brand name, the intention is not to discriminate against an equal product of another manufacturer, but rather to set a definite standard of quality or performance. The Engineer will be the judge of equivalency. Any substitution of equivalent materials or equipment must be approved in writing by the Engineer. The Engineer may require a specifically designated material, equipment, or process.
- C. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any “or equal” material, process, or article no later than fifteen (15) Days after award of Contract. At the District’s sole discretion, late substitution requests may be considered. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the Engineer, the Contractor shall provide the material, method, or service specified herein. The District shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.
- D. Substantiating data as described above shall include, at a minimum, the following information:
 1. A signed affidavit from the Contractor, or from the Supplier or Subcontractor seeking the substitution, stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.
 2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.
 3. A statement of the cost implications of the substitution being requested by the Contractor, indicating whether and why the proposed substitution will reduce or increase the amount of the contract. Any increased costs shall be borne by the Contractor.
 4. Information detailing the durability and lifecycle costs of the proposed substitution.

- E. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.
- F. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the Contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.
- G. The Contractor shall bear the costs of all the District work associated with the review of substitution requests. If substitution requests approved by the Engineer require that Contractor furnish materials, methods, or services more expensive than that specified, the increased costs shall be borne by Contractor.

5.20 As-Built Drawings.

- A. The Contractor shall maintain one As-Built set of Contract Documents at the Site or digitally in an acceptable format as specified by the Engineer. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried or concealed utilities that differ from the locations indicated, or which were not indicated on the Drawings. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations. Said Drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed.
- B. These master As-Built Drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders, shall be maintained up to date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date. As-Built Drawings shall be accessible to the Engineer at all times during the construction period. Failure on the Contractor's part to keep As-Built Drawings current could result in withholding partial payment.
- C. Upon completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of As-Built Drawings to the Engineer in a format as requested by the District, electronic or otherwise. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to the District for, the accuracy of such information, and for any errors or omissions which may or may not appear on the As-Built Drawings.
- D. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the As-Built Drawings shall be included

in Contractor's bid and distributed in the Bid Schedule. No additional compensation shall be made to the Contractor for this Work.

5.21 Surveying and Reference Points; Layout of Work.

- A. Horizontal and vertical control and right-of-way monuments, as shown in the Plans, will be marked in the field by the Engineer.
- B. The Contractor shall protect and preserve the established reference points and shall make no changes or relocations without prior written approval of the Engineer in a format as directed by the District. The Contractor shall report to the Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

5.22 Separate Contracts and Cooperation.

- A. Separate Contracts. The District reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall extend full cooperation towards the successful execution of all separate contracts. Contractor shall permit other contractors' reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.
- B. Cooperation. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the District in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The District shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project Site to the extent the Contractor knew, or should have known, about the other contract.
- C. Cutting, Fitting, and Patching. The Contractor shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of separate contractors shown upon, or reasonably implied by, the Contract Documents. The Contractor shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The Contractor shall not cut or alter the work of any separate Contractor without the prior written consent of the Engineer.

5.23 Work Site.

- A. Parking. The Contractor shall be responsible for the parking of any and all vehicles belonging to its employees or employees of its Subcontractors in a legal manner at no additional expense or inconvenience to the District.
- B. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Work will be provided as shown on the Drawings and/or in the Contract Documents. Unless otherwise specified in the Contract Documents, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. **The Contractor shall indemnify and hold the District harmless from all claims for damages caused by such actions.** Contractor shall confine construction equipment and the operations of workers to the Site and other areas permitted by Applicable Laws and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to District or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- C. Site Maintenance. During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris including without limitation before the end of each shift. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. The Contractor shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal. At a minimum, Contractor shall maintain landscaping, including vegetation and grass, in a professional manner throughout the Project that conforms with Applicable Laws of local jurisdictions or as otherwise directed by the Engineer.
- D. Cleaning. Prior to Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by the District. At the completion of the Work, Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

5.24 Utility Usage.

- A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Contractor shall remove all temporary distribution systems. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to, startup and testing required in the Contract Documents. All permanent meters installed shall be listed in the Contractor's name until the Work is accepted. If Work is to be performed in existing District facilities, Contractor may, with prior written approval of the Engineer, use

District's existing utilities. If Contractor uses District utilities, it shall compensate the District for utilities used.

5.25 Preservation and Restoration of Property.

- A. With the latest technology, the Contractor shall digitally record video and take photographs of the Project Site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the Project Site and adjacent improvements immediately prior to the start of work. The Contractor shall submit the video and photos in a manner specified by the District.
- B. The Contractor shall be responsible for the preservation of public and private property including along and adjacent to the Site. Contractor shall take every precaution necessary to prevent damage to pipes, conduits, and other underground structures and shall protect carefully from disturbance or damage all land, survey monuments, and property markers. When or where any direct or indirect damage is done to the District's, or adjacent, property by or on account of any act, omission, neglect, or misconduct in the performance of the Work or in consequence of the non-performance thereof on the part of the Contractor, the Contractor shall restore, at the Contractor's own expense, such property to a condition equal to that existing before such damage was done by repairing, rebuilding, or otherwise restoring same, or the Contractor will make good such damage in an acceptable manner.
- C. Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify the District in writing. Contractor shall be responsible for proper investigation and documentation, including video or photography, to adequately memorialize and make a record of what transpired. The District shall be entitled to inspect and copy any such documentation, video, or photographs.
- D. If the Contractor fails to respond to written demand for the repair of damage to property within twenty-four (24) hours of such notification, the District reserves the right to repair the damage. Repairs made by the District on the Contractor's behalf shall be reimbursed by the Contractor to the District or said costs of repairs may be deducted from amounts owed to the Contractor.
- E. Certain trees and shrubs growing within the right-of-way shall be preserved in good condition by the Contractor at the Contractor's sole expense when designated in the Contract Documents or by the Engineer. The Contractor shall trim them to the extent and in the manner directed by the Engineer to remove traffic hazards or to provide access to the Project Site, including, but not limited to, access to channels.

5.26 Relations with District Officials and Employees.

- A. All Contractors, Subcontractors, and their employees are prohibited to give or lend money, services or any other thing of value, to any official, employee, or representative of the District, and should it appear that this provision has been violated, Commissioners Court, at its option, may terminate any and all Contracts that may exist between the said Contractor and the District.

5.27 Emergencies.

- A. In emergencies affecting the safety or protection of persons or the Work or Property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the District or the Engineer, is obligated to act to prevent threatened damage, injury, or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

5.28 Open Flow.

- A. Except where otherwise allowed for in the Contract Documents, Contractor shall ensure that any waterway within or adjacent to the Project site is open to flow at all times.
- B. In all circumstances when Project Site is under a National Weather Service Flood Watch or when directed by the Engineer, Contractor shall remove temporary items restricting the use of District facilities for their intended purpose when needed to protect the public and public infrastructure. Items include, but are not limited to, construction materials, equipment, cofferdams, sheet piling, and low water crossings. Removal and replacement of such items shall be done at no cost to the District.

ARTICLE 6 -MATERIALS; INSPECTION

6.1 Access to Work.

- A. The District, Engineer, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs.

6.2 Materials and Workmanship.

- A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Contract within the Contract Time. Unless otherwise specified, all materials, parts, and equipment furnished by the Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project to the District free from any claims, liens, or charges.

