



City Secretary ☒  
Construction ☐  
Project Manager ☐

**CONTRACT  
FOR  
THE CONSTRUCTION OF**

CITY SECRETARY  
CONTRACT NO. 57089

**CC Moss and ML Phillips SRTS Improvements**

**City Project No. 102411**

Mattie Parker  
Mayor

David Cooke  
City Manager

William Johnson  
Director, Transportation and Public Works Department

**Prepared for  
The City of Fort Worth  
Transportation and Public Works Department**

**2021**

Kimley-Horn and Associates, Inc.  
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Fort Worth, Texas 76102  
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Scott R. Arnold, P.E. (TPBE #96782)



8/25/2021

**OFFICIAL RECORD  
CITY SECRETARY  
FT. WORTH, TX**

*Scott R. Arnold, P.E.*

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**Technical Specifications which have been modified by the Engineer specifically for this Project; hard copies are included in the Project's Contract Documents**

NONE

**Technical Specifications listed below are included for this Project by reference and can be viewed/downloaded from the City's website at:**

NONE

**TxDOT Requirements**

1. Disadvantaged Business Enterprises (DBE) Requirements
2. Buy America
3. Child Support Statement (Family Code §231.006)
4. **State of Texas Child Support Business Ownership Form\***
5. OSHA Implementation
6. **Disclosure of Lobbying Activities\***
7. **Non-Collusion Affidavit and Debarment Certification\***
8. Certificate of Insurance
9. Certification of Interest
10. Contractor's Assurance
11. Seals Page
12. Prevailing Minimum Wage – Davis Bacon
13. Prison Produced Materials
14. Differing Site Conditions
15. General Notes
16. TxDOT Specifications, Special Provisions, and Special Specifications List
17. Federal Requirements for Federal-Aid Construction Contracts (FHWA-1273)
18. "Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges – Adopted by the Texas Department of Transportation November 1, 2014" – Included by Reference.

**\*Required to be submitted with bid to be deemed a responsive bid. If these items are not submitted with the bid package, the bids will not be read publicly.**

**Appendix**

GC-6.06.D Minority and Women Owned Business Enterprise Compliance

**END OF SECTION**



# Mayor and Council Communication

DATE: 12/14/21

M&C FILE NUMBER: M&C 21-0972

LOG NAME: 20CC MOSS AND ML PHILLIPS SRTS CONSTRUCTION CONTRACT

## SUBJECT

(CD 3 and CD 5) Authorize Execution of a Construction Contract with Northstar Construction, LLC, in the Amount of \$1,449,726.40 for Construction of the Christene C. Moss and Mary Louise Phillips Safe Routes to School Improvements Project (2018 Bond Program)

## RECOMMENDATION:

It is recommended that the City Council authorize execution of a contract with Northstar Construction, LLC, in the amount of \$1,449,726.40, for construction of the Christene C. Moss and Mary Louise Phillips Safe Route to School Improvements project (City Project No. 102411).

## DISCUSSION:

The purpose of this Mayor and Council Communication (M&C) is to authorize execution of a contract with Northstar Construction, LLC, in the amount of \$1,449,726.40, for construction of the C. C. Moss and M. L. Phillips SRTS Improvements project. The improvements include construction of new and reconstruction of existing sidewalks, curb ramps, driveways, curb and gutter, small retaining walls, signs, crosswalks and pavement markings within an approximate quarter mile radius of both of the C. C. Moss and M. L. Phillips Elementary School campuses.

The project was posted on the City Purchasing website for bid on September 2, 2021 and advertised in the *Fort Worth Star-Telegram* on September 2, 2021 and September 9, 2021. The following bids were opened on September 30, 2021.

Bidders	Amount	Time of Completion
Northstar Construction, LLC	\$1,449,726.40	270 Calendar Days
The Fain Group, Inc.	\$1,497,347.52	
Urban Infraconstruction, LLC	\$1,508,961.00	
HQS Construction, LLC	\$1,587,799.00	
EAR Telecommunications, LLC	\$2,491,592.33	

This project will have no impact on the Transportation and Public Works annual operation budget when completed. Construction is expected to start in February 2022.

