

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in these General Conditions or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. Said terms are generally capitalized or written in italics, but not always. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument which is evidence of the agreement between City and Contractor covering the Work.
  3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
  6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  7. *Bidder*—The individual or entity who submits a Bid directly to City.
  8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  9. *Bidding Requirements*—The advertisement or Invitation to Bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  10. *Business Day*—A business day is defined as a day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
  11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.

12. *Change Order*—A document, which is prepared and approved by the City, which is signed by Contractor and City and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Fort Worth, Texas, a home-rule municipal corporation, authorized and chartered under the Texas State Statutes, acting by its governing body through its City Manager, his designee, or agents authorized under his behalf, each of which is required by Charter to perform specific duties with responsibility for final enforcement of the contracts involving the City of Fort Worth is by Charter vested in the City Manager and is the entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
14. *City Attorney* – The officially appointed City Attorney of the City of Fort Worth, Texas, or his duly authorized representative.
15. *City Council* - The duly elected and qualified governing body of the City of Fort Worth, Texas.
16. *City Manager* – The officially appointed and authorized City Manager of the City of Fort Worth, Texas, or his duly authorized representative.
17. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
18. *Contract*—The entire and integrated written document between the City and Contractor concerning the Work. The Contract contains the Agreement and all Contract Documents and supersedes prior negotiations, representations, or agreements, whether written or oral.
19. *Contract Documents*—Those items so designated in the Agreement. All items listed in the Agreement are Contract Documents. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any and (ii) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 11.01 of these General Conditions for definition.

24. *Damage Claims* – A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day* – A day, unless otherwise defined, shall mean a Calendar Day.
26. *Director of Aviation* – The officially appointed Director of the Aviation Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents.
27. *Director of Parks and Community Services* – The officially appointed Director of the Parks and Community Services Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents.
28. *Director of Planning and Development* – The officially appointed Director of the Planning and Development Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents.
29. *Director of Transportation Public Works* – The officially appointed Director of the Transportation Public Works Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents.
30. *Director of Water Department* – The officially appointed Director of the Water Department of the City of Fort Worth, Texas, or his duly appointed representative, assistant, or agents.
31. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals are not Drawings as so defined.
32. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
33. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
34. *Extra Work* – Additional work made necessary by changes or alterations of the Contract Documents or of quantities or for other reasons for which no prices are provided in the Contract Documents. Extra work shall be part of the Work.
35. *Field Order* —A written order issued by City which requires changes in the Work but which does not involve a change in the Contract Price, Contract Time, or the intent of the Engineer. Field Orders are paid from Field Order Allowances incorporated into the Contract by funded work type at the time of award.
36. *Final Acceptance* – The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.



37. *Final Inspection* – Inspection carried out by the City to verify that the Contractor has completed the Work, and each and every part or appurtenance thereof, fully, entirely, and in conformance with the Contract Documents.
38. *General Requirements*—Sections of Division 1 of the Contract Documents.
39. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, or other materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
40. *Hazardous Waste*—Hazardous waste is defined as any solid waste listed as hazardous or possesses one or more hazardous characteristics as defined in the federal waste regulations, as amended from time to time.
41. *Laws and Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
42. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
43. *Major Item*— An Item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price or \$25,000 whichever is less.
44. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate Contract Time prior to Final Acceptance of the Work.
45. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, City will sign and deliver the Agreement.
46. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
47. *PCBs*—Polychlorinated biphenyls.
48. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
49. *Plans* – See definition of Drawings.

50. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Time.
51. *Project*—The Work to be performed under the Contract Documents.
52. *Project Manager*—The authorized representative of the City who will be assigned to the Site.
53. *Public Meeting* – An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
54. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
55. *Regular Working Hours* – Hours beginning at 7:00 a.m. and ending at 6:00 p.m., Monday thru Friday (excluding legal holidays).
56. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
57. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
58. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
59. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
60. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Division 00 00 00) of each Project.
61. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

62. *Submittals*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
63. *Substantial Completion* – The stage in the progress of the Project when the Work is sufficiently complete in accordance with the Contract Documents for Final Inspection.
64. *Successful Bidder*—The Bidder submitting the lowest and most responsive Bid to whom City makes an Award.
65. *Superintendent*— The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
66. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
67. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
68. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to, those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
69. *Unit Price Work*—See Paragraph 11.03 of these General Conditions for definition.
70. *Weekend Working Hours* – Hours beginning at 9:00 a.m. and ending at 5:00 p.m., Saturday, Sunday or legal holiday, as approved in advance by the City.
71. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
72. *Working Day* – A working day is defined as a day, not including Saturdays, Sundays, or legal holidays authorized by the City for contract purposes, in which weather or other conditions not under the control of the Contractor will permit the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7 a.m. and 6 p.m.