- B. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. The Contractor shall be fully responsible for the security and safe keeping of any stored materials. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work, including, but not limited to, theft of materials. Any damaged or stolen materials shall be replaced in a timely manner so as not to delay the Project. In addition to following manufacturer's recommendations, Contractor shall deliver, store, and handle products using materials, means, and methods that shall prevent mildew and mold growth.
- C. The Contractor may use proximate open areas of the Site or off Site for storage of materials at its own risk. Storage areas for materials must be approved by the Engineer. Materials shall be stored in such manner so as not to interfere with any operations of the District or any independent contractor.
- D. The payment of materials on hand shall be in accordance with the following. A request for payment of materials on hand shall be on a form provided by the Engineer. The Contractor may request payment for nonperishable materials, at least \$10,000 in value, delivered to the Site or in acceptable storage places. Nonperishable materials are those that do not have a shelf life or whose characteristics do not materially change when exposed to the elements. Payment for materials on hand include materials that have been sampled, tested, approved, or certified in accordance with the Contract Documents and are ready for incorporation into the Work. Payment for material on hand may include the following types of items: concrete traffic barrier, precast concrete box culverts larger than 25 square feet, concrete piling, deck panels, beams, reinforced concrete pipe larger than 66 inches, structural steel girders, steel bridge rail, illumination poles, and other items deemed reasonable by the Engineer. If the request is acceptable, the Engineer will include payment for material on hand in a progress payment. Payment for material on hand does not constitute acceptance of the materials. Payment will not exceed the actual cost of the material as established by invoice, or the total cost for the associated item less reasonable placement costs, whichever is less. Materials for which the Contractor does not have a paid invoice within 60 days will not be eligible for payment as material on hand. Payment may be limited to a portion of the invoice cost or unit price if shown elsewhere in the Contract Documents as determined by the Engineer. By submitting a request for material on hand payment, the Contractor expressly authorizes the Engineer to audit material on hand records, and to perform process reviews of the record-keeping system. If the Engineer determines noncompliance with any of the requirements of this provision, the Engineer may exclude payment for any or all material on hand for the duration of the Project.
- E. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the District shall not be liable for Contractor's failure to so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Schedule, will be allowed because of differences between actual measurements, dimensions, elevations, and quantities and those indicated on the Drawings and in the Contract Documents that Contractor failed to verify prior to ordering any materials or

performing any Work. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

- F. The Contractor shall submit samples or specimens of the materials to be furnished or used in the Work as the Engineer may require. All materials must be of specified quality and equal to approved samples and shall be stored so as to insure the preservation of their quality and fitness for the Work. The Engineer may, at the Engineer's discretion, make test cuts at any point to determine the character of material and workmanship and to check dimensions.
- G. All materials not conforming to the Contract Documents shall be considered defective and all such materials whether in place or not shall be rejected and shall be removed immediately from the site of the Work, unless otherwise permitted by the Engineer. No rejected materials, the defects of which have been subsequently corrected, shall be used until approval has been given by the Engineer. All Work which has been rejected shall be remedied or removed and replaced in an acceptable manner by the Contractor at its own expense and no compensation shall be allowed for such removal or replacement. Upon failure of the Contractor to forthwith comply with any order of the Engineer made under the provisions of this article, the Engineer shall have the authority to remove and replace defective material or Work and to deduct the cost of removal and replacement from any monies due or to become due the Contractor.

6.3 Patented Devices, Materials and Processes.

- A. If the Contractor uses any design, material, or process covered by letters, patent, or copyright, it shall provide for such use with the patentee or owner. **The Contractor shall indemnify and save harmless the District and the County from any and all claims for infringement.**

6.4 Inspections.

- A. Inspectors shall be authorized to inspect all Work in progress, all Work completed, and all materials furnished. The inspector shall not be authorized to revoke, alter, enlarge, relax, or release any requirements of these Contract Documents, including, but not limited to, directing or approving Additional Work or deducting or removing Work from the Project. Inspector shall in no case act as foreman or perform other duties for Contractor or interfere with the management of the Work. Advice given to Contractor by the inspector is not binding upon Engineer or District, nor does it release Contractor from the fulfillment of the terms of the Contract Documents.
- B. The District will provide inspection during normal Working Hours, from 7:00 a.m. to 6:00 p.m. Monday through Sunday. Inspection before or after Working Hours will be only as such work times have been previously approved by the Engineer.
- C. Unless otherwise approved by the District, all concrete placement of twenty (20) cubic yards or greater, placement must begin no later than 10:00 a.m. on the day scheduled for the placement. If not begun by 10:00 a.m., the District, at its sole discretion, and without adjustment to the Contract Time or Contract Price, may require the Contractor to reschedule to ensure proper concrete placement and finishing. Such approval by the District shall not be unreasonably withheld.

- D. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or Approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the District, Contractor shall promptly inform the District of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for District testing and inspection shall be paid by the District.
- E. Inspectors shall have reasonable access to all parts of the shop where material under this Contract is being manufactured during Working Hours. Material that does not conform to the Contract Documents, accepted through oversight or otherwise, may be rejected at any stage of the Work. Whenever the Contractor on installation or construction is permitted or directed to do night work, or to vary the period during which the Work is carried on each day, it shall give the Engineer due notice, so that inspections may be performed. Such Work shall be done without extra compensation. The Contractor will furnish the Engineer a schedule for this night work.
- F. If any Work is done or covered up without the required inspection, testing, or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
- G. Reexamination of previously inspected Work may be ordered by the District. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.
- H. Should the Work, in the opinion of the Engineer be found to be faulty in any respect, all such faulty Work shall be replaced by the Contractor at no cost to the District.

6.5 Material Testing.

- A. The Engineer will assign a testing laboratory and will pay for testing and inspection directly, unless otherwise noted in the Contract Documents. Final testing and inspection may be made after the delivery of materials to the Site. Structural materials may be tested and inspected at points of origin. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- B. Should materials or construction not be in accordance with the Contract Documents when first tested, additional testing shall be required. If the materials or construction passes the retest, the cost of the retest will be at the District's expense. If the retest fails, the cost of the retest and all subsequent retests shall be at the Contractor's expense. Testing and retesting may be made at any time during the progress of the Work. It shall be the responsibility of the Contractor to notify the Engineer in advance as to the time of individual material placements.
- C. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the Engineer in writing, at least fifteen

(15) Days in advance, of its intention to use materials for which tests are specified, so that the Engineer may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

- D. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the Project Site, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection over \$2,000.00, including, but not limited to, excessive travel time, standby time, and required lodging.
- E. A Certificate of Compliance shall be furnished to the Engineer prior to the use of any material or assembled material for which these Contract Documents so require or if so required by the Engineer. Material test data may be required by the Engineer to be included with the submittal. Materials used based on a Certificate of Compliance may be sampled and tested at any time. The submission of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the Engineer whether in place or not.

6.6 Materials Provided by District.

- A. If applicable and upon written request of the Contractor, any materials furnished by the District shall be available to the Contractor within a reasonable time at the points designated in the Contract Documents. The cost of handling, including loading and unloading, transport, storing, and placing all materials after they are made available to the Contractor shall be considered as included in the contract prices for the items in connection with which they are used. The Contractor shall be responsible for all material provided, and deductions will be made from any monies due to the Contractor to make good any shortages, damages and deficiencies, from any cause whatsoever, which may occur after materials are provided.

ARTICLE 7 -SUBSURFACE AND PHYSICAL CONDITIONS; UTILITIES

7.1 Soils Investigations.

- A. When a soils investigation report for the Site is available, such report may be provided for informational purposes only. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock formation, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only, and Contractor is required to examine the Site before submitting its Bid and must make whatever tests it deems appropriate to determine its means and methods.

7.2 Differing Subsurface or Physical Conditions.

- A. The Contractor shall before such conditions are disturbed, and in no event later than five (5) Days after first observance of the conditions, notify the Engineer in writing of:

1. Subsurface or otherwise concealed physical conditions (including Hazardous Waste) that differ materially from those indicated in the Contract Documents; or
 2. Unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.
- B. The Engineer will promptly investigate such conditions and, if the District determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, and Contractor fully complies with Article 7.2(A), the Engineer will issue a Change Order under the procedures described in the Contract Documents.
- C. If the Engineer determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Engineer shall promptly notify the Contractor, stating the reasons.

