

**CITY OF GARLAND  
STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION**

**TABLE OF CONTENTS**

**ARTICLE I. DEFINITIONS**

- 1.1 General Conditions
- 1.2 Owner
- 1.3 Architect/Engineer
- 1.4 Contractor
- 1.5 Subcontractor
- 1.6 Project
- 1.7 Work
- 1.8 Day
- 1.9 The Contract Sum
- 1.10 Pre-Final Inspection
- 1.11 Final Inspection
- 1.12 Contract Time
- 1.13 Date of Commencement
- 1.14 Date of Substantial Completion
- 1.15 Final Completion
- 1.16 Site

**ARTICLE II. LAWS GOVERNING CONSTRUCTION**

- 2.1 Compliance with Laws
- 2.2 Wage Rates
- 2.3 State Sales and Use Taxes
- 2.4 Antitrust Claims

**ARTICLE III. CONTRACT DOCUMENTS AND BONDS**

- 3.1 Copies Furnished - Drawings and Specifications
- 3.2 Ownership of Drawings and Specifications
- 3.3 Drawings and Specifications at the Site
- 3.4 Performance and Payment Bonds
- 3.5 Interrelation of Documents

**ARTICLE IV. CONTRACT ADMINISTRATION**

- 4.1 General Administration
- 4.2 Access to and Inspection of the Work
- 4.3 Separate Contracts
- 4.4 Contract Termination
- 4.5 Written Notice
- 4.6 Disputed Matters

**ARTICLE V. CONTRACT RESPONSIBILITIES**

- 5.1 Owner's Responsibilities
- 5.2 Owner-Contractor Obligations
- 5.3 Contractor's Responsibilities
- 5.4 Contractor's Superintendent
- 5.5 Acts and Omissions
- 5.6 Conditions at Site or Building
- 5.7 Insurance
- 5.8 Safety Precautions and Programs
- 5.9 Materials and Workmanship
- 5.10 Tests

- 5.11 Removal of Defective Work
- 5.12 Royalties and Patents
- 5.13 Equal Materials
- 5.14 Shop Drawings and Samples
- 5.15 Cleaning
- 5.16 Indemnification
- 5.17 Allowances
- 5.18 Auditable Records

ARTICLE VI. CONTRACT CHANGES

- 6.1 Change Orders
- 6.2 Unit Prices
- 6.3 Claims for Additional Costs
- 6.4 Claims for Additional Time
- 6.5 Minor Changes
- 6.6 Bar to Claims
- 6.7 Administrative Procedures for Change Orders

ARTICLE VII. PAYMENTS

- 7.1 Contract Sum Breakdown
- 7.2 Progress Payments

ARTICLE VIII. WORK COMPLETION TIME

- 8.1 Work Progress Schedule
- 8.2 Delays and Extension of Time
- 8.3 Completion of Work
- 8.4 Failure to Complete Work on Time

ARTICLE IX. SUBSTANTIAL COMPLETION

- 9.1 Certification
- 9.2 Additional Inspection Costs
- 9.3 Occupancy or Use

ARTICLE X. FINAL ACCEPTANCE AND PAYMENT

- 10.1 Notification
- 10.2 Final Payment Documentation
- 10.3 Final Payment

ARTICLE XI. WARRANTY, CORRECTION OF DEFECTS AND GUARANTEE

- 11.1 Warranty
- 11.2 Correction of Defects

ARTICLE XII. OPERATIONS AND STORAGE AREAS

- 12.1 Operations and Storage
- 12.2 Assigned Entrances
- 12.3 Site Cleaning and Trash Disposal

# GENERAL TERMS AND CONDITIONS FOR A CONSTRUCTION SERVICES AGREEMENT

## **ARTICLE I: DEFINITIONS**

Whenever the following terms are used in these General Conditions or in the other Contract Documents as defined in the Construction Services Agreement by and between the Owner and Contractor, the intent and meaning shall be interpreted as follows:

**1.1 GENERAL CONDITIONS:** The General Conditions contained in this document are part of and apply to the Agreement by and between the Owner and Contractor whereunder Contractor provides the Work as specified in the Agreement.

**1.1.1 CONTRACT or AGREEMENT:** The words Contract and Agreement when used herein shall have the same meaning.

**1.2 OWNER:** The Owner is the City of Garland, acting through any responsible instrumentality of the Owner.

**1.3 ARCHITECT/ENGINEER:** A person registered as an architect pursuant to Article 249a, Vernon's Annotated Civil Statutes (V.A.C.S.), as a landscape architect pursuant to Article 249c, V.A.C.S., and/or a person licensed as a professional engineer pursuant to Article 3271a, V.A.C.S., or firm employed by the Owner to provide professional architectural or engineering services and having overall responsibility for the design of a project or a significant portion thereof.

**1.4 CONTRACTOR:** The individual, corporation, company, partnership, firm or other organization that has contracted to perform the Work under the Contract with the Owner.

**1.5 SUBCONTRACTOR:** A person or organization that contracts for the performance of part or all of the Contract between the Owner and Contractor. The subcontract may be directly with Contractor or with another Subcontractor.

**1.6 PROJECT:** The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

**1.7 WORK:** All labor, materials, equipment, services and all other appurtenances which are required by the Contract Documents whether completed or partially completed. The Work may constitute the whole or a part of the Project.

**1.8 DAY:** Whenever the word "Day" is used in the Contract Documents, it shall be interpreted to mean a calendar day, unless otherwise specifically stipulated.

**1.9 CONTRACT SUM :** The total compensation payable to Contractor for performing the Work as originally contracted for or as subsequently amended by Change Order.

**1.10 PRE-FINAL INSPECTION:** The inspection conducted to determine that a project, or a portion thereof, is substantially complete.

**1.11 FINAL INSPECTION:** The inspection conducted to determine that all known deficiencies have been corrected and that it is appropriate to release retainage and/or make final payment in accordance with Article X.

**1.12 CONTRACT TIME:** Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Final Completion of the Work.

**1.13 DATE OF COMMENCEMENT:** Is the date established in the Agreement or such other date as may be established therein when the Work starts. The Date of Commencement shall not be postponed by the failure to act of Contractor or of persons or entities for whom Contractor is responsible.

**1.14 DATE OF SUBSTANTIAL COMPLETION:** The Date of Substantial Completion of the Work, or designated portion thereof, is the date jointly certified by the Architect/Engineer, the Owner and Contractor when construction is so sufficiently complete, in accordance with the Contract Documents, that the Owner may utilize without disruptions, the Work, or a designated portion thereof, for the use for which it is intended. In the event of partial occupancy by the Owner, the Project shall not be deemed substantially complete until the entire Work is substantially complete, nor shall the Owner's partial occupancy be construed to constitute acceptance of Work not complying with requirements of the Contract Documents.

**1.15 FINAL COMPLETION:** The date of Final Completion is the date certified by the Architect/Engineer when the construction is finally complete in accordance with the Contract Documents, that all known deficiencies have been corrected, and that it is appropriate to release retainage and/or make final payment in accordance with Article X.

**1.16 SITE:** The physical location where the Work is being provided.

## **ARTICLE II. LAWS GOVERNING CONSTRUCTION**

**2.1 COMPLIANCE WITH LAWS:** In the performance of the Contract, Contractor must comply with all applicable State, Local and Federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety and minimum wages. Contractor shall make himself familiar with and at all times shall observe and comply with all Federal, State and Local laws, ordinances, codes, and regulations which in any manner affect the conduct of the Work, and shall indemnify and save harmless the Owner and its official representatives against any claim arising from violation of any such law, ordinance or regulation by himself or by his subcontractor or his employees. Upon reasonable request, competent evidence of compliance with applicable laws shall be furnished.

**2.1.1** Contractor shall cooperate with applicable city or other governmental officials at all times. Contractor shall make application for and pay for any permits and permanent utilities which are required for the execution of the Contract.

**2.1.2** When the Underwriters' Laboratories have established standards and issued labels for a particular group, class, or type of equipment, the Underwriters' label shall be required on all equipment in that category. The National Electric Code and the National Plumbing Code shall be minimum requirements. Upon reasonable request, competent evidence of compliance with applicable codes shall be furnished.

**2.1.3** These Contract Documents shall be governed and interpreted in accordance with the laws of the State of Texas, and venue of any action hereunder shall lie in Dallas County, Texas.

**2.2 WAGE RATES:** Contractor is required to pay not less than the wage scale of the various classes of labor as shown on the "Prevailing Wage Schedule" attached hereto. The specified wage rates are minimum rates only, and the Owner will not consider any claims for additional compensation made by any Contractor because of payment by Contractor of any wage rates in excess of the applicable minimum rate contained in the Contract.

**2.2.1** Pursuant to the provisions of Texas Government Code Section 2258.023(b), "a contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract."

**2.2.2** All workers shall be classified in one of the classifications in the Prevailing Wage Rate Table. Contractor shall notify each worker commencing work on the Project the worker's job classification and the established minimum wage rate required to be paid. The notice must be delivered to the employee and must list both the monetary wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When required, competent evidence of compliance with the Texas Prevailing Wage law shall be furnished.

**2.2.3** Contractor shall pay all contributions occasioned by his employees' wages required by federal and/or State laws, and shall cause his subcontractors to pay such contributions for their employees. Contractor shall indemnify and hold the Owner harmless for any such contributions assessed under Federal and/or State law.

**2.2.4** Contractor shall pay all unemployment, old age pension, or taxes of any nature imposed by local, city, State or Federal Government, and include such expenses in his price.

**2.3 STATE SALES AND USE TAXES:** Contractor shall pay all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. Contractor shall furnish an exemption certification in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by Contractor in performing this Contract. Contractor shall furnish exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The use of said materials and supplies for which an exemption from the sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

**2.4 ANTITRUST CLAIMS:** Contractor shall assign to the Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Secs. 1 et seq (1973).

### **ARTICLE III. CONTRACT DOCUMENTS AND BONDS**

**3.1 COPIES – DRAWINGS AND SPECIFICATIONS:** Contractor will not be furnished with any free sets of the Contract Drawings and Specifications. Contractor is responsible for providing applicable Contract Drawings and Specifications to its Subcontractors.

**3.2 OWNERSHIP OF DRAWINGS AND SPECIFICATIONS:** All Drawings, Specifications and copies are and shall remain property of the Owner. They are not to be used on any other project and, with the exception of one contract set, are to be returned to the Owner following completion of the Work.

**3.3 DRAWINGS AND SPECIFICATIONS AT THE SITE:** Contractor shall maintain at the Site one copy of all Drawings, Specifications, Addenda, approved Shop Drawings and Contract Modifications, in good order and marked to record all changes made during construction. Contractor shall keep on the Site of Work a copy of the Contract Documents and shall at all times give the Owner or his representatives and agents access thereto. Further, Contractor shall maintain a record set of the 3 mil. Mylar drawings which reflect the "As-Constructed" conditions and representations of the Work performed, whether it be directed by Addendum, Change Order or otherwise (the "Record Drawings"). The Record Drawings shall also contain all changes as indicated on the daily records as field changes and shall be verified. All records prescribed herein shall be made available for reference and examination by the Owner and his representatives and agents. Contractor shall update the "As Constructed" drawings monthly prior to submission of periodic partial pay estimates and submit a blue line copy of each sheet that changes, highlighting only the subsequent changes from the previous submission. Failure to maintain such records shall

constitute cause for denial of a progress payment otherwise due. Contractor shall notify the Owner's representative prior to backfill, pouring of concrete, sheet rocking, placing ceiling tile, or other forms of encasement of the Work in order for the Owner's representative to verify that the "As Constructed" documents reflect the location of the Work to be covered or encased. Upon completion of all the Work and prior to the time of final acceptance by the Owner, Contractor shall furnish a complete set of photo positive 3 mil. Mylar "As Constructed" drawings and the original photo negative of the Contract Documents required to produce the photo positive Mylars. These shall be delivered to the Architect/Engineer for the Owner upon Substantial Completion of the Work.

**3.4 PERFORMANCE AND PAYMENT BONDS:** In accordance with the provisions of Texas Government Code Chapter 2253, if the total Contract Sum exceeds \$50,000, Contractor must provide a Payment Bond in the full amount of the contract. In addition, if the Contract Sum exceeds \$100,000, Contractor must also provide a Performance Bond in the full amount of the contract.

**3.4.1** Each bond shall be duly and properly executed, on forms provided by or acceptable to the Owner, by Contractor as Principal, and by a corporate Surety recognized as an admitted carrier by the State of Texas and acceptable to the Owner, with a resident agent in Dallas County. Each bond must be executed by a corporate Surety in accordance with the Texas Insurance Code Article 7.19-1.

**3.4.2** Each bond shall be accompanied by a valid Power-of-Attorney (issued by the Surety, signed and sealed with the corporate embossed seal, and attached to the bond), authorizing the agent who signs the bond to commit the Surety to the terms of the bond, and stating (on the face of the Power-of-Attorney) the limit, if any, in the total amount for which the agent is empowered to issue a single bond.

**3.4.3** If any Surety upon any bond furnished in connection with the Contract becomes insolvent, or otherwise not authorized to do business in this State, Contractor shall promptly furnish equivalent security to protect the interests of the Owner and of persons supplying labor, materials and/or equipment in the prosecution of the Work contemplated by the Contract.

**3.4.4** Upon the request of any person or entity appearing to be a potential beneficiary of the Payment Bond covering payment of obligations arising under the Contract, Contractor shall promptly furnish a copy of the Payment Bond or shall permit a copy to be made.