## 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through E are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

### B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by City. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).

*C. Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents; or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. has been damaged prior to City’s written acceptance.

*D. Furnish, Install, Perform, Provide:*

1. The word “Furnish” or the word “Install” or the word “Perform” or the word “Provide” or the word “Supply,” or any combination or similar directive or usage thereof, shall mean furnishing and incorporating in the Work including all necessary labor, materials, equipment, and everything necessary to perform the Work indicated, unless specifically limited in the context used.

- E. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### *2.01 Copies of Documents*

City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract Documents, and four (4) additional copies of the Drawings. Additional copies will be furnished upon request at the cost of reproduction.

### *2.02 Commencement of Contract Time; Notice to Proceed*

The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given no earlier than 14 days after the Effective Date of the Agreement, unless agreed to by both parties in writing.

### 2.03 *Starting the Work*

Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work shall be done at the Site prior to the date on which the Contract Time commences to run.

### 2.04 *Before Starting Construction*

*Baseline Schedules:* Submit in accordance with the Contract Documents, and prior to starting the Work.

### 2.05 *Preconstruction Conference*

Before any Work at the Site is started, the Contractor shall attend a Preconstruction Conference as specified in the Contract Documents.

### 2.06 *Public Meeting*

Contractor may not mobilize any equipment, materials or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

### 2.07 *Initial Acceptance of Schedules*

No progress payment shall be made to Contractor until acceptable schedules are submitted to City in accordance with the Schedule Specification as provided in the Contract Documents.

## **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. Clarifications and interpretations of the Contract Documents shall be issued by City.
- D. The Specifications may vary in form, format and style. Some Specification sections may be written in varying degrees of streamlined or declarative style and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the

section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims.

- E. The cross referencing of specification sections under the subparagraph heading "Related Sections include but are not necessarily limited to:" and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not the cross referencing is provided in each section or whether or not the cross referencing is complete.

### 3.02 *Reference Standards*

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

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

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein against all applicable field measurements and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph

6.17.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

*B. Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and the provisions of any standard, specification, manual, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Plans shall govern over Specifications, Supplementary Conditions shall govern over General Conditions and Specifications, and quantities shown on the Plans shall govern over those shown in the proposal.

*3.04 Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by a Change Order.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one or more of the following ways:
  1. A Field Order;
  2. City's review of a Submittal (subject to the provisions of Paragraph 6.18.C); or
  3. City's written interpretation or clarification.

*3.05 Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer, including electronic media editions; or
  2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of City and specific written verification or adaptation by Engineer.

- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by City or Engineer to Contractor, or by Contractor to City or Engineer, that may be relied upon are limited to the printed copies included in the Contract Documents (also known as hard copies) and other Specifications referenced and located on the City's on-line electronic document management and collaboration system site. Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### 4.01 *Availability of Lands*

- A. City shall furnish the Site. City shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.
1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
  2. The City has or anticipates removing and/or relocating utilities, and obstructions to the Site. Any outstanding removal or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be removed, adjusted, and/or relocated by others.
- B. Upon reasonable written request, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.



- C. Contractor shall provide for all additional lands and access thereto that may be required for construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. those drawings known to City of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Contractor may not make any Contract Claim against City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17.A), notify City in writing about such condition.

**B. Possible Price and Time Adjustments**

Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:

1. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under a negotiated contract; or
2. the existence of such condition could reasonably have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
3. Contractor failed to give the written notice as required by Paragraph 4.03.A.