7.3 Underground Facilities.

- A. Utility Location. Prior to commencing any excavation, the Contractor shall notify the appropriate underground look-up notification center and request that all affected utility owners mark or otherwise indicate the approximate locations of their subsurface utility.
- B. Shown or Indicated. The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to the District by the owners of such Underground Facilities, including the District, or by others. Unless it is otherwise expressly provided in the Special Conditions:
1. The District shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. The cost of all the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents. Contractor shall determine the location and depth of all utilities, including service connections, which have been marked by the respective owners and which may affect or be affected by its operations;
 - c. coordination of the Work with the owners of such Underground Facilities, including the District, during construction;
 - d. cooperation with any third-party that is removing, relocating, or adjusting Underground Facilities, including above ground utilities; and

- e. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- C. Not Shown or Indicated. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the Contract Documents, Contractor shall immediately notify the Engineer and submit a written RFI within five (5) Days after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency), identify the owner of such Underground Facility, and give written notice to that owner and to the District. The Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. Protection of Utilities. Contractor shall not interrupt the service function or disturb the support of any utility, without authority from the Engineer or order from the utility owner. All valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff. Where protection is required to ensure support of utilities shown in the Contract Documents, Contractor shall, unless otherwise provided, furnish and place the necessary protection at its expense.
- E. Notification Requirements If Utility Disturbed. Contractor shall immediately notify the utility owner and then the Engineer if any utility is disturbed or damaged. Contractor shall bear the costs of repair or replacement of any utility damaged by Contractor.
- F. Removal of Abandoned Utilities. Unless otherwise specified, Contractor shall remove all interfering portions of utilities shown in the Contract Documents or indicated in the Bidding Documents as “abandoned”. Contractor shall plug or cap portions of utilities not interfering with the Work. Before starting removal operations, Contractor shall ascertain from the utility owner whether the abandonment is complete. The costs involved in the removal and disposal shall be incidental to the price for the item of Work necessitating such removals.
- G. Relocation of Utilities. When the Contract Documents provide for Contractor to alter, relocate, or reconstruct a utility, all costs for such Work shall be included in the Contract Price. Temporary or permanent relocation or alteration of indicated utilities requested by Contractor for Contractor’s convenience shall be Contractor’s responsibility, and Contractor shall make all arrangements and bear all costs. After award of the Contract, portions of utilities not indicated in the Contract Documents which are found to interfere with the Work may be relocated, altered, or reconstructed by the utility owner, or the District may order changes in the Work to avoid interference. Such changes will be paid for in accordance with these General Conditions.
- H. Access to the Work. When necessary, as determined by a utility company, the Contractor shall conduct its operations as to permit access to the Work site and provide time for any utility work to be accomplished during the progress of the Work.

7.4 Trenches.

- A. Trenches Five Feet or More in Depth. The Contractor and all of its Subcontractors shall comply with the Contract Documents and all applicable requirements and standards of Subpart P of Part 1926 of 29 C.F.R., OSHA Safety and Health Standards, and Texas Health and Safety Code Section 756.023 for trenches five (5) feet or more in depth.

ARTICLE 8 -PROSECUTION OF THE WORK

8.1 Prosecution of the Work.

- A. The Contractor shall notify the Engineer at least forty-eight (48) hours before beginning or restarting the Work. The Contractor shall start the Work at any part of the Project designated by the Engineer and shall prosecute the Work at as many different points as the Engineer shall direct. The Contractor is solely responsible for the means and methods utilized to perform the Work. Unless otherwise approved in writing by the District, in no case shall the Contractor's means and methods deviate from commonly used industry standards.
- B. In order to avoid channel destabilization, the area of disturbance for linear projects shall not exceed more than 1,500 linear feet ahead of the completed work.

8.2 Construction Schedule.

A. General Requirements.

1. This Section, along with the Standard Specifications, includes administrative and procedural requirements for the preparation, submittal, and maintenance of the Project schedule and reporting progress of the Work, including the following:
 - a. General Requirements (including the Preliminary Project Schedule, Three-Week Look Ahead Schedule, and Project Baseline Schedule).
 - b. Schedule Quality Assurance.
 - c. Project Schedule Updates & Review Cycle.
 - d. Recovery Schedule.
2. Preliminary Project Schedule. Unless otherwise directed by the District, at the preconstruction conference, the Contractor shall provide a preliminary schedule to the District demonstrating the sequence of Work and Contract milestone dates for the Project.
3. Three-Week Look Ahead Schedule. Contractor shall submit weekly to the District a three-week detailed look-ahead schedule.
4. Baseline Schedule.
 - a. Projects from \$25,000 to \$1,000,000. The baseline schedule shall be a Gantt Chart Schedule, unless otherwise directed by the District to provide a CPM

Schedule with sufficient detail to show construction sequence for different items of Work. Contractor shall deliver the baseline schedule and all updates to the District in both paper and electronic form. The Contractor shall submit the baseline schedule within seven (7) Days after the Notice to Proceed.

- b. Projects over \$1,000,000. The baseline schedule shall be prepared in a CPM Schedule format and in an electronic scheduling program acceptable to the Engineer. Contractor shall deliver the baseline schedule and all updates to the District in both paper and electronic form. The electronic versions shall be in the format, and include all data, used to prepare the schedule. The Contractor shall submit the baseline schedule within fourteen (14) Days after the Notice to Proceed.

B. Schedule Quality Assurance.

1. Scheduler.

- a. Contractor is required to employ or retain the services of an individual skilled in scheduling ("Scheduler") on Projects of \$5,000,000 or more. Notwithstanding the foregoing, on projects under \$5,000,000 requiring a CPM Schedule, Contractor is exempt from employing or retaining the services of a Scheduler unless Contractor fails to submit an acceptable CPM Schedule and is directed by the District, at its sole discretion, to employ or retain the services of a Scheduler.
- b. The Scheduler shall have at least five (5) years of verifiable experience as the person primarily responsible for preparing and maintaining project schedules on projects of the same or similar size and nature as this Project.
- c. Should the Scheduler leave the employ of the Contractor or be reassigned from the Project, the Contractor shall submit the qualifications of the proposed replacement Scheduler within seven (7) Days after the date the former Scheduler's responsibilities end on this Project.

2. Scheduling Software. The Contractor shall utilize a software application to prepare the Project baseline schedule. Unless otherwise directed by the Engineer, a CPM Schedule shall be produced with a scheduling software application such as Oracle Primavera P6 (District preferred) or Microsoft Project.

- C. Schedule. The receipt or approval of any schedules by the Engineer shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract Time. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed, and accepted by the District.

D. Project Schedule Updates and Review Cycle.

1. Contractor shall maintain and submit the Project schedule updated at least monthly for use by both the Contractor and the District and with each progress payment. Monthly updating of the Project schedule shall include:
 - a. The actual start dates for Activities started;
 - b. The actual finish dates for Activities completed;
 - c. The percentage of Work completed and remaining duration for each Activity started but not yet completed;
 - d. Revisions to as-built logic to correct any out-of-sequence progress issues; and
 - e. Preparation and submission of a narrative report to identify Activities modified since previous submittal, major changes in scope, define problem areas, anticipated delays, and impact on Project schedule. Report corrective action, taken or proposed, and its effect.
2. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.
3. Upon the Engineer's request, Contractor shall submit any schedules or updates to the Engineer in the native electronic format and printed or PDF document of the software used to create the schedule. This will become a record of the daily progress achieved on the Project.
4. Monthly Update Submission. The cut-off day for recording monthly progress will be the last day of each month, or as agreed with the District. Submit the updated Project schedule no later than the 5th Day after the cut-off day.
5. Monthly Update Review. The District will evaluate the updated schedule as a Submittal and inform the Contractor if it has or has not been accepted. If the Project schedule is not accepted, the District will provide comments to the Contractor for incorporation. A revised Project schedule based on the District's comments, or reasons for not doing so, must be provided within five (5) Days.
- E. Acceptance. Acceptance of the schedules by the Engineer will not impose on the Engineer responsibility for the accuracy, sequencing, scheduling, or progress of the Work, or Contractor's compliance with the Contract Documents. Acceptance will not interfere with or relieve Contractor from Contractor's full responsibility.
- F. Recovery Schedule.
 1. Should any of the following conditions exist, District may require Contractor to prepare, at no extra cost to District, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the allotted Contract Time:

- a. The Contractor's monthly progress report indicates delays that are, in the opinion of District, of sufficient magnitude that Engineer questions the Contractor's ability to complete the Work;
 - b. The schedule shows the Contractor to be thirty (30) or more days behind the Critical Path at any time during construction;
 - c. The Contractor desires to make changes in the logic or the planned duration of future Activities of the schedule which, in the opinion of Engineer, are major in nature.
2. The recovery schedule shall include proposed revisions to the Project baseline schedule, demonstrating how Contractor intends to achieve all contractual milestones including Contract completion within the allotted Contract Time. The submittal shall include a narrative describing the actions planned by the Contractor to recover the schedule.
 3. Contractor shall submit the recovery schedule within seven (7) Days of Engineer's request. If Contractor asserts that District is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of Engineer's request, will be considered a concurrent delay event attributable to Contractor unless a longer time frame is agreed to by the Engineer, and Contractor shall only be entitled to non-compensable adjustments to Contract Times. If Contractor is responsible for the delay, this provision will not limit or affect Contractor's liability and failure to submit the recovery schedule within seven (7) Days of Engineer's request may result in District withholding progress payments or other amounts due under the Contract Documents.
 4. Contractor is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of Activities, or sequencing changes to increase activity concurrence. Whether or not Engineer directs Contractor to prepare a recovery schedule pursuant to this section 8.2(F), in case of Contractor-caused delay, Contractor shall promptly undertake appropriate action at no additional cost to District to recover the schedule whenever the current construction schedule shows that the Contractor will not achieve a milestone and/or complete the Work within the allotted Contract Time.