**3.5 INTERRELATION OF DOCUMENTS:** Any Work mentioned in or shown on either the Drawings or the Specifications shall be as if mentioned in both. If Contractor has any question about what is required in this circumstance, the matter shall promptly be submitted in writing to the Architect/Engineer, who shall promptly respond in writing.

**3.5.1** Should the Drawings disagree, one with another, or with the Specifications, or should the Specifications disagree one with another, and unless otherwise ordered in writing by the Architect/Engineer, the more stringent and/or the better quality, or greater quantity of Work or materials shall be performed or furnished. All modifications required to provide or furnish the proper quality, quantity, or more stringent Work or materials shall be completed without additional costs to the Owner. In general, figures given on Drawings govern small scale measurements and large scale Drawings govern small scale Drawings. In case of discrepancy either in the figures, in the Drawings, or in the Specifications, the matter shall be promptly submitted to the Architect/Engineer, who shall promptly make a determination in writing. Any adjustment by Contractor without such a determination shall be at his own risk and expense.

**3.5.2** The "Scope of the Work" placed in the front part of each section of the Specifications is intended to designate the scope and locations of all items of the Work included therein, either generally or specifically. It is not intended to limit the Scope of Work should the

Contract Documents indicate an increased scope. Inadvertent omission of an item from its proper section of the Contract Documents and/or its inclusion in another section shall not relieve Contractor of responsibilities for the item specified.

#### **ARTICLE IV. CONTRACT ADMINISTRATION**

**4.1 GENERAL ADMINISTRATION:** The Owner may designate a Construction Manager to provide project oversight and Contract administration. Unless such a designation is made by the Owner, or as otherwise provided for in the Contract Documents, the Architect/Engineer will provide general administration of the Contract and will be the Owner's representative during construction and until final payment.

**4.1.1** The Owner assumes no responsibility for any understanding given or representation made orally by its agents prior to the execution of this Contract, unless such understanding(s) or representation(s) are expressly stated in the Contract. The Owner assumes no responsibility for any conclusions or interpretations made by Contractor. Any failure by Contractor to become acquainted with available information will not relieve Contractor from responsibility for properly estimating the difficulty or cost of successfully performing the Work or mutually agreed changes thereto.

**4.1.2** The Architect/Engineer has the authority to act on behalf of the Owner to the extent provided for in the Contract Documents, unless otherwise modified by written instrument which will be shown to Contractor. The Architect/Engineer will advise and consult with the Owner, and the Owner's written instructions to Contractor will generally be issued through the Architect/Engineer, except that the Owner reserves the right on appropriate occasions to issue instructions directly to Contractor through other designated representative(s). All written communications concerned with the construction of the Project shall be furnished to the Owner, the Owner's representative(s), the Architect/Engineer, and Contractor by the party originating the communication. All oral messages from Contractor shall be confirmed in writing by Contractor, and Contractor shall be fully responsible for the confirmation. Contractor is responsible for complying with the Owner's administrative requirements as set forth in the Contract Documents and in requirements issued at the pre-construction conference.

**4.1.3** All communications or instructions affecting the Work, Contract Sum, Contract Time or Contract interpretation shall be confirmed expeditiously in writing with copies furnished to the Architect/Engineer, the Owner's designated representative(s), and Contractor by the party issuing the communication or instruction. No instruction affecting the Architect/Engineer's design liability shall be issued without his prior written consent.

**4.1.4** The Owner's representative, and the Architect/Engineer, with the Owner's consent, shall interpret the Contract requirements and have the authority to reject Work performed by Contractor which, in the opinion of the Owner's representative or the Architect/Engineer, does not meet the requirements of the Contract and to order such Work removed and replaced in accordance with paragraph 5.11. The Owner's representative and the Architect/Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner's representative and/or the Architect/Engineer will not be responsible for or have control or charge over the acts or the omissions of Contractor, Subcontractors, or any of their agents, invitees or employees, or any other persons performing any of the Work.

**4.1.5 Subcontracts:** No Subcontractor shall be used to whom the Architect/Engineer or the Owner has a reasonable objection. Contractor will not be required to employ any company as a Subcontractor against whom he has a reasonable objection.

**4.1.5.1** Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound by the terms of the Contract Documents as far as applicable to his Work. Furthermore, Contractor shall fully inform his subcontractors prior to executing agreements with them that they will be required to perform their Work in conformance with related documents and to submit cost estimates and Change Order proposals in complete and full analytical detail. Contractor shall defend, indemnify and save harmless the Owner from any Subcontractor's claim which may result from the failure of Contractor to incorporate the provisions of the Contract Documents in any agreement with Subcontractors.

**4.1.5.2** If the Owner requires a change to another subcontractor, Contractor shall provide the Owner with an itemized proposal for the cost increase or decrease by reason of such change.

**4.1.5.3** After execution of the Contract, a change in any approved Subcontractor or the addition of any new Subcontractor can only be made with the written consent of the Owner.

**4.1.5.4** Each subcontract agreement for a portion of the Work is assigned by Contractor to the Owner provided that:

1 assignment is effective only after termination of the Contract by the Owner pursuant to the Paragraph **4.4.2** and only for those subcontract agreements which the Owner accepts by notifying the subcontractor in writing; and

2 assignment is subject to the prior rights of the Surety, if any, obligated under a Performance Bond relating to the Contract.

**4.2 ACCESS TO AND INSPECTION OF THE WORK:** Contractor shall provide sufficient, safe and proper facilities at all times for observation and/or inspection of the Work by authorized representatives of the Owner. The Architect/Engineer and the Owner will make periodic visits to the Site to familiarize themselves with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents.

**4.3 SEPARATE CONTRACTS:** The Owner reserves the right to perform work related to the Project with its own forces and to award other contracts in connection with other portions of the Project.

**4.3.1** When separate contracts are awarded for different portions of the Project, the "Contractor" in the Contract Documents in each case shall be Contractor who signs each separate Contract. This Contractor shall properly connect and coordinate his Work with the Work of other contractors. If any part of this Contractor's Work depends for proper execution or proper results on the Work of any other separate contractor, this Contractor shall inspect and promptly report in writing to the Architect/Engineer any discrepancies or defects he may find in such other Work that render it unsuitable for such proper execution and results. Failure of this Contractor to so inspect and report shall constitute an acceptance of the other contractor's Work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's Work after the execution of this Contractor's Work.

**4.3.2** Should Contractor cause delay or cause damage to the Work or property of any separate contractor on the Project, Contractor shall, upon due notice, endeavor to settle with such other contractor by agreement. If such separate contractor sues the Owner on account of any damage alleged to have been sustained, the Owner shall notify Contractor, who shall defend such proceedings and pay all costs in connection therewith and, if any judgment against the Owner arises therefrom, Contractor shall pay or satisfy such judgment.

**4.3.3** This Contractor shall afford the Owner and/or other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work and shall properly connect and coordinate his Work with theirs.

**4.3.4** The Owner reserves the right, with the concurrence of Contractor, to make essential installations which are pertinent to the

early use of the Project. Within this right the Owner may let other contracts or may do such work with its own labor forces and materials. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or supplier, or by the Owner's employees. Contractor shall cooperate to the end that the Owner may realize complete functioning of the Project on the Date of Substantial Completion.

**4.3.5** If a dispute arises between Contractor and separate contractors as to their individual responsibilities for cleaning up as required by the Owner, the Owner may clean up and charge the cost thereof to the contractors responsible therefor as the Architect/Engineer shall determine to be just.

**4.3.6** Contractor shall purchase all materials, equipment and services required for the Work, except such materials and equipment which the Owner, at its option and at its sole discretion, may elect to obtain directly and assign to Contractor for use in connection with the Work. In the event the Owner elects to exercise this option, Contractor agrees to fully cooperate with the Owner in order to efficiently incorporate such materials or equipment into the Work. Unless otherwise agreed to in writing, Contractor shall remain fully responsible for furnishing the necessary services and other items necessary to install and incorporate such Owner-furnished items into the Work, and Contractor's installation of such items shall be covered by Contractor's warranties contained herein.

**4.3.7** Contractor shall be responsible for inspecting any Owner-furnished materials and equipment before incorporating such items into the Work and shall promptly inform the Architect/Engineer and the Owner in writing of any deficiencies observed by him in such materials or equipment or any other objections that he has to using such materials or equipment in connection with the Work. Contractor's failure to inform the Architect/Engineer and the Owner in writing of any such observed deficiencies or objections shall be deemed to be a waiver by Contractor of any claims or damages based on the Owner having furnished the materials and equipment instead of Contractor.

#### **4.4 CONTRACT TERMINATION:**

**4.4.1 Termination by Contractor:** If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or a subcontractor or their agents or employees or any other persons performing any of the Work under a Contract with Contractor, then Contractor may, upon ten (10) additional days written notice to the Owner and the Architect/Engineer, terminate the Contract and recover from the Owner payment for all Work executed and for any loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and overhead associated with such Work resulting from such termination. If the cause of the Work stoppage is removed prior to the end of the ten (10) day notice period, Contractor may not terminate the Contract.

**4.4.2 Termination by the Owner:** The Owner may terminate the Contract if Contractor:

.1 is adjudged as bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or

.2 persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or

.3 fails to correct defective Work, or

.4 performs substandard Work, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or

.5 otherwise is guilty of a substantial violation of a provision of the Contract Documents, or

.6 fails to so prosecute the Work as to insure its completion, within the time, or any extension thereof, specified in the Contract.

The Owner may, without prejudice to any right or remedy and after giving Contractor and his Surety, if any, at least ten (10) days written notice, terminate the employment of Contractor and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor. Should the Surety fail to respond within fifteen (15) days following such notice and pursue completion of the Work with diligence acceptable to the Owner, the Owner may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract Sum remaining, including the cost of additional Architect/Engineer services and the Owner contract administration costs made necessary by such default or neglect, in which event no further payment shall then be made by the Owner until all costs of completing the Work shall have been paid. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect/Engineer's additional services made necessary thereby, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor or his Surety shall pay the difference to the Owner. If the Owner sues Contractor or Surety on account of failure to pay such difference in cost upon demand, Contractor and Surety will pay all costs in connection therewith, including reasonable attorney's fees. This obligation for payment shall survive the termination of the Contract. In the event that the termination of the Contract by the Owner because of Contractor's default is ultimately held unjustifiable, then this Contract shall automatically be deemed a termination for the convenience of the Owner as outlined in Paragraph 4.4.3.

**4.4.3 Termination for Convenience of the Owner:** Prior to or during the performance of the Work, the Owner reserves the right to terminate the Contract for any reason. Upon the occurrence, the following procedures will be adhered to:

**4.4.3.1** The Owner will immediately notify the Architect/Engineer and Contractor in writing, specifying the effective termination of the Contract.

**4.4.3.2** After receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:

- a. Stop all Work.
- b. Place no further subcontracts or orders for materials or services.
- c. Terminate all subcontracts.
- d. Cancel all material and equipment orders as applicable.
- e. Take action that is necessary to protect and preserve all property related to the Work which is in the possession of Contractor.

**4.4.3.3** Within 180 days of the date of the notice of termination, Contractor shall submit a final termination settlement proposal to the Owner based upon costs up to the date of termination, reasonable profit on Work done only, and reasonable demobilization costs. If Contractor fails to submit the proposal within the time allowed, the Owner may determine the amount due to Contractor because of the termination and shall pay the determined amount to Contractor.

**4.4.3.4** If Contractor and the Owner fail to agree on the settlement amount, the matter will be handled as a dispute in accordance with the procedure described in Paragraph 5.2.1.

**4.5 WRITTEN NOTICE:** Written notice shall be considered to have been duly given if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail to the last business address known to the one who gives the notice. Facsimile

transmissions shall be used to quickly exchange information and to receive approvals; however the original documents shall be delivered or sent to the appropriate person.

**4.6 DISPUTED MATTERS:** Disputed matters shall be handled through administrative procedures as established in Paragraph 5.2.1.

## **ARTICLE V. CONTRACT RESPONSIBILITIES**

### **5.1 OWNER'S RESPONSIBILITIES:**

**5.1.1** The Owner shall furnish surveys describing the physical characteristics, legal description and limitations, on-Site utility locations and other information necessary to Contractor which is under the Owner's control.

**5.1.2** Necessary actions of the Owner, including processing of payments to Contractor, shall be accomplished with reasonable promptness and subject to Texas Government Code Section 2251.

**5.2 OWNER-CONTRACTOR OBLIGATIONS:** The Owner and Contractor mutually bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the Owner.

**5.3 Disputes:** Pursuant to subchapter I, Chapter 271, TEXAS LOCAL GOVERNMENT CODE, the selected Bidder agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Agreement (a "Claim"), the Parties will first attempt to resolve the claim by taking the following steps: (i) A written notice substantially describing the factual and legal basis of the claim shall be delivered by the selected Bidder to the City within one-hundred eighty (180) days after the date of the event giving rise to the claim, which notice shall request a written response to be delivered to the selected Bidder not less than fourteen (14) business days after receipt of the notice of claim; (ii) if the response does not resolve the claim, in the opinion of the selected Bidder, the selected Bidder shall give notice to that effect to the City whereupon each party shall appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the claim; (iii) if those persons cannot or do not resolve the claim, then the Parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the claim.

**5.4 CONTRACTOR'S RESPONSIBILITIES:** Contractor shall supervise and direct the Work using his best skill and attention to assure that each element of the Work conforms to the Contract Documents. He shall be solely responsible for all construction means, methods, techniques, safety, sequences and procedures, and for coordinating all portions of the Work under his Contract.