The construction contract will be funded using 2018 Bond Program Funds available in the project along with Federal Grant Funds to be distributed by the Texas Department of Transportation (TxDOT) during construction of the project on a reimbursable basis after work has been performed and paid for.

This project will be constructed through a previously executed Advance Funding Agreement (AFA) with TxDOT (CSCN 53828). Both federal and state funds are allocated to the project. TxDOT must officially concur with the bid award prior to execution of the construction contract. The official concurrence process is currently underway.

This project is included in the 2018 Bond Program. Available resources within the General Fund will be used to provide interim financing until debt is issued. Once debt associated with the project is sold, bond proceeds will reimburse the General Fund in accordance with the statement expressing official intent to Reimburse that was adopted as part of the ordinance canvassing the bond election (Ordinance No. 23209-05-2018) and subsequent actions taken by the Mayor and Council.

Compliance with the City's Disadvantage Business Enterprise (DBE) Program has been achieved by the following method: Northstar Construction, LLC is in compliance with the City's DBE Program by committing to 8% DBE participation on this project. The City's DBE goal on this project is 8%.

This project is located in COUNCIL DISTRICT 3 and COUNCIL DISTRICT 5.

## FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that funds are available in the current capital budget, as previously appropriated, in the Grants Cap Projects Federal Fund and the 2018 Bond Program Fund for the 2018 Safe Routes to School P13 project to support the approval of the above recommendation and execution of the contract. Prior to any expenditure being incurred, the Transportation and Public Works Department has the responsibility to validate the availability of funds.



Submitted for City Manager's Office by: Dana Burghdoff 8018

Originating Business Unit Head: William Johnson 7801

Additional Information Contact: Monty Hall 8662

SECTION 00 05 15  
ADDENDA

CITY OF FORT WORTH, TEXAS  
ADDENDUM NO. 1  
To the Specifications and Contract Documents  
For  
CC Moss and ML Phillips SRTS Improvements  
City Project Number 102411  
Issued: September 20, 2021

**Bid Date: September 30, 2021 at 1:30 P.M.**

This Addendum forms a part of the Bidding Documents and will be incorporated into Contract Documents, as applicable. Insofar as the original Contract Documents and Specifications and Construction Plans are inconsistent, this Addendum governs. Acknowledge receipt of this addendum by signing and attaching it to the Contract Documents (inside). Note receipt of the Addendum in the Bid Proposal and on the outer envelope of your bid. **FAILURE TO DO SO MAY SUBJECT BIDDER TO DISQUALIFICATION.**

**Prospective bidders are hereby notified of the following:**

This addendum includes the following:

1. Pre-Bid Presentation

An electronic version (in PDF format) of the presentation given during the non-mandatory pre-bid meeting held at 9:00 A.M. CST on September 14, 2021 is attached to this addendum.

2. Pre-Bid Sign-In Sheet

An electronic version (in PDF format) of the pre-bid meeting attendee sign-in sheet is attached to this addendum.

3. Minority Business Enterprise (MBE) Status

As stated in the Project Manual, there is an 8.0% DBE goal (due to Federal funds). Replace the existing 00 45 40 Business Equity Goal document in the Project Manual with the attached version. Also, the attached Business Equity forms are now included as part of the Appendix.

4. Prequalification of Bidders

This project **does not** require prequalification of bidders. Refer to Section 00 45 12.

5. Project Duration

The Project Manual shows the project duration as 192 Working Days. This Addendum changes the project duration to **270 Calendar Days**.

