



City of La Porte

Established 1892

Purchasing Department

The City of La Porte is rich in history and built on community, delivering a safe and attractive environment for all walks of life.

CITY OF LA PORTE OFFICIAL NOTICE TO BIDDERS

Sealed Bid #27004 – Fire Station One Renovations

The City of La Porte will receive bids for the work identified in these Bid Documents and addenda as may be issued prior to the date of the Bid Opening. Sealed Bid #27004 offers will be received until 2:00 pm Central Standard Time on Thursday, October 22, 2026, at the City Hall Information Desk located at 604 W. Fairmont Parkway, La Porte, Texas 77571. **No late Bids will be considered.**

Bid Documents may be downloaded from www.publicpurchase.com or obtained without deposit from the City of La Porte Purchasing Division located at 604 W. Fairmont Parkway, LP, 77571. All sealed Bids shall be identified with the Bid number and name, Legal Name and address of the Bidder, and shall be submitted electronically on PublicPurchase.com. The Bids will be opened and publicly read in the Council Chambers immediately after the closing hour for Bids on said date.

The City reserves the right to reject any and/or all Bids, to waive all technicalities and to accept any Bid or part thereof, which in the opinion of the City Council, is most advantageous to the city. In case of ambiguity or lack of clarity in stating the prices bid, the city reserves the right to consider the most advantageous Bid thereof or to reject the Bid.

WITHDRAWAL OF BID

No Bid shall be withdrawn for a period of 60 days after the opening of the Bids without consent of OWNER.

PRE-BID CONFERENCE

A pre-bid meeting will be held on Tuesday, October 6, 2026, at 10:00 am in Conference Room 106 located at 604 W. Fairmont Parkway (City Hall) in La Porte, Texas 77571. Potential Bidders must sign in using the name of the organization that will be submitting a Bid. It is each Bidder's responsibility to sign in at the pre-bid conference to evidence participation.

BONDS

A Bid Bond payable to the City of La Porte shall accompany the Bid in an amount of not less than 5% of the total Bid. Performance and Payment bonds, when required, shall be executed on the forms furnished by the City and included in the Bid Package. Each bond shall be issued in an amount of one hundred percent (100%) of the Contract amount by a corporate surety authorized to do business in the State of Texas and shall meet any other requirements established by Law or by the OWNER.

BID DOCUMENTS ARE DUE PRIOR TO: Thursday, October 22, 2026, at 2:00 pm

604 West Fairmont Parkway, La Porte, TX 77571
281-470-5126 | Purchasing@LaPorteTX.gov | LaPorteTX.gov/Purchasing



Construction Standard Instructions to Bidders

PROJECT DESCRIPTION

The City of La Porte is seeking competitive bids for the renovation of the existing Fire Station One. The facility is located at 125 S Third Street, La Porte, Texas 77571. The Work shall include all labor, tools, plant, equipment, materials, transportation, superintendence, temporary construction of every nature, insurance, and contributions for all services and facilities required for the general construction, including mechanical, electrical, plumbing and technology work to construct and fully complete the Work identified by the Contract Documents.

QUESTIONS and CLARIFICATIONS

All requests for interpretation shall be submitted as a question at www.publicpurchase.com or to purchasing@laportetx.gov or may be delivered in writing to the Purchasing Office located at 604 W. Fairmont Parkway, La Porte, Texas, 77571. Purchasing will act as liaison between Bidders and the department's representative or the Engineer/Architect to seek clarification or supplemental instructions appropriate to the inquiry. The deadline for answering questions is seven (7) working days prior to the bid opening.

PRE-BID CONFERENCE and/or SITE VISIT

A pre-bid conference is scheduled for Tuesday, October 6, 2026, 10:00 am in Conference Room 106 at 604 W. Fairmont Parkway (City Hall). Questions shall be submitted in writing at www.publicpurchase.com or to purchasing@laportetx.gov, or delivered in person to the Purchasing office at 604 W. Fairmont Parkway, La Porte, Texas 77571.

ARTICLE 1 – DEFINED TERMS

Terms used in these Instructions to Bidders are defined in the “Standard General Conditions for Construction”, and have the meanings assigned to them in the General Conditions. Certain additional terms used in these Instructions to Bidders have the meanings indicated below

- 1.1 Bidder: who submits a bid to Bidder.
- 1.2 Issuing Office: The office from which the Bidding Documents are to be issued and where the Bidding procedures are to be administered.
- 1.3 Successful Bidder: The responsive and responsible Bidder to whom OWNER (based on OWNER's evaluation as hereinafter provided) makes an award.
- 1.4 OWNER and ENGINEER/ARCHITECT
 - 1.4.1 OWNER: where the word “OWNER is used in the Contract Documents it shall be understood as referring to the City of La Porte, Texas and its designated representative.
 - 1.4.2 ENGINEER/ARCHITECT: Where the word “ENGINEER” or “ARCHITECT” is used in the Instructions to Bidders it shall be understood as referring to the consultant to the OWNER.

ARTICLE 2 BIDDING DOCUMENTS

2.1 Complete sets of the Bidding Documents shall be used in preparing bids and to submit a bid; neither OWNER nor ENGINEER/ARCHITECT assumes any responsibility for errors, omissions, or misinterpretations resulting from the use of incomplete sets of Bidding Documents. It is the Bidder's sole responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors



- or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.02** Bid Documents are authorized for downloading solely for the Bidder's use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs (if applicable) associated with printing or reproduction.
- 2.03** The OWNER has established a Bidding Documents Website (PublicPurchase.com) as indicated in the Notice to Bidders. Bidders shall register with the website and obtain a complete set of the Bidding Documents from such website. Bidders may rely that sets of Bidding Documents obtained from the Bidding Documents Website are complete, including any Addenda issued by OWNER.
- 2.04** OWNER is not responsible for omissions in Bidding Documents or other documents obtained from plan rooms, or for a Bidder's failure to obtain Addenda from a plan room or any other source, although they may make them available for examination. Only the PublicPurchase.com site or the Issuing Office are complete unless an omission is blatant.
- 2.05** Bidding Documents will be provided in Adobe PDF (pdf) that is readable by Adobe Acrobat Reader with the intent of the OWNER that such documents are to be exactly representative of the paper copies of the documents. However, because transmission and receipt of Electronic Documents nor the Contractor's means of reproduction of such documents can be controlled, the OWNER does not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to paper copies. Bidder assumes all risks associated with such differences, including costs and responsibility associated with the use of said versions to derive information that is not explicitly contained in the printed paper versions of the documents, and for Bidder's reliance upon such derived information.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.1** This Bid #27004 requires that the Bidder provides written evidence to demonstrate Bidder's qualifications to perform the work:
- 3.1.1 A written statement that Bidder is authorized to do business in the State of Texas.
- 3.1.2 Bidder's state or other contractor license number, where applicable.
- 3.2** In accordance with City Ordinance 2013-3491 Section 1: That Chapter 2, "Administration, "Article III, "Finance", Division 2. "Purchases and Contracts", Subdivision II "Public Works Contracts", Section 2-1066 of the Code of Ordinances, La Porte Texas reads:
- Sec. 2-106. Qualification requirement of bidders; filing of contractor's qualification statement.
- (a) The city council has determined, and does hereby find, determine, and declare that it is in the best interest of the city that in the case of all construction projects having an owner's estimated construction cost of greater than \$1,000,000.00, all bidders must submit with their bid package, a satisfactory contractor's qualification statement, on forms to be provided by the city. Submission of a contractor's qualification Statement is a condition precedent to execution of a contract by the city with the successful bidder.



- (b) For projects with an Owner's estimated construction cost of less than \$1,000,000.00, contractors may be required to file a contractor's qualification statement if such is determined by the city to be required. In making such determination, the city shall review the city's experience with projects of similar nature; the recommendation of the project architect/engineer which considers the complexity of the project; and the uniqueness or novelty of the anticipated project which may require a high degree of contractor specialization, technical expertise and/or previous experience on similar projects.
- (c) After the bid opening for contracts up to \$2,000,000.00 the city shall request financial statements from the apparent low bidder that have been reviewed by an independent certified public accountant. For contracts over \$2,000,000.00 the apparent low bidder must submit audited financial statements performed by an independent certified public accountant. The qualification statement and the reviewed or audited financial statement is deemed confidential; shall not be disclosed by the city to the public or to other contractors; and shall be deemed exempt for disclosure by the city to the public or to other contractors; and shall be deemed exempt from disclosure under the Open Records Act, V.T.C.A., Government Code §552.001 et seq., in accordance with the state attorney general's opinion number ORD-309, 1982.

Section 2-10 Requirements for contractors entering bids on projects subject to submittal of qualification statement under section 2-106 of the Administration Code

- (a) Subcontracting of work more than 50 percent; consent is required.

Contractors entering bids on city construction projects subject to section 2-106 of this Code shall not subcontract more than 50 percent of the work on the project without first obtaining the express written consent of the city.

- (b) Attendance of pre-bid conference

All contractors (or representatives of the contractors) desiring to bid on city construction projects subject to section 2-106 of this Code must attend a Prebid conference if scheduled and stated in the Bid Documents. Otherwise, such contractors' bids will be returned by the city unopened.

- (c) Determination of bidding capacity.

The city is interested in determining a contractor's bidding capacity for the purpose of awarding contracts subject to section 2-106 of the Administration Code. Bidding capacity for each contractor shall be equal to net working capital. Net working capital is defined as current assets minus current liabilities, as shown on a balance sheet reviewed or audited by an independent certified public accountant. The city will determine the minimum bidding capacity for each project. Only those contractors possessing a bidding capacity meeting or exceeding that minimum will be considered qualified for that project.



(d) Standards for contractor disqualification

The city council adopts the following standards for disqualification of contractors:

(1) Automatic Disqualification

- a. The company has negative net working capital or does not meet the minimum bidding capacity.
- b. There is a failure to complete statements in all detail
- c. The company or personnel are on the federal job debarment list.
- d. The company or personnel are on the Justice Department list of unacceptable contractors, i.e., convicted of antitrust violations.
- e. There is a failure to complete a statement in a truthful manner.

(2) Other considerations for possible disqualification

Disqualification may also take place according to the following considerations:

- a. Companies with pending litigation may be disqualified for the duration of litigation as deemed to the advantage of the city by the city's project manager.
- b. There is a default on the contract, or forfeiture of bid bonds or performance bonds.
- c. There is a performance record of poor workmanship on previous projects.
- d. There is a performance record of failure to complete warranty work.
- e. There has been bankruptcy or financial reorganization.
- f. Companies submitting consolidated financial statements will be disqualified unless their partner company agrees to be the contracting party with the city.

3.4 Bidder shall supply a list of major subcontractors including but not limited to Masonry, Electrical, Roofing, Mechanical, Plumbing, Flooring, Low Voltage, Ceiling Systems, Gypsum Board and any other prudent subcontractor. List must accompany Bid.

3.3 The OWNER's decision as to the qualifications of the Bidders shall be final.

ARTICLE 4 – EXAMINATION OF CONTRACT DOCUMENTS AND SITE

4.1 It is the responsibility of the Bidder before submitting a Bid:

4.1.1 To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents including technical data, any reports and or tests referred to in the project documents.

4.1.2 To visit the site to become familiar with and satisfy Bidder as to the general local and site conditions that may affect cost, progress, performance or furnishing of the Work. The Site includes rights-of-way, easements, and other lands furnished by OWNER for the use of the Contractor.

4.1.3 To consider federal, state, and local Laws and Regulations that may affect cost, progress, performance, or furnishing of the Work.



- 4.1.4** To study and carefully correlate Bidder's knowledge and observations with the Contract documents and such other related data; and
 - 4.1.5** To promptly notify OWNER/ENGINEER/ARCHITECT of all conflicts, errors, ambiguities, or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.
- 4.2** Information and data shown or indicated in the Contract documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to OWNER and ENGINEER/ARCHITECT by owners of such Underground Facilities or others, and OWNER and ENGINEER/ARCHITECT do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in Supplementary Conditions.
- 4.3** Provisions concerning the responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in the General Conditions.
- 4.4** Bidder is responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto as Bidder deems necessary to determine a Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract documents prior to submitting a Bid.
- 4.5** Access to the site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid shall be provided upon request.
- 4.6** The general nature of work that is to be performed at the site by the OWNER or others (Such as utilities and other prime contractors) that is related to the Work for which a Bid shall be submitted will be identified and made available upon request.
- 4.7** Bidder represents that submission of a Bid constitutes an incontrovertible representation that Bidder has complied with every requirement of Article 3, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that bidder has given OWNER/ENGINEER/ARCHITECT written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Contract documents and written resolutions thereof by OWNER/ENGINEER/ARCHITECT is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.



ARTICLE 5 – AVAILABILITY OF LANDS FOR WORK, ETC.

- 5.1** The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by CONTRACTOR in performing the Work are identified in the Contract documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Contract Documents.

ARTICLE 6 – INTERPRETATIONS AND ADDENDA

- 6.1** All questions about the meaning or intent of the Bidding documents are to be directed to the OWNER utilizing the Bidding documents Website (PublicPurchasing.com), or to the Purchasing Office (the authorized representative for these purposes; 281-470-5126, purchasing@laportetx.gov), in writing not less than seven (7) business days prior to the date for opening of Bids. No question will be accepted or responded to orally but will be presented and answered in writing. Any information provided to Bidders by any other means than the Purchasing Office via the Bidding Documents Website is not allowed during the Bidding process. Therefore, unless Bidder receives information, including Addenda otherwise communicated from the Purchasing Office on PublicPurchase.com, Bidder shall not be entitled to assert any claim or demand against the OWNER on account thereof.

6.1.1 Replies may be issued by Addenda published on PublicPurchase.com only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. All Addenda so issued shall become part of the Contract Documents.

6.1.2 Questions received less than five (5) days prior to the date for the opening of the Bids may not be answered.

- 6.2** OWNER/ENGINEER/ARCHITECT will neither approve nor disapprove materials or equipment prior to the opening of Bids, unless specifically stated in the Bid.
- 6.3** Addenda may also be used to modify the Bidding Documents as deemed advisable by OWNER or ENGINEER/ARCHITECT.
- 6.4** Each Bidder is solely responsible for submitting a Bid acknowledging that any Addenda issued are received on the Bid Form. Failure of any Bidder to receive any such Addenda shall not relieve such Bidder from any obligation under his Bid as submitted.

ARTICLE 7 – BID SECURITY

- 7.1** Each Bid must be accompanied by Bid security made payable to the OWNER in an amount equal to not less than 5% of the Bidder's maximum Bid price in the form of a Bid Bond issued by a surety meeting the requirements stated. Any Bid submitted without the required Bid bond shall be considered non-responsive and will not be considered for award.



- 7.2** Bid Security of the successful Bidder will be retained until such Bidder has executed the Agreement, furnished all the required contract security, and met the conditions of the Notice to Award, whereupon the Bid security will be available for return upon request. If the successful Bidder fails to execute and deliver the Agreement with all the required contract security within 15 days of the Notice of Award, the OWNER may annul the Notice of Award, and the Bid security of that Bidder will be forfeited. The bid security of other Bidders participating in the Bid will be retained by OWNER until at least the 7th calendar day after the Effective Date of the Agreement with Successful Bidder whereupon the Bid security furnished by said Bidders will be returned.

ARTICLE 8 - CONTRACT TIMES

- 8.1** The number of days within which, or the dates by which the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any are to be achieved), are set forth in the Agreement.
- 8.2** Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or Completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 9 – SUBSTITUTES AND “APPROVED EQUAL” ITEMS

- 9.1** Materials and equipment specified in the Contract Documents by using the name of a proprietary item or name of a particular supplier are intended to further describe, establish type, function, and the quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “approved equal” item or no substitution is permitted., a substitute or “approved equal” item of material or equipment may be provided or used by the CONTRACTOR if acceptable to ENGINEER/ARCHITECT and OWNER.
- 9.2** Substitutes or “approved equal” items proposed must include a detailed explanation and documentation to support how the items proposed by Bidder can perform as well as or better than those specified. If no alternate is proposed and accepted by the city, the Bidder will be required to provide the specific items(s) described in the Specifications.
- 9.2.1** Acceptable documentation to support proposed alternate items may include, but are not limited to:
- Product identification, including manufacturer’s name and address.
 - Manufacturer’s literature identifying the product including detailed description, reference standards, performance and test data.
 - Samples, as applicable
 - Contact information about similar applications where proposed product(s) have been used, date of product usage.
 - Itemized comparison of proposed alternate item with product or service specified, listing significant variations.
- 9.3** No application for acceptance of substitutes and or “approved equal” items will be considered until after the effective Date of the Agreement. The Contractor shall submit any



such application for consideration by ENGINEER/ARCHITECT/OWNER as set forth in the General Conditions and may be supplemented in the Supplementary Conditions.