**5.4.1** With regard to incidental items required as a part of the Work, Contractor shall provide, without charge, all items that would be included in the normal scope of the Work, even if not particularly specified or indicated in the Contract Documents. If Contractor has good reason for objecting to the use of a material, appliance, or method of construction as shown or specified, he shall register his objections with the Architect/Engineer in writing, sending a copy to the Owner; otherwise, he shall proceed with the Work with the understanding that a satisfactory job is required.

**5.4.2** Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect/Engineer any error, inconsistency or omission he may discover. Contractor shall perform no portion of the Work at any time without Contract

Documents and, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work. Failure by Contractor or subcontractor to properly plan, properly coordinate, or report in a timely manner an error to the Architect/Engineer on any portion of the Work shall not result in additional cost to the Owner.

**5.4.3** If Contractor performs any Work in conformity with any Contract Document knowing it to be inconsistent with any other Contract Document, without first obtaining from the Architect/Engineer written instructions on how to proceed with respect to such inconsistency, Contractor shall correct such Work according to the direction of the Architect/Engineer without cost to the Owner.

**5.4.4** Contractor shall verify all indicated dimensions before ordering materials or equipment or before performing Work. If a discrepancy exists, Contractor shall take field measurements required for the proper fabrication and installation of Work. Upon commencement of any item of Work, Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make Work properly fit at no additional cost to Owner. Contractor shall be solely responsible for all locations, dimensions and levels, and no instructions or orders received from any source, other than the information contained in plot, Drawings and Specifications or in written orders of the Architect/Engineer, shall justify departure from the dimensions and levels required by the Drawings. Contractor shall take measurements at the Site, verifying same with the Drawings and at the building, and will be held responsible for the proper fit of completed Work in position. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure himself that they properly reflect those on the Drawings. Any inconsistency shall be brought to the attention of the Architect/Engineer. In the event that discrepancies occur between ordered material and actual conditions, of which the Architect/Engineer was not notified beforehand, costs to correct such discrepancies shall be borne by Contractor.

**5.4.5** Not later than ten (10) days from the receipt of the Notice to Proceed, Contractor shall provide a list showing the name of the manufacturers proposed to be used for each major product identified in the Specifications and the name of the installing subcontractor. The Architect/Engineer will reply in writing to Contractor within thirty (30) days if the Owner or the Architect/Engineer has objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect/Engineer may state that action will be deferred until Contractor provides further data. Failure of the Owner or Architect/Engineer to reply shall constitute notice of no objection. Failure to object to a manufacturer shall not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must conform to such requirements.

**5.4.6** Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect/Engineer in his administration of the Contract, or by any inspections, tests or approvals required or performed by persons other than Contractor.

**5.4.7** Unless otherwise provided in the Contract Documents, or in the event there is a conflict in the Contract Documents as to whether a subcontractor or Contractor shall provide for an item of the Work, Contractor shall be responsible to provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Contractor shall cause all labor, materials and other such items and services to be readily available as and when required in or needed for the orderly and timely progress of the Work.

**5.4.8** Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the tasks assigned to him.

**5.4.9** Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for the building permit and for all other permits and governmental fees, taxes, licenses and inspections necessary for the proper and lawful execution and completion of the Work, which are legally required at the time the bids are received and which are customarily secured after execution of the Contract.

**5.4.10** Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing upon the performance of the Work.

**5.4.11** When Contractor observes that any of the Contract Documents are at variance with any applicable law, statute, building code or regulation in any respect, he shall promptly notify the Architect/Engineer in writing, and any necessary changes shall be accomplished by appropriate modification.

**5.4.12** When Contractor performs any Work knowing it to be contrary to any applicable laws, statutes, building codes, ordinances, rules and regulations, without notifying the Architect/Engineer in writing, Contractor shall assume full responsibility for such Work and shall bear all costs to correct it.

**5.4.13** Contractor shall properly and effectively protect all materials and equipment furnished by him during and after their installation. Particular care shall be taken to protect glass, bright, brushed, or special finishes, plastics, elevator doors, door frames, and other surfaces that are difficult to repair or remove. Building materials, Contractor's equipment, and other project-related items may be stored on the premises, but the placing of same shall be within the construction area or designated on-Site storage area. When any room in the building is used as a shop, storeroom, or temporary holding area, the party making use of such room will be held responsible for any repairs, patching, or cleaning arising from such use. Contractor shall protect and be responsible for any damage to its Work or material from the date of the agreement until the final payment is made and shall make good without cost to the Owner any damage or loss that may occur during this period, except that, in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. Contractor shall handle all material as directed so that it may be inspected by the Architect/Engineer. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the Site, as well as when it is stored on the Site. Contractor or any subcontractor, at his own expense and option, may employ a watchman during such times as he deems necessary to protect his Work. Contractor shall provide a person or persons for janitor work who shall keep all offices clean and attend to the temporary toilet rooms and keep them clean and supplied, and attend to drinking water and supplies.

**5.4.14** Contractor shall be responsible for fitting his material and apparatus into the building and shall carefully lay out his Work at the Site to conform to the structural and architectural conditions, to provide proper grading of lines, to avoid all obstructions and to conform to the details of the installation supplied by the manufacturer of the equipment to be installed, and thereby to provide an integrated satisfactory operating installation. Contractor shall, at no additional cost to the Owner, make all changes or additions to materials and/or equipment necessary to accommodate structural and architectural conditions.

**5.4.15** Contractor shall be responsible for the proper location and size of slots, holes or openings in the building structure, and for the correct location of sleeves. The Drawings indicate the extent and general arrangement of the various systems, but if any departures from the Drawings are deemed necessary by Contractor, descriptions of these departures and a statement of the reasons therefor shall be submitted to the Architect/Engineer in writing as soon as practicable and before the Work is begun.

**5.4.16** Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to, the Work and materials to be incorporated therein and other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavement, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**5.4.17** Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, or its agents, invitees, Subcontractors, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under Article V, except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of Contractor. The foregoing obligations of Contractor are in addition to Contractor's obligations under Paragraph 5.16.

**5.5 CONTRACTOR'S SUPERINTENDENT:** Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site at all times during the progress of the Work. The superintendent shall be satisfactory to the Owner, and shall not be changed except with the written approval of the Owner or if he leaves the employment of Contractor. The superintendent shall represent Contractor and shall have full authority to act on his behalf. All communications given to the superintendent shall be binding as if given to Contractor.

**5.6 ACTS AND OMISSIONS:** Contractor shall be responsible for acts and omissions of his employees and his subcontractors, their agents and employees. The Owner may, in writing, require Contractor to remove from the Work any employee the Owner finds careless, incompetent or otherwise objectionable.

**5.7 CONDITIONS AT SITE OR BUILDING:**

**5.7.1** Contractor is responsible for having visited the Site and having ascertained pertinent local conditions such as location, capacities, accessibility, and general character of the Site or building, the character and extent of existing work within and adjacent to the Site, and any other work being performed thereon at the time of the submission of his proposal. Any failure to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the Owner. The Owner makes no representations as to the accuracy or completeness of the Site information furnished to Contractor by the Owner and does not expressly or by implication warrant same and is not responsible for any interpretations or conclusions reached by Contractor with respect thereto.

**5.7.2** It is Contractor's sole responsibility to verify to his own satisfaction all Site information, including but not restricted to topographical data, borings, subsurface information dimensions, the precise location of utilities, utility capacities, and easements. If, in the performance of the Contract, subsurface, latent or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, the Architect/Engineer shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon his own observation of such conditions, the Architect/Engineer, with the approval of the Owner, will promptly make such changes in the Drawings and Specifications as he deems necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes may be adjusted by Change Order, subject to the prior approval of the Owner.

**5.8 INSURANCE:**

**5.8.1** Throughout the term of the Agreement, Contractor shall provide insurance as specified in the bid documents.



**5.9 SAFETY PRECAUTIONS AND PROGRAMS:**

**5.9.1** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

**5.9.2** Contractor shall take, and require its subcontractors to take, necessary precautions for the safety of the public and all persons working on or visiting the Project and shall comply with the applicable provision of federal, state and local laws, ordinances and regulations relating to the performance of the Work and safety of the public and all persons working on or visiting the Project.

**5.9.3** Contractor, directly or through its subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of the public and all persons working on or visiting the Project, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

**5.9.5** Contractor shall not load or permit any part of the Project or Site to be loaded so as to endanger its safety.

**5.9.6** Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

**5.9.7** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), Contractor shall immediately stop Work in the affected area and report the condition to the Owner and Architect/Engineer in writing.

**5.9.7.1** Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of Contractor's reasonable additional costs of shutdown, delay and start-up.

**5.9.7.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless Contractor, Architect/Engineer, Architect/Engineer's consultants and agents, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of Work in the affected area:

- a. if, in fact, the material or substance presents the risk of bodily injury or death as described in 5.8.7 and has not been rendered harmless,
- b. provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom,
- c. but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by

a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph.

**5.9.7.3** Owner shall not be responsible for materials or substances brought to the Site by the Contractor unless such materials or substances were required by the Contract Documents.

**5.10 MATERIALS AND WORKMANSHIP:** All Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and of the best finish and best workmanship. In regard to best finish and best workmanship, visual imperfections will not be acceptable to the Owner, even if within industry tolerances. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new.

**5.11 TESTS:** If the Contract Documents or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, Contractor shall give the Owner and the Architect/Engineer timely notice of its readiness and of the date arranged so the Owner and the Architect/Engineer may observe such inspection, testing or approval. Contractor shall bear all costs of such inspections, tests, or approvals conducted by public authorities. In addition, the Owner or the Architect/Engineer may require additional inspections, including the professional services of consultants, engineers, or specialists, testing or approval of material or Work to assure compliance with the requirements of the Contract Documents. Contractor shall pay for testing of materials not conducted by public authorities and required by the Contract Documents. When re-testing or re-inspection of materials failing the initial test/inspection is required, the cost of test/re-inspection will be paid for by Contractor at no cost to the Owner. Contractor shall be responsible for all scheduling and notifying the testing/inspection entity in order to allow for proper testing. If Contractor fails to properly schedule the testing, Contractor shall pay for all additional trip charges by the testing lab. In regard to areas of questionable quality or workmanship, and upon special direction of the Owner and the Architect/Engineer, Contractor shall properly arrange for such additional testing, inspection or approval procedure as additionally directed. Should the material or Work fail to comply with the requirements of the Contract Documents, Contractor shall bear all costs of the testing, inspection or approval, including compensation for the Architect's/Engineer's and/or other consultants' additional services made necessary by such failures, as well as the cost of replacement of unsatisfactory material or Work as provided by Paragraph 5.11. When directed by the Owner, material compliance with the Contract Documents shall be made by one of the following:

- a. Manufacturer's certificate of compliance.
- b. Mill certificate.
- c. Testing laboratory certification.
- d. Report of actual laboratory test from a laboratory satisfactory to the Owner. Samples tested shall be selected by or in the presence of the Owner and the method of testing shall comply with the professional societies' standard specifications.

**5.12 REMOVAL OF DEFECTIVE WORK:** The Owner's representatives and the Architect/Engineer shall interpret the Contract Documents and shall be the final judge of the acceptability of the Work under the Contract Documents. If any materials furnished under this Contract are condemned by the Owner and/or Architect/Engineer, Contractor shall, after having received notice from the Owner and/or Architect/Engineer to that effect, proceed to remove from the Site all condemned materials, whether worked or unworked, and to take down all portions of the Work which the Owner and/or Architect/Engineer shall by like written notice condemn as unsound or improper or as in any way failing to conform to the Contract Documents, and shall make good all Work damaged or destroyed thereby.

**5.12.1** Contractor shall, without charge, replace any material or correct any workmanship found by the Owner or Architect/Engineer

not to conform to the Contract Documents, unless in the public interest the Owner consents in writing to accept such material or workmanship with an appropriate adjustment in the Contract Sum. Contractor shall promptly correct all Work rejected by the Owner or Architect/Engineer as defective or as failing to conform to the Contract Documents, whether observed before or after the Date of Substantial Completion or final inspection and acceptance and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the architectural/engineering services and expenses made necessary thereby. The Owner shall have the right to operate equipment until defects are corrected and warranties are met and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

**5.12.2** If Contractor does not promptly replace rejected material or correct rejected workmanship, the Owner may, 1) by contract or otherwise, replace such material or correct such workmanship and charge the cost and administrative costs thereof to Contractor, or 2) terminate Contractor's employment in accordance with paragraph 4.4, Contract Termination.

**5.12.3** If any portion of the Work is covered contrary to the instructions of the Owner or Architect/Engineer or to the requirements specifically expressed in the Contract Documents, it must be uncovered for observation and recovered at Contractor's expense without change in the Contract Time.

**5.12.4** If any other portion of the Work has been covered which the Owner or Architect/Engineer has not specifically requested to observe prior to being covered, either may request to see such Work and it shall be uncovered by Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and recovering shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, Contractor shall pay such costs.

**5.13 ROYALTIES AND PATENTS:** Contractor shall pay all royalties and license fees, and defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such royalties and license fees and loss when a particular design or process, or the product of a particular manufacturer or manufacturers is specified; provided, however, if Contractor has reason to believe the design, process or product specified constitutes an infringement of a patent, he shall be responsible for such royalties, license fees and loss unless he promptly gives such information to the Owner and the Architect/Engineer in writing.