6. Updated City Specifications

The City recently updated several specifications which will need to be added to the Project Manual. A summary is below:

- Remove 00 32 15 Construction Schedule
- Replace 00 52 43 Agreement
- Replace 00 72 00 General Conditions
- Replace 01 32 16 Construction Progress Schedule
- Add 01 32 16.1 Construction Schedule – Baseline Example
- Add 01 32 16.2 Construction Schedule – Progress Example
- Add 01 32 16.3 Construction Schedule – Progress Narrative

7. Pre-Bid Meeting and Other Questions

During the pre-bid meeting, the attendees asked the following questions. Official answers are being provided as part of this addendum:

**Q: What are the working hours for the project?**

A: Work will be allowed between 7 AM and 6 PM, per the general notes. Work immediately adjacent to a school may prohibited during AM drop-off (7:30 am – 8:30 am) and PM pick-up (3:30 pm to 4:30 pm). These time frames may be adjusted slightly based on the particular school.

**Q: Item 48 RE PM W/RET REQ TY I (Y)4" (SLD) is a TxDOT item that requires retroreflective readings be performed on this stripe. Typically, the City of Fort Worth does not require this. Will retroreflective readings need to be done for this item?**

A: Yes, this project is required to follow TxDOT specification requirements due to the funding source.

**PROJECT MANUAL**

1. **REMOVE** Section 00 00 00, **REPLACE** with attached Section 00 00 00.
2. **REMOVE** Section 00 21 13, **REPLACE** with attached Section 00 21 13.
3. **REMOVE** Section 00 32 15.
4. **REMOVE** Section 00 41 00, **REPLACE** with attached Section 00 41 00.
5. **REMOVE** Section 00 45 11.
6. **REMOVE** Section 00 45 13.
7. **REMOVE** Section 00 45 40, **REPLACE** with attached Section 00 45 40.
8. **REMOVE** Section 00 52 43, **REPLACE** with attached Section 00 52 43.
9. **REMOVE** Section 00 72 00, **REPLACE** with attached Section 00 72 00.
10. **REMOVE** Section 01 32 16, **REPLACE** with attached Section 01 32 16.
11. **ADD** Section 01 32 16.1.
12. **ADD** Section 01 32 16.2.
13. **ADD** Section 01 32 16.3.
14. **ADD** the following Business Equity form to the Appendix:
  - a. Business Equity Special Instructions for Bidders
  - b. Business Equity Utilization Form
  - c. Business Equity Prime Contractor Waiver
  - d. Business Equity Good Faith Effort Form

- c. Business Equity Joint Venture
15. **REMOVE** Sheet E of TxDOT General Notes (page 285 of 338 of the Project Manual PDF), **REPLACE** with attached Sheet E (Revised Item 8).

**CONSTRUCTION PLANS**

1. **REMOVE** Plan Sheet C0.03C, **REPLACE** with attached Plan Sheet C0.03C (Revised Item 8).

Acknowledge your receipt of Addendum No. 1 by completing the requested information at the following locations:

- (1) In the space provided in Section 00 41 00, Bid Form  
(2) Indicate in upper case letters on the outside of your sealed bid envelope:  
"RECEIVED AND ACKNOWLEDGED ADDENDUM NO. 1"

All other provisions of the plans, specifications and contract documents for the project which are not expressly amended herein shall remain in full force and effect.

Failure to return a signed copy of the addendum with the proposal shall be grounds for rendering the bid non-responsive. A signed copy of this addendum shall be placed into the proposal at the time of bid submittal.

RECEIPT ACKNOWLEDGED:

William Johnson  
Director, Transportation  
and Public Works

By: Michael A. Heimlich  
Michael A. Heimlich, President

By: Chad Allen  
Chad Allen, PE, CFM  
Senior Professional Engineer

Digitally signed by Chad Allen  
DN: cn=Chad Allen, o=City of Fort Worth, ou=City of Fort Worth, email=chad.allen@cityofw.org, c=US  
Date: 2021.09.20 16:12:00 -0500

Company: Northstar Construction, LLC

END OF SECTION



9/20/2021

Scott R. Arnold, P.E.



changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If City determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order may be issued.

- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take positive steps to fulfill this written request, or does not show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City forces or by contract. The City shall deduct an amount equal to the entire costs for such remedial action, plus 25%, from any funds due or become due the Contractor on the Project.