8.3 Time for Completion and Liquidated Damages.

- A. Time for Completion. Time is of the essence. Contract Time shall commence: (1) on the date stated in the Notice to Proceed or (2) if the Notice to Proceed does not specify a commencement date, then ten (10) Days after the date of the Notice to Proceed or the date the Contractor mobilizes to the Project site and commences Work, whichever is earlier. The Work shall be completed by Contractor in the time specified in the Contract Documents. The District is under no obligation to consider early completion of the Project; the Contract completion date shall not be amended by the Engineer's receipt or acceptance of the Contractor's proposed earlier completion date. Any difference in time between the Contractor's early completion

and the Contract Time shall be considered a part of the Project float. Contractor shall not be entitled to compensation, and the District will not compensate Contractor, for delays which impact early completion. Contractor shall not, under any circumstances, receive additional compensation from the District (including but not limited to indirect, general, administrative, or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date.

- B. Liquidated Damages. If the Contractor fails to acceptably complete its undertaking to the District within the time specified in the Contract Documents, the District will be damaged. The exact amount of damage is and will be difficult to ascertain exactly. Such damages shall be at the rate, or the amount hereinafter fixed. The District and Contractor recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the District if the work is not completed on time. It is agreed that Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract Document for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. **The Contractor specially binds and obligates himself to pay such damages to the District on demand, or at its option, the District may withhold the amount thereof from any sums due the Contractor under this Contract.**
- C. Inclement Weather. Contract Time includes Days specified in the Contract Documents to accommodate inclement weather. If the number of inclement weather days exceeds 110% of the number of Days to accommodate inclement weather, the Contractor may receive an extension of the Contract Time, for such number of Days that the inclement weather days exceeds 100% of the number of Days to accommodate inclement weather. Along with each Application for Payment, Contractor shall request in writing inclement weather days occurring during the payment period. After receipt of such application, the Engineer shall make a determination as to which days, if any, during the Contract Time are inclement weather days, and the Engineer's decision shall be final. The Contractor shall be entitled to an extension of the Contract Time equal to such excess as determined by the Engineer. The term "inclement weather day", as used herein, means a Day in which weather or wet soil does not permit the performance of the Work for a continuous period of not less than seven (7) hours between the hours of 7 a.m. and 6 p.m. When the Contract Time is extended because of inclement weather days, Contractor shall not receive an adjustment to the Contract Price or any other compensation.
- D. Extension of Time. Contractor's entitlement to an extension of the Contract Time is limited to a District-caused extension of the Critical Path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its Subcontractors or Suppliers). The District shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. No time extension shall be allowed unless, and then only to the extent that, District-caused delay extends the Critical Path beyond the previously approved Contract Time. Contractor shall not be entitled to an adjustment in the Contract Times for

delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

- E. Force Majeure. If a delay to the Critical Path results from a Force Majeure Event, the Contractor will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other compensation. Such a non-compensable adjustment shall be the Contractor's sole and exclusive remedy for such delays.
- F. No Damages for Reasonable Delay. The District's liability to Contractor for delays for which the District is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In accordance with Texas law, unreasonable under the circumstance means where the District actively and willfully interferes with Contractor's Work without due consideration and in disregard of the rights of the Contractor. In no case shall the District be liable for any costs that are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable District delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.
- G. Procedure for Time Extensions and Delay Damages. Contractor shall not be entitled to any extension of time unless Contractor properly notices the delay and adjustment to compensation and submits a Potential Contract Change in accordance with Article 9 of these General Conditions. Contractor shall submit the Potential Contract Change prior to performance of the Work and no later than five (5) Days after Contractor discovers the circumstances causing the need for the Potential Contract Change. Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Contractor's right to a time extension.
- H. Computation of Contract Time. Contractor shall accept and use various reports, forms, and computer-based reporting systems provided by District. Contractor shall complete reporting within the time frame required by District. Each Day the Engineer or its representative shall record the time worked, the type of work done, and personnel and equipment on the Project by the Contractor. When requested by the Engineer, such records or reports shall be signed by the Contractor or its representative, and the Contractor shall be entitled to a copy. When any period of time is referred to in the Contract Documents by Days, it will be computed to include both the first and the last day of such period.

8.4 Contractor's Responsibility for Work.

- A. Until the acceptance of the Work by the Engineer as evidenced in writing, the Work shall be under the charge and care of the Contractor. The Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. Contractor shall keep the Site free from accumulation of waste materials, rubbish, and other debris resulting from the Work. At the

completion of the Work, Contractor shall leave the Site clean and ready for its intended use by the District.

8.5 Partial Utilization.

- A. Use by the District at the District's option of any part of the Work which (a) has specifically been identified in the Contract Documents or (b) constitutes a separately functioning and usable part of the Work that can be used by the District for its intended purpose without significant interference with the Contractor's performance of the remainder of the Work, may be accomplished prior to completion of all the Work. This use shall not relieve the Contractor of its responsibilities under the Contract.
- B. Partial utilization of the Work shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents, unless specifically accepted in writing by the District, and this use shall not relieve the Contractor of its responsibilities under the Contract.
- C. If any portion of the Project is accepted by the District for turf establishment, acceptance does not constitute Substantial Completion of the Project or any portion of the Project.

8.6 Completion and Acceptance of Work.

- A. Commissioning. If required by the District in the Contract Documents, the Contractor shall provide commissioning of the Project. Commissioning of the facility shall occur prior to Substantial Completion. The commissioning process shall include representatives from the District, design team, contract administration, and any agencies responsible for the operation and maintenance of the facility. The Contractor shall submit technical operation and maintenance information for any item of mechanical, electrical, and instrumentation equipment in an organized manner in the technical manual. It shall be written so that it can be used and understood by District's operation and maintenance staff. The Contractor shall furnish to District six (6) identical technical manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard binder.
- B. Substantial Completion.
 1. The Contractor shall notify the District in writing that the entire Work is substantially complete and request that the Engineer issue a Certificate of Substantial Completion. Within fifteen (15) Days after receipt of a request, weather permitting, Engineer will inspect the Work and determine if the Work is substantially complete. **A Contract for Unit Price Work shall not be deemed substantially complete until all Unit Price Work required for the Project is complete.** If Engineer determines that the Work is substantially complete, a Certificate of Substantial Completion will be issued. The certificate shall establish the date of Substantial Completion and include the Punch List generated by the District. If Engineer determines that the Work is not substantially complete, Engineer will notify Contractor in writing of the Work to be completed. Contractor shall complete remaining Work and re-submit the request for Substantial Completion. Upon

Substantial Completion for the entire Project, the Contract Time for the Project shall cease to accrue on that date.