**5.14 EQUAL MATERIALS:** It is not the intent of the Specifications to limit materials to the product of any particular manufacturer. Where materials, equipment and/or fixtures have been specified by name, manufacturer or catalog number, it has been done so as to set a standard of quality and as to application, physical conformity, and other characteristics. It is not the intention to discriminate against or prevent any dealer, jobber or manufacturer from furnishing materials, equipment, and/or fixtures which meet or exceed the characteristics of the specified items. Substitution of materials shall not be made without prior written approval of the Owner and the Architect/Engineer.

**5.14.1** Contractor shall be responsible for any additional costs or delays resulting from having furnished materials, equipment or fixtures other than those specified, and shall reimburse the Owner for any increased design costs resulting from such substitutions.

**5.14.2** The Owner in consultation with the Architect/Engineer shall be the final judge of whether a proposed substitution meets or exceeds the characteristics of a specified item. Decisions of the Owner relative to the equality of items proposed as substitutes for specified items shall be final and conclusive.

## **5.15 SHOP DRAWINGS AND SAMPLES:**

**5.15.1** Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by Contractor or any subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

**5.15.2** Samples are physical examples furnished by Contractor to illustrate materials, equipment or workmanship, and to conform to standards by which the Work will be judged.

**5.15.3** Contractor shall submit, with reasonable promptness and in orderly sequence, all Shop Drawings and Samples required by the Contract Documents, or subsequently required by the Architect/Engineer as covered by Contract modifications. Contractor shall review, approve, and check for compliance with Contract Documents and shall certify that he has done so by stamp or otherwise affixed to each copy thereof. Submittal data presented without such certification will be returned without review or other comment, and any delay resulting therefrom will be Contractor's responsibility.

**5.15.3.1** Contractor shall, within twenty (20) calendar days after receipt of the Notice to Proceed, submit to the Owner through the Architect/Engineer four (4) copies of a schedule listing all items that shall be furnished for review and approval by the Owner and/or the Architect/Engineer. The submittal schedule shall also list all items that are to be reviewed and approved by Contractor.

.1 The submittal schedule shall include, among other things, shop drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, etc.

.2 The submittal schedule shall indicate the type of item, contract requirements reference, Contractor's scheduled dates for submitting the above and like items and the projected need dates for approval answers from the Owner or the Architect/Engineer and the projected or actual dates for procurement. The submittal schedule shall show a minimum of fifteen (15) calendar days after receipt for review and approval by the Owner and Architect/Engineer, and if resubmittal is required, an additional fifteen (15) days will be allowed for approval after receipt. Contractor will revise and/or update the submittal schedule as appropriate, and submit same with each payment estimate.

.3 The submittal schedule shall be coordinated with the submitted progress schedule for all the Work. Contractor shall revise and/or update the schedule weekly to insure consistency with the progress schedule. Such revised submittal schedules shall be provided to the Owner in four (4) copies.

**5.15.4** Shop Drawings and Samples shall be properly identified, as specified or as the Owner and/or the Architect/Engineer may require. At the time of submission, Contractor shall inform the Owner and the Architect/Engineer in writing of all deviations in the Shop Drawings or Samples from the requirements of the Contract Documents.

**5.15.5** By submitting Shop Drawings and Samples, Contractor thereby represents that he has determined and verified all field measurements, capacities, field construction criteria, materials, catalog numbers and similar data, or will do so, that he has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents.

**5.15.6** The Architect/Engineer, or the Owner as required by the Contract Documents, will review the Shop Drawings and Samples with reasonable promptness, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The review of a separate item shall not indicate approval of an assembly in which the item functions. The review of the Shop Drawings or Samples shall not relieve Contractor of responsibility for any deviation from the requirements of the Contract Documents unless Contractor has informed the Owner and the Architect/Engineer in writing of all such deviations at the time of submission and the Owner or the

Architect/Engineer has not objected to the specific deviation. The review shall not relieve Contractor from responsibility for errors or omissions or subsequent coordination in the Shop Drawings or Samples. The Architect's/Engineer's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Architect's/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**5.15.7** Contractor shall make any corrections required and shall resubmit the required number of corrected copies of the Shop Drawings or new Samples of materials until approved. Contractor shall direct specific attention in writing to any new revisions other than the corrections requested on previous submissions.

**5.15.8** No portion of the Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved. All such Work shall be in accordance with approved Shop Drawings, Samples, and submittals.

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

**5.15.10** Contractor shall review, approve, check and submit to the Architect/ Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.

**5.16 CLEANING:**

**5.16.1** Contractor shall at all times keep the Site clean and free from accumulation of waste materials or rubbish caused by the Work under his Contract.

**5.16.2** Upon completion of the Project, and prior to the final inspection, Contractor shall have the premises in a neat and clean condition. Contractor shall clean all glass and bright metal surfaces, including but not limited to smudges, overspray and fingerprints; shall "touch-up" paint, broom clean, mop, sanitize, vacuum, sand, buff, wax, polish, oil, or coat in an appropriate manner all other surfaces and equipment and leave all surfaces and equipment smooth and uniform, free from dirt, dust, excessive paint or liquids, or imperfections, blemishes, or marks. If Contractor fails to clean up at the completion of the Work, the Owner may do so and the cost thereof shall be charged to Contractor.

**5.17 INDEMNIFICATION:**

**5.17.1** Contractor, in performing its obligations under this Contract, is acting independently and the Owner assumes no responsibility or liability to third parties for Contractor's acts or omissions.

**5.17.2** To the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless the Owner and the Architect/Engineer and their agents and employees from and against all claims, lawsuits, judgments, damages, losses and expenses, including but not limited to legal fees and disbursements paid or incurred to defend any such claims, as well as legal fees and disbursements paid or incurred in connection with enforcing the provisions of this paragraph, arising out of or resulting, either directly or indirectly, in whole or in part, from the performance of the Work, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent or willful act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of

indemnity which would otherwise exist as to any party or person described in this paragraph. Contractor's obligations under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor pursuant to any insurance coverage.

**5.17.3** In the event of joint and concurrent negligence of both Contractor and the Owner, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas; without, however, waiving any governmental immunity available to the Owner under Texas law and without waiving any defense of the parties under Texas law.

**5.17.4** The obligations of Contractor within paragraph 5.16 shall not extend to indemnity from liability for damage of the Architect/Engineer, his agents or employees that: (1) is caused by or results from defects in plans, designs or specifications prepared, approved or used by the Architect/Engineer or the negligence of the Architect/Engineer in the rendition or conduct of professional duties called for or arising out of this Agreement and the plans, designs or specifications that are a part of the Contract Documents; and (2) arises from personal injury or death, property damages or any other expense that arises from personal injury, death or property injury.

**5.18 ALLOWANCES:**

**5.18.1** Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amount and by such persons or entities as the Owner may direct, but Contractor shall not be required to employ persons or entities to which Contractor makes reasonable objection. Unless otherwise provided in the Contract Documents:

.1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

.2 allowances shall cover the cost to Contractor of materials and equipment delivered at the Site, less applicable trade discounts;

.3 Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;

.4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 5.17.1.2 and (2) changes in Contractor's costs under Clause 5.17.1.3.

**5.19 AUDITABLE RECORDS:** The Owner may audit the performance of the Contract by Contractor and his subcontractors to verify the accuracy and appropriateness of payments made and procedures employed in connection with such performance. Accordingly, Contractor and his subcontractors shall maintain all accounts and records pertaining to their performance of the Contract as may reasonably be required by the Owner for audit purposes. Contractor and his subcontractors shall, at any reasonable time during the contract term and for a period of not less than four years following final payment for the completed Work and settlement of any and all claims associated with performance of the Contract, afford the Owner's agents and auditors reasonable facilities and access for the examination and audit of their records and shall, upon request by the Owner, produce and exhibit all such records. Contractor shall ensure that a provision to such effect is included in all subcontracts for Work performed under this Contract.

**ARTICLE VI. CONTRACT CHANGES**

**6.1 CHANGE ORDERS** : A Change Order is a written order to Contractor signed by the Owner and the Architect/Engineer issued after execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum or the Contract Time. It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may or may not be complete or free

from errors, omissions and imperfections or require changes or additions in order for the Work to be completed to the satisfaction of the Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or addition to same or to the Work ordered by the Owner and any resulting delays in the Work or increases in Contractor's costs and expenses, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of contract, quantum meruit, or otherwise; provided, however, that the Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise in any way incident to, arising out of, or resulting directly or indirectly from the Work performed by Contractor under such Change Order.

**6.1.1** The Owner, without invalidating the Contract and without approval of the Surety, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. All Change Orders shall be in writing.

**6.1.1.1** Any other written order or oral order (which terms as used in this paragraph shall include direction, instruction, interpretation, or determination) from the Architect/Engineer or the Owner shall be treated as a Change Order under this clause only if Contractor gives the Owner written notice within twenty (20) days stating the date, circumstances and source of the order, and that Contractor regards the order to be a Change Order.

**6.1.1.2** The Owner may, in writing, issue a notice to proceed for any portion of the Work in a Change Order for which final adjustment in Contract Sum and/or Contract Time has not been finalized. The Notice to Proceed letter may have a not-to-exceed cost amount for any or all portions of the Change Order. This amount is not to be exceeded without prior written approval by the Owner.

**6.1.2** If Contractor intends to assert a claim for an adjustment of cost or time over and above any adjustment already being granted in a Change Order, he must, within twenty (20) calendar days after receipt of a written Change Order, or oral or written order to proceed with a proposed change under paragraph 6.1.1.2, or the furnishing of a written notice under paragraph 6.1.1.1, submit to the Owner a written statement setting forth in detail the nature and monetary extent of such claim. Contractor shall certify that the claim is made in good faith and that the supporting data is current, accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which Contractor believes the Owner is liable. Failure to certify a claim will result in a determination that no claim has been filed. The twenty-day period of time for submission of such claim may be extended only by written agreement signed by the Owner. Except for claims based on defects in Specifications furnished by the Owner, no claim for any change under paragraph 6.3.1 shall be allowed for any costs incurred more than twenty (20) days before Contractor gives written notice as therein required; provided that, in the case of defects in Specifications furnished by the Owner, the adjustment in cost shall include only those increased direct costs reasonably and necessarily incurred by Contractor as a result of such defective Specifications.

**6.1.3** Except as provided above, no order, oral statement, or direction of the Owner or its duly appointed representative shall be treated as a change under this Article or entitle Contractor to an adjustment thereunder.

**6.1.4** Contractor agrees that the Owner or any of its duly authorized representatives shall have access and the right to examine any

directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all his subcontracts a provision to the effect that the subcontractor agrees that the Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor relating to any claim from the Contract, whether or not the subcontractor is party to the claim. The period of access and examination described herein which relates to appeals under the "Disputes" paragraph of this Contract, litigation, or the settlement of claims arising out of the performance of this Contract shall continue until final disposition of such claims, appeals or litigation.

**6.2 UNIT PRICES:** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Contract Documents.

**6.2.1** Each unit price bid by Contractor shall include all costs applicable to the Work, including but not limited to mobilization, demobilization, labor, materials, equipment, supervision, delays, overhead at any level, and profit.

**6.2.2** Either party may request an equitable adjustment of the unit prices. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred and fifteen percent (115%) or below eight-five percent (85%) of the originally specified amount. If the quantity variation causes an increase in the time necessary for completion, the Owner, upon receipt of a written request for an extension of time within thirty (30) days from the recognition of the variation or within such further period of time as may be granted by written agreement signed by the Owner, will ascertain the facts and make such adjustment for changing the completion date as, in its judgment, the findings justify.

### **6.3 CLAIMS FOR ADDITIONAL COSTS:**

**6.3.1** If Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner and the Architect/Engineer written notice thereof, on a form approved by the Owner, as soon as practical after the occurrence of the event giving rise to such claim. **This notice shall be given by Contractor before proceeding to execute the Work, except in an emergency endangering life or property.** No such claim shall be valid unless so made and Contractor hereby waives all claims for which such notice is not properly given. If the Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by administrative procedures as provided in Paragraph 5.2.1. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

**6.3.2** If Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation of the Contract Documents, (2) any order by the Owner to stop the Work pursuant to Paragraph 4.4.2 where Contractor was not at fault, or (3) any written order for a minor change in the Work issued pursuant to Paragraph 6.5, Contractor shall make such claim as provided in Paragraph 6.3.1.

**6.3.3** Any claim should contain the following elements: (1) an analysis of the relevant Contract provisions, (2) a description of the facts, (3) a statement of why the particular facts warrant compensation under the terms of the Contract, (4) supporting cost or pricing data on a form furnished and approved by the Owner, (5) legal analysis, if appropriate, (6) expert opinion, if appropriate, (7) certification, and (8) a format request for decision. All direct costs should be accurately presented in the claim, i.e., labor should come from payrolls, equipment from equipment reporting forms and materials should be based on invoices.

**6.3.4** The certification shall certify that the claim is made in good faith, that the supporting data is current, accurate and complete to the best of Contractor's knowledge and belief, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the Owner is liable.

**6.3.5** Failure to certify the claim will result in a determination that no claim has been filed.

**6.4 CLAIMS FOR ADDITIONAL TIME:** Contractor shall make claims for additional time and time-related damages in accordance with Article VIII.

**6.5 MINOR CHANGES:** The Architect/Engineer, with concurrence of the Owner, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly.

**6.6 BAR TO CLAIMS:** No claim shall be allowed for an adjustment under this or any other provision of the Contract if asserted after final payment under this Contract.