#### 6.18 Submittals

- A. Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as City may require.
  - 1. Submit number of copies specified in the General Requirements.
  - 2. Data shown on the Submittals will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show City the services, materials, and equipment Contractor proposes to provide and to enable City to review the information for the limited purposes required by Paragraph 6.18.C.
  - 3. Submittals submitted as herein provided by Contractor and reviewed by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
  - 4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
  - 5. For-Information-Only submittals upon which the City is not expected to conduct review or take responsive action may be so identified in the Contract Documents.
  - 6. Submit required number of Samples specified in the Specifications.
  - 7. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as City may require to enable City to review the submittal for the limited purposes required by Paragraph 6.18.C.



- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *City's Review:*

1. City will provide timely review of required Submittals in accordance with the Schedule of Submittals acceptable to City. City's review and acceptance will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
3. City's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal. City's review and acceptance shall not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.

6.19 *Continuing the Work*

Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

6.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or



2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by City;
  2. recommendation or payment by City of any progress or final payment;
  3. the issuance of a certificate of Final Acceptance by City or any payment related thereto by City;
  4. use or occupancy of the Work or any part thereof by City;
  5. any review and acceptance of a Submittal by City;
  6. any inspection, test, or approval by others; or
  7. any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified and shall furnish a good and sufficient maintenance bond, complying with the requirements of Article 5.02.B. The City will give notice of observed defects with reasonable promptness.

## 6.21 Indemnification

- A. Contractor covenants and agrees to indemnify, hold harmless and defend, at its own expense, the City, its officers, servants and employees, from and against any and all claims arising out of, or alleged to arise out of, the work and services to be performed by the Contractor, its officers, agents, employees, subcontractors, licensees or invitees under this Contract. **THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY.** This indemnity provision is intended to include, without limitation, indemnity for costs, expenses and legal fees incurred by the City in defending against such claims and causes of actions.
- B. Contractor covenants and agrees to indemnify and hold harmless, at its own expense, the City, its officers, servants and employees, from and against any and all loss, damage or destruction of property of the City, arising out of, or alleged to arise out of, the work and services to be performed by the Contractor, its officers, agents, employees, subcontractors, licensees or invitees under this Contract. **THIS INDEMNIFICATION PROVISION IS**



**SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY.**

**6.22 Delegation of Professional Design Services**

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such professional. Submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to City.
- C. City shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided City has specified to Contractor performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.22, City's review and acceptance of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. City's review and acceptance of Submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.18.C.

**6.23 Right to Audit**

- A. The Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers, and records of the Contractor involving transactions relating to this Contract. Contractor agrees that the City shall have access during Regular Working Hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this Paragraph. The City shall give Contractor reasonable advance notice of intended audits.
- B. Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the City shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers, and records of such Subcontractor, involving transactions to the subcontract, and further, that City shall have access during Regular Working Hours to all



Subcontractor facilities, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this Paragraph. The City shall give Subcontractor reasonable advance notice of intended audits.

- C. Contractor and Subcontractor agree to photocopy such documents as may be requested by the City. The City agrees to reimburse Contractor for the cost of the copies as follows at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

#### 6.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, which are funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. *Title VI, Civil Rights Act of 1964 as amended:* Contractor shall comply with the requirements of the Act and the Regulations as further defined in the Supplementary Conditions for any project receiving Federal assistance.

### ARTICLE 7 – OTHER WORK AT THE SITE

#### 7.01 *Related Work at Site*

- A. City may perform other work related to the Project at the Site with City's employees, or other City contractors, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then written notice thereof will be given to Contractor prior to starting any such other work; and
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and City, if City is performing other work with City's employees or other City contractors, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects in the work provided by others.



## 7.02 *Coordination*

- A. If City intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  2. the specific matters to be covered by such authority and responsibility will be itemized; and
  3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

## ARTICLE 8 – CITY’S RESPONSIBILITIES

### 8.01 *Communications to Contractor*

Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

### 8.02 *Furnish Data*

City shall timely furnish the data required under the Contract Documents.

### 8.03 *Pay When Due*

City shall make payments to Contractor in accordance with Article 14.