**4.04 Underground Facilities**

**A. Shown or Indicated:** The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all such information and data;
  - b. locating all Underground Facilities shown or indicated in the Contract Documents;
  - c. coordination and adjustment of the Work with the owners of such Underground Facilities, including City, during construction; and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

**B. Not Shown or Indicated:**

1. If an Underground Facility which conflicts with the Work is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any

Work in connection therewith (except in an emergency as required by Paragraph 6.17.A), identify the owner of such Underground Facility and give notice to that owner and to City. City will review the discovered Underground Facility and determine the extent, if any, to which a change may be required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.

2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences.
3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

#### 4.05 *Reference Points*

- A. City shall provide engineering surveys to establish reference points for construction, which in City's judgment are necessary to enable Contractor to proceed with the Work. City will provide construction stakes or other customary method of marking to establish line and grades for roadway and utility construction, centerlines and benchmarks for bridgework. Contractor shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations. Contractor shall report to City whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations. The City shall be responsible for the replacement or relocation of reference points or property monuments not carelessly or willfully destroyed by the Contractor. The Contractor shall notify City in advance and with sufficient time to avoid delays.
- B. Whenever, in the opinion of the City, any reference point or monument has been carelessly or willfully destroyed, disturbed, or removed by the Contractor or any of his employees, the full cost for replacing such points plus 25% will be charged against the Contractor, and the full amount will be deducted from payment due the Contractor.

#### 4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Contractor may not make any Contract Claim against City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of

- construction to be employed by Contractor and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.17.A); and (iii) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after City has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered suitable for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. City may have such deleted portion of the Work performed by City's own forces or others.
- G. *To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.*
- H. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Licensed Sureties and Insurers*

All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 5.02 *Performance, Payment, and Maintenance Bonds*

- A. Contractor shall furnish performance and payment bonds, in accordance with Texas Government Code Chapter 2253 or successor statute, each in an amount equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents.
- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City.
- C. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a sealed and dated power of attorney which shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- D. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of Paragraph 5.02.C, Contractor shall promptly notify City and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01 and 5.02.C.

### 5.03 *Certificates of Insurance*

Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (other evidence of insurance requested by City or any other additional insured) in at least the minimum amount as specified in the Supplementary Conditions which Contractor is required to purchase and maintain.

1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as "Additional Insured" on all liability policies.

2. The Contractor's general liability insurance shall include a, "per project" or "per location", endorsement, which shall be identified in the certificate of insurance provided to the City.
3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide
4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers' compensation, all insurers must have a minimum rating of A-VII in the current A. M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of City is required.
5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance provided under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements, which, neither nullify or amend, the required lines of coverage, nor decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Contract has been bid or executed and the exclusions are determined to be unacceptable or the City desires additional insurance coverage, and the City desires the contractor/engineer to obtain such coverage, the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. Any self-insured retention (SIR), in excess of \$25,000.00, affecting required insurance coverage shall be approved by the City in regards to asset value and stockholders' equity. In

lieu of traditional insurance, alternative coverage maintained through insurance pools or risk retention groups, must also be approved by City.

11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis, must be acceptable to and approved by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverage's and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City shall be required to provide prior notice of 90 days, and the insurance adjustments shall be incorporated into the Work by Change Order.
13. City shall be entitled, upon written request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

#### 5.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability.* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury, and liability under an insured contract. Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other

insurance or self-insurance programs afforded to the City. The Commercial General Liability policy, shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions).

- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because bodily injury or death of any person and or property damage arising out of the work, maintenance or use of any motor vehicle by the Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- D. *Railroad Protective Liability.* If any of the work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop work until replacement insurance has been procured. There shall be no time credit for days not worked pursuant to this section.

#### 5.05 *Acceptance of Bonds and Insurance; Option to Replace*

If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

### ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

#### 6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.



- B. At all times during the progress of the Work, Contractor shall assign a competent, English-speaking, Superintendent who shall not be replaced without written notice to City. The Superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communication given to or received from the Superintendent shall be binding on Contractor.
- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

#### 6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during Regular Working Hours. Contractor will not permit the performance of Work beyond Regular Working Hours or for Weekend Working Hours without City's written consent (which will not be unreasonably withheld). Written request (by letter or electronic communication) to perform Work:
  - 1. for beyond Regular Working Hours request must be made by noon at least two (2) Business Days prior
  - 2. for Weekend Working Hours request must be made by noon of the preceding Thursday
  - 3. for legal holidays request must be made by noon two Business Days prior to the legal holiday.