**6.7 ADMINISTRATIVE PROCEDURES FOR CHANGE ORDERS:**

**6.7.1 Lump Sum Bid:**

**6.7.1.1** In responding to a request for a proposed price for a change in the Work, or in submitting a claim, Contractor shall furnish a lump sum proposal supported by a complete breakdown as described hereafter, on a form and in the number of copies approved by the Owner, indicating the additional Work and the corrective Work, also indicating the estimated or actual cost to Contractor for performance of the changed Work, including the applicable percentage of overhead and profit described hereafter. Any request for a time extension must be justified and presented in adequate detail, including a critical path analysis if requested by the Owner, showing how the proposed change will impact the critical path and will delay the final Contract Completion Date, to permit evaluation.

.1 The proposal for the adjustment of Work, whether performed by Contractor or a Subcontractor, shall contain the following items:

a. Estimated cost, using any discounts to the trades of the materials and supplies used, which shall be itemized completely to include unit cost, quantity and total cost.

b. Estimated wages, including only the actual fringe benefits calculated on an hourly basis (excluding car allowance) required by agreement or custom and workers' compensation insurance paid for skilled, semi-skilled or unskilled hourly labor performing the additional Work, which shall be itemized completely to include trade(s), hourly rate(s), number of hours and total cost. Such wages shall include labor required for performance of the changed Work only. A working foreman may be included; all other supervisors, non-hourly labor shall be excluded and shall be considered as a part of field supervision. Labor for supporting services, including but not limited to safety provisions, layout, and trash removal, clerk of the works, secretarial or accounting, shall be excluded and shall be considered as a part of overhead.

c. Estimated cost to Contractor for additional construction equipment used solely on the Change Order Work, to include rental rates or owned equipment rates for such items of equipment while in use, which shall be itemized completely to include type(s), the number(s) of each, hourly rate(s), number of hours and total cost. Equipment which is used regularly at the job shall be used in Change Order Work at no extra charge. Rental or owned equipment rates shall be no greater than those established by the Association of General Contractors for the local area. Unnecessary idle time (failure to return rental equipment when less expensive), and time when the equipment is used on other portions of the Project shall not be charged to the Owner. As used herein,

the terms "construction equipment" and "equipment" shall include wheeled vehicles and small tools.

d. Estimated untimely or unscheduled transportation costs for delivery and handling of materials and supplies, bringing to and removing from the additional construction equipment and/or new items of installed equipment, if applicable, which shall be itemized separately.

e. Estimated off-site storage costs in excess of thirty (30) calendar days for new items of installed equipment, if applicable.

f. The percentage permitted to be added to the total sum of a, b, c, d, and e above, to cover all field supervision (including superintendents), use of other tools and equipment already on the job as necessary for performance of the Change Order Work, field and general home office services and expenses, interference with other Work, adjustments to progress schedules and all other overhead (indirect expenses including bonds and general business insurance) and profit, shall be fifteen percent (15%).

g. To the total cost proposed for the Change Order Work which is the sum of a, b, c, d, e, and f above, may be added the net cost of the following, if applicable: Social Security, Old Age Pension and/or other taxes of like nature imposed upon the subcontractor or Contractor (when he performs the Work) by the State or Federal Government, or both, which are incident solely to such Change Order Work and which Contractor would be required to pay if or as he performs the Work.

.2 To the amount of the adjustment of the subcontractor(s) as listed under Paragraph 6.7.1.1 above, Contractor will be allowed to add a percentage of five percent (5%) to cover all overhead (indirect) expenses and profit, including supervision, small tools, general business insurance and bonds. It is to be expressly understood that when Contractor orders and takes delivery of the materials and performs the Work with his own forces and there is no subcontractor involved, Contractor will be allowed the 15% markup heretofore described and the 5% markup is then not applicable.

.3 In cases where changes in the Work result in a credit to the Owner, the credit shall be limited to direct costs plus five percent (5%). In cases where a change in the Work results in both credits and charges to the Owner, Contractor will be allowed to add the overhead and profit percentages indicated in 6.7.1.1.1 and 6.7.1.1.2 to the net charge based upon the amount by which the total of direct charges exceeds the total of the direct costs of the credits.

**6.7.2 Submission Time:** Contractor's proposals for changes in the Contract Sum or Contract Time for Change Order Work shall be submitted within twenty (20) calendar days of the Owner's or Architect's/Engineer's written request for same, unless the Owner or Architect/Engineer extends such period of time due to the circumstances involved. If such proposals are not received timely, or if such proposals are not acceptable to the Architect/Engineer and/or the Owner, or if the changed Work should be started immediately to avoid damage to the Project or to avoid costly delay, the Owner may, at its discretion and in the interest of prosecuting the Work to timely completion, direct Contractor to proceed with the changed Work without waiting for Contractor proposals or other cost and/or time estimates to be developed or the formal Change Order to be issued. In the case of an unacceptable Contractor proposal, the Owner's direction to proceed with the changed Work shall be based on "a price not to exceed" Contractor's lump sum proposal. The estimated cost plus the marked up percentage shall be determined at a later date in accordance with these articles and said procedure shall be known as "PDL-NTE" (Price Determined Later - Not to Exceed). Such directions as may be given to Contractor by the Owner under the above procedure, if given orally, shall be confirmed in writing within seven (7) calendar days. The cost or credit and time adjustments will be determined through negotiation as soon as practicable thereafter and incorporated in a Change Order to the Contract. Prior to such negotiations, Contractor shall keep separate costs on Change Order Work done up to that point.

**6.7.3 Processing:** The Owner will undertake to formally process Owner-Contractor agreed Change Orders within twenty (20) calendar days of agreement, provided the Contingency Allowance, if included within the Contract Documents, is not exceeded. In those cases where Change Order Work exceeds \$10,000, approval of Owner's governing body may be necessary and, if such approvals are necessary, the Owner will have sixty (60) additional calendar days to process such agreed Change Orders.

**6.7.4 Unilateral Change Order:** In the event that the Owner and Contractor fail to agree on the terms of a Change Order, the Owner may issue a unilateral Change Order, which is a Change Order issued by or at the direction of the Owner without the full and timely agreement of Contractor.

**6.7.4.1** A Unilateral Change Order may be issued before, during or after changed Work is accomplished, under the following conditions:

a. Contractor fails to submit a timely price and/or time extension proposal for the changed Work.

b. Negotiation fails to achieve an agreed price and/or time extension, or there remains a disagreement concerning any part of the changed Work.

c. Contractor fails or refuses to execute timely a Change Order by affixing his signature thereto.

d. The Owner notifies Contractor in writing that the Change Order is unilateral and is an effective change to the Contract. A notation will be made on the face of the Change Order that it is unilateral and the effective date thereof. Normal distribution of copies will then be made.

**6.7.4.2** The terms of a unilateral Change Order including the change in Contract Sum and/or Completion Date shall be determined by the Owner with the assistance of the Architect/Engineer and shall, in the Owner's judgment, be fair and reasonable.

**6.7.4.3** When a unilateral Change Order has been issued, it will have the full force and effect of a Contract modification. It will be included in schedules, payment estimates, reports and all official records of the Contract. The issuance of a unilateral Change Order will not prejudice any of Contractor's rights to make claims or to appeal disputed matters under other provisions of this Contract.

**6.7.4.4** If Contractor objects to a unilateral Change Order, he shall state in writing his specific objections to or specific points of disagreement with the Work described in the unilateral Change Order within twenty (20) days of receipt of such Change Order. Failure to file a timely objection constitutes waiver of any claim related to the Change Order.

**6.7.5 Notice to Proceed with Change Order Work:** It is recognized that time is often of the essence in the execution of Change Order Work. Accordingly, in such instances, the Owner will issue written notices to proceed with the Change Order Work while the formal Change Order is still being processed. Contractor will comply with these notices to proceed on the representation that formal confirming Change Orders will be issued.

## **ARTICLE VII. CONTRACT PAYMENTS**

**7.1 CONTRACT SUM BREAKDOWN:** Upon execution of the Contract by the Owner and Contractor, Contractor shall submit to the Owner and the Architect/Engineer for written approval by the Owner and Architect/Engineer a breakdown ("Schedule of Values") of the Contract Sum, a schedule of Work itemizing material and labor for the various classifications of the Work, and the timing to the completion of installation of that material and equipment, which timing shall not exceed the time limits current under the Contract Documents. The breakdown will be used as the basis for the progress payments of the Contract. The Owner reserves the right to

adjust the Schedule of Values to reflect an accurate distribution of values.

**7.1.1** No progress payments will be made prior to receipt and approval of the Schedule of Values, which shall be in such detail as may be required by the Owner. The Schedule of Values shall be submitted to the Architect/Engineer and the Owner not less than twenty (20) days prior to the first request for payment, and this shall be a condition precedent to the processing of the first payment. The Schedule of Values shall follow the completion of tasks and delivery of major materials and equipment as indicated on the critical path and bar chart of the various trade divisions of the Specifications and each item thereunder shall include its pro rata part of overhead and profit so that the sum of the items will equal the Contract Sum. Each item shall be assigned labor or material values, or both, the subtotal thereof equaling the value of the Work in place when completed.

**7.1.2** Contractor shall submit with the Schedule of Values a copy of all worksheets used in preparation of his bid, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid.

**7.2 PROGRESS PAYMENTS:** On or before the 25th of each month, Contractor shall submit an Application for Payment to the Architect/Engineer. In preparing Applications, all material delivered and labor performed shall be included in the progress upon which payment is based. However, payment for materials will not be made prior to approval of materials for which submission and approval is specified. Furthermore, stored materials will be paid for on the basis of invoice price. If the Owner so requires, Contractor, in requesting payment for materials, shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials. Items requiring testing/inspection shall have their written reports submitted to the Architect/Engineer before they may be submitted for payment. Seven-day strength test results on concrete shall be acceptable as a basis for the Application. Estimates will be made on completed tasks whenever possible, or upon agreed upon payment periods, and shall reflect the amounts or percentages in the Schedule of Values.

**7.2.1** An Application may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

**7.2.2** Such Applications may not include requests for payment of amounts Contractor does not intend to pay to a subcontractor or material supplier because of a dispute or other reason.

**7.2.3** Contractor warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**7.2.4** Administrative actions and submittals that shall precede or coincide with each Applications include:

- .1 current photographs of the Work as specified;
- .2 copies of the changes in the record documents;
- .3 copies of the daily reports and job minutes;
- .4 subsequent insurance certificates as required herein;
- .5 test or retesting results or reports on the materials and completed Work;
- .6 changes in the construction schedule and critical path as it may impact change orders or completion;
- .7 outstanding submittals as are deemed necessary by the Architect/Engineer; and
- .8 the percentage being used by each new subcontractor to calculate the insurance and taxes on the various types of laborers for the basis of

calculating and/or verifying Change Orders.

**7.2.5** Each Application shall be accompanied by an affidavit signed by Contractor that there are no known liens or claims thereof outstanding at the date of the Application, that all bills or obligations for which funds were requested in all previous Applications have been paid, and that, except for such bills not paid but so included, there is no known basis for the filing of any claim on the Work, and that waivers from all subcontractors and materialmen have been obtained in such form as to constitute an effective waiver under the laws of the State of Texas, and all payrolls, bills for labor, materials, equipment, or other indebtedness will be paid within the period of time required by Texas Government Code Chapter 2251.

**7.2.6** Applications for Payment must be on a form provided by the Owner and signed by a corporate officer or a representative specifically named by Contractor.

**7.2.7** At least five days prior to the submission of each Application for Payment, beginning with the second Application, Contractor shall furnish to the Owner upon the Owner's request a detailed statement accounting for the disbursement of funds received from the Owner on the previous Application. Such statement shall include the status of subcontractors' accounts and shall itemize all disbursements to subcontractors and suppliers.

**7.2.8** Architect/Engineer will, within seven (7) days after the receipt of Contractor's Application for Payment, either issue a Certificate for Payment to the Owner, with a copy to Contractor, for such amount as the Architect/Engineer determines is properly due, or notify Contractor in writing his reasons for withholding a Certificate as provided herein. After the Architect/Engineer has issued a Certificate for Payment, once each calendar month, the Owner shall make a progress payment to Contractor.

**7.2.9** Owner may withhold or, on account of subsequently discovered evidence, nullify that part of any Certificate to such extent as may be necessary to protect the Owner from loss on account of:

- .1 defective Work not remedied; or
- .2 damage to Work of another Contractor; or
- .3 failure to maintain scheduled progress; or
- .4 persistent failure to carry out the Work in accordance with the Contract Documents; or
- .5 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .6 reasonable evidence that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the Work, in which event no additional payments will be due to Contractor under this Contract until and unless Contractor, at his sole cost, performs a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is determined by the Architect/Engineer to be sufficient to so complete the Work; or
- .7 assessment of fines for violations of Prevailing Wage Rate Laws; or
- .8 failure of Contractor to make payments properly to subcontractors or for labor, materials or equipment; or
- .9 failure to submit the documents as required by the Owner as specified herein and in other provisions of the Contract Documents.

When the above reason(s) for withholding or nullifying the certification are removed, certification will be made for amounts previously withheld.

**7.2.10** Owner shall retain five percent (5%) of the amount of each approved application for payment until thirty (30) days after Final Completion and acceptance of all Work covered by this Agreement. When a subcontract has a value of less than \$100,000, the Owner reserves the right, in its sole discretion, to make partial release of amounts retained to permit payment in full to a Subcontractor(s) after completion of the Subcontractor's portion of the Work.

**7.2.11** All material and Work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract

**7.2.12** Payments to Contractor shall not be construed to release Contractor or his Surety from any obligations under this Contract.

**7.2.13** Contractor shall use all sums advanced to him pursuant to this Contract solely for the purpose of performance of the Work in accordance with the Contract Documents.