### 8.04 *Lands and Easements; Reports and Tests*

City’s duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

### 8.05 *Change Orders*

City shall execute Change Orders in accordance with Paragraph 10.03.

### 8.06 *Inspections, Tests, and Approvals*

City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.



**8.07 Limitations on City's Responsibilities**

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- B. City will notify the Contractor of applicable safety plans pursuant to Paragraph 6.14.

**8.08 Undisclosed Hazardous Environmental Condition**

City's responsibility with respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

**8.09 Compliance with Safety Program**

While at the Site, City's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which City has been informed pursuant to Paragraph 6.14.

**ARTICLE 9 – CITY'S OBSERVATION STATUS DURING CONSTRUCTION**

**9.01 City's Project Manager**

City will provide one or more Project Manager(s) during the construction period. The duties and responsibilities and the limitations of authority of City's Project Manager during construction are set forth in the Contract Documents. The City's Project Manager for this Contract is identified in the Supplementary Conditions.

**9.02 Visits to Site**

- A. City's Project Manager will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, City's Project Manager will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City's Project Manager will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City's Project Manager's efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City's Project Manager's visits and observations are subject to all the limitations on authority and responsibility in the Contract Documents including those set forth in Paragraph 8.07.



**9.03 *Authorized Variations in Work***

City's Project Manager may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on City and also on Contractor, who shall perform the Work involved promptly.

**9.04 *Rejecting Defective Work***

City will have authority to reject Work which City's Project Manager believes to be defective, or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing of the Work as provided in Article 13, whether or not the Work is fabricated, installed, or completed.

**9.05 *Determinations for Work Performed***

Contractor will determine the actual quantities and classifications of Work performed. City's Project Manager will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City's written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

**9.06 *Decisions on Requirements of Contract Documents and Acceptability of Work***

- A. City will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City's written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 10.06.

**ARTICLE 10 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK**

**10.01 *Authorized Changes in the Work***

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by the City.



#### 10.02 *Unauthorized Changes in the Work*

Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.17.

#### 10.03 *Execution of Change Orders*

A. City and Contractor shall execute appropriate Change Orders covering:

1. changes in the Work which are: (i) ordered by City pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08 or City's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed.

#### 10.04 *Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment thereof, and the City insists upon its performance, the Contractor shall proceed with the work after making written request for written orders and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 10.06.
- B. The Contractor shall furnish the City such installation records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual installation.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be a full, complete and final payment for all costs Contractor incurs as a result or relating to the change or Extra Work, whether said costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the change or Extra Work.

#### 10.05 *Notification to Surety*

If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.



## 10.06 Contract Claims Process

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
  2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City on or before 45 days from the start of the event giving rise thereto (unless the City allows additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
  3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.
  4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.
  5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.
  6. The City shall submit any response to the Contractor within 30 days after receipt of the claimant's last submittal (unless Contract allows additional time).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor, if any, take one of the following actions in writing:
1. deny the Contract Claim in whole or in part;
  2. approve the Contract Claim; or
  3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.



- D. City's written action under Paragraph 10.06.C will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 10.06.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT**

### **11.01 *Cost of the Work***

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall not include any of the costs itemized in Paragraph 11.01.B, and shall include but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include;
    - a. salaries with a 55% markup, or
    - b. salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of Regular Working Hours, Weekend Working Hours, or legal holidays, shall be included in the above to the extent authorized by City.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith.
  3. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.



4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City and Contractor and shall deliver such bids to City, who will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
6. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable not covered under Paragraph 6.11, as imposed by Laws and Regulations.
  - d. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of City. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - f. The cost of utilities, fuel, and sanitary facilities at the Site.
  - g. Minor expenses such as telegrams, long distance telephone calls, telephone and communication services at the Site, express and courier services, and similar petty cash items in connection with the Work.



- h. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to City an itemized cost breakdown together with supporting data.