#### 6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

#### 6.04 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.07 and the General Requirements as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to City for acceptance (to the extent indicated in Paragraph 2.07 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment for the duration of the Contract in accordance with the schedule specification 01 32 16.
  - 3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Time may only be made by a Change Order.

#### 6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be submitted to City for review under the circumstances described below.
  - 1. *"Or-Equal" Items:* If in City's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an "or-equal" item, in which case review and approval of the proposed item may, in City's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. the City determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
  - 3) it has a proven record of performance and availability of responsive service; and
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the City or increase in Contract Time; and
  - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in City's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it may be submitted as a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by City from anyone other than Contractor.
- c. Contractor shall make written application to City for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design;
    - b) be similar in substance to that specified;
    - c) be suited to the same use as that specified; and
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of final completion on time;
    - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item;

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty; and
- 3) will identify:
  - a) all variations of the proposed substitute item from that specified;
  - b) available engineering, sales, maintenance, repair, and replacement services; and
- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and Damage Claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by City. Contractor shall submit sufficient information to allow City, in City's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. Contractor shall make written application to City for review in the same manner as those provided in Paragraph 6.05.A.2.
- C. *City's Evaluation:* City will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. City may require Contractor to furnish additional data about the proposed substitute. City will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until City's review is complete, which will be evidenced by a Change Order in the case of a substitute and an accepted Submittal for an "or-equal." City will advise Contractor in writing of its determination.
- D. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee, warranty, or other surety with respect to any substitute. *Contractor shall indemnify and hold harmless City and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorneys fees) arising out of the use of substituted materials or equipment.*
- E. *City's Cost Reimbursement:* City will record City's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor may be required to reimburse City for evaluating each such proposed substitute. Contractor may also be required to reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

G. *City Substitute Reimbursement*: Costs (savings or charges) attributable to acceptance of a substitute shall be incorporated to the Contract by Change Order.

H. *Time Extensions*: No additional time will be granted for substitutions.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall perform with his own organization, work of a value not less than 35% of the value embraced on the Contract, unless otherwise approved by the City.

B. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection (excluding those acceptable to City as indicated in Paragraph 6.06.C).

C. The City may from time to time require the use of certain Subcontractors, Suppliers, or other individuals or entities on the project, and will provide such requirements in the Supplementary Conditions.

D. *Minority Business Enterprise Compliance*: It is City policy to ensure the full and equitable participation by Minority Business Enterprises (MBE) in the procurement of goods and services on a contractual basis. If the Contract Documents provide for a MBE goal, Contractor is required to comply with the intent of the City's MBE Ordinance (as amended) by the following:

1. Contractor shall, upon request by City, provide complete and accurate information regarding actual work performed by a MBE on the Contract and payment therefor.
2. Contractor will not make additions, deletions, or substitutions of accepted MBE without written consent of the City. Any unjustified change or deletion shall be a material breach of Contract and may result in debarment in accordance with the procedures outlined in the Ordinance.
3. Contractor shall, upon request by City, allow an audit and/or examination of any books, records, or files in the possession of the Contractor that will substantiate the actual work performed by an MBE. Material misrepresentation of any nature will be grounds for termination of the Contract in accordance with Paragraph 15.02.A. Any such misrepresentation may be grounds for disqualification of Contractor to bid on future contracts with the City for a period of not less than three years.

E. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
  2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- F. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- G. All Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work shall communicate with City through Contractor.
- H. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of City.

#### 6.07 *Wage Rates*

- A. *Duty to pay Prevailing Wage Rates.* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Fort Worth to be the prevailing wage rates in accordance with Chapter 2258. Such prevailing wage rates are included in these Contract Documents.
- B. *Penalty for Violation.* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause.* On receipt of information, including a complaint by a worker, concerning an alleged violation of 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being subtracted from successive progress payments pending a final determination of the violation.

- D. *Arbitration Required if Violation Not Resolved.* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph C above. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.
- E. *Records to be Maintained.* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of acceptance of the work, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be open at all reasonable hours for inspection by the City. The provisions of Paragraph 6.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments.* With each progress payment or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates.* The Contractor shall post prevailing wage rates in a conspicuous place at all times.
- H. *Subcontractor Compliance.* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs A through G above.