**7.2.14** Progress payments, occupancy or use of the Work, whether in whole or in part, do not constitute acceptance of Work not in accordance with Contract Documents.

**7.2.15** The provisions of Texas Government Code Chapter 2251 apply to payments under this Contract. Payments to all major subcontractors, materialmen and other parties furnishing labor and materials in connection with performance of the Work shall be accompanied by a partial release of claim covering all sums due through the effective date of such previous Application for Payment from each party in the form approved by the Owner.

**7.2.16** The Owner or Architect/Engineer may, on request and at their discretion, furnish to any Subcontractor, if practicable, information regarding the percentage of completion or the amounts applied for by Contractor and the action taken thereon by the Architect/Engineer on account of Work done by each such Subcontractor.

**7.2.17** After Substantial Completion of the Work, the Owner shall, upon application by Contractor, approved by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Article III, such payment shall be made under the terms and conditions governing final payment, and shall not constitute a waiver of claims. Any request for reduction or release of retainage shall be accompanied by written consent of Contractor's Surety.

**7.2.18** Final payment shall be made after completion of the Work by Contractor in accordance with the Contract Documents. As a condition of receipt of final payment, Contractor and all subcontractor and suppliers shall submit a full and final release of claims for all sums due under their respective contracts, purchase orders or other agreements; provided, however, that no provision hereof shall be construed to require the Owner or the Architect/Engineer to see to it that monies advanced to Contractor are properly disbursed or applied.

## **ARTICLE VIII. CONTRACT COMPLETION TIME**

**8.1 WORK PROGRESS SCHEDULE:** Within three (3) weeks after receipt of a Notice to Proceed, if requested by the Owner, Contractor shall submit in duplicate to the Owner and the Architect/Engineer for review an estimated progress schedule for the Work in relation to the entire Project, which shall not exceed time limits current under the Contract Documents, and which shall be revised at appropriate

intervals as required by the conditions of the Work and Project, and shall provide for expeditious and practical execution of the Work. This schedule shall indicate the dates for starting and completing the various classifications of construction. By executing the Owner-Contractor Agreement, Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**8.1.1** Contractor shall provide the critical path scheduling and monthly updating or as required by the Owner thereof and other necessary schedules in the interest of completing the Work in the most expeditious and economical manner. The parties acknowledge and agree that notwithstanding any theoretical delays or theoretical extensions of time for completion as may be shown on any critical path schedules or printouts, the completion dates for the Project shall be governed by the Agreement and shall only be extended in accordance with the procedures set forth for same in Paragraph 8.2.

**8.1.2** Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article II to be furnished by Contractor. Unless the Date of Commencement is established by a Notice to Proceed given by the Owner, Contractor shall notify the Owner in writing of the date Work shall begin on the project before commencing the Work.

**8.1.3** Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the Contract Time.

## **8.2 DELAYS AND EXTENSIONS OF TIME:**

**8.2.1** Contractor may be granted an extension of time because of changes ordered in the Contract or because of strikes not caused by Contractor or his forces, lockouts, fire, unusual delay in transportation, unavoidable casualties, national emergencies, inclement weather in excess of the amount allowed in the Contract Documents, or any cause beyond Contractor's control which constitute a justifiable delay upon items on the critical path, or which subsequently become part of the critical path, due to insufficient slack time. The Owner will extend the time subject to the following provisions.

**8.2.2** Claims for extensions of time must be made in writing within seven (7) calendar days after the occurrence of the delay. All time extension claims shall be supported by sufficient written evidence, including evidence of how the delay impacts the critical path, to justify the claim. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days. In case of claims for extension of time because of inclement weather, such extension of time shall be granted only because such inclement weather prevented the execution of major critical items of Work which will subsequently delay the Final Completion of the Contract.

**8.2.2.1** The Owner's representative shall ascertain the facts and the extent of the delay and extend the time for completing the Work when, in his judgment, the findings justify such an extension of contract time. The findings of the Owner's representative are final and conclusive on both parties and subject only to appeal as provided in Article 5.2.1.

**8.2.3** Contractor shall have no claim for compensation or damages for delays or hindrances to the Work occasioned by any act or omission of the Architect/ Engineer or the Owner or its representatives, other provisions of the Contract notwithstanding, and further agrees that he shall be fully compensated for all delays solely by an extension of time. Except for Contractor's right to terminate this Contract pursuant to the provisions of the General Conditions, Contractor's sole remedy for any delay by either party shall be an extension or extensions of time as set forth in this article, unless the same shall have been caused by acts constituting intentional interference by the Owner with Contractor's performance of the Work and to the extent that such acts continue after Contractor's notice to the Owner of such intentional interference. The Owner's exercise of any of its rights under Article 6 hereof,

regardless of the extent or number of such changes, or the Owner's exercise of any of its remedies of suspension of the Work, or requirement of correction or re-execution of any defective Work, shall not, under any circumstances, be construed as intentional interference with Contractor's performance of the Work.

**8.2.4** No extension of time shall release Contractor or the Surety furnishing a Performance or Payment Bond from all obligations thereunder, which obligations shall remain in full force until the discharge of the Contract.

**8.3 COMPLETION OF WORK:** Contractor shall be held to account for the Work being completed within the Contract Time.

**8.3.1** If, in the judgment of the Owner, the Work is behind schedule and the rate of placement of Work is inadequate to regain scheduled progress so as to insure timely completion of the entire Work or a separable portion thereof, Contractor, when so informed by the Owner, shall immediately take action to increase the rate of Work placement. This increase shall be accomplished by any one or a combination of the following or other suitable measures:

- .1 an increase in working forces;
- .2 an increase in equipment or tools;
- .3 an increase in hours of Work or number of shifts; and/or
- .4 expedited delivery of materials.

**8.3.2** Contractor shall, within ten (10) calendar days after being so informed, notify the Owner of the specific measures taken and/or planned to increase the rate of progress, together with an estimate as to when scheduled progress will be regained. Should the plan of action be deemed inadequate by the Owner, Contractor will take additional steps or make adjustments as necessary to his plan of action until it meets with the Owner's approval. The increased rate of Work will continue until scheduled progress is regained. Scheduled progress will be established from the latest revised accepted progress schedule for the job. Timely completion will be understood to be the Contract completion date as revised by all time extensions granted at the time acceleration is undertaken. Contractor shall not be entitled to additional compensation for the additional effort he applies to the Work under the terms of this subparagraph.

**8.3.3** In the event that the Owner has specified a stipulated completion date, and in the event of delay(s) fully beyond Contractor's control, the Owner may authorize by Change Order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

**8.4 FAILURE TO COMPLETE WORK ON TIME:** The time set forth in the Contract for the completion of Work is an essential element of the Contract. Contractor's failure to complete the Work within such time will cause damage to the Owner.

**8.4.1** The time specified for completion in the Agreement shall cover final cleanup of the premises and completion of punch list deficiencies.

**8.4.2** In the event of delay in performance of the Work by Contractor, Contractor and its Surety acknowledge that it would be difficult, if not impossible, to determine the actual damages to the Owner. Consequently, the parties agree that as liquidated damages, and not as a penalty, the Contractor shall pay to the Owner the sums set out in Section 12.6 herein for each day that the Contractor fails to complete the Work within the Contract Time. Such payment is in addition to, and not in lieu of, any other rights or remedies of the Owner against the Contractor as a result of any breach of this Agreement. It is hereby agreed that the liquidated damages to which Owner is entitled hereunder are a reasonable forecast of just compensation for the harm that would be caused by Contractor's failure to achieve Final Completion of the Work within the Contract Time.

## **ARTICLE IX. CONTRACT SUBSTANTIAL COMPLETION**



**9.1 CERTIFICATION:** When Contractor considers the Work complete, or a portion thereof which the Owner agrees to accept separately, Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of items to be completed or corrected. Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of Contractor's list, the Architect/Engineer and the Owner will make a pre-final inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's/Engineer's inspection discloses any item, whether or not included on Contractor's list, which is not in accordance with the requirements of the Contract Documents, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect/Engineer. Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, operation of permanent equipment, transfer of contracted services and insurance, and shall fix the time within which Contractor shall refinish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

**9.1.1** Prior to the pre-final inspection, Contractor shall furnish to the Owner all instructional manuals, as-built record documents, test reports, maintenance manuals, parts catalogs, wiring diagrams, operational manuals, spare parts, specified written warranties and like publications or parts for all installed equipment, systems and like items. If Contractor does not furnish these requirements and the Owner must of necessity otherwise obtain this information and data, the costs for this procurement will be deducted from payments due Contractor.

**9.1.2** Prior to the pre-final inspection, Contractor shall furnish the following:

- .1 Schedule of the time and areas to be inspected.
- .2 Demonstration of all equipment and completion of all systems.
- .3 Training of supervisory personnel.

**9.1.3** All time limits stated in the Contract Documents are of the essence of the Contract.

**9.2 ADDITIONAL INSPECTION COSTS:** Contractor shall be charged with any cost for re-inspection resulting from substantial differences between Contractor's list of items to be completed or corrected and the list of items resulting from the pre-final inspection.

**9.3 OCCUPANCY OR USE:** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. If the Owner occupies a portion of the structure prior to Substantial Completion, the utilities and operating

costs associated with the occupied portion shall be prorated on a square foot basis or other equitable means and shall be paid to Contractor as a Change Order. In the event the Owner takes occupancy before Final Completion, the responsibilities as indicated in Paragraph 9.1 shall remain with Contractor until the date of Final Completion, and the cost of utilities and the other associated operating costs attributable to Contractor for use of the project from the date of Substantial Completion to the date of Final Completion, shall be credited on an equitable means to the Owner in the form of a Change Order to be issued prior to Final Payment.

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

## **ARTICLE X. CONTRACT FINAL ACCEPTANCE AND PAYMENT**

**10.1 NOTIFICATION:** When the Work is finally completed, Contractor shall notify the Architect/Engineer and the Owner in writing that the Work will be ready for final inspection on a definite date. Upon verification by the Architect/Engineer and the Owner that the Work is ready for final inspection and acceptance, the Owner and Architect/Engineer will, within (10) calendar days, make a final inspection and, when the Work is found acceptable under the Contract Documents and the Contract is fully performed, the Owner will make final payment to Contractor.

**10.2 FINAL PAYMENT DOCUMENTATION:** Neither the final payment nor the remaining retained percentage shall become due until Contractor submits to the Architect/Engineer for transmittal to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible or will be paid or otherwise satisfied within thirty (30) days after receipt of final payment from the Owner, or within the period of time required by Texas Government Code Chapter 2251, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of Surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any subcontractor refuses to furnish a release and waiver required by the Owner, Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against any such claim. If any such claim or lien remains unsatisfied after all payments are made, Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such claim or lien, including all costs and reasonable attorneys' fees.

**10.3 FINAL PAYMENT:** The making of final payment shall constitute a waiver of all claims by the Owner except those arising from: (1) faulty or defective Work; (2) failure of the Work to comply with the requirements of the Contract Documents; (3) terms of any special warranties required by the Contract Documents; or (4) liens, claims, security interests or encumbrances arising out of the Contract that are unsettled. Acceptance of final payment shall constitute a waiver of all claims by Contractor except those specifically enumerated at the time of the final Application for Payment.

## **ARTICLE XI. CONTRACT WARRANTY AND CORRECTION OF DEFECTS**

**11.1 WARRANTY:** Contractor warrants to the Owner and the Architect/Engineer that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming

to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect/ Engineer, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraphs 11.2.

**11.2 CORRECTION OF DEFECTS:** Upon receipt of written notice from the Owner of the discovery of any defects, Contractor shall remedy the defects and replace any property damaged therefrom occurring within the warranty period. If Contractor, after notice, fails to proceed promptly and remedy such defects within thirty (30) days or within any other period of time which has been agreed to in writing, or to comply with the terms of the warranty, the Owner may have the defects corrected and Contractor and his Surety shall be liable for all expenses incurred.

**11.2.1** Contractor shall promptly correct all Work rejected by the Architect/Engineer as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear all costs of correcting such rejected Work, including compensation for the Architect's/ Engineer's additional services made necessary thereby.

**11.2.2** If, within one year after the Date of Substantial Completion of the Work or designated portion thereof, or within one year after acceptance by the Owner of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct it promptly after receipt of a written notice from the Owner to do so, unless the Owner has previously given Contractor a written acceptance of such condition. Contractor shall furnish to the Owner Certificates of Guarantee/Warranties to cover all materials, equipment, and workmanship from the various manufacturers, suppliers and subcontractors individually who furnish materials or perform Work.

**11.2.3** Contractor shall remove from the Site all portions of the Work which are defective or nonconforming and which have not been corrected, unless removal is waived by the Owner.

**11.2.4** If Contractor does not proceed with the correction of such defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove it and may store the materials or equipment at the expense of Contractor. If Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may, upon ten (10) additional days' written notice to Contractor, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by Contractor, including compensation for the Architect's/Engineer's additional services made necessary thereby. If such proceeds of sale do not cover all costs which Contractor should have borne, the difference shall be charged to Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to the Owner.

**11.2.5** Contractor shall bear the cost of making good all Work of the Owner or separate contractors destroyed or damaged by such correction or removal.

**11.2.6** Nothing contained in this Article shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which his obligations to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to his obligations other than specifically to correct the

Work. Contractor's express warranties herein shall be in addition to, and not in lieu of, any other remedies that the Owner may have under this Contract and the Contract Documents, at law or in equity, for defective Work or other failure of Contractor to perform his Work in accordance with the Contract Documents.