ARTICLE 10 - BASIS OF DESIGN

- 10.1** This Project design is based upon the material or supplier's equipment named in the specifications, unless otherwise indicated. Specified items have been evaluated by the ENGINEER/ARCHITECT for compliance with the requirements of the Contract documents. When other manufacturers are listed, CONTRACTOR may be required to make modifications or adjustments, at CONTRACTOR's expense, to coordinate the installation of the furnished equipment with associated elements of Work, such as piping and electrical connections, or support and mounting provisions.

ARTICLE 11 – SUBCONTRACTORS, SUPPLIERS AND OTHERS

- 11.1** CONTRACTOR is required to perform with its own work forces at least 50% of the Work, unless written consent to Subcontract a greater percentage of the Work is approved by OWNER.

11.1.1 A list of the names of proposed Subcontractors having a direct contract with CONTRACTOR and a portion of the Work to be performed by each shall be submitted with the Bid.

11.1.2 Any change to the Bid list of Subcontractors shall be submitted to the ENGINEER/ARCHITECT/OWNER prior to performing that portion of the Work within 5 calendar days of Notice to Proceed being issued. If requested by OWNER, such a list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier.

11.1.3 The city reserves the right to approve any Subcontractor in direct contract with the CONTRACTOR prior to start of Work.

ARTICLE 12 – BID PROPOSAL FORM

- 12.1** Only the Bid Form included with the Bidding Documents will be accepted at Bid Opening.

12.1.1 All blanks on the Bid Proposal Form provided shall be completed in ink or typed. It is the sole responsibility of the Bidder to submit a legible, accurate and complete Bid. The Bid Form cannot be changed unless an Addendum has been issued by the ENGINEER/ARCHITECT/OWNER authorizing Bidder to do so. Changing the Bid Form will result in disqualification of the Bidder.

12.1.2 Lump Sum Bids shall be priced only for the base contract with a separate price for any alternate described in the Specifications and provided for on the Bid Form. Where an alternate is selected by OWNER for award, the separate price for that alternate will be added to or deducted from the Base Bid.

12.1.3 Unit price work shall be the total of unit prices extended by the estimated number of units as set forth in the Bid. A separate price shall be provided for any alternate described in the Specifications and provided for on the Bid Form. The alternate(s) selected will be the amount added to or deducted from the price of the Base Bid.



- a. An extension may not be divided by the number of units specified to determine a unit cost, if such is omitted by Bidder.
- b. Where a discrepancy in an extended price is identified, the unit price shall prevail.
- c. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- d. Discrepancies between words and figures will be resolved in favor of the words.

12.1.4 Quantities are only estimated and are not guaranteed. The determination of actual quantities and classification shall be made by the ENGINEER/ARCHITECT as provided in the General Conditions. The city will only approve payment for actual quantities used.

12.2 Only an authorized representative that meets the following requirements shall sign a Bid. Authorization shall be considered as per the Bid Execution required form submitted with the Bid package.

12.2.1 A Bid shall be signed in the space provided by the written signature of the person, or persons properly authorized to sign it. All names must be typed or printed below the signature.

12.2.2 A Bid submitted by an individual shall be signed by the Bidder or by an authorized agent.

12.2.3 Bids by partnerships must be executed in the legal partnership name and signed by a partner, whose title must appear under the signature with the official address of the partnership shown below the signature.

12.2.4 Bids by corporations must be executed in the legal corporate name by the president or a vice-president (or another corporate officer with evidence of authority to sign provided). The corporate address and the state of incorporation shall be shown below the signature. Such corporation must be licensed to do business in the state in which the Project is located before a Contract to do the work can be executed. If a foreign corporation, the state under which it is incorporated must be named.

12.2.5 Bids signed by an attorney-in-fact for individuals, firms, partnerships, or joint ventures shall attach a power-of-attorney evidencing such authority to sign the Bid.

ARTICLE 13 – SUBMISSION OF BIDS

13.1 Bids shall be submitted prior to the published opening date, time and the place indicated in the Official Notice to Bidders, unless otherwise changed by Addendum. All bids must be enclosed in an opaque sealed envelope marked with the Sealed Bid Number and Project Title and the name and address of the Bidder. NO oral, facsimile, or telephone bids will be accepted unless otherwise stated in the Bid Documents.

13.1.1 The Bid shall be accompanied by Bid Security and all other required documents, including acknowledgement of any Addenda.



13.1.2 If a Bid is mailed or delivered other than by hand, the Sealed Bid envelope must be properly sealed and marked with the appropriate Bid information on the face of the sealed envelope.

13.1.3 Bids received after the official Bid closure time will be returned to the Bidder unopened.

ARTICLE 14 – MODIFICATION AND WITHDRAWAL OF BID

14.1 Bids may be modified or withdrawn at any time prior to the opening of Bids by submitting a written document, duly executed in the manner that a Bid must be executed and delivered to the place where the Bid is to be submitted.

14.2 A Withdrawn Bid may be resubmitted up to the time designated for the official receipt of Bids if they are in full conformance with these Instructions to Bidders, including Bid security in an amount sufficient for the Bid as modified or resubmitted.

14.3 If within 24 hours after the Bids are publicly opened any Bidder files a duly signed written notice with the OWNER and promptly thereafter demonstrates to the reasonable satisfaction of the OWNER that there was a material and substantial mistake in the preparation of the Bid, the Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is re-bid, the Bidder will be disqualified from further bidding on the Work.

ARTICLE 15 – BID OPENING AND AWARD OF CONTRACT

15.1 Bids will be opened at the date, time and place indicated in the advertisement and the Official Notice to Bid and unless obviously non-responsive, read aloud publicly at the appointed time. A summary of the amounts of the Base Bids and major alternates, if any, will be made available to Bidders on PublicPurchase.com after the opening of Bids. Bidders and other interested parties may be present at the public opening.

15.2 OWNER reserves the right to reject any and all Bids, including without limitation the rights to reject any nonconforming, nonresponsive, unbalanced or conditional Bids, and to reject the Bid of any Bidder if OWNER determines that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive, the Bidder is unqualified or doubtful financial ability, or fails to meet any other pertinent standard or criteria established by the OWNER.

15.3 The OWNER also reserves the right to waive all informalities not involving price, time or changes in the Work if in its judgment best serves the interest of the OWNER.

15.4 The OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any Bid and to determine the responsibility, qualifications, and financial ability of a Bidders' proposed Subcontractors, Suppliers and other persons and organizations proposed to perform and furnish Work in accordance with the Contract Documents to OWNER's satisfaction within the prescribed time.

15.4.1 The qualifications and experience of Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work may also be considered at the request of the OWNER.



15.4.2 Operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation into the Work when such data is required to be submitted (prior to the Notice of Award) may also be considered.

15.5 The OWNER shall have the right to reject any unit prices for additions to or deductions from the Work as given in the Bid, if the prices are considered excessive or unreasonable, or to accept any unit prices which may be considered fair and reasonable.

15.6 The OWNER shall have the right to accept alternates in any order or combination or to not accept alternates, unless specifically otherwise stated. The OWNER reserves the right to award the contract based on an adjusted base bid, which shall consist of any combination of alternate bid items and bid items included in the base bid.

15.7 A Bid which does not contain a unit price which is both adequate and reasonable for each item named in the Bid may be considered irregular and subject to rejection.

15.8 The Contract award method will be stated in the Bid Documents in compliance with the Texas Local Government Code Chapter 252.043 or for construction, Chapter 2269 of the Government Code. The OWNER also reserves the right to select the method of award that is in the best interest of the OWNER.

15.8.1 The Contract may be awarded to the lowest responsible Bidder or to the Bidder who provides the goods or services specified herein at the best value to the OWNER.

In determining the best value for the city, the city may consider:

- The purchase price
- The reputation of the Bidder and of the Bidder's goods or services
- The quality of the Bidder's goods or services
- The extent to which the goods or services meet the municipality's needs
- The Bidder's past relationship with the municipality
- The impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing people with disabilities
- The total long-term cost to the municipality to acquire the Bidder's goods or services, and
- Any relevant criteria specifically listed in the request for bids or proposals

15.8.2 If the contract is to be awarded, the OWNER will give Successful Bidder notification within a reasonable time.

ARTICLE 16 – CONTRACT SECURITY

16.1 The required bonds and certificates of insurance shall be delivered to the city prior to the execution of a Contract.

16.1.1 Any public work contract with a prime contractor shall require the contractor before beginning the work, to execute to the city

1. A performance bond if the contract is more than \$100,000, solely for the protection of the city awarding the public works contract, shall be in the amount of the contract,



and shall be conditioned on the faithful performance of the Work in accordance with the plans, specifications, and Contract Documents.

2. A payment bond if the contract is more than \$50,000 solely for the protection of beneficiaries who supply materials or labor and have a direct contractual relationship with the CONTRACTOR with both being in accordance with the provisions of Chapter 2253 of the Texas Government Code. .

16.2 Corporate sureties issuing performance and payment bonds payable to the city shall meet all the following criteria according to Ordinance No. 1773, §1, 7-22-91:

(1) The surety company must be authorized to do business in the State of Texas, which such authorization must be recorded in the files of the State Board of Insurance.

(2) The surety company must be an approved surety company listed in the current United States Department of Treasury list of approved corporate sureties for performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation.

(3) The surety company must be authorized to issue payment and performance bonds in the amount required for the contract, which authorization must be recorded in the files of the State Board of Insurance.

(4) The person executing the payment and performance bonds must be a licensed state local recording agent, and such licensing must be recorded in the files of the State Board of Insurance.

(5) The person executing the payment and performance bonds must be authorized by the surety company to execute performance and payment bonds on behalf of the company in the amount required for the contract, and such authorization shall be recorded in the files of the State Board of Insurance.

(6) Failure to meet the criteria for acceptability of surety company issuing payment and performance bonds will result in the disqualification of the Bid.

(7) The payment and performance bonds shall remain in effect until at least one year beyond the final acceptance of Work under the contract by the OWNER.

ARTICLE 17 – SIGNING OF AGREEMENT

17.1 When the OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required bond forms and the unsigned Contract with all other written Contract documents attached. The CONTRACTOR shall sign and deliver the Agreement and attached documents to the OWNER within 15 calendar days of the Notice of Award. The OWNER will deliver one fully signed counterpart to CONTRACTOR within 10 business days thereafter.



ARTICLE 18 – WAGE RATES

18.1 Each CONTRACTOR or Subcontractor performing Work on this Project shall comply in all respects with all laws governing the employment of labor, Social Security, and Unemployment Insurance of both the state and federal government. There shall be paid each employee engaged in the Work under this Contract at the site of the Project, the minimum wage for the classifications of labor employed. The CONTRACTOR shall make their own investigation locally and satisfy themselves as to availability of labor.

ARTICLE 19 -PERMITS

19.1 The CONTRACTOR shall be required to obtain all construction, electrical and plumbing permits related to this project from all municipal, county, and state agencies. All municipal permit fees will be waived for this project.

ARTICLE 20 – GOVERNANCE and CERTIFICATIONS

Bidder hereby warrants and represents by initialing that Article 20, Sections 20.1 through 20.15 have been carefully read and are understood so that Bidder is responsible for compliance with these certifications. Bidders' initials on each blank space evidence such agreement and compliance for the duration of the Contract.

20.1 ETHICS

City of La Porte Ordinance No. 2013-3489 establishes an ethics and conflict of interest policy applicable to city council members, appointive members to city boards and commissions, and city employees. Any vendor entering into a contract or agreement with the city expressly acknowledges that it has familiarized itself with the provisions of this Ordinance.

20.2 PROHIBITION ON CONTRACTS WITH COMPANIES WITH “DELINQUENT INDEBTEDNESS” TO THE CITY OF LA PORTE

Ordinance 98-2217 declares that the city may not make any expenditure of any kind for goods or services by the city, from any person firm or corporation, owing any delinquent indebtedness to the city. “Delinquent indebtedness” shall mean any indebtedness due and owing to the city, including, but not limited to, ad valorem taxes on real and personal property, which property is in fact owned by and is legally subject to taxation, by any person whether the same may have been property rendered to the tax assessor-collector by any person. Such term shall also include, but not be limited to, charges for penalties, interest, and costs on any such ad valorem taxes; charges for water, sewer, garbage, and other services rendered or goods furnished by the city to any person; and any other manner of indebtedness to the city, now existing or which may hereafter be created, by any person. No such indebtedness shall be considered “delinquent” until the time for its current payment under the various ordinances of the city or the state statutes, shall have expired without payment in full having been made.

Any person submitting a Bid to the city for furnishing of any manner of goods or services, shall provide a written certification to the city at the time of submitting such proposal, which indebtedness is delinquent, or, if such person is unable to make such certification, then, and in the event such person, at this option, in order to qualify as a Bidder, shall include



in such proposal a tender to assign to the city from the proceeds of any such contract, should he be the successful Bidder, an amount at least as great as the total sum of such delinquent indebtedness, or the total proceeds of such contract, whichever is the lesser amount.

20.3 CONFLICT OF INTEREST

Chapter 176, Local Government Code, requires that a vendor who has a business relationship as defined by Section 176.001 (1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) that by law, a Conflict of Interest Questionnaire be filed with the city. The form is made part of the Contract Documents as a Required Document, Section 00300.

20.4 LOCAL BIDDER PREFERENCE

Sections 271.905 and 271.9051 of the Texas Local Government Code authorize a municipality to consider a vendor's location in the determination of a bid award if the lowest bid received is from a business outside the municipality and contracting with a local Bidder would provide the best combination of price and other economic benefits to the municipality. If the city receives one or more competitive Sealed Bids from a Bidder whose principal place of business is in the municipality and whose Bid is within 5% of the lowest Bid price received by the city from a Bidder who is not a local Bidder, the city may enter into a contract for construction services in an amount of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with the lowest Bidder, or the Bidder whose principal place of business is in the municipality.

Exclusions to the local preference include expenditures of \$25,000 or less, and those purchases which are sole source, emergency, federally funded, cooperative contracts, service contracts subject to the Professional Services Procurement Act, contracts awarded through request for proposals or qualifications, or via inter-local agreement. The City of La Porte, Texas has determined that the allowable preference shall be applied to local vendors' bids for the purposes of evaluation when requested in writing by a local Bidder and when determined to be in the best interest of the City to do so. The form is made a part of the Contract documents as applicable, Sec 00300.

20.5 ANTI LOBBYING PROVISION

Bidders are prohibited from directly or indirectly communicating with City Council members regarding the Bidder's qualifications or any other matter related to the eventual award of a contract for the products or services requested under this Bid. Bidders are prohibited from contacting City Staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member, a request for clarification or an objection. Any violation will result in immediate disqualification of the Bidder from the bidding and award process.