#### 6.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by City in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay for the use of said fees or royalties to others.
- B. *To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from*

*the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.*

#### 6.09 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Contractor shall obtain and pay for all construction permits and licenses except those provided for in the Supplementary Conditions or Contract Documents. City shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement, except for permits provided by the City as specified in 6.09.B. City shall pay all charges of utility owners for connections for providing permanent service to the Work.
- B. *City obtained permits and licenses.* City will obtain and pay for all permits and licenses as provided for in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency. The City will not reimburse the Contractor for any cost associated with these requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
  2. U.S. Army Corps of Engineers Permits
  3. Texas Commission on Environmental Quality Permits
  4. Railroad Company Permits
- C. *Outstanding permits and licenses.* The City anticipates acquisition of and/or access to permits and licenses. Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

#### 6.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, the City shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all



court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.02.

- C. Changes in Laws or Regulations not known at the time of opening of Bids having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

#### 6.11 Taxes

- A. On a contract awarded by the City, an organization which qualifies for exemption pursuant to Texas Tax Code, Subchapter H, Sections 151.301-335 (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to his supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Ruling .007. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with the provision of State Comptroller's Ruling .011, and any other applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas Tax permits and information may be obtained from:
1. Comptroller of Public Accounts  
Sales Tax Division  
Capitol Station  
Austin, TX 78711; or
  2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

#### 6.12 Use of Site and Other Areas

##### A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. At any time when, in the judgment of the City, the Contractor has obstructed or closed or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Should any Damage Claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
  4. Pursuant to Paragraph 6.21, Contractor shall indemnify and hold harmless City, from and against all claims, costs, losses, and damages arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against City.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Site Maintenance Cleaning:* 24 hours after written notice is given to the Contractor that the clean-up on the job site is proceeding in a manner unsatisfactory to the City, if the Contractor fails to correct the unsatisfactory procedure, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice (by letter or electronic communication), and the costs of such direct action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor.
- D. *Final Site Cleaning:* Prior to Final Acceptance of the Work Contractor shall clean the Site and the Work and make it ready for utilization by City or adjacent property owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition or better all property disturbed by the Work.
- E. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.13 Record Documents

- A. Contractor shall maintain in a safe place at the Site or in a place designated by the Contractor and approved by the City, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all accepted Submittals will be available to City for reference. Upon completion of the Work, these record documents, any operation and maintenance manuals, and Submittals will be delivered to City prior to Final Inspection. Contractor shall include accurate locations for buried and imbedded items.

#### 6.14 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall

take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- D. Contractor shall inform City of the specific requirements of Contractor's safety program, if any, with which City's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.14.A.2 or 6.14.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor.
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and City has accepted the Work.