## 11.02 Allowances

A. *Specified Allowance:* It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.

B. *Pre-bid Allowances:*

1. Contractor agrees that:



- a. the pre-bid allowances include the cost to Contractor of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the pre-bid allowances have been included in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 9.05.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to unit price work listed and the cost of incidental work included as part of the unit price.
- D. City may make an adjustment in the Contract Price in accordance with Paragraph 12.01 if:
  1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  2. there is no corresponding adjustment with respect to any other item of Work.
- E. *Increased or Decreased Quantities*: The City reserves the right to order Extra Work in accordance with Paragraph 10.01.
  1. If the changes in quantities or the alterations do not significantly change the character of work under the Contract Documents, the altered work will be paid for at the Contract unit price.



2. If the changes in quantities or alterations significantly change the character of work, the Contract will be amended by a Change Order.
3. If no unit prices exist, this will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 12.
4. A significant change in the character of work occurs when:
  - a. the character of work for any Item as altered differs materially in kind or nature from that in the Contract or
  - b. a Major Item of work varies by more than 25% from the original Contract quantity.
5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

#### 11.04 *Plans Quantity Measurement*

- A. Plans quantities may or may not represent the exact quantity of work performed or material moved, handled, or placed during the execution of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised by the governing Section or this Article.
- B. If the quantity measured as outlined under "Price and Payment Procedures" varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 10.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount involved in the change, and the 25% variance will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.



- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

## ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIME

### 12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. The value of any Work covered by a Change Order will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum or unit price is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's additional fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 11.01.A.1, 11.01.A.2, and 11.01.A.3, the Contractor's additional fee shall be 15 percent except for:
      - 1) rental fees for Contractor's own equipment using standard rental rates;
      - 2) bonds and insurance;
    - b. for costs incurred under Paragraph 11.01.A.4 and 11.01.A.5, the Contractor's fee shall be five percent (5%);
      - 1) where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever



tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor, however in no case shall the cumulative total of fees paid be in excess of 25%;

- c. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.6, and 11.01.B;
- d. the amount of credit to be allowed by Contractor to City for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent (5%) of such net decrease.

#### 12.02 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by Critical Path Method analysis how the Extra Work or claimed delay adversely affects the critical path.

#### 12.03 *Delays*

- A. Where Contractor is reasonably delayed in the performance or completion of any part of the Work within the Contract Time due to delay beyond the control of Contractor, the Contract Time may be extended in an amount equal to the time lost due to such delay if a Contract Claim is made therefor. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by City, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph.
- B. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- C. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
- D. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, which is to be furnished by the City.



## ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

### 13.01 *Notice of Defects*

Notice of all defective Work of which City has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### 13.02 *Access to Work*

City, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### 13.03 *Tests and Inspections*

- A. Contractor shall give City timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. If Contract Documents, Laws or Regulations of any public body having jurisdiction require any of the Work (or part thereof) to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such independent inspections, tests, retests or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection or approval; excepting, however, those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, re-tests, or approvals required for City's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, re-tests, or approvals shall be performed by organizations acceptable to City.
- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
  - 1. City will coordinate such Testing to the extent possible, with Contractor;
  - 2. Should any Testing under this Section 13.03 D result in a "fail", "did not pass" or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor's cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.



3. Any amounts owed for any retest under this Section 13.03 D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of City, Contractor shall, if requested by City, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense.
- G. Contractor shall have the right to make a Contract Claim regarding any retest or invoice issued under Section 13.03 D.

#### 13.04 *Uncovering Work*

- A. If any Work is covered contrary to the Contract Documents or specific instructions by the City, it must, if requested by City, be uncovered for City's observation and replaced at Contractor's expense.
- B. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
  1. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); or City shall be entitled to accept defective Work in accordance with Paragraph 13.08 in which case Contractor shall still be responsible for all costs associated with exposing, observing, and testing the defective Work.
  2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

#### 13.05 *City May Stop the Work*

If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of City to stop the Work shall not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any



Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

### 13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work pursuant to an acceptable schedule, whether or not fabricated, installed, or completed, or, if the Work has been rejected by City, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, additional testing, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others). Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair City's special warranty and guarantee, if any, on said Work.