Once issued, all Bidder communications and requests for clarification or objections shall be directed in writing to the Purchasing Office for response, determination and dissemination to all Bidders. Any communication by Bidders or their representatives toward other city officers or employees regarding this Bid or the award of a contract are



prohibited and will constitute grounds for the disqualification of a proponent. A Bidder or any of its agents may not do any act or refrain from any act for the express purpose and intent of placing any City official under personal obligation to the Bidder. _____

20.6 CERTIFICATE OF INTERESTED PARTIES

Applies to all contracts that must be approved by the City council. In accordance with House Bill 1295, for certain contracts entered on or after January 1, 2016, the successful proposer must submit a Certificate of Interested Parties (Form 1295) at the time the signed contract is submitted to the City. This applies to any contract of any amount that must be approved by the City Council. Form 1295 must be filed electronically with the Texas Ethics Commission using the online filing application located at: <https://www.ethics.state.tx.us/File> . _____

20.7 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Beginning September 1, 2017, state law prohibits governmental entities from contracting with companies who boycott Israel, and requiring contract terms that state the vendor does not boycott Israel and will not boycott Israel during the term of the contract. The Texas State Comptroller maintains a list of companies that boycott Israel. Inclusion on this list will prevent the city of La Porte from entering a contract with the company. <https://comptroller.texas.gov/purchasing/publications/divestment.php> _____

20.8 PROHIBITION ON CONTRACTS WITH CERTAIN ENTITIES

Beginning September 1, 2017, a municipality may not enter a contract with a company that does business with Iran, Sudan, or know terrorist organizations, and contracts must contain language to that effect. The Texas Comptroller maintains a list of companies known to do business with Iran, Sudan, or known terrorist organizations. Inclusion on this list will prevent the City of La Porte from entering a contract with that company. <https://comptroller.texas.gov/purchasing/publications/divestment.php> _____

20.9 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING OIL COMPANIES

Beginning September 1, 2021, state law prohibits governmental entities from contracting with companies who boycott oil companies and utilize those companies that will not boycott oil companies during the term of the contract. _____

20.10 PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES

Beginning September 1, 2021, state law prohibits governmental entities from contracting with companies that discriminate against firearms and ammunition industries and requiring contract terms that state that the vendor does not discriminate against firearms and ammunition industries and will not discriminate against ammunition industries during the term of the contract. _____

20.11 PROHIBITION ON CONTRACTS WITH COMPANIES PARTICIPATING IN LOBBYING

Contractors who apply or Bid for an award of \$100,000.00 or more shall provide the required certification that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee



of any agency, a member of Congress, officer or employee of Congress or an employee of a member of Congress, or an employee of a member of Congress in connection with obtaining a Federal contract, grant or any other award covered by 31 USC §1352. _____

20.12 PROHIBITION ON CONTRACTS WITH COMPANIES NOT SUPPORTING THE PROTECTION OF RESIDENT WORKERS

The City of La Porte, Texas actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. _____

20.13 INDEMNITY AND HOLD HARMLESS AGREEMENT

It is understood that any resulting contract executed will contain the following language:

To the fullest extent permitted by law, the Contractor, its successors, assigns and guarantors shall pay, defend, indemnify and hold harmless the City of La Porte, its agents, representatives, officers, directors, officials, and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney's fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expenses, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by the Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by or working as an independent contractor for Contractor or said Subcontractors or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees or independent contractors. _____

20.14 COOPERATIVE PURCHASING

Chapter 791.025 of the Texas Local Government code allows for participation under the same terms and conditions contained in this contract by other entities. Each entity wishing to do so must have prior written authorization by all parties. If such participation is authorized, purchase orders will be issued directly from and the goods or services received directly by the participating entity. The city will not be held responsible for any order placed, delivery made, or payment for goods or services ordered by the participating entity. Each entity reserves the right to determine their participation in this Contract. _____

20.15 RELEASE

It is understood that any resulting contract executed will contain the following language:

The Contractor assumes full responsibility for the Work to be performed hereunder and hereby releases, releases, relinquishes and discharges the City, its Council Members, officers, agents and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by



insurance and regardless of whether such injury, death, loss or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party.

End of Instructions to Bidders

BID BOND

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

(hereinafter called the Principal), as Principal and _____

(hereinafter called the Surety), as Surety, are bound unto the City of La Porte, Texas, a home rule municipal corporation of Harris County, Texas (hereinafter called Obligee) in the amount of _____ Dollars (\$_____), for the payment whereof said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid to enter into a certain written Contract with Obligee for _____

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully, enter into such written Contract, then this obligation shall be void; otherwise to remain in full force and effect.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that if said Principal should withdraw its Bid anytime after such Bid is opened and before this Bid Bond is returned or before official rejection of such Bid; or, if successful in securing the award thereof, said Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond, and other required contract documents, the Obligee, in either of such events, shall be entitled and is hereby given the right to collect the full amount of this Bid Bond as liquidated damages.

PROVIDED, further that if any legal action be filed upon this Bond, venue shall lie in Harris County, Texas.

IN WITNESS WHEREOF, the said Principal and Surety do sign and seal this instrument this _____
day of _____, 20____.

Principal/Contractor

Surety

By: _____

By: _____

Address: _____

Address: _____

NOTE: Attach Power of Attorney

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of Texas)

County of _____)

_____, being first duly sworn, deposes and says that:

(1) He/She is _____ of _____, the Bidder that has submitted the attached Bid;

(2) He/She is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with another Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix an overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the _____ (Local Public Agency) or any person interested in the proposed Contract; and

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____

Title

Subscribed and sworn to me this _____ day of _____.

By: _____
Notary Public

My commission expires _____



CITY OF LA PORTE LOCAL BIDDER PREFERENCE APPLICATION

Sections 271.905 and 271.9051 of the Texas Local Government Code authorize a municipality to consider a vendor's location in the determination of a quote/bid award if the lowest bid received is from a business outside the municipality and contracting with a local bidder would provide the best combination of price and other economic benefits to the municipality. The City of La Porte, Texas has determined that the allowable preference shall be applied to local vendor's quote/bids for the purposes of evaluation when requested in writing by local bidder and when determined to be in the best interest of the City to do so. **This request form and any supporting documentation must be submitted with quote/bid in order to be considered by the City of La Porte, Texas.** Questions should be addressed to the Purchasing Department at 281-470-5126. Exclusions to the local preference include expenditures of \$25,000 or less, and those purchases which are: sole source, emergency, federally-funded, cooperative contracts, service contracts subject to the Professional Services Procurement Act, contracts awarded through request for proposals or qualifications, or via inter-local agreement.

Location Eligibility: Principal place of business in La Porte, Texas. Principal place of business is defined herein as a business that is headquartered in and has an established place of business in the incorporated limits of the City of La Porte, and from which a substantial role in the entity's performance of a commercially useful function or a substantial part of its operations is conducted. A location utilized as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed as a principal place of business.

- (a) If yes, identify name of business/DBA, address and business structure: sole proprietorship, partnership, corporation or other.

Name of business/DBA: _____

Address: _____

City: _____ State: _____ Zip: _____

- ☐ Sole Proprietorship
☐ Partnership
☐ Corporation
☐ Other _____

- (b) Name and city of residence of owner(s) partners/corporate officers as applicable

Name: _____

City: _____

2. General Business Information:

- (a) Year business established (La Porte location) _____
(b) Most recent year property valuation (if owned); real and personal property \$ _____
(c) Is business current on all property, sales tax and utility bills at the time of this application? _____
(d) Total number of current employees _____ and number of La Porte-resident employees _____

3. Economic Development benefits resulting from award of this contract:

- (a) Number of additional jobs created _____ or retained for La Porte resident-employees _____

(b) Local subcontractor utilized, if applicable; name, location and contract value for each

Name: _____

Address: _____

Contract Value \$ _____

(c) Other economic development benefit deemed pertinent by applicant

The undersigned does hereby affirm that the information supplied is true and correct as of the date hereof, under penalty of perjury.

City Bid No./Quote for which the local preference is requested: _____

(Name of Bidder)

(Date)

(Signature)

(Print Name)

THE STATE OF TEXAS §
§
COUNTY OF _____ §

Appeared before me the above-named _____, known to me to be the same, and swore that the information provided in response to the foregoing questions are true and correct to the best of his/her knowledge and belief, this _____ day of _____, 20____.

NOTARY PUBLIC, STATE OF TEXAS

Printed Name: _____

Commission Expires: _____

Sealed Bid #27004

BID PROPOSAL FORM



DATE: _____

A Bid by _____ (company legal name),

which is a _____ (type of legal entity),

for Sealed Bid #27004 Fire Station One Renovation

The Bidder acknowledges that the following Addenda have been received. The modifications to the Bidding Documents noted therein have been considered and all costs thereto are included in the Bid Proposal prices.

Addendum No. _____ Addendum No. _____ Addendum No. _____

Date: _____ Date: _____ Date: _____

Proposal:

The undersigned Bidder has carefully examined the Instructions to Bidders, this Bid Proposal, the General Conditions of Agreement, The Technical Specifications and the Plans prepared by Joiner Architects, Inc. for the work herein above described and referred to in the Official Notice to Bidders and has carefully examined the site of the Work and will provide all necessary labor, superintendence, machinery, equipment, tools, materials, services and other means of construction to complete all the Work upon which he Bids, as called for in the Contract, the Specifications and shown on the drawings, and in the manner prescribed therein and according to the requirements of the City of La Porte for the Lump Sum indicated below.

AMOUNT \$ _____

WRITTEN _____

Allowances:

Specified allowances are included in the Base Bid and Bidder agrees that unexpended balance of allowance sums will it is understood and agreed that the work shall be completed in full according to the stipulated time in the Contract Documents calendar days after the date on which work is to commence as established by the Contract Documents. The written amount shall govern.

It is agreed that the Contract price may be increased or decreased to cover work added or deleted by order of the Architect/Engineer, in accordance with the provisions of the General Conditions of Agreement.

The undersigned agrees that the amounts Bid will not be withdrawn or modified for ninety (90) days following the date of Bid Opening.

It is understood that the Bid Bond to the undersigned, unless, in case of the should fail to enter a construction in the specifications. In the event the construction contract and execute bonds as required within 15 calendar days after the OWNER or its representative has given unsigned contracts to the Contractor, it is understood and agreed that the bid security shall be forfeited to the Owner and shall be considered as payment for damages due to delay and other inconveniences suffered by the Owner as a result of such failure on the part of the undersigned.



accompanying this offer shall be returned acceptance of this offer the undersigned contract and execute bonds as provided undersigned should fail to enter into a

It is understood that the Owner reserves the right to reject any and all Bids with the approval by City Council

In the event of Award of the Contract to the undersigned, the undersigned agrees to furnish Performance and Payment Bonds as provided in the Instructions to Bidders.

The undersigned certifies that the Bid prices contained in this offer have been carefully checked and are submitted as correct and final.

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Company Legal Name: _____

Address: _____

Telephone Number: _____

Email Address: _____

Witness

PLACE CORPORATE SEAL HERE if Bidder is a Corporation



City of La Porte

Established 1892

Purchasing Department

The City of La Porte is rich in history and built on community, delivering a safe and attractive environment for all walks of life.

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2026 by and between the City of La Porte (hereinafter called "OWNER") and _____ Hereinafter called "CONTRACTOR").

OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – WORK

- 1.1 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Fire Station One Renovation
- 1.2 The Project for which the Work under the Contract Documents may be the whole or only a part of is generally described as follows:

Sealed Bid #27004
Fire Station One Renovation
THE CITY OF LA PORTE

ARTICLE 2 – CONTRACT TIMES

- 2.1 The Work will be substantially completed within 240 calendar days after the date when the Contract Times commence to run as provided in the General Conditions, Article 1.12 Contract Time, and completed and ready for final payment in accordance with Article 6.09 of the General Conditions within 240 calendar days.
- 2.2 Liquidated Damages – OWNER and CONTRACTOR recognize that time is of the essence of specified in Paragraph 2.1 above, plus any extension thereof allowed by the City. OWNER and this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times CONTRACTOR also recognize the difficulty in estimating at the time of this contract's execution OWNER's actual damages that would result from delay in completing the Work and the uncertainty, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages to compensate OWNER for delay in performance (but not as a penalty for breach) CONTRACTOR shall pay OWNER \$250.00 per day for each day that expires after the time specified in Paragraph 2.1 Substantial Completion until the Work is substantially complete. The parties stipulate and agree that the amount of daily liquidated damage set forth herein is a reasonable forecast of just compensation to OWNER, in the event of delay.
- 2.3 Permitting CONTRACTOR or Surety to continue and finish the Work or any part of the Work after the times specified for completion, or after the date to which the times for completion may

have been extended, shall in no way operate as a waiver on the part of OWNER of its rights under the Contract.

ARTICLE 3 – CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds as follows:

ARTICLE 4 – PAYMENT PROCEDURES

- 4.1 OWNER will make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR'S APPLICATION for payment each month during construction. All progress payments will be made on the basis of the progress of WORK measured by the schedule of values or in the case of Unit Price work on the number of units complete. The amount of retainage will be ten percent (10%).
- 4.1 The City of La Porte budget is funded on an October 1st to September 30th fiscal year basis. Accordingly, the City of La Porte reserves the right to terminate this contract by giving the Bidder (90) days written notice, without liability to the city, if funding for this contract is discontinued or is no longer available.

ARTICLE 5 – INTEREST

All moneys not paid when due as provided in the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 6 – CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in XX) and the other related data identified in the Bidding Documents including "technical data".
- 6.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance and furnishing of the Work.
- 6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- 6.4 CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations,

explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

- 6.5 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 6.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 6.7 CONTRACTOR has given ENGINEER/ARCHITECT written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER/ARCHITECT is acceptable to CONTRACTOR and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 – CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1 This Agreement
- 7.2 Exhibits to this Agreement
- 7.3 Bid Proposal Form
- 7.4 Performance and Payment Bonds
- 7.5 Notice to Proceed, not attached hereto
- 7.6 General Conditions (Pages 1 to 41, inclusive)
- 7.7 Supplementary Conditions, where applicable
- 7.8 Specifications, Plans, and Drawings
- 7.9 Addendums

ARTICLE 8 – MISCELLANEOUS

- 8.1 Terms used in this Agreement which are defined in the General Conditions will have the meanings indicated in the General Conditions.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty

or responsibility under the Contract Documents.

8.3 OWNER and CONTRACTOR each bind itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, OWNER AND CONTRACTOR have signed this Agreement. A fully executed copy of this Agreement has been delivered to the CONTRACTOR. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER/ARCHITECT on their behalf.

This Agreement will be effective on _____, 2026 (which is the effective Date of the Agreement).

FOR CONTRACTOR

Attest:

(Signature)

(Typed Name of Contractor)

(Typed Name and Title)

(Signature)

Contractor address for giving notices:

(Typed Name and Title)

If CONTRACTOR is a corporation, attach evidence of authority

FOR OWNER

Attest:

(Signature/City Secretary)

City of La Porte

(Signature)

Corby D. Alexander, City Manager

(Signature)

Clark T. Askins, City Attorney

Owner address for giving notices:

City of La Porte
604 West Fairmont Parkway
La Porte, Texas 77571

End of Agreement

PAYMENT BOND

STATE OF TEXAS }

COUNTY OF HARRIS }

KNOW ALL PERSONS BY THESE PRESENTS:

That _____,
hereinafter called Principal, and

_____,
hereinafter called Surety, are held and firmly bound unto the City of La Porte, Texas, hereinafter
called Owner, in the full and just sum of:

_____ Dollars,

(\$_____) good and lawful money of the United States of America for the payment of
which well and truly to be made, the said Principal and Surety hereby jointly and severally bind
ourselves, heir, executors, administrators, successors and assigns firmly by these presents.

WHEREAS, the Contractor has entered into a certain written contract with the Owner dated the
_____ day of _____, 20____, herein referred to as "the Contract" and
incorporated herein and made a part hereof for all purposes, for the construction of the following
project:_____ (the "Project" herein).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said
Principal shall pay all claimants supplying labor and material to him or a subcontractor in the
prosecution of the work provided for in said Contract, then, this obligation shall be void one (1)
year beyond the date of approval of the Project by Owner's engineer; otherwise to remain in full
force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253
of the Texas Government Code and as amended, and all liabilities on this bond shall be
determined in accordance with the provisions of said Chapter to the same extent as if it were
copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or
addition to the terms of the contract, or to the work performed thereunder, or the specifications or
drawings accompanying the same, shall in anyway affect its obligation on this bond and it does
hereby waive notice of any such change, extension of time, alteration or addition to the terms of
the contract, or to the work to be performed thereunder.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on the respective date written below and have attached current Power of Attorney.

Signed and sealed this _____ day of _____, 20____.
The date of bond shall not be prior to date of Contract

ATTEST:

(Principal) Secretary

(SEAL)

PRINCIPAL

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number _____

ATTEST:

Secretary

(SEAL)

SURETY

By: _____

Name: _____

Attorney in Fact

Address: _____

Telephone Number _____

PERFORMANCE BOND

STATE OF TEXAS }

COUNTY OF HARRIS }

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of La Porte, Texas "Owner" in the sum of _____ Dollars, (\$_____) for the payment of which sum, well and truly to be made to Owner and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has entered into a certain written contract with the Owner dated the _____ day of _____, 20____, herein referred to as "the Contract" and incorporated herein and made a part hereof for all purposes, for the construction of the following project: _____ (the "Project" herein).

NOW, THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of Contract, and with this bond, and performs and completes all work under the Contract according to approved plans and specifications and in accordance with sound construction principles and practices, then this obligation shall become null and void and shall have no further force and effect one (1) year beyond the date of approval of the Project by Owner's engineer; otherwise the same is to remain in full force and effect.

Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, or fail to perform and complete all work under the Contract according to approved plans and specifications and in accordance with sound construction principles and practices, the Surety shall be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof, as more fully set forth herein. It is further understood and agreed that the Owner or its representatives shall exercise reasonable diligence in securing compliance on the part of the Contractor with the terms of the Contract. The Surety hereby waives any notice to it of any default, or delay, by the Contractor in the performance of his Contract, except to the extent that such notice is required in anticipation of or in connection with a claim on this bond. The Surety understands and agrees that the provision in the Contract that Owner shall retain certain amounts due the Contractor until the expiration of thirty (30) days from the acceptance of the Work is intended for the Owner's benefit.