2. Contractor shall complete or resolve the Punch List to the satisfaction of Engineer within thirty (30) Days unless specified otherwise in the Certificate of Substantial Completion and provide written notification to the Engineer that the Site is ready for final inspection.
 3. Engineer will make final inspection within ten (10) Days after receipt of Contractor's written notice that the Work is ready for final inspection and acceptance. Should the Punch List items be found not in compliance with the requirements of the Contract Documents, Engineer will notify Contractor in writing of items of noncompliance. Unless otherwise agreed upon by the parties, within ten (10) Days of such notification, Contractor shall take such measures as necessary to complete such items of noncompliance. Failure to include an item on the Punch List does not alter the Contractor's responsibility to comply with the Contract Documents.
 4. If the Punch List items are not completed within the allotted time in sections 2 and 3 above, liquidated damages will be assessed in the amount of \$500 for each Day beyond the allotted time unless otherwise modified by the Special Conditions.
 5. Issuance of a Certificate of Substantial Completion shall not discharge the duty of the Contractor to complete the Work in accordance with the Contract Documents and shall not constitute a waiver of defects or missing or incomplete Work, whether or not identified in the Punch List.
- C. Final Acceptance; Project Close-out. After Contractor has, in the opinion of the Engineer, satisfactorily completed the Punch List identified during the final inspection, cooperated with the District as required by the funding source for the Project to close-out the Project, and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, As-Build Documents, and other documents required by the Contract Documents, the Engineer shall accept the Project, constituting final acceptance and completion of the Project. Such acceptance by the Engineer shall not constitute a waiver of defects.

8.7 Removal and Rebuilding of Defective Work.

- A. Promptly after receipt of written notice, the Contractor shall remove and rebuild at its own expense any part of the Work that has been improperly executed, even though it has been included in the monthly estimates. If the Contractor refuses or neglects to correct any Defective Work, it may be corrected by the District at the Contractor's expense. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

8.8 Acceptance of Defective Work.

- A. If, instead of requiring correction or removal and replacement of Defective Work, the Engineer prefers to accept it, the Engineer may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the Engineer's evaluation of and determination to accept such Defective Work and for the diminished value of the Work. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the Engineer shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by the District.

8.9 District May Correct Defective Work.

- A. If Contractor fails within a reasonable time after written notice from the District to correct Defective Work or to remove and replace Defective Work as required by the District, or if Contractor fails to perform the Work in accordance with the Contract Documents or fails to comply with any other provision of the Contract Documents, the District may, after seven (7) Days written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, the District may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the District has paid Contractor but which are stored elsewhere. Contractor shall allow the District, and the agents, employees, or other contractors and consultants of each of them, access to the Site to enable the District to exercise the rights and remedies to correct the Defective Work. The District will permit the Contractor, surety, and/or their representatives the opportunity to observe the correction of any Defective Work, however the District will not alter its plan, including its schedule, to correct the Defective Work in response to the request to observe.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the District correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the District shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses, and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the District correcting Defective Work.

8.10 Warranty and Guaranty of Work.

- A. All items having a manufacturer's warranty installed under this Contract shall be installed by or under the directive of the manufacturer or his certified agent in order to conform with the manufacturer's warranty requirements. All Work, including any repairs or replacements, involving manufacturer's products shall be performed in accordance with manufacturer's recommendations in order to maintain all warranties.
- B. The Contractor will supply the Engineer with copies of all guarantees and warranties which have been made to the Contractor by Suppliers or Subcontractors with an assignment of these guarantees and warranties to the Engineer. Assignments will not relieve the Contractor of its responsibility in the case of a Supplier's or Subcontractor's failure to fulfill guarantee or warranty provisions. If Contractor is prevented for any reason from making any such assignment to the District, the Contractor hereby gives the District permission to enforce any and all non-assignable guarantees and warranties in Contractor's name and the Contractor shall pass on to the District any benefits derived therein.
- C. As part of the Warranty, Contractor hereby agrees to repair or replace, at the discretion of the District, any or all Work that may prove to be defective in its workmanship, materials furnished, or methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year from the date of the Substantial Completion, unless otherwise agreed upon, but in no case shall the Warranty commence prior to Substantial Completion, without any expense whatsoever to the District. Notwithstanding the foregoing, the period of one (1) year may be a longer period of time as prescribed by the terms of any applicable guarantee required by the Contract Documents, by any specific provision of the Contract Documents, or by any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work. In connection with final payment, the Contractor shall provide a warranty affidavit on a form provided by the District guaranteeing the foregoing.
- D. If any Work during the Warranty period is found to be defective or not performing suitably for its intended use, or if the repair of any damages to the Site or areas made available for Contractor's use during the performance of the Work is found to be defective, Contractor shall promptly and in no case longer than thirty (30) Days, without cost to the District and in accordance with the Engineer's written instructions:
1. repair such defective land or areas;
 2. correct such defective or non-performing work;
 3. if the Defective Work has been rejected by the Engineer pursuant to the Contract Documents, remove it from the Project and replace it with Work that is not defective; and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or other land or areas resulting therefrom.

- E. The Contractor shall prosecute such Warranty work without delay until completed to the satisfaction of the Engineer, even though the date of completion of the Warranty work may extend beyond the expiration date of the Warranty period.
- F. If Contractor does not comply with the terms of the District's written instructions, or in an emergency where delay would cause serious risk of loss or damage, the Engineer may have the Defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- G. Where Defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- H. Immediately prior to expiration of the one (1) year Warranty period, or any extended warranty, the Contractor shall inspect the Work in the company of the Engineer. The Engineer shall be given not less than fourteen (14) Days' notice prior to the anticipated date of Warranty expiration by the Contractor.
- I. Contractor's obligations under this Article are in addition to any other obligation or warranty and do not limit the District's rights and remedies pursuant to Applicable Law.

8.11 Termination or Suspension of Work.

A. The District May Suspend Work.

1. The District may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Contractor. Such notice of suspension of Work will designate the amount and type of material, labor, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best efforts to utilize its material, labor, and equipment in such a manner as to minimize costs associated with suspension.
2. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:
 - a. Immediately discontinue Work on the date and to the extent specified in the notice;
 - b. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
 - c. In no case longer than 48 hours, make every reasonable effort to obtain suspension upon terms satisfactory to the District of all orders, subcontracts,

and rental agreements to the extent they relate to performance of Work suspended; and

- d. Continue to protect and maintain the Work including those portions on which Work has been suspended.
3. The District shall not be liable for any additional costs, damages or anticipated profits incurred by Contractor or its Subcontractors, and the Contract Price shall not be increased during the period of suspension, except the actual costs incurred by Contractor, excluding overhead and profit, for (a) the purpose of safeguarding the Work and material and equipment in transit or at the Site during the period of suspension, (b) Contractor's or its Subcontractor's rented equipment which are maintained at the Site, or (c) other reasonable and unavoidable costs of shutting down the Work, or reassembling personnel and equipment resulting directly from such suspension. Notwithstanding the foregoing, actual costs shall not be granted if the suspension results from Contractor's non-compliance with the requirements of the Contract.
4. Should such suspension cause a delay to the Project Critical Path, the Contractor shall only be granted an extension of the Contract Time equal to the number of days the Critical Path was impacted. However, no extension of Contract Time shall be granted if the suspension results from Contractor's non-compliance with the requirements of the Contract. Except for actual costs related to the suspension of the Work as described in Section 8.11(A)(3) above, such a non-compensable adjustment shall be the Contractor's sole remedy for impacts to the Critical Path when the performance of Work is suspended.

B. The District May Terminate for Cause.

1. In addition to any County or District policies, the District may issue a Notice of Default to the Contractor, with a copy to the Surety, if the Contractor:
 - fails to begin the work within the time specified;
 - fails to make deliveries or to provide sufficient workmen and equipment or sufficient materials to insure the prompt completion;
 - fails to make prompt payment to subcontractors or for material or labor;
 - performs the Contract in a manner contrary to the Contract Documents;
 - neglects or refuses to correct Defective Work;
 - discontinues the prosecution of the Work;
 - becomes insolvent or is declared bankrupt; or commits any act of bankruptcy or insolvency;
 - fails to commence to correct any violation or satisfy any final judgment related to the Project for a period of forty-eight (48) hours or longer and shall

complete such action within five (5) Days unless agreed to otherwise by the District;

- makes an assignment for the benefit of creditors;
- fails to comply with any of the conditions of the Contract to such an extent that the Contract is forfeited or abandoned by the Contractor, or declared abandoned or suspended by the District; or
- if the Contractor for any other cause whatsoever shall not carry on the Work or perform the Contract in an acceptable manner or disregards Applicable Laws.

Unless within five (5) Days after the service of such notice, Contractor resolves the circumstances giving rise to the Notice of Default to the District's satisfaction or makes arrangements acceptable to the District for the required corrective action, the provisions below shall apply, and the Contractor shall not be entitled to receive any further payment until the Work has been finished.