**ARTICLE XII. OPERATIONS AND STORAGE AREAS**

**12.1 OPERATIONS AND STORAGE:** Contractor will operate and maintain operations areas and associated storage areas at the Site of the Work in accordance with the following:

**12.1.1** All Contractor operations, including storage of materials and employee parking upon the Site of Work, shall be confined to areas designated by the Owner.

**12.1.2** Contractor may erect temporary buildings at his expense, which shall remain his property. Contractor shall remove such buildings and associated utilities service lines upon completion of the Work, unless Contractor requests and the Owner provides written consent that he may abandon such buildings and utilities in place.

**12.1.3** Contractor will use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. Load limits of vehicles shall not exceed the limits prescribed by appropriate regulations or law. Contractor will provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage, and any damage thereto shall be repaired by and at the expense of Contractor.

**12.2 ASSIGNED ENTRANCES:** The Owner may restrict Contractor's entry to the Site to specifically assigned entrances and routes.

**12.3 SITE CLEANING AND TRASH DISPOSAL:** Contractor shall, at all times, keep the construction areas, including storage areas, used by him free from the accumulation of water, waste materials or rubbish during performance of the Work. During the period of construction, and not less frequently than once a week, Contractor shall remove from the Site any and all waste materials, rubbish and trash, and shall dispose of such waste materials, rubbish and trash off the property of the Owner. Prior to Contractor's requested date for a pre-final inspection, Contractor shall remove any and all remaining equipment from the Site and shall leave the premises in a clean, neat and workmanlike condition satisfactory to the Owner.

**12.4 SUBCONTRACTOR REPORTS:** With each Application for Payment, the Contractor shall include a report showing the portion of the subject payment that is to be paid to its Subcontractors. The report is to show the amount previously paid and to be paid to the applicable Subcontractors. A PAYMENT APPLICATION RECEIVED WITHOUT THE REPORT WILL NOT BE PROCESSED.

**12.5** Upon the request of the Owner, the Contractor shall periodically report payments made and the goods or Work provided by all Subcontractors used under this Agreement. The report shall be in a form approved by the Owner's Business Diversity Department.

**12.6 LIQUIDATED DAMAGES:**

<u>Agreed Damages per Day</u>	<u>Calendar Days Final Completion is Delayed</u>
\$1,500	first 15 days
\$1,500	16 days & over

## **INSURANCE REQUIREMENTS**

### **D1.0 General Requirements.**

- D1.1 Contractor and Subcontractors shall provide all insurance as specified in the bid documents. Such insurance shall be maintained throughout the term of this Agreement and as otherwise provided herein.
- D1.2 The insurance must be obtained from a company or companies acceptable to the Owner and licensed to transact business in the State of Texas, and have a minimum financial security rating by A.M. Best of "A-" or better, or the equivalent from any other rating system.
- D1.3 The insurance specified herein is the minimum requirement. In the event Contractor or any Subcontractor has or obtains insurance coverage in amounts in excess of those required herein, such additional insurance coverage shall also inure to the benefit of the Owner.

### **D2.0 Coverage Requirement Levels for Contractor**

- D2.1 Minimum insurance coverage to be provided by Contractor is defined in the actual Request For Bid document.

### **D3.0 Workers Compensation Requirements (part a)**

- D3.1 The alternate employer endorsement (WC 00 03 01 A) shall be attached showing Owner in the schedule as the alternate employer.
- D3.2 Contractor waives all rights against Owner, Architect/Engineer and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employer's liability or commercial umbrella insurance obtained by Contractor pursuant to this Agreement.
- D3.3 As required under Title 28 Texas Administrative Code 110.110(c)(7) the following provisions are hereby made a part of this Agreement.

#### **D3.4.1 Definitions:**

Certificate of coverage ("certificate"): A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission ("TWCC" or "Commission"), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Project, for the duration of the Project.

Duration of the project: includes the time from the beginning of the Work on the Project until Contractor's/person's Work on the Project has been completed and accepted by the Owner.

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

D3.4.2 Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of Contractor providing Work on the Project, for the duration of the Project.

D3.4.3 If the coverage period shown on Contractor's current certificate of coverage ends during the duration of the Project, Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

D3.4.4 Contractor shall obtain from each person providing Work on the Project, and provide to the Owner:

- (1) a certificate of coverage, prior to that person beginning Work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- (2) no later than seven (7) days after receipt by Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

D3.4.5 Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

D3.4.6 Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing Work on the Project.

D3.4.7 Contractor shall post on each Project Site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing Work on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

D3.4.8 Contractor shall contractually require each person/Subcontractor with whom it contracts to provide Work on a Project, to:

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing Work on the Project, for the duration of the Project;
- (2) provide to Contractor, prior to that person/Subcontractor beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person/Subcontractor providing Work on the Project, for the duration of the Project;
- (3) provide Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- (4) obtain from each other person/Subcontractor with whom it contracts, and provide to Contractor:
  - (a) a certificate of coverage, prior to the other person beginning Work on the Project; and
  - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

- (5) retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
- (6) notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person/Subcontractor knew or should have known, of any change that materially affects the provision of coverage of any person/Subcontractor providing Work on the Project; and
- (7) contractually require each person/Subcontractor with whom it contracts, to perform as required under Section D3.4.9, with the certificates of coverage to be provided to the person/Subcontractor for whom they are providing the Work.

D3.4.9 By signing this Agreement, or providing or causing to be provided a certificate of coverage, Contractor is representing to the Owner that all employees of Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

D3.4.10 Contractor's failure to comply with any of these provisions is a breach of this Contract by Contractor which entitles the Owner to declare the Contract void if Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

D3.5 As provided in Title 28 Texas Administrative Code 110.110(i), the Workers Compensation coverage requirements shown in the bid documents do not apply to sole proprietors, partners, and corporate officers who meet the requirements of the Texas Labor Code 406.097(c) and who are explicitly excluded from coverage in accordance with the Act 406.097(a) (as added by House Bill 1089, 74th Legislature, 1995, 1.20). This applies only to sole proprietors, partners, and corporate executive officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

**D4.0 Worker's Compensation Employers Liability Insurance (part b)**

D4.1 The employers liability coverage as provided under Texas Labor Code 408.001.

**D5.0 Commercial General Liability Coverage Requirements**

D5.1 In the event the commercial general liability policy ("CGL") contains a general aggregate limit, the limit shall apply separately to the Project.

D5.2 CGL insurance shall be written on the most current Insurance Services Office ("ISO") occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury.

D5.3 Owner and Architect/Engineer shall be included as insureds under the CGL, using the most current ISO Additional Insured Endorsement form or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by, Owner.

D5.4 There shall be no endorsement or limitation restricting: (1) the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage, or (2) employment-related professional liability.

D5.5 Contractor waives all rights against Owner, Architect/Engineer and its agents, officers, directors and

employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this Agreement.

D5.6 Contractor shall provide paid-up CGL for at least one (1) year following final completion of the Work and shall provide to Owner a certificate evidencing such insurance prior to release of final payment.

D5.6.1 Continuing CGL insurance shall be written on the most current ISO occurrence form (or a substitute form providing equivalent coverage) and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

D5.6.2 Continuing CGL insurance shall have a products-completed operations aggregate of at least two (2) times its each occurrence limit.

#### **D6.0 Business Vehicle Policy Coverage Requirements**

D6.1 Such insurance shall cover liability arising out of any owned, hired, non-owned, substitute or replacement vehicle.

D6.2 Contractor waives all rights against Owner and its agents, officers, trustees, directors, volunteers and employees for recovery of damages to the extent these damages are covered by the business vehicle liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Agreement or under any applicable vehicle physical damage coverage.

#### **D7.0 Builders Risk Coverage Requirements**

D7.1 Builders Risk coverage shall be an "all-risk form" property insurance upon the entire Work on a completed value form. Such insurance shall be evidenced by the kind of policy which does not have to be adjusted or reported upon periodically but provides constant insurance at full 100% of all insurable values as they are created during construction by performance of this Agreement. The insurance shall apply on a replacement cost basis. This insurance shall name the Owner, Contractor and Subcontractors as insureds.

D7.2 The insurance shall be written to cover all risks of physical loss except those specifically excluded in the policy, and shall insure at least against the perils of fire, lightening, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion and extended coverage including flood and earthquake and shall include coverage for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasions by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect/Engineer's services and expenses required as a result of such insured loss. The policy shall include coverage for explosion, collapse and underground (XCU). The insurance shall also cover portions of the Work located away from the Site but intended for use at the Site, and shall also cover portions of the Work in transit.

D7.3 All insurance provided under this Section D8.0 shall provide by endorsement or otherwise that the insured property may be occupied and that the insurance will remain in full force and effect until the property is fully accepted by the Owner.

D7.4 The insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the premises.

D7.5 Loss under the Builders Risk insurance shall be made payable jointly to the City of Garland, and to Contractor by name. Owner shall pay Subcontractors their just shares of insurance proceeds received by Owner, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payment to their Subcontractors in similar manner.

## **D8.0 Commercial Umbrella Liability Insurance**

D8.1 Contractor shall provide paid-up commercial umbrella liability insurance for at least one (1) year following final completion of the Work and shall provide to Owner a certificate evidencing such insurance prior to release of final payment.

D8.2 Continuing commercial umbrella coverage shall include liability coverage for damage to the completed Work equivalent to that provided under the most current ISO occurrence form (or a substitute form providing equivalent coverage) and the Owner shall be named as an additional insured.

## **D9.0 General Provisions**

D9.1 As required in the Contract Documents, Contractor shall furnish to the Owner a certificate of insurance, executed by a duly authorized representative of each insurer, setting forth evidence of all coverage required by the bid documents. Promptly providing such certificate(s) shall be the responsibility of Contractor, and shall not be considered a delay by the Owner in giving Notice to Proceed. The Owner does not waive any of the insurance requirements by failing to receive the certificate(s) or by failing to identify a deficiency in the certificates.

D9.2 The Owner shall have the right, but not the obligation, to prohibit Contractor or any Subcontractor from entering the Project Site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Owner.

D9.3 The insurance shall contain a provision that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the cancellation provision of all certificates provided by Contractor. If any of the foregoing insurance coverage is required to remain in force after Final Payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment.

D9.4 Within ten (10) days of the Owner's written request, Contractor shall provide a certified copy of any or all insurance policies under which insurance is provided as required under this Agreement.

D9.5 Contractor shall cause each Subcontractor employed by Contractor or another Subcontractor to purchase and maintain insurance of the types specified herein. Except as otherwise provided herein, Contractor shall obtain and maintain certificates from each Subcontractor evidencing such coverage. When requested by the Owner, Contractor shall furnish to the Owner copies of certificates of insurance evidencing coverage for each Subcontractor.

D9.6 The Contractor waives all rights against the Owner and its Architect/Engineer, Architect/Engineer's consultants, separate contractors, if any, and any of their subcontractors, agents, invitees and employees, for damages covered and paid by insurance obtained by Contractor under this Agreement or any other insurance Contractor may have that is applicable to the Work. The Contractor shall require of its subcontractor's, agents and employees of any of them, by appropriate agreements, similar waivers each in favor of the Owner and others as enumerated herein.

D9.7 All policies which Contractor and all Subcontractors secure and maintain and which are in any way related to the Work shall be endorsed with a Waiver of Subrogation Endorsement waiving the insurer's rights of subrogation against Subcontractors and their insurers. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged. The Builders Risk policy will be endorsed with a Waiver of Subrogation Endorsement, waiving the insurer's right of recovery by way of subrogation against the Owner, Contractor and all

Subcontractors whose interests are insured under such policy.

D9.8 Contractor shall pay any deductible applicable to the insurance purchased in compliance with this Agreement.

D9.9 By requiring the insurance set out in the bid documents, Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities provided to Owner in this Agreement, or any other provision of the Contract Documents.

D9.10 The insurance requirements in the bid document are independent from all other obligations of Contractor under this Agreement and apply whether or not required by any other provision of this Agreement. This insurance is in addition to, and not in any way a substitution for, all other protection provided for under the Contract, including but not limited to the indemnity obligations contained in this Agreement.



## INSURANCE REQUIREMENTS

### Construction Liability Insurance Requirements

	<u>Cost of Work</u>	<u>CGL</u>	<u>UMB</u>	<u>AUTO</u>	<u>EL</u>
<b>Category I</b>  Painter, Drywall, Concrete Work, Brick Mason, Carpenter, Cleanup, Glazier, Locksmith, Landscaper	\$0 - \$50,000	\$100,000	\$0	\$100,000	\$500,000
	\$50,001 - \$100,000	\$250,000	\$0	\$100,000	\$500,000
	\$100,001 - \$500,000	\$500,000	\$0	\$250,000	\$500,000
	\$500,001 - \$1,000,000	\$1,000,000	\$0	\$500,000	\$500,000
	\$1,000,001 - \$2,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$500,000
	\$2,000,001 - \$5,000,000	\$1,000,000	\$4,000,000	\$1,000,000	\$500,000
	\$5,000,001 +	\$1,000,000	\$10,000,000	\$1,000,000	\$500,000
<b>Category II</b>  Electrician, Plumbing, Crane Operator, Fire System Installer, HVAC Work	\$0 - \$50,000	\$500,000	\$0	\$100,000	\$500,000
	\$50,001 - \$100,000	\$500,000	\$0	\$250,000	\$500,000
	\$100,001 - \$500,000	\$1,000,000	\$0	\$500,000	\$500,000
	\$500,001 - \$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$500,000
	\$1,000,001 - \$2,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$500,000
	\$2,000,001 - \$5,000,000	\$1,000,000	\$5,000,000	\$1,000,000	\$500,000
	\$5,000,001 +	\$1,000,000	\$10,000,000	\$1,000,000	\$500,000
<b>Category III</b>  Boiler Work, Roofer, Hot Work (cutting and welding)	\$0 - \$50,000	\$1,000,000	\$0	\$100,000	\$1,000,000
	\$50,001 - \$100,000	\$1,000,000	\$0	\$250,000	\$1,000,000
	\$100,001 - \$500,000	\$1,000,000	\$1,000,000	\$500,000	\$1,000,000
	\$500,001 - \$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	\$1,000,001 - \$2,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
	\$2,000,001 - \$5,000,000	\$1,000,000	\$5,000,000	\$1,000,000	\$1,000,000
	\$5,000,001 +	\$1,000,000	\$10,000,000	\$1,000,000	\$1,000,000
<b>Category IV</b>  General Contractor	\$0 - \$50,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	\$50,001 - \$100,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	\$100,001 - \$500,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	\$500,001 - \$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	\$1,000,001 - \$2,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
	\$2,000,001 - \$5,000,000	\$1,000,000	\$5,000,000	\$1,000,000	\$1,000,000
	\$5,000,001 +	\$1,000,000	\$10,000,000	\$1,000,000	\$1,000,000

CGL=Commercial General Liability UMB=Commercial Umbrella Liability Auto=Automobile Liability EL=Employers Liability

General Contractors must provide Builders Risk Insurance for the insurable value of the work.