Whenever Principal shall be declared by Owner to be in default under the Contract, the surety shall, upon request of Owner and within ten (10) calendar days from receipt of Owner's notice of Principal's default, commence and thereafter complete performance of Principal's obligations under the Contract. Surety acknowledges that its obligations under this bond and as detailed herein and in the Contract Documents are not conditioned on a termination of the Principal by Owner. Surety further acknowledges and agrees that Surety shall obtain Owner's approval and consent with respect to the contractor(s) that Surety may retain to replace defaulted Principal or otherwise honor the obligations under this Bond.

It is further expressly agreed by Surety that Owner or its representatives are at liberty at any time, without notice to the Surety to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made shall not in any way vitiate the obligations in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless Owner from any liability, loss, cost, expense or damage arising out of or in connection with the failure of the Contractor to perform work as required under the Contract.

This Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

This bond and all obligations created hereunder shall be performable in Harris County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on the respective date written below and have attached current Power of Attorney.

Signed and sealed this _____ day of _____, 20____.
The date of bond shall not be prior to date of Contract

ATTEST:

(Principal) Secretary

(SEAL)

PRINCIPAL

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number _____

City of La Porte, Texas

Section 00611
Performance Bond Form

ATTEST:

Secretary

(SEAL)

SURETY

By: _____

Name: _____

Attorney in Fact

Address: _____

Telephone Number _____

1.0 DEFINITIONS AND INTERPRETATIONS

1.01 OWNER, CONTRACTOR, AND ENGINEER/ARCHITECT. The OWNER, the CONTRACTOR, and the ENGINEER/ARCHITECT are those persons or organizations identified as such in the Agreement. The term ENGINEER/ARCHITECT as used in these General Conditions, shall refer to the ENGINEER/ARCHITECT or Architect identified in the Agreement, as applicable, and means a person authorized to act as a representative of the entity designated by the OWNER to provide professional services required in connection with the preparation of plans and specifications of this Contract. The term CONSTRUCTION MANAGER as used in these General Conditions shall refer to the Construction Manager identified in the Agreement, as applicable, and means a person authorized to act as representative of the entity designated by the OWNER to provide professional services required in connection with the performance of the work of this Contract. The Owner's representative on the project site shall be the CONSTRUCTION MANAGER or ENGINEER/ARCHITECT as designated.

1.02 CONTRACT DOCUMENTS. The Contract Documents shall consist of all the documents designated in the Agreement, and which together comprise the Contract, excluding such documents as may be delivered or issued after the Effective Date of the Agreement. All references to the "Contract" or the "Agreement" in these General Conditions of Construction shall include the Contract Documents.

The Contract Documents are complementary; what is required by one Contract Document is binding as if required by all. In the event of any conflict among the Contract Documents, the Contract Documents shall govern in the following order:

- (1) Modifications in writing and signed by both parties, including any Change Orders;
- (2) Standard Form of Agreement;
- (3) Special Conditions of Agreement;
- (4) General Conditions of Construction, including Attachments;
- (5) Addenda, if any;
- (6) Plans and Specifications referenced or included in the Project records;
- (7) Instructions to Bidders;
- (8) Bid Proposal; and
- (9) Exhibits: The following Exhibits, if any, attached hereto, are incorporated herein, and are a part of this Contract:

In the event a conflict or inconsistency remains between or within the Contract Documents, or the Contract Documents and applicable standards, codes and ordinances, CONTRACTOR shall provide the greater quantity or better quality, or CONTRACTOR shall comply with the more stringent requirements, as determined by the ENGINEER/ARCHITECT.

Terms or phrases used in the Contract Documents with a well-known technical or construction industry meaning shall have such recognized meanings. References to standards, specifications, manuals or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, shall mean the latest in effect on the effective date of the Contract, unless otherwise stated in the Contract Documents.

1.03 **SUBCONTRACTOR.** The term “subcontractor”, as used herein, shall mean any individual or entities having a direct contract with the CONTRACTOR or a subcontractor for performance of a part of the Work on the Project. The OWNER shall have no responsibility to any subcontractor for performance of work on the Project contemplated by these Contract Documents, and any such subcontractor shall look exclusively to CONTRACTOR for any payments due to subcontractor.

1.04 **WRITTEN NOTICE.** Written Notice shall be deemed to have been duly served if delivered in person or by electronic means through Pro-Trak to the individual or to a partner of the partnership or joint venture, or to an officer of the corporation or company for whom it is intended, or if delivered at or sent by Certified Mail, Return Receipt Requested, to the last known business address or registered office of such individual, partnership, joint venture or corporation or company, or to the address for giving notices listed in the Standard Form of Agreement.

1.05 **WORK.** Unless otherwise stipulated, the CONTRACTOR shall provide and pay for the entire construction, or the various separately identifiable parts thereof required to execute and complete what is 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; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

Unless otherwise specified, all materials shall be new and unused, and both workmanship and materials shall be of good quality. The CONTRACTOR shall, if required by the ENGINEER/ARCHITECTS representative of the OWNER, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which so applied have well-known, technical or trade meaning shall be held to refer to such recognized standards. All work done and all materials shall be furnished in strict conformity with the Contract Documents.

1.06 **EXTRA WORK.** The term “Extra Work”, as used in this Contract, shall be understood to mean, and include all work that may be required by the ENGINEER/ARCHITECT as representative of the OWNER, to be performed by the CONTRACTOR to accomplish any change, alteration or addition to the work shown in the plans. Extra Work shall be authorized in writing by the ENGINEER/ARCHITECT prior to commencement. Extra Work items are paid for on an as needed, as authorized basis only.

1.07 **WORKDAY.** As used herein, a “Workday” is defined as any Monday through Friday, not a legal holiday, and any Saturday or Sunday specifically approved by the OWNER, in which the CONTRACTOR can perform six or more hours of work per the current construction schedule. All Work at the Site will be performed during regular working hours, Monday through Friday. CONTRACTOR agrees to request specific approval from the Construction Manager or Owner, in advance, to perform work on Saturdays or Sundays, or any legal holiday, which will not be unreasonably withheld, and in doing so agrees to pay all charges and costs for Inspection and or Construction Management services required during the performance of any such approved work. The procedure for

determining the cost for Construction Management and Inspection Services for work on non-workdays shall be detailed in paragraph 7.05.

1.07-1 **RAIN DAY.** As used herein, is defined as any WORKDAY during which weather-related conditions prevent the CONTRACTOR from performing four (4) or more consecutive hours of work on critical path items as identified in the current construction schedule. CONTRACTOR shall record Rain Days on the Pay Application each month for the review and possible approval by the OWNER. The approved Rain Day is then added to the Contract Time. (See 1.12 Contract Time below)

1.07-2 **IMPACT DAY.** As used herein, is a day that is added to the CONTRACT TIME by the OWNER by Change Order to extend the Contract Time by one full Workday. (See 1.12 Contract Time below) Impact Days, once approved by the OWNER, shall extend the Contract Time on a one-to-one basis to replace a Workday lost to conditions that prevented the CONTRACTOR from performing four (4) or more consecutive hours of work on critical path items. Impact Days are added to the Contract Time by Change Order only at the end of the work and then only if, in the opinion of the OWNER, a time extension is warranted due to delays beyond the control of the Contractor and required to complete the work within the Contract Time.

1.08 **CALENDAR DAY.** A “calendar day” is any day of the week, month, or year no days being excepted. Unless otherwise expressly provided, all references to “day(s)” shall mean calendar day(s).

1.09 **SUBSTANTIALLY COMPLETED:** The terms “Substantially Completed”, or “Substantially Complete” or “Substantial Completion” as used in this Contract, shall mean that the Work has progressed to the point where, in the opinion of the ENGINEER/ARCHITECT, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended, including appropriate documentation from the equipment suppliers that all of the individual components have been installed in accordance with the specifications and manufacturer’s recommendation, the installations have met the start-up and testing requirements of the contract documents or requires only minor miscellaneous work and adjustment to achieve Final Completion and Acceptance as determined by the ENGINEER/ARCHITECT. Upon compliance with the above referenced criteria, ENGINEER/ARCHITECT shall issue a Certificate of Substantial Completion.

PARTIAL SUBSTANTIAL COMPLETION: designation will be given on components of the Work that must be placed into service prior to the completion of the entire Work. The Contractor’s One Year Warranty period for these items shall begin on the date of Partial Substantial Completion as designated by the ENGINEER/ARCHITECT. The ENGINEER/ARCHITECT shall determine and make all such designations.

1.10 **INTERPRETATION OF WORDS AND PHRASES.** Whenever the words “as directed”, “as permitted”, “as designated”, “as required”, “as ordered”, “as allowed”, “as considered necessary”, “as approved”, “as prescribed” or words of like effect or import to authorize an exercise of professional judgment by the ENGINEER/ARCHITECT as the OWNER’s representative is intended. Similarly, the adjectives “reasonable”, “suitable”, “acceptable”, “satisfactory”, “proper” or adjectives of like effect or import are used to mean that no

exception is taken by the ENGINEER/ARCHITECT but does not relieve the CONTRACTOR of responsibility for compliance with the Contract Documents.

Whenever in the Specifications or Plans of the Contract Documents, the terms of description of various qualities relative to finish, workmanship or other qualities of similar kind which cannot, from the nature, be specifically and clearly described and specified, but are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then, in all such cases, any question of the fulfillment of said Specifications shall be decided by the ENGINEER/ARCHITECT as the OWNER's representative, and said work shall be done in accordance with his interpretations of the meaning of the words, terms or clauses defining the character of the work.

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.

- 1.11 REFERENCED STANDARDS.** Any reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard, specification, manual, reference standard, code, or Laws or Regulations in effect on the Effective Date of the Contract, except as may be otherwise specifically stated in the Contract Documents.

No provision of any referenced standard, specification, manual, or code shall be effective to change the duties and responsibilities of the Owner, ENGINEER/ARCHITECT, Contractor, or their consultants, employees, or representatives from those set forth in the Contract Documents, nor shall it be effective to assign to the ENGINEER/ARCHITECT or its consultants, employees, or representatives any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibilities contrary to provisions of the Contract Documents.

1.12 CONTRACT TIME. The term Contract Time as used herein, refers to the number of Calendar days or the dates by which the Contractor shall: (a) achieve milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work so that it is ready for final payment as evidenced by the ENGINEER/ARCHITECT's written recommendation of final payment in accordance with Paragraph 6.09 and as modified as a result of any authorized Extensions.

The Contract Times will commence to run on the date stated in the Notice to Proceed. A Notice to Proceed may be given at any time within 60 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the one hundred twentieth day after the day of Bid opening or the sixtieth day after the Effective Date of the Contract, whichever date is earlier.

The established Contract Time as stated in the Agreement includes 40 Rain Days per year, based on the average number of rain days per year for the period of June 1898 to December 1996 as recorded by the Harris County Weather Center Record. The Contract Time shall only be extended by (a) the addition of Rain Days equal to the number of actual Rain Days more than 40 days per year and (b) the number of Impact Days granted for

delays, in the opinion of the Owner, beyond the control of the Contractor. The extension of the Contract Time shall be the CONTRACTOR's sole and exclusive remedy for delays.

1.13 CONSTRUCTION INSPECTOR. The term "Construction Inspector" here in includes those professionals engaged by the OWNER to ensure CONTRACT work's compliance with the specifications and any applicable statutory requirements.

1.14 BALANCING CHANGE ORDER. Is a change order executed during the close-out process that may add/remove pay items or adjust quantities of existing items or remove unused pay items or quantities. Balancing Change Orders are used to reconcile the unit cost of the work performed or installed by the Contractor.

2.0 RIGHTS AND RESPONSIBILITIES OF THE OWNER

2.01 NO WARRANTY OF DESIGN. It is understood that the OWNER MAKES NO WARRANTY OF THE ADEQUACY, ACCURACY, OR SUFFICIENCY OF THE PLANS AND SPECIFICATIONS OR ANY OTHER DESIGN DOCUMENTS, AND THE OWNER HEREBY EXPRESSLY DISCLAIMS ANY SUCH WARRANTY, EXPRESSED OR IMPLIED. Before undertaking each portion of the Work, CONTRACTOR shall carefully study the Contract Documents, shall observe conditions at the site affecting the Work, and shall check and verify pertinent figures and dimensions, particularly with respect to applicable field measurements. Any conflict, error, ambiguity, or discrepancy within the Contract Documents noted by the CONTRACTOR, and/or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard or code, or (d) any instruction of any Supplier shall be promptly reported by the CONTRACTOR to the ENGINEER/ARCHITECT in writing as a Request for Information or Interpretation. Contractor shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by the ENGINEER/ARCHITECT, or as an amendment or supplement to the Contract. The ENGINEER/ARCHITECT's written clarification, interpretation, or decision will be final and binding on the CONTRACTOR, unless appealed by submitting a Change Proposal, and on OWNER, unless it appeals by filing a Claim. Work performed prior to a Request for Information or Interpretation shall be at the Contractor's risk. If the CONTRACTOR fails to perform its obligations under this paragraph, CONTRACTOR shall pay such costs and damages to OWNER as would have been avoided if CONTRACTOR had reported any errors, omissions, inconsistencies, or variances in the Contract Documents noted by CONTRACTOR or which should have been noted by a careful study of the Contract Documents. CONTRACTOR shall comply with the Contract Documents, all approved modifications thereof and additions and alterations thereto approved in writing by the OWNER. The burden of proof of such compliance shall be upon the CONTRACTOR to show that he has complied with the requirements of the Contract Documents and approved modifications thereof and all approved additions and alterations, thereto, as the same shall have been interpreted by the ENGINEER/ARCHITECT.

2.02 RIGHT OF ENTRY. The OWNER reserves the right to enter the property or location on which the work herein contracted for is to be performed, constructed, or installed, for itself, for the purpose of inspecting the work, or for the purpose of performing, constructing or installing such collateral work as the OWNER may desire. The OWNER shall have the

right to make inspections at all reasonable times, and the CONTRACTOR hereby waives any claims for extension of time and/or compensation for any loss or damage if his work shall be delayed by reason of such inspection, performance, construction or installation of collateral work.

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 with such procedures and programs as applicable.

- 2.03 OWNERSHIP OF PLANS.** Contractor and its Subcontractors and Suppliers shall not 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 the ENGINEER/ARCHITECT or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, or other documents or copies thereof for any purpose without the prior written consent of the Owner and ENGINEER/ARCHITECT. All plans, specifications and copies thereof furnished by the OWNER, apart from the sets forming the part of the signed Contract Documents, are to be returned to the OWNER on request at the completion of the Work. All plans and models are the property of the OWNER.

The prohibitions of this Paragraph 2.03 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

- 2.04 CHANGES AND ALTERATIONS.** The CONTRACTOR further agrees that the OWNER may make such changes and alterations, additions and deletions as the OWNER may see fit, in the Work, including but not limited to changes in line, grade, form, dimensions, plans or specifications for the Work herein contemplated, or any part thereof, either before or after the beginning of construction, without affecting the validity of this Contract and the corresponding Performance and Payment Bonds.

If such changes or alterations or deletions diminish the quantity or the value of the Work to be done, they shall not constitute the basis for a claim for compensation or damages, including lost or anticipated profits on the Work that may be affected. If the amount of Work is increased and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity done and at the unit price, if any, established for such work under this Contract, otherwise, such additional work shall be paid for as provided under Article 7 hereof for Extra Work. In case the OWNER shall make such changes or alterations as shall make useless any Work already done or material or labor so used and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the Work as originally planned.

Any change as stated in the above paragraphs shall only occur on the recommendation of the ENGINEER/ARCHITECT and approval of the OWNER.

- 2.05 LIMITATION OF DAMAGES.** In the event the OWNER is damaged in the course of the work by the act, negligence, omission, mistake, or default of the CONTRACTOR, or should the CONTRACTOR unreasonably delay the progress of the work being done by others on the job to cause loss for which the OWNER becomes liable, then the CONTRACTOR shall reimburse the OWNER for such loss.