2. The Surety on the Contractor's Performance Bond shall have the right and privilege, within ten (10) Days after the Notice of Default, unless otherwise provided in the Performance Bond, to assume control of the Contract and all Work thereunder and to sublet or complete the Work in strict conformity with the provisions of said Contract. Surety shall not utilize Contractor in completing the Project if District, when declaring the Contractor in default, notifies Surety of District's objection to Contractor's further participation in the completion of the Project. Failure of the Surety to do so within ten (10) Days, unless otherwise provided in the Performance Bond, will result in an immediate forfeiture of all right to thereafter assume control of the Contract and the Work thereunder, in which event the District shall have the right to take the prosecution of the Work out of the hands of the Surety and Contractor and to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and enter into an agreement for the completion of the Contract according to the terms and provisions hereof or use such other methods as in the Engineer's opinion may be required or desirable for the completion of the Contract in an acceptable manner. In such case, the District may, in addition to all other remedies herein, terminate this Contract for cause.
3. All costs and charges incurred by the District, together with the costs of completing the Work, shall be deducted from any money due or which may become due said Contractor. In the event the cost and expense so incurred by the District is less than the sum which would have been payable under the Contract if it had been completed by said Contractor, then said Contractor and/or Surety shall be entitled to receive the difference. In the event such cost shall exceed the amount which would have been payable under the Contract, then the Contractor and Surety shall be liable and shall pay to the District the amount of said excess in addition to any other damages incurred by the District to complete the Work.

C. The District May Terminate for Convenience.

1. The District may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, upon ten (10) Days receipt of

written notice if the District determines that a termination is in the District's interest. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.

2. After receipt of Notice of Termination, and except as directed by the Engineer, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations:
 - a. Stop Work as specified in the Notice of Termination;
 - b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents;
 - c. Leave the Site upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety;
 - d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated; and
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
3. The Contractor shall be entitled to receive payment for Work completed by the Contractor in conformity with the Contract Documents prior to the Contractor's receipt of the Notice of Termination and costs incurred by reason of such termination. Contractor will submit to the Engineer, within ten (10) Days from the effective date of the Notice of Termination, all the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than thirty (30) Days after the effective date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience." If the District rejects any costs, Contractor shall be deemed to waive the rejected costs unless Contractor files a claim within thirty (30) Days of the rejection pursuant to the dispute resolution procedures of the Contract Documents.
4. Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to the District.

5. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.
6. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the Engineer may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the District or the Contract is terminated.
7. If the District terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 9 - CHANGES ORDERS; DISPUTE RESOLUTION

9.1 Change Orders.

All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. No person shall have the authority to verbally alter the requirements of the Contract Documents. The District, without invalidating the Contract, may order changes in the Work consisting of additions, deletions, or other revisions, and Contractor's compensation and the time for completion shall be adjusted accordingly. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Contractor shall take no advantage of errors or omissions. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties. The District shall not be liable to Contractor for Work performed or omitted by Contractor in reliance on verbal orders.

A. Change Order Procedures.

1. District Directed Change. The Engineer may direct changes in the Work by delivering a written work directive. To the extent the work directive results in a change to the overall Contract Price or Contract Time, Contractor must timely submit a Potential Contract Change and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a work directive, Contractor's failure to submit a Potential Contract Change no later than five (5) Days after receiving a work directive shall constitute a waiver by Contractor of any

adjustment to the Contract Price or Contract Time for Work performed under the directive.

2. Contractor's Notice of Change/Delay. If Contractor intends to initiate a request for a Change Order, then Contractor shall notify the Engineer immediately and provide the Engineer with written notice in the form of a Potential Contract Change of the underlying facts and circumstances that give rise to the proposed change. Contractor shall submit the Potential Contract Change prior to performance of the Work and no later than five (5) Days after Contractor discovers the circumstances causing the need for the Change Order.

To be considered valid and complete, the Potential Contract Change shall include a general statement of the circumstances giving rise to the change and/or delay.

The Potential Contract Change shall not include a cost proposal with supporting documentation of costs. On Projects receiving federal funds and upon receiving a Potential Contract Change, the Engineer may create an independent cost estimate prior to notifying the Contractor to submit a cost proposal.

3. Request for Change in Compensation and/or Extension of Time. Once the Engineer directs a change in the Work by delivering a written work directive or direction is given by the Engineer regarding an RFI or a Potential Contract Change and either results in a change to the Contract Price and/or Contract Time, the Contractor shall submit a Potential Contract Change. The Potential Contract Change shall be made prior to incurring any expense and within five (5) Days from the Engineer's directive ordering the change or direction given regarding an RFI or a Potential Contract Change. The Potential Contract Change shall include all the following information (unless inapplicable to the change):

- a. A detailed description of the circumstances giving rise to the request;
- b. As described below, a complete itemized cost proposal for labor, equipment and materials, including itemized pricing for all Subcontractors;
- c. Supporting documentation for all costs;
- d. A time impact analysis showing the impact of the delay to the Critical Path to completion;
- e. If any added costs or information cannot be determined at the time of the Potential Contract Change, the reason the costs or information cannot be determined at the time; and
- f. Certification to the accuracy of the Potential Contract Change under penalty of perjury.

The time impact analysis shall be in the Critical Path method format and shall show the sequencing of all critical and non-critical new Activities and/or Activity revisions affected by the delay, with logic ties to all affected existing Activities noted on the schedule.

The Engineer may demand, and Contractor shall provide, any additional information supporting the Potential Contract Change, including but not limited to native electronic format version of schedules and a time impact analysis. Contractor shall provide the requested additional information within five (5) Days of the request.

For any costs or information that cannot be determined at the time Contractor submits the Potential Contract Change, Contractor shall submit to the Engineer notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination.

4. District's Final Decision on Change Order. If the Engineer denies the Potential Contract Change or disagrees with the proposal submitted by Contractor, the Engineer will notify the Contractor and will provide an opinion of the appropriate price and/or time extension. If no agreement can be reached, the Engineer shall have the right to reject the entirety of the Potential Contract Change, order the Work performed on a time and materials basis, or issue a unilateral Change Order setting forth the Engineer's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The Engineer's determination shall become final and binding if the Contractor fails to submit a Claim in writing to the Engineer within fourteen (14) Days of the Engineer rejecting the Potential Contract Change or issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order, and providing such supporting documentation for its position as the Engineer may reasonably require.
5. Contractor's Waiver of Further Relief.
 - a. **CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF AN RFI, POTENTIAL CONTRACT CHANGE, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**
 - b. Contractor recognizes and acknowledges that timely submission of a formal written RFI or Potential Contract Change, whether or not the circumstances of the change may be known to the District or available to the District through other means, is not a mere formality but is of crucial importance to the ability of the District to promptly identify, prioritize, evaluate, and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.
6. Change Order Format.

- a. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect, and overhead) related to the Work authorized by the Change Order.
- b. The Engineer may designate the forms to be used for RFIs, Potential Contract Changes, and Change Orders. If so designated, Contractor may only use such forms. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration, and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration, and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the District's Change Order form in an attempt to reserve additional rights.

B. Determining Adjustments to Compensation.

1. Limitation on Costs. Contractor shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.
2. Unit Price Change Orders.
 - a. Unit Price Work. When the actual quantity of a Unit Price Work item varies from the Bid Schedule, compensation for the change in quantity will be calculated by multiplying the actual quantity by the unit price. This calculation may result in either an additive or deductive Change Order. Bid items included on the Bid Schedule may be deducted from the Work in their entirety without any negotiated extra costs. Because Unit Price Work includes overhead and profit as determined by Contractor at the time of its Bid submission, no mark up or deduction for overhead and profit will be allowed.
 - b. Unit Price Additional Work. A unit price Additional Work Change Order may be mutually agreed to by the Contractor and the District when the unit price for Additional Work items can be established. The Potential Contract Change shall include, among other things, an itemized cost proposal including labor, materials, and equipment, to establish the unit price for each item of Additional Work and estimated quantities. Estimated quantities are not guaranteed and are solely for the purpose of determining the Change Order price. Final payment of the Change Order shall be determined by the Engineer from measured quantities of work performed based upon the unit price.
3. Lump Sum Change Orders. A lump sum Change Order will be mutually agreed to by the Contractor and the District. Any lump sum Change Order shall result from a Potential Contract Change that includes, among other things, an itemized cost proposal including labor, materials, and equipment.