NOTE: The insurance must be obtained from a company or companies acceptable to the Owner and licensed to transact business in the State of Texas, and have a minimum financial security rating by A.M. Best of "A-" or better, or the equivalent from any other rating system.

With the exception of Workers Compensation and Builders Risk insurance, The City of Garland, PO Box 469002, Garland, TX shall be listed as an additional insured on all required coverage and shall be shown as such on the Certificate of Insurance. The Additional Insured Endorsement may be requested by the City. A waiver of subrogation is required on all coverage, and shall be granted and shown on the Certificate of Insurance.

**PAYMENT BOND**

**STATE OF TEXAS            }**  
**COUNTY OF DALLAS        }**

**WHEREAS,** \_\_\_\_\_ as principal ("Contractor") and \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_ and being duly authorized to do business in the State of Texas, as surety ("Surety")(whether one or more), do hereby expressly acknowledge themselves to be held and bound to pay to the City of Garland, Texas, a home-rule municipality organized and operating under the Constitution and laws of the State of Texas (the "City"), its successors and assigns, and to all persons, firms, subcontractors and corporations who may furnish materials or labor under the contract as more fully described below, the sum of \_\_\_\_\_ Dollars in the lawful currency of the United States of America (\$ \_\_\_\_\_) for the payment of which Contractor and Surety are liable to the City, jointly and severally; and

**WHEREAS,** Contractor has this day entered into a written contract with the City to build and construct:

**Name of Project**

which contract and the plans and specifications therein mentioned (collectively referred to hereinafter as the "Contract") are hereby expressly incorporated into and made a part hereof as though set forth at length; and

**WHEREAS,** this bond is given pursuant to Chapter 2253 of the Texas Government Code;

**NOW, THEREFORE,** if Contractor shall promptly make payment to all persons, firms, subcontractors and corporations who may furnish materials or labor under the Contract, then this obligation shall be void; otherwise to remain in full force and effect. The obligations of Contractor and Surety under this bond apply both to the original Contract and to any extension of time or modification of the Contract and Surety agrees that no change, extension of time, addition, expansion or other modification of the Contract, the work to be done under the Contract, or the plans and specifications which are a part of the Contract shall in any manner affect the obligations of Surety under this bond, and Surety waives notice of any such change, extension of time, addition, expansion or other modification. The obligations of Contractor and Surety under this bond are performable and payable in Dallas County, Texas such that exclusive venue for any

legal action pertaining to this bond shall lie in Dallas County, Texas. By their signatures below, the persons signing this bond warrant and represent that they are, respectively, duly authorized to sign on behalf of Contractor and Surety.

**EXECUTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR:**

**SURETY:**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENTS**

[Contractor]

**STATE OF TEXAS }  
COUNTY OF DALLAS }**

Before me \_\_\_\_\_ (insert the name of the officer) on this day \_\_\_\_\_ personally appeared \_\_\_\_\_ known to me (or proved to me on the oath of \_\_\_\_\_) or through \_\_\_\_\_ (description of identity card or other document) to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name of Notary

[Surety]

**STATE OF TEXAS }  
COUNTY OF DALLAS }**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_ by \_\_\_\_\_ who is the \_\_\_\_\_ of the Surety, on behalf of Surety.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name of Notary

**PERFORMANCE BOND**

**STATE OF TEXAS            }**  
**COUNTY OF DALLAS        }**

**WHEREAS,** \_\_\_\_\_ as principal ("Contractor") and \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_ and being duly authorized to do business in the State of Texas, as surety ("Surety")(whether one or more), do hereby expressly acknowledge themselves to be held and bound to pay to the City of Garland, Texas, a home-rule municipality organized and operating under the Constitution and laws of the State of Texas (the "City"), its successors and assigns, and to all persons, firms, subcontractors and corporations who may furnish materials or labor under the contract as more fully described below, the sum of \_\_\_\_\_ Dollars in the lawful currency of the United States of America (\$ \_\_\_\_\_ ) for the payment of which Contractor and Surety are liable to the City, jointly and severally; and

**WHEREAS,** Contractor has this day entered into a written contract with the City to build and construct:

**Name of Project**

which contract and the plans and specifications therein mentioned (collectively referred to hereinafter as the "Contract") are hereby expressly incorporated into and made a part hereof as though set forth at length; and

**WHEREAS,** this bond is given pursuant to Chapter 2253 of the Texas Government Code;

**NOW, THEREFORE,** if Contractor shall well, truly and faithfully perform all of the undertakings, duties, terms, conditions and agreements of the Contract; shall satisfy all claims and demands incurred under the Contract; shall fully indemnify and hold the City harmless; shall reimburse and repay the City for any outlay or expense which the City may incur in making good any default, and shall promptly make payment to all persons, firms, subcontractors and corporations who may furnish materials or labor under the Contract, then this obligation shall be void; otherwise to remain in full force and effect. The obligations of Contractor and Surety under this bond apply both to the original Contract and to any extension or modification of the Contract and Surety agrees that no change, extension of time, addition, expansion or other modification of the Contract, the work to be done under the Contract, or the plans and specifications which are a part of the Contract shall in any manner affect the obligations of Surety under this bond, and Surety waives notice of any such change, extension of time, addition, expansion or other modification. The obligations of Contractor and Surety under this bond are performable and payable in Dallas

County, Texas such that exclusive venue for any legal action pertaining to this bond shall lie in Dallas County, Texas. By their signatures below, the persons signing this bond warrant and represent that they are, respectively, duly authorized to sign on behalf of Contractor and Surety.

**EXECUTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

CONTRACTOR:

SURETY:

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENTS**

[Contractor]

**STATE OF TEXAS** }  
**COUNTY OF DALLAS** }

Before me \_\_\_\_\_ (insert the name of the officer) on this day \_\_\_\_\_ personally appeared \_\_\_\_\_ known to me (or proved to me on the oath of \_\_\_\_\_) or through \_\_\_\_\_ (description of identity card or other document) to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name of Notary

[Surety]  
**STATE OF TEXAS** }  
**COUNTY OF DALLAS** }

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_ by \_\_\_\_\_ who is the \_\_\_\_\_ of the Surety, on behalf of Surety.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name of Notary

## **BOND NOTES**

- (1) This Payment Bond applies to all contracts in excess of \$50,000.00 involving a contract for construction, alteration or repair of any public building or the completion or prosecution of any public work.
- (2) This Performance Bond applies to all contracts in excess of \$100,000.00 involving a contract for construction, alteration or repair of any public building or the completion or prosecution of any public work.
- (3) These Bonds must be payable to the awarding authority, the City of Garland (the Owner), as the named obligee, and must be approved as to form by such awarding authority.
- (4) These Bonds must be furnished before any work is commenced.
- (5) Surety must be a corporate surety duly authorized to do business in Texas, and acceptable to the Owner.
- (6) Each of these Bonds must be in the full amount of the contract which they secure.
- (7) Power of Attorney for Corporate Surety must be attached to each of these Bonds.

**CONSTRUCTION SERVICES AGREEMENT**

The Owner prefers to use the following Construction Services Agreement. **AS PART OF YOUR RESPONSE TO THIS RFx, YOU MUST IDENTIFY, IN WRITING, ANY EXCEPTIONS YOU MAY HAVE TO ANY PROVISION OF THE RFx, SUPPLEMENTAL BIDDING INFORMATION FOR CONSTRUCTION-RELATED PROJECTS, OR THIS AGREEMENT** . Any desired changes are to be specific and cite the applicable section. If none, so indicate in your response. Acceptance of the terms and conditions of the Agreement is considered as a major factor in the selection of the successful contractor.

**CONSTRUCTION SERVICES AGREEMENT**

For

(bid title)

BID NO. (as specified)

By and Between

The City of Garland

and

\_\_\_\_\_ (fill in contractor name)

# CONSTRUCTION SERVICES AGREEMENT

BID NO. (as noted in the RFB)

This Construction Services Agreement ("Agreement") is entered into by and between the City of Garland ("the Owner") and Contractor named below ("Contractor") and establishes the terms, conditions and consideration under which Contractor will provide construction services ("Work") as specified herein.

The provisions of Contractor's bid and Owners Request for Bids are hereby made a part of this Agreement as if attached hereto. The Payment and Performance bonds, as applicable, are hereby made a part of this Agreement.

Contractor shall furnish, at Contractor's own cost, all labor, superintendence, equipment, materials, supplies, insurance, and other accessories and services necessary to complete the Work; provide all necessary installation means, methods, techniques, sequences, and procedures; and coordinate all portions of said Work, so as to complete the Work in strict accordance with the Agreement.

Final payment shall not relieve Contractor of responsibility for faulty materials or workmanship, the obligation to remedy defects, the breach of any term hereof, or terms of any special warranties required by the Agreement.

The general description of the Work to be provided under this Agreement is contained in the bid entitled:

(bid title)

The location of the City of Garland where the Work is to be performed is:

(Site Location)

The Owner agrees to pay Contractor in current funds in accordance with the terms of the Agreement, subject to additions and deductions as provided herein, the sum of:

\_\_\_\_\_ (\$ \_\_\_\_\_)

Contractor acknowledges that time is of the essence for performance of this Agreement and agrees to commence Work not later than ten calendar days following receipt of the Owner's written notice to proceed ("Notice to Proceed") and to fully and finally complete all Work hereunder (within the calendar days specified in the RFB documents) following receipt of the Owner's written Notice to Proceed and issuance of all applicable building permits.

The Owner and Contractor acknowledge and agree, with regards to the matters covered hereunder, this Agreement is the complete Agreement and supersedes and replaces all prior agreements and understandings.

If any provision of this Agreement shall be held invalid for any reason, then such provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity or enforceability of the other provisions of this Agreement, unless the invalidity of any such provision deprives any party of the economic benefit intended to be conferred by this Agreement.

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision, and any failure to enforce strict performance of any provision of this Agreement shall not be construed as a waiver or relinquishment to enforce strict performance of such provision on any future occasion.

Throughout the term of this Agreement, with each Application for Payment, in a format provided by the Owner, Contractor shall report a description of the type of Work provided and the amount of payments made and to be made to all Subcontractors, including certified Minority and Woman Owned Businesses. An Application for Payment submitted without this report shall be incomplete and is not subject to payment. Prior to submitting its first Application for Payment, Contractor shall contract the Owner's Business Diversity Department to receive the form to be used to report Subcontractor and supplier payments.



Notwithstanding the general rules of construction, both Contractor and the Owner acknowledge that both parties were given an equal opportunity to negotiate the terms and conditions of this Agreement and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

Except as otherwise specifically provided in this Agreement, all remedies set forth in this Agreement shall be in addition to all other remedies available under this Agreement or at law or in equity.

Contractor and the Owner agree that this Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and shall be deemed to be signed by an authorized representative of Contractor and of the Owner.

This Agreement shall be construed in accordance with the laws of the State of Texas, and exclusive venue shall lie in Dallas County, Texas.

This Agreement, executed in multiple counterparts and effective with the latter of the two signatory dates noted below, is made and entered by and between:

The City of Garland  
(Owner)

(contractor's company name)  
(Contractor)

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

Address \_\_\_\_\_

City: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip \_\_\_\_\_

State: \_\_\_\_\_ Zip \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **PREVAILING WAGE RATE DETERMINATION**

As a local municipality of the State of Texas, the City of Garland is required, in accordance with Texas Government Code Chapter 2258, to specify the generally prevailing rates of wages which are paid to various classifications of workers in the locality of this project. The City has adopted the Federal Davis-Bacon wage rates. To view these rates you will have to access the Department of Labor web site at the following address: <http://www.access.gpo.gov/davisbacon/index.html>. Accordingly, not less than the base hourly rates specified shall be paid for the various classifications of work required for this project.

Except for work on legal holidays, the "general prevailing rate or per diem wage" for the various crafts or type of work is the product of (a) the number of hours worked per day, except for overtime hours, times (b) the above respective rate per hour.

For legal holidays, the "general prevailing rate of per diem wage" for the various crafts or type of work is the product of (a) one and one-half times the above respective rate per hour times (b) the number of hours worked on the legal holiday.

The "general prevailing rate for overtime work" for the crafts or type of work is one and one-half times the above respective rate per hour.