With respect to all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor ENGINEER/ARCHITECT, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to CONTRACTOR for any claims, costs, losses, or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

3.0 RIGHTS AND RESPONSIBILITIES OF THE ENGINEER/ARCHITECT

3.01 OWNER-ENGINEER/ARCHITECT RELATIONSHIP. The ENGINEER/ARCHITECT shall serve as the OWNER's representative during the construction period. The duties, responsibilities, and limitations on the authority of the ENGINEER/ARCHITECT as the OWNER's representative during construction are set forth in the Contract Documents; and the ENGINEER/ARCHITECT shall not have authority to extend the OWNER's liability or to bind the OWNER for any additional liability of any nature whatsoever without the written consent of the OWNER. Any communications by the OWNER to the CONTRACTOR regarding the Work shall be issued through the ENGINEER/ARCHITECT.

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 without any delay in the execution of the Work; therefore, the ENGINEER/ARCHITECT as the OWNER's representative shall issue clarifications and interpretations of the Contract Documents as provided herein, decisions or directions rendered by the ENGINEER/ARCHITECT as the OWNER's representative shall be promptly carried out, and any claim arising therefrom shall be resolved as provided in Article 7. Unless otherwise specified, it is mutually agreed between the parties to this Agreement that the OWNER's representative shall have the authority to issue written stop work orders whenever such stoppage may be necessary to ensure the performance of the Work in accordance with the Contract Documents.

3.02 KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE. The ENGINEER/ARCHITECT shall furnish the CONTRACTOR with four (4) copies of all Plans and Specifications without expense to the CONTRACTOR, and the CONTRACTOR shall keep one full size copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, samples, and approved Shop Drawings in good order and updated in a timely manner to show changes made during construction. These documents of record shall be made constantly available for reference by the ENGINEER/ARCHITECT at the job site. These record documents, together with all approved Samples, shall be safely preserved, and upon completion of the Work, Contractor shall deliver these record documents for reference and review by the OWNER or the ENGINEER/ARCHITECT and submittal of redlines during closeout.

The OWNER shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications, signed, and sealed by ENGINEER/ARCHITECT and other design professionals. OWNER shall make such original printed record version of the Contract available to the CONTRACTOR for review. OWNER may delegate the responsibilities under this provision to the ENGINEER/ARCHITECT.

3.03 PRELIMINARY APPROVAL. The ENGINEER/ARCHITECT shall not have the authority to waive the obligations imposed under this Contract for the furnishing by the CONTRACTOR of new material of good quality, and for good and workmanlike performance of the Work as herein described, and in full accordance with the Contract Documents, without alteration, deletion, or change. No failure or omission of the OWNER's representative to discover, object to or condemn any non-conforming or defective work or materials, or to stop work, shall release the CONTRACTOR from the obligation to fully and properly perform the Contract, including without limitation, the obligation to at once remove and properly replace any defective work or materials at any time prior to final acceptance, upon discovery of such non-conforming or defective work or material.

Any questioned Work may be ordered taken up or removed for inspection by the ENGINEER/ARCHITECT prior to final acceptance, and if found not to be in accordance with the Contract Documents, all expense of removing, inspection and repair or replacement shall be borne by the CONTRACTOR; otherwise the expense thus incurred shall be allowed as Extra Work and shall be paid for by the OWNER, provided that where inspection or approval is specifically required by the Specifications prior to performance of certain work, should the CONTRACTOR proceed with such work without requesting prior inspection or approval, he shall bear all expense of taking up, removing and replacing this work if so directed by the ENGINEER/ARCHITECT.

3.04 INSPECTION BY ENGINEER/ARCHITECT. The ENGINEER/ARCHITECT, as an experienced and qualified design professional, will make periodic visits to the site to observe that progress has been made and check the quality of the executed Work to determine if such Work generally meets the essential performance and design features and the technical, functional, or ENGINEER/ARCHITECTS requirements of the Contract Documents, and is in all other respects being performed in compliance with the Contract Documents. However, the ENGINEER/ARCHITECT shall not be responsible for making any detailed, exhaustive, comprehensive or continuous on-site inspections if, for the benefit of the OWNER, the ENGINEER/ARCHITECT determines, in general, the Work is proceeding in accordance with the Contract Documents nor shall the ENGINEER/ARCHITECT be in any way responsible, directly or indirectly, for the construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident to the Work being performed or any part thereof. The ENGINEER/ARCHITECT shall use reasonable care to prevent deviation from the intent and substance of the Contract Documents by the CONTRACTOR in the performance of the Work and any part thereof and, based on such visits and observations, ENGINEER/ARCHITECT will keep OWNER informed of the progress of the Work and will endeavor to guard the OWNER against defects and deficiencies in the Work of the CONTRACTOR. Notwithstanding any other provision of this Agreement or any other Contract Document, the ENGINEER/ARCHITECT shall not be in any responsible or liable for any acts, errors, omissions or negligence of the CONTRACTOR, any subcontractors, agents, servants or employees or any other person, firm or corporation performing or attempting to perform any of the Work.

3.05 DETERMINATION OF QUESTIONS AND DISPUTES. To prevent delays and disputes and to discourage litigation, it is agreed that the ENGINEER/ARCHITECT shall, in all cases, determine the quantities and qualities of the several kinds of Work which are to be

paid for under this Contract. The ENGINEER/ARCHITECT shall address all questions in relation to said Work and the construction thereof, as well as all claims, disputes, and other matters in question between the CONTRACTOR and the OWNER relating to the execution or progress of the Work or the interpretation of the Contract Documents. In the event the ENGINEER/ARCHITECT shall become aware of or shall receive information that there is a dispute or a possible dispute as to the reasonable interpretation of the terms and conditions of the Contract Documents, or any other dispute or question, the ENGINEER/ARCHITECT shall, within a reasonable time, provide a written interpretation of the Contract Documents or a written decision on all questions arising relative to the execution of the Work, copies of which shall be delivered to all parties to the Contract. If the CONTRACTOR or OWNER desires to take exception to any directions, order, interpretation or instructions of the ENGINEER/ARCHITECT, CONTRACTOR or OWNER shall present any such claim to the ENGINEER/ARCHITECT in accordance with the provisions of Section 7.04.

- 3.06 RECOMMENDATION OF PAYMENT.** The ENGINEER/ARCHITECT shall review the CONTRACTOR's application for payment and supporting documents, shall determine the amount owed to the CONTRACTOR and shall provide written recommendation to the OWNER for payment to the CONTRACTOR in such amount, or return the Application to CONTRACTOR indicating in writing ENGINEER/ARCHITECT's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

Such recommendation of payment to CONTRACTOR shall constitute a representation to the OWNER of the ENGINEER/ARCHITECT's judgment that the work has progressed to the point indicated, is of quality that is generally in accordance with the Contract Documents, and the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled, to the best of his knowledge, information, and belief; however, such recommendation of an Application for Payment to CONTRACTOR shall not be deemed an acceptance of any defective or non-conforming Work. Any recommendation of payment by the ENGINEER/ARCHITECT shall be subject to the OWNER's rights to withhold payment under Section 6.11 and as otherwise provided in the Contract.

4.0 RIGHTS AND RESPONSIBILITIES OF THE CONTRACTOR

- 4.01 INDEPENDENT CONTRACTOR.** CONTRACTOR is, and shall remain, an independent contractor, solely responsible for the manner and method of completing the Work under this Contract, with full and exclusive power and authority to direct, supervise and control his own employees and to determine the means, method and manner of performing such Work, so long as such methods comply with the requirements of the Contract Documents, and do not adversely affect the completed improvements or any other property abutting or adjoining the Work area, the OWNER and ENGINEER/ARCHITECT being interested only in the result obtained and conformity of such completed improvements to the Plans, Specifications and Contract Documents. The fact that the OWNER or ENGINEER/ARCHITECT as the Owner's representative shall have the right to observe CONTRACTOR's work during his performance and to carry out the other prerogatives which are expressly reserved to and vested in the OWNER and the ENGINEER/ARCHITECT hereunder, is not intended to and shall not at any time change

or affect the status of the CONTRACTOR as an independent contractor or to create any contractual relationship between OWNER or ENGINEER/ARCHITECT and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or any obligation on the part of the OWNER or ENGINEER/ARCHITECT to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

4.02 CONTRACTOR'S UNDERSTANDING. It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, including but not limited to weather, access, lay down and storage areas, and all other matters which in any way affect the Work under this Contract. It is further understood that the CONTRACTOR has satisfied himself as to the terms, meaning, intent and requirements of all the Contract Documents, and applicable laws, codes, regulations, and ordinances. CONTRACTOR hereby warrants and represents that it has taken into consideration all the foregoing factors, and CONTRACTOR shall perform the Work for the Contract Price and within the Contract Time. No verbal negotiation, agreement, or conversation with any officer, agent or employee of the OWNER or the ENGINEER/ARCHITECT, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations contained herein.

4.03 LAWS AND ORDINANCES. The CONTRACTOR shall at all times observe and comply with all federal, state or local laws, codes, ordinances, permits and regulations, regardless of whether the same are adopted before or after the execution of this Contract, which in any manner affect the Contract or the work, and shall indemnify, save and hold harmless the OWNER and the ENGINEER/ARCHITECT against any claim arising out of the violation of any such laws, ordinances and regulations, whether by the CONTRACTOR or his agents, employees, subcontractors, or vendors. If the CONTRACTOR observes that the Plans and Specifications are at variance with federal or state laws or codes or the ordinances or regulations of the City, he shall promptly notify the ENGINEER/ARCHITECT in writing, and any necessary changes shall be made as provided in the Contract for changes in the Work. If the CONTRACTOR performs any work knowing it to be contrary to such laws, codes, ordinances, rules, or regulations, or if CONTRACTOR reasonably should have known of any such violation, and without such notice to the ENGINEER/ARCHITECT, CONTRACTOR shall bear all costs arising therefrom.

The OWNER is a Political Subdivision (a Home Rule Municipality) of the State of Texas, and the law from which it derives its powers, insofar as the same regulates the objects for which, or the manner in which, or the conditions under which the OWNER may enter into contracts, shall be controlling and shall be considered as part of this Contract to the same effect as though embodied herein. Neither the act of OWNER entering this Contract, nor OWNER's performance hereunder, shall constitute a waiver of any immunity from suit enjoyed by OWNER under applicable law, all such rights and defenses being hereby expressly reserved, notwithstanding any term or provision herein to the contrary. The Code

of Ordinances and other applicable regulations of the OWNER shall be deemed to be embodied in this Contract.

4.04 ASSIGNMENT AND SUBLETTING. The CONTRACTOR further agrees that he will retain personal control and will give his personal attention to the fulfillment of this Contract and unless expressly agreed to elsewhere in the Contract, that he will not assign, by power of attorney or otherwise, or sublet said Contract, or any rights duties or obligations arising thereunder, in whole or in part, without the prior written consent of the OWNER, and that no part or feature of the Work will be sublet to anyone objectionable to the ENGINEER/ARCHITECT or the OWNER. In addition, the OWNER reserves the right to disapprove the subletting of this Contract or any portion hereof on any basis whatsoever. The CONTRACTOR further agrees that the subletting of any portion or feature of the Work or materials required in the performance of this Contract shall not relieve the CONTRACTOR from his obligations to the OWNER, as provided for in this Agreement.

4.05 PERFORMANCE, PAYMENT, AND MAINTENANCE BONDS. In the event the Contract Price shall be \$100,000 or greater the CONTRACTOR shall execute a Performance Bond solely for the protection of the city in the event of CONTRACTOR default and/or termination and in the event the Contract Price is \$50,000 or greater The CONTRACTOR shall execute a Payment Bond solely for the protection of beneficiaries who supply materials or labor and have a direct contractual relationship with the CONTRACTOR with both being in accordance with the provisions of Chapter 2253 of the Texas Government Code. If the Contract Price does not exceed \$25,000.00, the statutory bonds will not be required.

All required Bonds shall be payable to the OWNER each in the sum of one hundred percent (100%) of the Contract price, on the forms furnished in the Bidding Documents by the OWNER and shall be executed by a corporate surety in accordance with Article 7.19-1 of the Texas Insurance Code prior to commencement of the Work. It is agreed that the Contract shall not be in effect until such original Bonds are delivered to and approved by the OWNER. The cost of the Bond premiums shall be included in the CONTRACTOR's Bid Proposal.

All Bonds shall be issued by the Texas Department of Insurance approved surety companies. All Bonds must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

If the surety on a bond furnished by the Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and ENGINEER/ARCHITECT in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Article 6 (6.09, 6.11),

whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.

All bonds must be in the form included in the Bidding documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or regulations.

4.06 INSURANCE.

- A. The CONTRACTOR, at his own expense, shall obtain, maintain and keep in force throughout the duration of the Work, and throughout the Guarantee Period, insurance as specified in Attachment No 1 hereto regarding all Insurance. Such insurance shall be obtained from insurance companies that are duly licensed or authorized to transact business in the State of Texas with an A.M. Best Rating of A-VII or better to issue insurance policies for the required limits and coverages to cover all operations in connection with this Contract, whether performed by the CONTRACTOR or a subcontractor, or others for whom CONTRACTOR is responsible.
- B. Certificates of Insurance and endorsements establishing that the CONTRACTOR has obtained and is maintaining the policies and coverages required by the Contract shall be delivered to the Owner.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the supplementary Conditions.
- D. The Contractor shall deliver certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract to the Owner prior to executing the Agreement. Upon request by the Owner Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this contract.
- E. All such certificates of insurance shall include a specific waiver of all rights of subrogation in favor of the Owner (the City) and other named insureds.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by the Contractor, the Owner, at Owner's option may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor and Contractor cannot rely

upon Owner's liability policies for any of Contractor's obligations to the Owner, ENGINEER/ARCHITECT, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project,, and to name as additional insureds Owner and ENGINEER/ARCHITECT (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs and exercise Owner's termination rights under Article 8.6
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision of endorsement that the coverage afforded will not be canceled, or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and ENGINEER/ARCHITECT.

4.06.1 Builder's Risk and Other Property Insurance

A. Owner and Contractor intend that all policies purchased in will protect Owner, Contractor, Subcontractors, and ENGINEER/ARCHITECT/Architect, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and

will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds requirements of the Contract. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and in addition, waive all such rights against Subcontractors, and ENGINEER/ARCHITECT/Architect, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused.

B. Property Insurance for Substantially Complete Facilities: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work and maintain such property insurance at least until the Work is complete. Such property insurance will be written on a special peril (all-risk form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owners procurement of such property insurance.

C. Partial Occupancy or Use by Owner: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

D. Insurance of Other Property; Additional Insurance: if the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided, it may do so at Contractor's expense.

4.06.2 Property Losses; Subrogation

A. The builder's risk insurance policy purchased and maintained (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against ENGINEER/ARCHITECT or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by,

arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and in addition waive all such rights against ENGINEER/ARCHITECT, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Notice of Cancellation or Change: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

C. The waivers in this Paragraph include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the ENGINEER/ARCHITECT and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk or cause of loss.

4.06.3 Receipt and Application of Property Insurance Proceeds

A. Owner and Contractor intend that all policies purchased in accordance with Article 4.06 will protect Owner, Contractor, Subcontractors, and ENGINEER/ARCHITECT/Architect, and all other individuals or entities identified in the supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. To the extent that Contractor's insurance conforms to the requirements of the Contract, Owner and contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and in addition, waive all such rights against Subcontractors, and ENGINEER/ARCHITECT/Architect, and all other individuals or entities identified in the Supplementary Conditions to be listed as

insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused.

B. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

4.06.4 Professional Liability Insurance

The contractor shall provide professional liability insurance for any professional design or ENGINEER/ARCHITECTS drawing required by the work. Such insurance shall indemnify the Owner from claims arising from the negligent performance of professional services of any type, including but not limited to design or design/build services as part of the Work to be performed.

This insurance shall include prior acts coverage sufficient to cover all services rendered by the Contractor and by its consultants under this Agreement. It is recognized that this coverage may be provided on a Claims-Made basis.

The coverage shall be provided with a limit of not less than \$1,000,000. The Contractor shall maintain such insurance in identical coverage, form and amount for at least one (1) year following the Date of Substantial Completion of the Work to be performed under this Agreement. The Contractor shall provide written representation to the Owner stating Work completion date.

4.06.5 If Owner has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by Contractor on the basis of non-conformance with the Contract Documents, Owner shall so notify the Contractor in writing. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. Contractor shall purchase or maintain all the bonds and insurance required by the Contract Documents. Without prejudice to any other right or remedy, the Owner may elect to obtain equivalent bonds or insurance to protect Owner's interests at the expense of the Contractor and a Change Order shall be issued to adjust the Contract Price accordingly.

4.07 PERMITS AND FEES. Unless otherwise provided in the Contract Documents, the CONTRACTOR shall secure and pay for all construction permits, licenses, and inspections necessary for proper execution and completion of the Work, and which are legally required at the time bids are received (or when CONTRACTOR became bound under a negotiated contract). Permits required by the City of La Porte will be issued as a NO FEE permit.