4. Time and Materials Change Orders. The Engineer may direct the Contractor to proceed with the Additional Work with payment to be made based on actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable, and the Change Order shall include a ceiling price that the Contractor exceeds at its own risk.
5. Federally Funded Projects. For any change to the Contract Price, allowed costs, including, but not limited to, labor, materials, and tool and equipment use, shall be negotiated and must conform to the cost principles set forth under at 2 C.F.R. Part 200, subpart E, and profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the extra work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
6. Allowed Costs. Itemized cost proposals for lump sum Change Orders, unit price Additional Work Change Orders, and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows:
 - a. Labor. The costs of labor will be the cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus a burden amount up to 55% of the sum of prevailing wage labor costs for, among other things, employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state, or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. Contractor shall provide Certified Payrolls for all Time and Material work.
 - b. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus any applicable sales tax, freight, and delivery. Materials costs shall be based upon supplier or manufacturer's invoice.
 - c. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the Work is performed. The Contractor shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to the District for the total period of use. The District shall make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of \$1,000 or less.

- (i) The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.
 - (ii) All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
 - (iii) Before construction equipment is used on any Additional Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Engineer, in duplicate, a description of the equipment and its identifying number.
 - (iv) When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be 1/2-day of operation.
- d. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:
- (i) If the Project is federally funded, the allowed mark-up shall not be capped and instead shall be determined in accordance with Section 9.1(B)(5) above and not in accordance with this Section.
 - (ii) "Net Cost" is defined as the costs of burdened labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and Subcontractors at cost only, without mark-up. Contractor shall provide the Engineer with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the Engineer may reasonably request.
 - (iii) For Work performed by the Contractor's forces, the allowed mark-up shall not exceed fifteen (15%) percent of the Contractor's Net Cost of the Work.
 - (iv) For Work performed by a Subcontractor, or lower tier subcontractors, the added mark-up for overhead and profit shall not exceed fifteen percent (15%) of the Subcontractor's or lower tier subcontractor's Net Cost of the Work.
 - (v) In no case shall the mark-up for overhead and profit payable by the District exceed fifteen percent (15%) of the Net Cost of the party that performs the Work.
 - (vi) Calculation of the mark-up will be subject to the limitations above, and to calculation as further detailed in Section 9.1(B)(5) above.
- e. Documentation of Time-and-Material (T&M) Costs.

- (i) T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Engineer for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the District's agreement to Contractor's entitlement to the cost.
 - (ii) T&M Summary Sheet. Contractor shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Contractor's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the Additional Work.
- f. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the Contractor's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:
- (i) Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Work;
 - (ii) Office Expenses. Expenses of Contractor's principal and branch offices;
 - (iii) Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;
 - (iv) Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - (v) Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of Contractor;
 - (vi) Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;

(vii) Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

(viii) Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay*, burden fluctuation, or other similar formulaic methods;

(ix) Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.

(x) Compliance with Federal Cost Principles. If the Project is federally funded, any costs that are not allowable, reasonable and allocable to the Project, under generally accepted accounting principles and the applicable federal requirements.

(xi) Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; and insurance and bond premiums.

9.2 Dispute Resolution.

- A. Claim Prerequisites. Contractor shall comply with any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, including but not limited to, all requirements of Article 9.1, as a prerequisite to filing any Claim governed by this Article. The failure to submit a notice of delay or notice of change, or to request a change to the time for completion or Contractor's compensation, or to provide any other notice or request required herein shall constitute a waiver of the right to further pursue the Claim under the Contract or at law.
- B. All Claims. All Claims shall be submitted in writing and accompanied by substantiating documentation. Claims governed by this Article must be filed no later than fourteen (14) Days after a request for change has been denied in whole or in part.
- C. District Response. The District shall respond in writing within a reasonable period of time to review and evaluate the Claim. The District may request in writing any additional documents supporting the Claim or relating to defenses or claims the District may have against the claimant. Contractor shall make these records and documents available at all reasonable times, without any direct charge.

D. Claim Requirements. Contractor shall submit the Claim justification in the following format:

1. Summary of Claim merit and price, and Contract clause pursuant to which the claim is made.
2. List of documents relating to Claim
 - a. Specifications
 - b. Drawings
 - c. Clarifications (Requests for Information)
 - d. Schedules
 - e. Chronology of events and correspondence
 - f. Analysis of Claim merit
 - g. Analysis of Claim cost
 - h. Analysis of time impact analysis in CPM format
 - i. Cover letter and certification of validity of the Claim
 - j. Other

E. Meet & Confer.

1. If the Contractor disputes the District's response, or if the District fails to respond within a reasonable time, the Contractor may so notify the District within 15 days of the receipt of the response or the failure to respond and demand an informal conference to meet and confer to participate in settlement discussions and informally resolve the dispute. Upon such demand, the District and Contractor will schedule and convene an informal meet and confer conference for settlement within 30 days unless otherwise agreed to by the parties.
2. Unless otherwise agreed to by the parties, only one meet and confer conference will be held for each dispute.
3. At the meet and confer conference, the parties shall endeavor to resolve the dispute in a timely fashion and in good faith through direct discussions by the parties and their respective representatives who shall possess the authority to resolve such disputes.

F. Mediation. The parties agree to participate in mediation with a mutually agreeable mediator following an exchange of documents reasonably necessary for resolution of the Claim or any issues in dispute following the meet and confer conference. Mediation shall be scheduled within a reasonable time, with the City and Contractor sharing the mediator's fees equally. Unless otherwise agreed to by the parties, all unresolved Claims shall be considered jointly in a single mediation.

- G. Condition Precedent. The foregoing dispute resolution procedures, including attendance at a meet and confer conference and participation in mediation, are conditions precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.

ARTICLE 10 -MEASUREMENT; PAYMENT

10.1 Measurement of Quantities for Work.

- A. Lump Sum Work. The following is applicable where a Project is not Unit Price Work but instead the Contractor is compensated by a lump sum amount. Before the first partial payment the Contractor shall submit to the Engineer a schedule of values allocated to the various portions of the Work, prepared in such form and supported by date to substantiate its accuracy as the Engineer may require. The schedule must be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown as a single line item. This schedule, unless objected to by the Engineer, shall be used as the basis for reviewing the Contractor's payment. The schedule of values may contain separate pay items for bonding and insurance. The schedule of values shall be divided into labor and material for each line item of Work.
- B. Unit Price Work. Unless otherwise specified, where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by the Engineer. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and or profit for each separately identified item.
- C. All Work completed and materials furnished under the Contract shall be measured by the Engineer, or under the supervision of the Engineer, according to United States standard measures, unless otherwise agreed upon in writing. Unless otherwise agreed upon by the Engineer, the Contractor shall furnish the Engineer with dray tickets with each load of materials. As a minimum, the tickets shall indicate gross, tare, and net weights for each load, and the location of delivery.
- D. No payment will be made for materials wasted or disposed of in a manner not called for under the Contract. This includes rejected material not unloaded from vehicles, material rejected after it has been placed, and material placed outside of the construction limits. No compensation will be allowed for disposing of rejected or excess material.

10.2 Partial Payments.

- A. On the 1st or 15th of each month, as agreed upon by Contractor and Engineer, Engineer will prepare and submit to the Contractor a complete Application for

Payment for review and signature by the Contractor. The Application for Payment will cover the Work completed as of the date of the application, unless otherwise directed by the Engineer.