### 13.07 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents), any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by City or permitted by Laws and Regulations as contemplated in Paragraph 6.10.A is found to be defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
  - 1. repair such defective land or areas; or
  - 2. correct such defective Work; or
  - 3. if the defective Work has been rejected by City, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.



- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work may be required to be extended for an additional period of one year after the end of the initial correction period. City shall provide 30 days written notice to Contractor should such additional warranty coverage be required. Contractor may dispute this requirement by filing a Contract Claim, pursuant to Paragraph 10.06.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### 13.08 *Acceptance of Defective Work*

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

### 13.09 *City May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace rejected Work as required by City in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, City may, after seven (7) days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, City shall proceed expeditiously. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment incorporated in the Work, stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents, consultants, employees, and City's other contractors, access to the Site to enable City to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution



costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the Contract Price.

- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise of City's rights and remedies under this Paragraph 13.09.

## ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

The Schedule of Values for lump sum contracts established as provided in Paragraph 2.07 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payments*

#### A. *Applications for Payments:*

1. Contractor is responsible for providing all information as required to become a vendor of the City.
2. At least 20 days before the date established in the General Requirements for each progress payment, Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate insurance or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as described in subsection C. unless otherwise stipulated in the Contract Documents.



*B. Review of Applications:*

1. City will, after receipt of each Application for Payment, either indicate in writing a recommendation of payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that to the best of City's knowledge:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Work performed under Paragraph 9.05, and any other qualifications stated in the recommendation).
3. Processing any such payment will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to City in the Contract Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
  - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:
  - a. the Work is defective or completed Work has been damaged by the Contractor or subcontractors requiring correction or replacement;
  - b. discrepancies in quantities contained in previous applications for payment;
  - c. the Contract Price has been reduced by Change Orders;
  - d. City has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or



e. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Retainage:*

1. For contracts less than \$400,000 at the time of execution, retainage shall be ten percent (10%).
2. For contracts greater than \$400,000 at the time of execution, retainage shall be five percent (5%).

D. *Liquidated Damages.* For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be assessed against the monies due the Contractor, not as a penalty, but as damages suffered by the City.

E. *Payment:* Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

F. *Reduction in Payment:*

1. City may refuse to make payment of the amount requested because:
  - a. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
  - b. there are other items entitling City to a set-off against the amount recommended; or
  - c. City has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.4.a through 14.02.B.4.e or Paragraph 15.02.A.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, when Contractor remedies the reasons for such action.

14.03 *Contractor's Warranty of Title*

Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.



#### 14.04 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to permit City to use or occupy any such part of the Work which City determines to be ready for its intended use, subject to the following conditions:
1. Contractor at any time may notify City in writing that Contractor considers any such part of the Work ready for its intended use.
  2. Within a reasonable time after notification as enumerated in Paragraph 14.05.A.1, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
  3. Partial Utilization will not constitute Final Acceptance by City.

#### 14.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is Substantially Complete in accordance with the Contract Documents:
1. Within 10 days, City will schedule a Final Inspection with Contractor.
  2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective ("Punch List Items"). Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. No time charge will be made against the Contractor between said date of notification to the City of Substantial Completion and the date of Final Inspection.
1. Should the City determine that the Work is not ready for Final Inspection, City will notify the Contractor in writing of the reasons and Contract Time will resume.
  2. Should the City concur that Substantial Completion has been achieved with the exception of any Punch List Items, Contract Time will resume for the duration it takes for Contractor to achieve Final Acceptance.

#### 14.06 *Final Acceptance*

Upon completion by Contractor to City's satisfaction, of any additional Work identified in the Final Inspection, City will issue to Contractor a letter of Final Acceptance.



#### 14.07 *Final Payment*

##### *A. Application for Payment:*

1. Upon Final Acceptance, and in the opinion of City, Contractor may make an application for final payment following the procedure for progress payments in accordance with the Contract Documents.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.03;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all pending or released Damage Claims against City that Contractor believes are unsettled; and
  - d. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of or Liens filed in connection with the Work.