4.08 TEXAS STATE SALES TAX. Materials incorporated into this project are exempt from State Sales Tax according to provisions of the Texas Tax Code, Chapter 151, Subsection H. The Contractor must obtain a limited sale, excise, and use tax permit or exemption certificate which shall enable him to buy the materials to be incorporated into the Work without paying tax due at the time of purchase.

- 4.09 CONTRACTOR'S DUTY AND SUPERINTENDENCE.** The CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, giving such skills and expertise as may be necessary to execute the faithful prosecution and completion of this Contract and shall keep on the work, during its progress, a competent superintendent, and any necessary assistants, all satisfactory to the ENGINEER/ARCHITECT as the OWNER'S representative. The superintendent shall represent the CONTRACTOR in his absence and shall act as the agent of the CONTRACTOR, and all directions given to him shall be binding as if given to the CONTRACTOR. Adequate supervision by competent and reasonable representatives of the CONTRACTOR is essential to the proper performance of the Work, and lack of such supervision shall be an act of default, and grounds for suspending operations of the CONTRACTOR. The Superintendent cannot be removed from the project without the consent of the OWNER; the Superintendent must speak and understand the English language; the Superintendent must be on site when any work on the project is being done, even when a subcontractor is performing the work.

The Work, from its commencement to completion, shall be under the exclusive charge and control of the CONTRACTOR, and all risk in connection therewith shall be borne by the CONTRACTOR.

Neither the OWNER nor the ENGINEER/ARCHITECT as the OWNER's representative will be responsible for the acts or omissions of the CONTRACTOR, its subcontractors or any of its agents or employees, or any other person performing any of the Work.

- 4.10 LABOR.** The Contractor agrees to employ orderly, competent, suitably qualified personnel, skillful in the performance of the type of work required under this Contract to do the Work. The Contractor shall maintain good discipline and order at the Site, and agrees that whenever the ENGINEER/ARCHITECT shall inform him in writing that any worker or workers on the Work are, in his opinion, incompetent, unfaithful or disorderly, or in the ENGINEER/ARCHITECT's opinion, are not using their best efforts for the progress of the Work, such worker or workers shall be discharged from the Work and shall not again be employed on the Work without the ENGINEER/ARCHITECT's written consent. OWNER reserves the right to bar any person, subcontractor, or supplier found to be incompetent, unfaithful, disorderly, or not using their best efforts to progress Work or considered to be a threat to the health, safety and welfare to the Project or workforce.

The CONTRACTOR and his subcontractors shall expressly comply with Article 5159A, Revised Civil Statutes of Texas, 1925, commonly known as the "Prevailing Wage Act" including the latest provisions. Not less than the minimum prevailing wage for the Harris County area shall be paid for labor which is employed by the CONTRACTOR and his subcontractors for execution of this contract. The CONTRACTOR and his subcontractors shall keep accurate records of the names, wage classifications, and hourly wages paid to each worker employed on this project. The records shall be open to inspection by the OWNER.

- 4.11 SERVICES, MATERIALS, EQUIPMENT, CONSTRUCTION PLANT, AND BUILDINGS.** The Contractor shall provide and assume full responsibility for all services, tools, equipment, transportation, machinery, supplies, appliances, fuel, facilities, utilities, and materials and incidentals necessary in the prosecution, testing, start up, and completion of this Contract where it is not otherwise specifically provided that the OWNER shall

furnish same; and further, the CONTRACTOR shall be responsible for the care, preservation, conservation and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction and any and all parts of the Work whether the CONTRACTOR has been paid, partially paid, or not paid for such Work, until the entire Work is completed and accepted.

All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract documents. If required by the ENGINEER/ARCHITECT, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

The building or placement of structures for housing workers or offices, or the erection of tents or other forms of protection, will be permitted only with the ENGINEER/ARCHITECT's written permission, and at such places as the ENGINEER/ARCHITECT shall direct, and the sanitary conditions of the grounds in or about such structures shall always be maintained in a manner satisfactory to the ENGINEER/ARCHITECT. Any structures of any nature constructed, placed or erected by the CONTRACTOR for the purposes herein set out, shall be the sole responsibility of the CONTRACTOR as to the proper erection, placement or construction thereof; and the CONTRACTOR agrees to indemnify and hold the ENGINEER/ARCHITECT or OWNER harmless from any claims of any nature whatsoever brought against either of them for damages allegedly sustained by anyone by reason of the erection, placement, construction or maintenance of CONTRACTOR's buildings or structures.

- 4.12 **SANITATION.** Necessary sanitary conveniences for the use of laborers and others on the Work site, properly secluded from public observation, shall be constructed, and maintained by the CONTRACTOR in such manner and at such points as shall be approved by the ENGINEER/ARCHITECT, and their use shall be strictly enforced. Any structures of any nature constructed or erected by the CONTRACTOR for the purposes herein set out, shall be the sole responsibility of the CONTRACTOR as to the proper erection or construction thereof, and the CONTRACTOR agrees to indemnify and hold the ENGINEER/ARCHITECT and OWNER harmless from any claims of any nature whatsoever brought against either of them for damages allegedly sustained by anyone by reason of the erection, construction or maintenance of CONTRACTOR's buildings.

- 4.13 **CLEANING AND MAINTENANCE.** The CONTRACTOR shall always keep and maintain the premises from accumulation of debris, trash, and waste. The CONTRACTOR shall remove waste, debris, and trash at the end of each workday. The CONTRACTOR shall remove all such debris, trash and waste, tools, scaffolding, and surplus materials, and shall leave the Work broom-clean or its equivalent and restore to original condition all property not designated for alteration by the Contract Documents. upon completion of the Work. The Work shall be left in good order and condition. In case of dispute, the OWNER may remove the debris, trash, waste, and surplus materials, and charge the cost to the CONTRACTOR.

Removal and disposal of such waste materials, rubbish and other debris will conform to applicable Laws and Regulations.

- 4.14 **PERFORMANCE OF WORK.** It is further agreed that it is the intent of this Contract that all Work must be done, and all material must be furnished in accordance with the generally

accepted practice for such materials furnished or work completed, unless otherwise provided in the Contract Documents.

- 4.15 **RIGHT OF OWNER TO ACCELERATE THE WORK.** If at any time the methods or equipment used by the CONTRACTOR, or the work force supplied are found to be inadequate to achieve the progress required to Substantially Complete the Work within the Contract Time, the OWNER, or the ENGINEER/ARCHITECT as the OWNER's representative, may order the CONTRACTOR in writing to supplement its forces and/or equipment, or work shifts or overtime, or otherwise improve its efficiency and rate of progress to achieve Substantial Completion of the Work within the Contract Time, and the CONTRACTOR shall comply with such order, at its own cost and expense.
- 4.16 **LAYOUT OF WORK.** Except as specifically provided herein, the CONTRACTOR shall be responsible for laying out work by means of construction surveying and shall accomplish this work in a manner acceptable to the ENGINEER/ARCHITECT and in conformance with the Contract Documents.
- 4.17 **Shop Drawings.** The CONTRACTOR shall submit to the ENGINEER/ARCHITECT, with such promptness as to cause no delay in his own Work or in that of any other contractor, complete copies with respect to all related data included in Submittal, of all shop and/or setting drawings and schedules required for the work of the various trades. The CONTRACTOR will check and approve shop drawings for compliance with the requirements of the Contract Documents and will certify by stamp each drawing prior to submittal to ENGINEER/ARCHITECT. Any drawings submitted without Contractor's stamp of approval will not be considered and will be returned to him for proper submission. The ENGINEER/ARCHITECT shall pass upon them with reasonable promptness, indicating desired corrections.

The CONTRACTOR shall make any corrections required by the ENGINEER/ARCHITECT, file with him the requested number of corrected copies and furnish such other copies as may be needed. The ENGINEER/ARCHITECT's approval of such drawings or schedules shall not relieve the CONTRACTOR from responsibility for deviations from the Contract Documents, unless he has, in writing, called the ENGINEER/ARCHITECT's attention to such deviations at the time of the submission, and the ENGINEER/ARCHITECT has acknowledged and accepted such deviations in writing, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules. It shall be the CONTRACTOR's responsibility to fully and completely review all shop drawings to ascertain their effect on his ability to perform the required Contract Work in accordance with the Contract Documents, and within the Contract Time.

Such review by the ENGINEER/ARCHITECT shall be for the sole purpose of determining the apparent sufficiency of said drawings or schedules to result in finished improvements in conformity with the Contract Documents, and shall not relieve the CONTRACTOR of his duty as an independent contractor as previously set forth, it being expressly understood and agreed that the ENGINEER/ARCHITECT does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during CONTRACTOR's performance hereunder, and any action taken by the

ENGINEER/ARCHITECT shall not relieve the CONTRACTOR of his responsibility and liability to comply with the Contract Documents.

OWNER, CONSTRUCTION MANAGER, ENGINEER/ARCHITECT, and CONTRACTOR shall make all submittals, review comments, notes, corrections, schedules, and updates, testing results, payment applications, instructions, and other communications by means of the OWNER's Pro-Trak. The OWNER, ENGINEER/ARCHITECT, and CONTRACTOR shall each retain such hard copies as are required for their specific record keeping requirements. No documents shall be removed from OWNER's system or destroyed except those being replaced by the systems protocols as a latest version document.

All requirements for written communications, submittals, comments, instructions, or other documents processed by means of OWNER's system shall have the same legal or time sensitive status as if they had been hand delivered in hard copy to their intended addressee.

- 4.18 ENGINEER/ARCHITECT-CONTRACTOR RELATIONSHIP; OBSERVATIONS.** It is agreed by the CONTRACTOR that the ENGINEER/ARCHITECT, as the OWNER's representative, shall be and is hereby authorized to appoint such subordinate ENGINEER/ARCHITECTs, representatives or observers as the said ENGINEER/ARCHITECT may from time to time deem proper to observe the materials furnished and the Work done under this Agreement. The CONTRACTOR shall furnish all reasonable aid and assistance required by the subordinate ENGINEER/ARCHITECTs, representatives or observers for the proper observation and examination of the work. The CONTRACTOR shall regard and obey the directions and instructions of any subordinate ENGINEER/ARCHITECTs, representatives or observers so appointed, when such directions and instructions are consistent with the obligations of this Agreement and the Contract Documents, provided, however should the CONTRACTOR object to any orders by any subordinate ENGINEER/ARCHITECT, representative or observer, the CONTRACTOR may, within three (3) days make written appeal to the ENGINEER/ARCHITECT for his decision.
- 4.19 OBSERVATION AND TESTING.** The OWNER or the ENGINEER/ARCHITECT as the OWNER's representative shall have the right at all reasonable times to observe, inspect and test the Work. The CONTRACTOR shall make all necessary arrangements and provide proper facilities and access for such observation, inspection and testing at any location wherever Work is in preparation or progress. The CONTRACTOR shall ascertain the scope of any observation, inspection or testing which may be contemplated by the OWNER or the ENGINEER/ARCHITECT and shall give ample notice as to the time each part of the Work will be ready for such observation, inspection, or testing. The OWNER or the ENGINEER/ARCHITECT may reject any Work found to be defective or not in accordance with the Contract Documents, regardless of the stage of its completion or the time or place of discovery of such deficiencies, and regardless of whether the ENGINEER/ARCHITECT has previously accepted the Work through oversight or otherwise. If any Work is covered without approval or consent of the OWNER, it must, if requested by the OWNER or the ENGINEER/ARCHITECT, be uncovered for examination, at the sole expense of the CONTRACTOR. In the event that any part of the Work is being fabricated or manufactured at a location where it is not convenient for the OWNER or the ENGINEER/ARCHITECT to make observations of such Work or require testing of said

Work, then in such event, the OWNER or the ENGINEER/ARCHITECT may require the CONTRACTOR to furnish the OWNER or the ENGINEER/ARCHITECT with certificates of inspection, testing or approval made by independent persons competent to perform such tasks at the location where that part of the work is being manufactured or fabricated. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials, or such other applicable organization as may be required by law or the Contract Documents.

If any Work, which is required to be inspected, tested, or approved, is covered up without written approval or consent of the OWNER or the ENGINEER/ARCHITECT, it must, if requested by the OWNER or the ENGINEER/ARCHITECT, be uncovered for observation and testing, at the sole expense of the CONTRACTOR. The cost of all such inspections, tests and approvals shall be borne by the CONTRACTOR unless otherwise provided herein. Any Work which fails to meet the requirements of such tests, inspections or approval, and any Work which meets the requirements of any such tests or approval but does not meet the requirements of the Contract Documents shall be considered defective. Such defective Work and any other work affected thereby shall be corrected at the CONTRACTOR's expense.

Neither observations by the OWNER or by the ENGINEER/ARCHITECT, nor inspections, certifications, tests, or approvals made by the OWNER, the ENGINEER/ARCHITECT or other persons authorized under this Agreement to make such inspections, tests, or approvals, shall relieve the CONTRACTOR from his obligation to perform the Work in accordance with the requirements of the Contract Documents.

- 4.20 DEFECTS AND THEIR REMEDIES.** It is further agreed that if the Work or any part thereof or any material brought on the site of the Work for use in the Work or selected for the same, shall be deemed by the ENGINEER/ARCHITECT as unsuitable or not in conformity with the Contract Documents, the CONTRACTOR shall, after receipt of written notice thereof from the ENGINEER/ARCHITECT, forthwith remove such material and rebuild or otherwise remedy such Work so that it shall be in full accordance with this Contract. It is further agreed that any such remedial action contemplated herein shall be at CONTRACTOR's expense.

- 4.21 LIABILITY FOR PROPER PERFORMANCE.** ENGINEER/ARCHITECTS construction drawings and specifications, as well as any additional instructions and information concerning the Work to be performed, passing from or through the ENGINEER/ARCHITECT, shall not be interpreted as requiring or allowing the CONTRACTOR to deviate from the Contract Documents, the intent of such drawings, specifications and any other such instructions being to define with particularity the agreement of the parties as to Work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable and contractually bound, at his own expense, for design, construction, installation and use or non-use of all items and methods incident to the performance of the Contract, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, similar items or devices used by him during construction, and work performed either directly or incident to construction, and for all loss, damage or injury incident thereto, either to person or property, whether such damage be suffered by the ENGINEER/ARCHITECT, the OWNER or any other person not a party to this Contract.

Any review of Work in progress or any visit or observation during construction, or any clarification of Contract Documents by the ENGINEER/ARCHITECT or OWNER, or any agent, employee or representative of either of them, whether through personal observation on the Project site or by means of approval of shop drawings for construction or construction processes, or by other means or methods, is agreed by the CONTRACTOR to be for the purpose of observing the extent and nature of Work completed or being performed, as measured against the Contract Documents, or for the purpose of enabling the CONTRACTOR to more fully understand the Contract Documents so that the completed construction Work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for proper performance of his Work on the Project, including, without limitation, the propriety of means and methods of the CONTRACTOR in performing said Contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Any action by the ENGINEER/ARCHITECT or the OWNER in visiting or observing during construction, or any clarification of Contract Documents shall not constitute a waiver of CONTRACTOR's liability for damages as herein set out. Deviation by the CONTRACTOR from the Contract Documents, whether called to the CONTRACTOR's attention or not, shall in no way relieve CONTRACTOR from his responsibility to complete all work in accordance with said Contract Documents, and further shall not relieve CONTRACTOR of his liability for loss, damage or injury as herein set out.

- 4.22 PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC.** The CONTRACTOR shall be solely responsible for the safety of himself, his employees and persons entering the project site, as well as for the protection of the improvements being erected and the property of himself or any other person, because of his operations hereunder. The CONTRACTOR shall take out and procure a policy or policies of Workers' Compensation Insurance with an insurance company licensed to transact business in the State of Texas, which policy shall comply with the Workers' Compensation laws of the State of Texas. The CONTRACTOR shall always exercise reasonable precautions for the safety of employees and others at or near the Work and shall comply with all applicable provisions of federal, state, and municipal laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded, as a minimum, in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, except where incompatible with federal, state, or municipal laws or regulations. The CONTRACTOR shall provide all necessary machinery guards, safe walkways, ladders, bridges, gangplanks, barricades, fences, traffic control, warning signs and other safety devices.