- B. With each Application for Payment, Contractor will submit supporting documentation as required by the Contract Documents and Engineer, including, but not limited to, the required items listed in the Standard Specifications Section 01270 Measurement and Payment. Notwithstanding the foregoing, all daily and weekly supporting documents required to be included with the Application for Payment must be provided on a daily or weekly basis, as applicable. If supporting documents are not provided within five (5) Days of the pay period cutoff, Contractor, at the discretion of the Engineer, may not be compensated for that work during the pay period.
- C. If Contractor does not return an executed Application for Payment to the Engineer within seven (7) Days, Engineer has authority to notify Contractor that payment consideration, or portion of payment, will be made at the designated due date the following month. Notwithstanding the foregoing, the Engineer, at their discretion, may request the Contractor to prepare and submit to the Engineer an Application for Payment for review and approval.
- D. After review and approval of the Application for Payment, Engineer will request payment of the total amount less 5% retained until after completion of the entire Work to the satisfaction of Engineer. The County Auditor will review payment applications and request Commissioners Court approval of payment to Contractor of the remaining 95%.
- E. If in Engineer's judgment, Contractor is not suitably performing the Contract, Engineer may withhold payment until determining that Contractor is performing in a manner acceptable to Engineer.
- F. The Contractor may be required to furnish the Engineer copies of invoices for all materials purchased for the Project.
- G. The District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor as in its judgment may be necessary to cover:
 - 1. Payments which may be past due and payable for just claims against Contractor or any Subcontractors for labor, equipment or materials furnished in and about the performance of work on the Project under this Contract;
 - 2. Defective work not remedied;
 - 3. Failure of Contractor to make proper payments to his Subcontractor or for material, equipment, or labor;
 - 4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid;
 - 5. Damage to another contractor or a third party;

6. Amounts which may be due the District for claims against Contractor;
 7. Failure of Contractor to keep the As-Built Drawings up to date;
 8. Failure to provide update on construction schedule as required herein;
 9. Site cleanup;
 10. Work performed related to a Submittal, Shop Drawing, or Sample that has not been reviewed and approved by the Engineer;
 11. Failure to comply with Contract Documents
 12. Liquidated damages; and/or
 13. Legally permitted penalties.
- H. District or County may, in its discretion, remit to Contractor's surety any amounts due and payable to the Contractor, upon request of the surety arising out of any unpaid amounts by Contractor for labor, equipment, and materials.

10.3 Acceptance and Final Payment.

- A. If Engineer finds the Work has been completed in accordance with the Contract, Contractor shall submit the following items to Engineer before Engineer will process the final Application for Payment:
1. Affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Contractor connected with the Work, less amounts withheld by District, have been paid or otherwise satisfied. If required by Engineer, Contractor shall submit further proof including waiver or release of lien or claims from laborers, Subcontractors, or Suppliers;
 2. If requested by the District, consent of surety to final payment in a form acceptable to the District; and
 3. Copies of As-Builts, record documents, maintenance manuals, extended warranties, tests, inspections, and approvals, or other items required by Engineer.
- B. After mutual agreement of final quantities, final contract value, and, if necessary, a final Change Order approved by Commissioners Court, Engineer shall submit to Commissioners Court a final Application for Payment (Final Estimate) for the amount due Contractor under the provisions of the Contract Documents. Contractor will examine said final estimate and, if correct, will certify under oath that it includes all items and balances due the Contractor remaining unpaid on the Contract, and accept it as full release to District and as final and complete satisfaction of any and all claims due the Contractor from District by virtue of this Contract and Work arising under it. Further, that all bills for labor, materials, and supplies incorporated in the Work for which the final estimate is received have been paid in full.

- C. After approval of the Final Estimate by Commissioners Court and the County Auditor, Contractor will be paid the amount of the estimate after deducting all previous payments and all amounts retained under provisions of the Contract Documents. All prior partial estimates and payments shall be subject to correction in the final estimate and payment. No estimate or payment except the Final Estimate shall be evidence of performance by Contractor. No payment shall be construed to be an acceptance of any defective work or improper materials or a release from any claim for damages. Payment of the Final Estimate due under the Contract and the adjustments and payment of the bill rendered for any work done in accordance with the Contract Documents shall release District and Engineer from all claims or liability related to work performed in accordance with the Contract Documents.

10.4 Auditor's Certification of Funds.

- A. The laws governing the awarding of Contracts by the District require the approval of the County Auditor and that the County Auditor certify that funds are, or will be, available for the payment of the obligations created thereunder before such Contracts become effective. Despite any provisions in the Contract Documents to the contrary, no change or addition of any character in the Contract Documents that will increase the obligations of the District, or the amount to be paid by the District shall ever be binding on the District unless and until such changes or additions have been submitted to the County Auditor and the County Auditor certifies that funds are, or will be, available for the payment of such obligation.

ARTICLE 11 -MISCELLANEOUS

11.1 Notice.

- A. Unless otherwise agreed upon by the District, all notices for official business, such as termination and Claims, and not routine Project correspondence, shall be in writing and served by personal delivery or certified mail to the other party. Written notice to the Contractor shall be addressed to Contractor's authorized representative designated in Section 2.7(B) and if by personal delivery or certified mail, delivered to the Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to the District shall be addressed to the Engineer and if by personal delivery or certified mail, delivered to the District's principal place of business unless the District designates another address in writing for service of notice. Certified mail shall be addressed to the other party recipient postage prepaid with return receipt requested. Notice shall be effective upon receipt of the mailing or personal delivery.
- B. Routine Project correspondence may be in writing and served by email, personal delivery, or certified mail to the other party or otherwise determined by the District.

11.2 Limitations on the District's Responsibilities.

- A. The District shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Applicable Laws applicable to the performance

of the Work. The District will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

11.3 Cumulative Remedies.

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them that are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

11.4 Survival of Obligations.

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

11.5 Controlling Law.

A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of Texas excluding any choice of law provisions.

11.6 Jurisdiction; Venue.

A. Contractor and any Subcontractor, Supplier, or other person or organization performing any part of the Work agree that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Harris County, Texas, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

11.7 Headings.

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

11.8 Right to Audit.

A. Contractor shall make available to the District for auditing all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the District. If Contractor submits an RFI or a Claim to the District, the District shall have the right to audit Contractor's books, records, documents, and other evidence to the extent they are relevant.

- B. The right to audit shall include the right to examine books, records, documents, and other evidence, and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the Claim has been submitted, including but not limited to, job cost reports, estimates, bids, bid papers, documents of other work administered by the Contractor's home office, and any and all other documentation relied upon by the Contractor to obtain this Contract, for a period of four (4) years after final payment. The District shall have the right to make and take copies of any records examined. The right to audit shall include the right to inspect Contractor's plans, or such parts thereof, as may be or have been engaged in the performance of the Work.
- C. Contractor further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors.
- D. The right to audit provided herein shall be exercisable through such representatives as the District deems desirable during Contractor's normal business hours at Contractor's office.

11.9 Assignment.

- A. Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of the District. Any assignment without the written consent of the District shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to Texas law.

11.10 All Legal Provisions Included.

- A. Contractor shall give all notices and comply with all federal, state, and local laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules, or regulations in this Contract are for reference purposes only and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify the District in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the District, he shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules, and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.
- C. No District or County official or representative who is authorized in such capacity and on behalf of the District to negotiate, supervise, make, accept, or approve, or

to take part in negotiating, supervising, making, accepting, or approving any engineering, inspection, construction or material supply contract, or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

- D. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by the District, at no increase in Contract Price or extension in Contract Times, to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

11.11 Change In Name And Nature Of Contractor's Legal Entity.

- A. Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the District in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect the District's rights under the Contract, including but not limited to the bonds.

**SPECIAL PROVISIONS
TO
HARRIS COUNTY GENERAL CONDITIONS**



Add the following paragraph to Article 8- Prosecution of the work of the General Requirements:

8.2.D. Project Schedule Updates and Review Cycle.

8.3.A Time of Completion. The entire work shall be finished and fully completed to the satisfaction of the Engineer in **Five Hundred and Fifty-Two (552) days** contract time.

Add the following paragraph to Section 8.3B of the General Requirements:

8.3.B Liquidated Damages. Contractor shall pay to the County as liquidated damages the sum of **Five Thousand dollars (\$5,000.00)** a day for each calendar day the work remains uncompleted after the expiration or consumption of the number of calendar days in section 8.3.B.

8.3.C Inclement Weather. Contract time includes **64** calendar days to accommodate inclement weather days.

END OF SPECIAL PROVISION

12/19/2025

Half Associates, Inc
Project ID: G103-80-03.1-E002
& G503-06-00-E003

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Special Provisions to
General Conditions