#### 6.15 *Safety Representative*

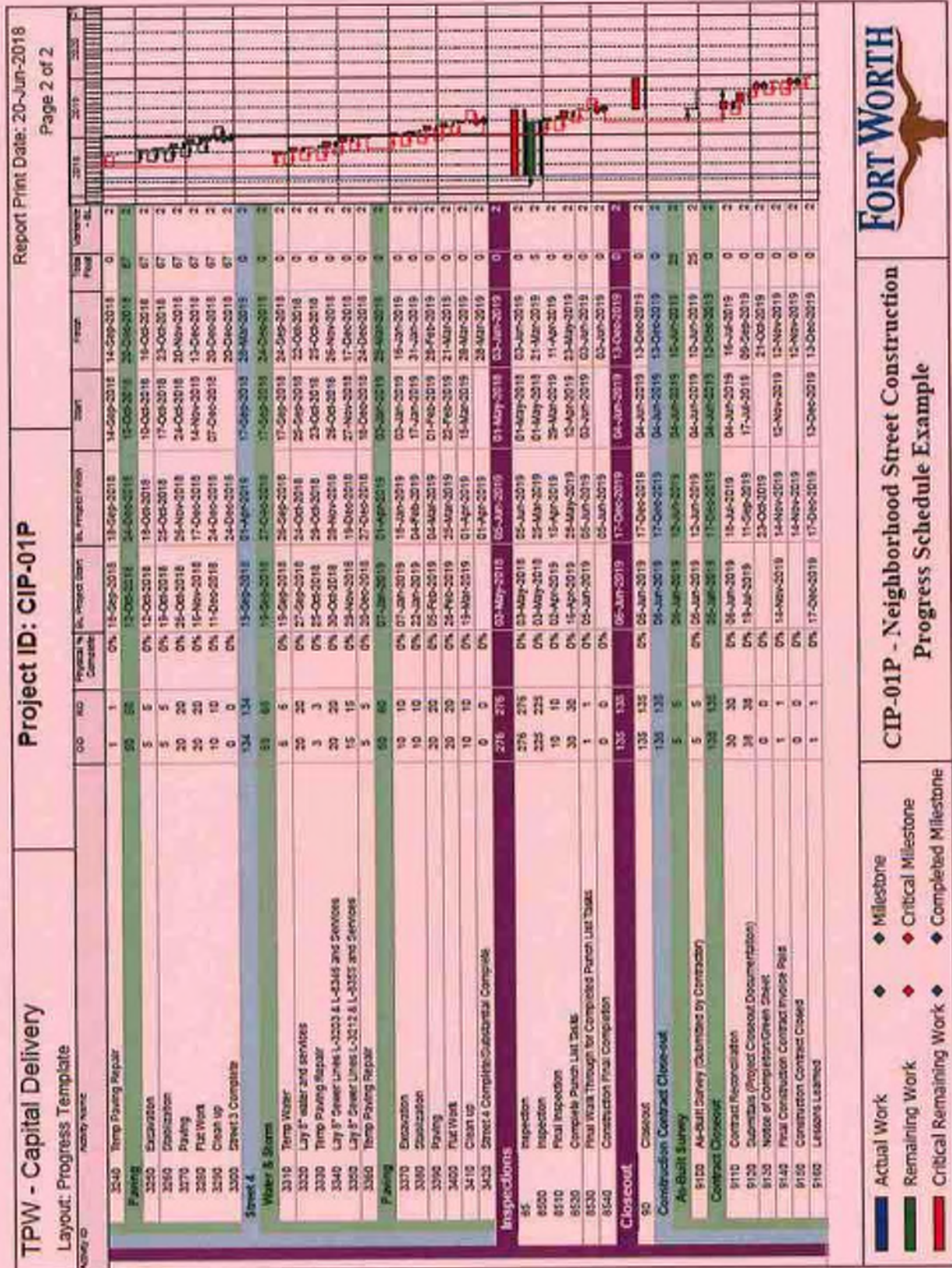
Contractor shall inform City in writing of Contractor's designated safety representative at the Site.

#### 6.16 *Hazard Communication Programs*

Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers in accordance with Laws or Regulations.

#### 6.17 *Emergencies and/or Rectification*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant



**END OF SECTION**

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Revision Log		
DATE	NAME	SUMMARY OF CHANGE
July 20, 2018	M. Jarrell	Initial Issue
May 7, 2021	M Owen	Revised name due to revising the schedule specification

6

**SECTION 01 32 16.3**  
**CONSTRUCTION PROJECT SCHEDULE PROGRESS NARRATIVE**

<b>Reporting Period:</b>	<b>Date Issued:</b>
<b>Project Name:</b>	<b>Contractor Company Name:</b>
<b>City Project No:</b>	<b>Contractor Schedule Contact:</b>
<b>City Project Manager:</b>	

**A. List of activities changed in the reporting period.**

<ol style="list-style-type: none"><li>1. (insert text here)</li><li>2. (insert text here)</li><li>3. (insert text here)</li><li>4. (insert text here)</li><li>5. (insert text here)</li><li>6. (insert text here)</li></ol>
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**B. List any potential delays and provide mitigation actions**

<ol style="list-style-type: none"><li>1. (insert text here)</li><li>2. (insert text here)</li><li>3. (insert text here)</li></ol>
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**C. List any actual delays and provide recovery actions**

<ol style="list-style-type: none"><li>1. (insert text here)</li><li>2. (insert text here)</li><li>3. (insert text here)</li></ol>
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