No alcoholic beverages, non-prescription drugs, or unsafe practices shall be allowed on the Work site. CONTRACTOR shall dismiss anyone participating in any of the above from the Work site for the duration of the Project. Only prescription drug use with a doctor's authorization to perform construction activities shall be allowed on the Work site. Violation of this provision is a default under the Contract. The use, possession, sale, transfer, purchase or being under the influence of alcohol, drugs, or any other illegal or unlawful substance by CONTRACTOR or CONTRACTOR's employees, or CONTRACTOR's subcontractors and employees at any time at the work site or while on company business is prohibited. CONTRACTOR shall institute and enforce appropriate drug testing guidelines and program.

All accidents or injuries to CONTRACTOR's employees working on the job site must be reported verbally and in writing to the ENGINEER/ARCHITECT immediately, and within no more than eight (8) hours.

The safety precautions taken, and their adequacy shall be the sole responsibility of the CONTRACTOR, in his sole discretion as an independent contractor. Inclusion of this paragraph in the Agreement, as well as any notice which may be given by the OWNER or the ENGINEER/ARCHITECT as the OWNER's representative concerning omissions under this paragraph as the Work progresses, are intended as reminders to the CONTRACTOR of his duty and shall not be construed as any assumption of duty by ENGINEER/ARCHITECT, or OWNER's representative to supervise safety precautions by either the CONTRACTOR or any of his subcontractors.

4.23 PROTECTION OF ADJOINING PROPERTY. The CONTRACTOR shall employ proper means to protect the adjacent or adjoining property or properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this Agreement, from any damage or injury by reason of said process of construction; and he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjacent or adjoining property. THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CONSTRUCTION MANAGER, OWNER AND ENGINEER/ARCHITECT AGAINST ANY CLAIM OR CLAIMS FOR DAMAGES, LOSS, COSTS OR EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, DUE TO ANY INJURY TO ANY ADJACENT OR ADJOINING PROPERTY, ARISING OR GROWING OUT OF THE PERFORMANCE OF THE CONTRACT, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE, LOSS, COST OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY OF OWNER AND/OR ENGINEER/ARCHITECT.

4.24 PROTECTION AGAINST THE CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIALMEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES. THE CONTRACTOR AGREES THAT HE WILL PROMPTLY PAY WHEN DUE, AND WILL INDEMNIFY, SAVE AND HOLD THE OWNER AND THE ENGINEER/ARCHITECT HARMLESS FROM ALL CLAIMS GROWING OUT OF THE DEMANDS OF SUBCONTRACTORS, LABORERS, WORKERS, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. When desired by the OWNER, the CONTRACTOR shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the CONTRACTOR fails to do so, then the OWNER may, at the option of the OWNER, either pay directly any unpaid bills of which the OWNER has written notice, or withhold from the CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to the CONTRACTOR shall be resumed in full, in accordance with the terms of this Contract.

All communications between any parties under this paragraph shall be in writing. Nothing contained in this paragraph, or this Agreement shall create, establish, or impose any relationship, contractual or otherwise, between OWNER and any subcontractor, laborer,

or supplier of CONTRACTOR, nor shall it create, establish, or impose any duty upon OWNER to pay or to see the payment of any subcontractor, laborer or supplier of CONTRACTOR.

- 4.25 PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION.** The CONTRACTOR shall pay all royalties and license fees and shall provide for the use of any design, device, material or process covered by letters patent or copyright, by suitable legal agreement with the patentee or owner thereof THE CONTRACTOR SHALL DEFEND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT OR COPYRIGHT AND SHALL INDEMNIFY, SAVE AND HOLD THE OWNER AND THE ENGINEER/ARCHITECT HARMLESS FROM ANY LOSS OR LIABILITY ON ACCOUNT THEREOF, EXCEPT SUCH SUITS AND CLAIMS ARISING OUT OF A PARTICULAR DESIGN, DEVICE, MATERIAL OR PROCESS OR THE PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS SPECIFIED OR REQUIRED BY THE OWNER; PROVIDED, HOWEVER, IF CHOICE OF ALTERNATE DESIGN, DEVICE, MATERIAL OR PROCESS IS ALLOWED TO THE CONTRACTOR, OR IF CONTRACTOR KNEW OR SHOULD HAVE KNOWN OF THE PATENT OR COPYRIGHT AND FAILED TO PROMPTLY NOTIFY OWNER IN WRITING, THEN THE CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD THE OWNER HARMLESS FROM ANY LOSS OR LIABILITY ON ACCOUNT THEREOF.

- 4.26 INDEMNIFICATION.** To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CONTRACTOR under the Contract or otherwise, CONTRACTOR shall indemnify and hold harmless the OWNER and the ENGINEER/ARCHITECT, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of ENGINEER/ARCHITECTs, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any 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.

In any and all claims against OWNER or ENGINEER/ARCHITECT, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any 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, the indemnification obligation under the preceding Paragraph will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- 4.27 **LOSSES FROM NATURAL CAUSES.** All loss, cost, expense, or damage to the CONTRACTOR arising out of the nature of the Work to be done or from any unforeseen circumstances in the prosecution of the same, or from the action of the elements, or from unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained, and borne by the CONTRACTOR at his own cost and expense.
- 4.28 **GUARANTEE.** The CONTRACTOR hereby guarantees all the Work under the Contract to be free from defects or deficiencies in material in every particular and free from defects or deficiencies in workmanship; and against unusual damage from proper and usual use; and agrees to replace or to re-execute without cost to the OWNER such Work as may be found to be defective, deficient or otherwise not in conformance with the Contract Documents, and to make good all damages caused to other work or material, due to such defective Work or due to its required replacement or re-execution. This guarantee shall cover a period of one year from the date of Substantial Completion or Partial Substantial Completion of Work under the Contract, as evidenced by the Certificate of Substantial Completion. Neither the Certificate of Substantial Completion, Final Payment, nor any provision in the Contract Documents shall relieve the CONTRACTOR of the responsibility for defective deficient or non-conforming material or workmanship during the period covered by the guarantee. The one-year period of guarantee will not limit the OWNER's other rights under common law with respect to any effects, deficiencies or non-conforming Work discovered after one year. If this one-year guarantee conflicts with other warranties or guarantees, the longer period of warranty or guarantee will govern.

5.0 PROSECUTION AND PROGRESS

- 5.01 **TIME AND ORDER OF COMPLETION.** It is the meaning and intent of this Contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute his Work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the Work shall be Substantially Completed as a whole and in part, in accordance with this Contract and the Contract Time; provided, also, that when the OWNER is having other work done, either by contract or by his own forces, the ENGINEER/ARCHITECT may direct the time and manner of constructing the Work done under this Contract, so that conflict will be avoided and the construction of the various works being done for the OWNER shall be harmonized, and the CONTRACTOR shall fully cooperate and coordinate its Work with OWNER or such other contractors.

The CONTRACTOR shall submit, an updated schedule with every pay estimate for review by the ENGINEER/ARCHITECT, schedules which shall show the order in which the CONTRACTOR proposes to carry on the Work, with dates on which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts. Such schedules shall show completion of the Work within the Contract Time, and/or shall show such recovery efforts as CONTRACTOR intends to undertake in the event Substantial Completion of the Work is delayed.

- 5.02 **EXTENSION OF TIME.** The CONTRACTOR agrees that he has submitted his Bid Proposal in full recognition of the time required for the completion of this Project, taking into consideration the average climatic range and industrial conditions prevailing in this

locality, and has considered the liquidated damage provisions as hereinafter set forth, and that he shall not be entitled to, nor will he request, an extension of time on this Contract, except when Substantial Completion of the Work has been delayed solely by strikes, lockouts, fires, Acts of God, or by any other cause which the ENGINEER/ARCHITECT shall decide justifies the delay. The CONTRACTOR shall give the ENGINEER/ARCHITECT prompt notice, in writing and within three (3) days of the start of any such delay, of the cause of any such delay, and its estimated effect on the work and the schedule for completion of the Work. Upon receipt of a written request for an extension of the Contract Time from the CONTRACTOR, supported by relevant and all requested documentation, the ENGINEER/ARCHITECT shall submit such written request, together with his written recommendation, to the OWNER for consideration. If the delay is not attributable in whole or in part to any act or omission of CONTRACTOR, its subcontractors or suppliers, and if the OWNER determines that CONTRACTOR is entitled to an extension of time under the terms of the Contract, the OWNER shall grant an extension of time for Substantial Completion of the Work, sufficient to compensate for the delay, and such extension of time shall be CONTRACTOR's sole and exclusive remedy, except as may be otherwise provided herein. No extensions of Contract Time shall be made for delays occurring prior to the Contractor's mobilization.

The Contract Time as defined in the Bid Proposal and other sections herein incorporates 40 Rain Days per calendar year or an average of 3.33 days per calendar month. The CONTRACTOR is required to keep a record of all weather-related delays and to submit the monthly count on each Pay Application. The Owner's Representative shall review and sign off on this record as a part of the Pay Application approval process every month. If, during preparation of the Balancing Change Order, the status of the work progress requires an extension of the Contract Time, Impact Days shall be added to the Completion Date equal to the total number of Weather or Impact Days approved less the original 40 days resident in the original Contract Time. The Addition of Weather or Impact Days shall be the CONTRACTOR's sole remedy for delays to the completion of the Work and their addition to the Contract Time shall not affect the Contract Price through any "per diem" adjustment to the General Conditions costs, Temporary Facilities costs or any other costs associated with the extension of the Contract Time.

- 5.03 HINDRANCES AND DELAYS.** In executing the Contract, the CONTRACTOR agrees that in undertaking to complete the Work within the time herein fixed, he has taken into consideration and made allowances for all interference, disruption, hindrances, and delays incident to such Work, whether growing out of delays in securing material, workmen or otherwise. No claim shall be made by the CONTRACTOR for damages, loss, costs, or expense resulting from interference, disruption, hindrances, or delays from any cause during the progress of any portion of the Work embraced in this Contract, except where the Work is stopped or suspended by order of the OWNER's representative and such stoppage or suspension is not attributable to any act or omission of the CONTRACTOR.
- 5.04 SUSPENSION OF WORK.** OWNER may, without cause, order the CONTRACTOR in writing to suspend the Work, in whole or in part, for such period as OWNER may request. The Contract Price and/or Contract Time shall be adjusted for any increase in the cost of or the time required for performance of the Work caused by such suspension. No adjustment shall be made to the extent performance was or would have been suspended

by a cause for which CONTRACTOR is responsible, or to the extent an adjustment is made or denied under another provision of the Contract Documents.

5.05 LIQUIDATED DAMAGES FOR DELAY. It is understood and agreed that time is of the essence, and that the CONTRACTOR will commence the Work on the date specified herein or in any Notice to Proceed and will Substantially Complete the Work within the Contract Time. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the time for the Substantial Completion of the Work described herein is reasonable time for the completion of the same, taking into consideration the average climatic range and conditions and usual industrial conditions prevailing in this locality. The CONTRACTOR further agrees that a failure to complete on time will cause damage to the OWNER and that such damages cannot be accurately measured or that ascertainment will be difficult. Therefore, the parties agree that for every calendar day the Work or any portion thereof shall remain uncompleted after the expiration of the Contract Time, the CONTRACTOR shall pay, as liquidated damages and as a reasonable estimate of OWNER's damages, and not as a penalty, the amount set out in the Standard Form of Agreement.

However, the foregoing agreement as to liquidated damages constitutes only an agreement by the OWNER and the CONTRACTOR as to the amount of damages which the OWNER will sustain by reason of the CONTRACTOR's failure to complete the work within the Contract Time. Should the OWNER suffer damage by reason of any other breach by CONTRACTOR, the OWNER may recover such actual damages in addition to any liquidated damages due.

The OWNER shall have the right to deduct and withhold the amount of any and all such damages whether it be the minimum amount stipulated above, or otherwise, from any monies owing by it to said CONTRACTOR, or the OWNER may recover such amount from the CONTRACTOR and the sureties of his bond; all of such remedies shall be cumulative and the OWNER shall not be required to elect any one nor be deemed to have made an election by proceeding to enforce any one remedy.

5.06 CHANGE OF CONTRACT TIME: The Contract Time may only be changed by a Change Order. Any claim for an adjustment of the Contract Time shall be based on written notice delivered by the party making such claim to the other party and to the ENGINEER/ARCHITECT promptly, but in no event later ten (10) days after the event-giving rise to the claim. Notice of the extent of the claim, along with supporting data, shall be delivered within thirty (30) days of the occurrence and shall be accompanied by the claimant's written representation that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled because of the occurrence of said event. All claims for adjustment in Contract Time shall be determined by the ENGINEER/ARCHITECT in accordance with the requirements of this paragraph. Contractor shall submit, as a minimum, the following data:

- A. Information showing that the time requested is not included in the existing Contract and in addition to the Contract.
- B. Information documenting that the number of days requested is accurate for the event.

- C. Revised, current construction schedule showing that the time requested affects the project's critical path.

5.07 DELAYS BEYOND OWNER'S AND CONTRACTOR'S CONTROL: Where **CONTRACTOR** is prevented from completing any part of the Work within the Contract Time due to delays beyond the control of the OWNER and the CONTRACTOR, including, but not limited to, interference by utility owners or other contractors performing other work, Contractor shall be entitled to an extension of the Contract Time in an amount equal to the time lost. CONTRACTOR shall not be entitled to an increase in Contract Price because of such delays. In no event shall owner be liable to contractor for damages arising out of or resulting from (i) Delays caused by, or within the control of, the CONTRACTOR, or (ii) Delays beyond the control of both parties including, but not limited to, interference by utility owners or other subcontractors performing other work, fires, floods, epidemics, abnormal weather conditions, acts of God, even if such delays are due in part to the negligence, other fault, breach of contract or warranty, violation of the Texas Deceptive Trade Act, or strict liability without regard to fault of OWNER. An extension of Contract Time shall be CONTRACTOR's sole and exclusive remedy for any such delays.

Delays attributed to, and within the control of, a Subcontractor or Supplier shall be deemed to be delays within the control of the CONTRACTOR.

6.0 MEASUREMENT AND PAYMENT

6.01 DISCREPANCIES AND OMISSIONS. If the CONTRACTOR knows or reasonably should have known of any discrepancies or omissions in the Contract Documents, he shall notify the ENGINEER/ARCHITECT and obtain a clarification by Addendum before the bids are received, and if no such request is received by the ENGINEER/ARCHITECT prior to the opening of bids, then it shall be considered that the CONTRACTOR fully understands the Work to be performed and has provided sufficient sums in his Bid Proposal to complete the Work in accordance with the Contract Documents. It is further understood that any request for clarification must be submitted no later than five (5) days prior to the opening of bids.

6.02 QUANTITIES AND MEASUREMENTS. No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, volume, number, and weight only shall be considered, unless otherwise specifically provided.

6.03 ESTIMATED QUANTITIES. This Agreement, including the Contract Documents, and including any estimates contained herein, is intended to convey all Work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of Work to be done and material to be furnished under this Contract, they are approximate and are to be used only as a basis for estimating the probable cost of the Work and for comparing Bid Proposals offered for the Work. It is understood and agreed that the actual amount of work to be done and the materials to be furnished under this Contract may differ from the estimates and that the items listed or estimated quantities stated, and/or any difference between estimated and actual Work, shall not give rise to a claim by the CONTRACTOR against the OWNER for loss, cost, expense, damages, unit price adjustment, quantity differences, unrecovered overhead, or lost or anticipated profits, or other compensation.

6.04 PRICE OF WORK. It is agreed that it is the intent of this Contract that all Work described in the Bid Proposal, and Contract Documents, is to be done for the prices bid by the CONTRACTOR and that such prices shall include all appurtenances necessary to complete the Work in accordance with the intent of these Contract Documents as interpreted by the ENGINEER/ARCHITECT, and all costs, expenses, bond and insurance premiums, taxes, overhead, and profit. In consideration of furnishing all of the necessary labor, equipment, and material, and the completion of all Work by the CONTRACTOR, and upon the completion of all Work and the delivery of all materials embraced in this Contract in full conformity with the Contract Documents, the OWNER agrees to pay to the CONTRACTOR the prices set forth in the Standard Form of Agreement, OWNER and CONTRACTOR agree that the Contract is a unit cost agreement, unless stated otherwise, and that the final Contract amount is equal to the unit cost multiplied by the number of units authorized, installed and approved by the OWNER.

The OWNER does not assume any obligation to pay for any services or material not actually authorized and used. The CONTRACTOR hereby agrees to receive such prices as payment in full for furnishing all materials and all labor required for the aforesaid Work, and for all expenses incurred by him, and for full performance of the Work and the whole thereof in the manner and according to this Agreement, Contract Documents, and the requirements of the ENGINEER/ARCHITECT.