##### *B. Payment Becomes Due:*

1. After City's acceptance of the Application for Payment and accompanying documentation, requested by Contractor, less previous payments made and any sum City is entitled, including but not limited to liquidated damages, will become due and payable.
2. After all Damage Claims have been resolved:
  - a. directly by the Contractor or;
  - b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.
3. The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract Documents which specifically continue thereafter.

#### 14.08 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, 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 to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.02.C, and if bonds have been furnished as required in Paragraph 5.02, the written consent of the surety to the payment of the balance due for that



portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.

- B. *Partial Retainage Release.* For a Contract that provides for a separate vegetative establishment and maintenance, and test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

#### 14.09 *Waiver of Claims*

The acceptance of final payment will constitute a release of the City from all claims or liabilities under the Contract for anything done or furnished or relating to the work under the Contract Documents or any act or neglect of City related to or connected with the Contract.

### ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

#### 15.01 *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor and which may fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. During temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way, and he shall take every precaution to prevent damage or deterioration of the work performed; he shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving his equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the equipment and no profit will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.



## 15.02 City May Terminate for Cause

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, failure to adhere to the Project Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04, or failure to adhere to the City's Business Diversity Enterprise Ordinance #20020-12-2011 established under Paragraph 6.06.D);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of City; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents; or
  5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
  6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
  7. Substantial evidence that the Contractor has become insolvent or bankrupt, or otherwise financially unable to carry on the Work satisfactorily; or
  8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02A. occur, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. Conference shall be held not later than 15 days, after receipt of notice.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the construction Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of conference to address Contractor's failure to perform the Work.
  2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its



obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.

- a. If City completes the Work, City may exclude Contractor and Surety from the site and take possession of the Work, and all materials and equipment incorporated into the Work stored at the Site or for which City has paid Contractor or Surety but which are stored elsewhere, and finish the Work as City may deem expedient.
3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by City arising out of or resulting from completing the Work, such excess will be paid to Contractor. If such claims, costs, losses and damages exceed such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph, City shall not be required to obtain the lowest price for the Work performed.
4. Neither City, nor any of its respective consultants, agents, officers, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim on account of the method used by City in completing the Contract.
6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise prescribed by law.
- C. Notwithstanding Paragraphs 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.02, the termination procedures of that bond shall not supersede the provisions of this Article.



### 15.03 *City May Terminate For Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract. Any termination shall be effected by mailing a notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Receipt of the notice shall be deemed conclusively presumed and established when the letter is placed in the United States Postal Service Mail by the City. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the City regarding such discretionary action.
- B. After receipt of a notice of termination, and except as otherwise directed by the City, the Contractor shall:
1. Stop work under the Contract on the date and to the extent specified in the notice of termination;
  2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
  3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
  4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
    - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
    - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
  5. complete performance of such Work as shall not have been terminated by the notice of termination; and
  6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to its contract which is in the possession of the Contractor and in which the owner has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by City.



- D. Not later than 15 days thereafter, the City shall accept title to such items provided, that the list submitted shall be subject to verification by the City upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination, the Contractor shall submit his termination claim to the City in the form and with the certification prescribed by the City. Unless an extension is made in writing within such 60 day period by the Contractor, and granted by the City, any and all such claims shall be conclusively deemed waived.
- F. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  3. reasonable expenses directly attributable to termination.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

## ARTICLE 16 – DISPUTE RESOLUTION

### 16.01 *Methods and Procedures*

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 10.06 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.06.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 days of filing of the request.
- C. If the Contract Claim is not resolved by mediation, City's action under Paragraph 10.06.C or a denial pursuant to Paragraphs 10.06.C.3 or 10.06.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:



1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.
- B. Business address changes must be promptly made in writing to the other party.
- C. Whenever the Contract Documents specifies giving notice by electronic means such electronic notice shall be deemed sufficient upon confirmation of receipt by the receiving party.

### 17.02 *Computation of Times*

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday the next Working Day shall become the last day of the period.

### 17.03 *Cumulative Remedies*

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



#### 17.04 *Survival of Obligations*

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

#### 17.05 *Headings*

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