6.05 PAYMENTS. No payments made or approvals or certificates given shall be considered as conclusive evidence of the performance of the Contract, either in whole or in part, nor shall any certificate, approval or payment be considered as acceptance of defective, deficient, or non-conforming Work. The CONTRACTOR shall, at any time requested during the progress of the Work, furnish the OWNER or the ENGINEER/ARCHITECT with an affidavit showing the CONTRACTOR's total outstanding indebtedness in connection with the Work. Before Final Payment is made, the CONTRACTOR shall satisfy the OWNER, by affidavit or otherwise, that there are no unpaid claims due subcontractors, suppliers, or laborers by reason of any Work under the Contract. Acceptance by CONTRACTOR of Final Payment shall constitute a waiver of all claims of whatsoever nature against OWNER, arising out of or in connection with the Contract, or the Work, or any acts or omissions of the OWNER or the ENGINEER/ARCHITECT, which have not theretofore been timely filed as provided in this Contract.

6.06 PARTIAL PAYMENTS. When the Contract Price is a lump sum amount, prior to the first Application for Payment, CONTRACTOR shall submit to ENGINEER/ARCHITECT for review and approval a Schedule of Values, which shall fairly allocate the entire Contract Price among the various portions of the Work and shall be prepared in such form and supported by such data to substantiate its accuracy as the ENGINEER/ARCHITECT may reasonably require. The Schedule of Values shall follow the trade divisions of the Specifications so far as practicable. Upon approval, this Schedule of Values shall be used by the ENGINEER/ARCHITECT as the basis for reviewing the Contractor's Application for Payment. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

On or before the tenth day of each month, the CONTRACTOR shall prepare and submit to the ENGINEER/ARCHITECT, for approval or correction, an application for partial payment, being a statement showing as completely as practicable, the agreed unit quantities and extended total value of the Work done by the CONTRACTOR up to and including the twenty-fifth day of the preceding month; said statement shall also include the value of all conforming materials to be fabricated into the Work and stored in accordance with the manufacturer's recommendations and as approved by the OWNER or ENGINEER/ARCHITECT at the work site only. No payment will be made for materials stored until OWNER has approved in writing storage at the Work site. The ENGINEER/ARCHITECT shall then review such statement of unit quantities and application for partial payment and the progress of the work made by the CONTRACTOR and, within ten days after the date the ENGINEER/ARCHITECT receives the CONTRACTOR's application for payment, if the application is found to be accurate and correct and the Work conforming to the requirements of the Contract Documents, the ENGINEER/ARCHITECT shall certify the Application for Partial Payment and shall deliver his preliminary certification for payment to the OWNER and the CONTRACTOR; or, if the ENGINEER/ARCHITECT finds that CONTRACTOR's Application for Payment contains an error or is otherwise disputed, he shall notify the CONTRACTOR of such error or dispute, and shall prepare a preliminary certificate for partial payment for the undisputed amount of the application for payment due CONTRACTOR, and deliver it to the OWNER and CONTRACTOR. The ENGINEER/ARCHITECT's notice to the CONTRACTOR that a bona fide dispute for payment exists shall include a list of the specific reasons for nonpayment. All payment applications made by CONTRACTOR and delivered to ENGINEER/ARCHITECT, and all verifications and certifications of such applications shall be made and transmitted within the Pro-Trak system and signed with the appropriate electronic signatures as provided for in the software.

Such applications for payment shall not be considered complete unless accompanied by the CONTRACTOR's Partial Waiver of Lien and Payment Affidavit, Section 00615, duly executed by an authorized representative of the CONTRACTOR and reflecting the correct corresponding amount of the payment application.

The OWNER shall then pay the CONTRACTOR, within thirty (30) days of the date of ENGINEER/ARCHITECT's receipt of the application for payment, the undisputed balance due, less applicable retainage, and further less all previous payments and all further sums that may be retained or withheld by the OWNER under the terms of this Agreement. CONTRACTOR may submit a corrected Application for Payment after its receipt of the ENGINEER/ARCHITECT's notice of error or dispute, and such corrected application for payment shall be reviewed by the ENGINEER/ARCHITECT and disputed or paid under the same procedure and within the same time limits set out above.

As a condition of any progress payment under this Agreement, CONTRACTOR shall execute and deliver to the ENGINEER/ARCHITECT and the OWNER a full release of all claims, direct or indirect, at law or in equity, arising out of or related to the work to date, excluding retainage or any claims previously submitted as required under the terms of the Contract, and specifically identified and excluded by CONTRACTOR in the release.

OWNER shall be entitled to retain from each progress payment on a contract of less than \$5 million, 10 percent of the contract price, not exceeding 10 percent for any item in a bid

schedule or schedule of values for the Project, including materials and equipment delivered on site to be installed; and for a contract of more than \$5 million, 5 percent of the contract price, and not exceeding 5 percent for any item in a bid schedule or schedule of values for the project, including materials and equipment to be delivered on site to be installed. Such retainage shall be retained until Final Completion and satisfaction of all conditions for Final Payment. It is understood however, that in case the whole Work be near to completion, as certified by the ENGINEER/ARCHITECT, and some unexpected or unusual delay occurs, through no neglect or fault on the part of the CONTRACTOR, the OWNER may, upon written recommendation of the ENGINEER/ARCHITECT, pay a reasonable and equitable portion of the retained percentage to the CONTRACTOR, or the CONTRACTOR, at the OWNER's option, may be relieved of the obligation to fully complete the Work, and thereupon, the CONTRACTOR shall receive, at the OWNER's option, payment of the balance due him under the Contract for Work completed in accordance with the Contract Documents, subject to OWNER's rights to otherwise withhold or retain payments, and subject to the conditions set forth under "6.09 FINAL PAYMENT."

The OWNER at its option and in compliance with Texas law may reduce retainage to less than the above-stated percentages.

6.07 USE OF COMPLETED PORTIONS & PUNCHLIST. The OWNER shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire work or such portions may not have expired; but such possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the Work, the CONTRACTOR shall promptly and within three (3) days of OWNER's taking possession, give OWNER written notice of same, and CONTRACTOR may be entitled to such extra compensation or extension of time, or both, as may be determined in accordance with the provisions of this Agreement.

6.08 SUBSTANTIAL COMPLETION. The CONTRACTOR shall notify the OWNER and ENGINEER/ARCHITECT, by letter executed by a duly qualified officer of CONTRACTOR, that in CONTRACTOR's opinion, the Work of the Contract, or an agreed portion thereof, is "Substantially Complete". Such notification shall include a list of all outstanding or incomplete items. Upon receipt, and within a reasonable time thereafter, of such notice, the ENGINEER/ARCHITECT and the CONTRACTOR shall jointly perform a walk-through and inspection of the Work to determine the status of all or the identified portion of the work, and the ENGINEER/ARCHITECT shall prepare a detailed list of unfinished, incomplete, defective and/or non-conforming Work ("Punchlist"). If the ENGINEER/ARCHITECT determines that the Work is Substantially Complete in accordance with the Contract Documents, the ENGINEER/ARCHITECT shall issue to the OWNER and the CONTRACTOR a Certificate of Substantial Completion. OWNER shall have seven (7) days after receipt of Certificate to make written objection to the ENGINEER/ARCHITECT as to any provision of the Certificate or the attached list of non-conforming work. If ENGINEER/ARCHITECT concludes that the Work is not Substantially Complete, ENGINEER/ARCHITECT will, within fourteen (14) days, notify CONTRACTOR of the reason he believes the Work is not Substantially Complete. Upon Substantial Completion of the Work, ENGINEER/ARCHITECT will deliver to OWNER and

CONTRACTOR a written recommendation as to division of responsibilities, pending final payment and acceptance, with respect to security, maintenance, utilities, and damage to the Work, except as otherwise provided in the Certificate of Substantial Completion. NEITHER THE SUBSTANTIAL COMPLETION OF THE WORK, NOR THE OMISSION OF AN ITEM FROM THE PUNCHLIST, SHALL EXCUSE THE CONTRACTOR FROM PERFORMING ALL OF THE WORK UNDERTAKEN, WHETHER OF A MINOR OR MAJOR NATURE, AND THEREBY COMPLETING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. The Certificate of Substantial Completion shall establish the time within which the CONTRACTOR shall complete the Work for Final Acceptance by the OWNER and ENGINEER/ARCHITECT.

6.08-1 The OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, for security requirement reasons. OWNER may establish an access procedure to facilitate CONTRACTOR's uninterrupted access to the Work for the purposes of completing and correcting all items on the Punchlist in an expeditious manner.

6.09 FINAL PAYMENT. Final payment of the Retainage withheld from the Contract Price shall be made by the OWNER to the CONTRATOR at such time as:

- (a) the Work, including all Change Orders and including all Punchlist Work, has been fully completed in strict accordance with the Contract Documents;
- (b) the Contract has been fully performed except for the CONTRACTOR's responsibility to correct nonconforming Work during the warranty period set forth in the Contract Documents, and to satisfy other requirements, if any, which necessarily survive final payment;
- (c) CONTRACTOR delivers to OWNER a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to OWNER;
- (d) CONTRACTOR delivers to OWNER a Consent of Surety, if any, to final payment;
- (e) CONTRACTOR delivers to OWNER a complete set of As-Built Drawings, reflecting all deviations from the Plans, Specifications and approved shop drawings in the Work actually constructed, and delivers all maintenance and operating manuals and/or instructions;
- (f) CONTRACTOR delivers to OWNER all building certificates required prior to occupancy and all other required inspections/approvals/acceptances by city, county, state governmental entities or other authorities having jurisdiction;
- (g) CONTRACTOR delivers to OWNER assignments of all guarantees and warranties from subcontractors, vendors, suppliers or manufacturers, as well as names, addresses, and telephone numbers of contacts for each subcontractor, vendor, supplier or manufacturer;

(h) CONTRACTOR removes all equipment, tools, temporary facilities, surplus materials and rubbish from the site, and final cleans the site to OWNER's satisfaction;

(i) CONTRACTOR delivers to OWNER a Full and Final Release and Affidavit of Bills Paid in the form satisfactory to the OWNER, executed by the CONTRACTOR.

(j) CONTRACTOR delivers to OWNER all other documentation required to be submitted to OWNER pursuant to the Contract Documents, including but not limited to any special guarantees or warranties, operation, and maintenance manuals, etc. in each case in a form satisfactory to OWNER as determined in OWNER's sole discretion; and

(k) the Final Application for Payment has been approved by the ENGINEER/ARCHITECT and OWNER.

Acceptance of Final Payment by the CONTRACTOR shall constitute a waiver of all claims by CONTRACTOR against OWNER other than any claims previously made in writing by the CONTRACTOR against the OWNER, and still unsettled, and except for claims arising out of third-party actions, crossclaims and counterclaims. No interest shall be due or payable by OWNER to CONTRACTOR on any sums retained or withheld by OWNER pursuant to the terms or provisions of the Contract Documents, except as otherwise provided by applicable law. Neither the Certificate of Substantial Completion nor the Final Payment nor possession or acceptance of the Work shall relieve the CONTRACTOR of its obligation for correction of defective or non-conforming Work, or for fulfillment of any warranty, which may be required by law or by the Contract Documents.

6.10 CORRECTION OF WORK BEFORE FINAL PAYMENT. The CONTRACTOR shall promptly remove from OWNER's premises all materials, equipment or Work which is defective or otherwise not in conformance with the Contract Documents, whether incorporated in the Work or not, and CONTRACTOR shall, at his own expense, promptly replace such materials, equipment or Work with other materials conforming to the requirements of the Contract. The CONTRACTOR shall also bear the expense of restoring all the work of the CONTRACTOR or other contractors damaged by any such removal or replacement. If the CONTRACTOR does not remove and replace any such unsuitable Work within ten (10) business days after receipt of a written notice from the OWNER or the ENGINEER/ARCHITECT, the OWNER may remove, replace, and remedy such work at CONTRACTOR's expense.

6.11 CORRECTION OF WORK AFTER FINAL PAYMENT. If within one (1) year from the date of Substantial Completion or such longer period of times as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR shall, at its sole cost, correct it and any other work affected thereby promptly after receipt of a written notice from OWNER to do so. In addition, the CONTRACTOR shall be responsible for any damage to the building's contents, when such damage results from the CONTRACTOR's use of faulty materials or defective workmanship; to the extent such damage is not covered by OWNER's insurance. This warranty period shall renew and recommence for each corrected item of Work upon completion of the remedial Work. This time for correction by CONTRACTOR is in addition

to, and not in lieu of, all warranties or remedies, which exist at common law or by statute. These warranty obligations shall survive the termination of this Contract and shall be enforceable by a decree of specific performance, in addition to such other rights and remedies available to OWNER at law or in equity.

6.12 PAYMENTS WITHHELD. The OWNER may withhold, or on account of subsequently discovered evidence nullify and demand immediate repayment of, the whole or part of any certificate for payment or payment, to such extent as may be necessary to protect OWNER from loss on account of:

- (a) Defecting or non-conforming Work not remedied;
- (b) Claims filed or reasonable evidence indicating probable filing of claims;
- (c) Failure of the CONTRACTOR to make payments promptly to subcontractors or for material or labor;
- (d) Damage to another contractor, OWNER, existing improvement on the site, or to adjacent or adjoining property;
- (e) Reasonable doubt that the work can be completed for the unpaid balance of the Contract amount;
- (f) Reasonable indication that the Work will not be completed within the Contract Time;
- (g) Failure on the part of the CONTRACTOR to execute all documents, releases or other documents presented to the CONTRACTOR for execution, as provided for herein or otherwise;
- (h) Liquidated or other damages due to late completion; and/or
- (i) Any breach by the CONTRACTOR of this Contract or any other agreement between OWNER and CONTRACTOR.

When the above grounds are removed to OWNER's satisfaction, the withheld payment shall be made promptly. If the said causes are not so remedied, OWNER may remedy the same for CONTRACTOR's account, charge the entire cost thereof to CONTRACTOR and deduct such cost from the Contract Sum or from any payments due or to become due under any other agreement between OWNER and CONTRACTOR.

6.13 DELAYED PAYMENTS. Should the OWNER fail to make payment to the CONTRACTOR when payment is due in accordance with the terms of the Contract Documents, any interest due CONTRACTOR for late payments shall accrue and be paid in accordance with the provisions of Chapter 2251 of the Texas Government Code, as amended, and payment of such interest shall fully liquidate and compensate any injury to the CONTRACTOR growing out of such delay in payment. Should OWNER fail to pay CONTRACTOR an undisputed amount due within the time limits provided in the Contract or applicable law, CONTRACTOR shall give the notice required and comply with the provisions of Section 2251.051 of the Texas Government Code and shall thereupon be entitled to the rights and remedies provided therein.

7.0 EXTRA WORK AND CLAIMS

7.01 DIFFERING SITE CONDITIONS. During the progress of the Work, if subsurface, latent physical conditions or unknown physical conditions of an unusual nature are encountered at the site that differ materially from those indicated in the Contract or from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract, the CONTRACTOR shall notify the OWNER's Representative in writing within three (3) calendar days of the specific differing conditions before the site is disturbed and before the affected work is performed.

(a) Upon written notification, the ENGINEER/ARCHITECT will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding anticipated profits, will be made and the Contract modified in writing accordingly. The ENGINEER/ARCHITECT will notify the CONTRACTOR in writing of the determination whether an adjustment of the contract is warranted.

(b) No Contract adjustment which results in a benefit to the CONTRACTOR will be allowed unless the CONTRACTOR has provided the required written notice.

(c) No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

7.02 SUSPENSIONS OF WORK ORDERED BY THE ENGINEER/ARCHITECT. If the performance of all or any portion of the work is suspended by the ENGINEER/ARCHITECT in writing for seven (7) calendar days and the CONTRACTOR believes that additional compensation and/or contract time is due as a result of such suspension, the CONTRACTOR shall submit a written request for adjustment to the ENGINEER/ARCHITECT within seven (7) calendar days of receipt of the notice to resume Work. The request shall set forth the reasons and support for such adjustment.

(a) Upon receipt, the ENGINEER/ARCHITECT will evaluate the CONTRACTOR's request. If the ENGINEER/ARCHITECT agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the CONTRACTOR, its suppliers, or subcontractors at any approved tier, and not caused by weather, the ENGINEER/ARCHITECT will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The CONTRACTOR will be notified of the ENGINEER/ARCHITECT's determination, in writing, whether an adjustment of the Contract is warranted.

(b) No Contract adjustment will be allowed unless the CONTRACTOR has submitted the request for adjustment within the time prescribed.

(c) No Contract adjustment will be allowed under this clause to the extent that performance would have been suspended by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this Contract.

- 7.03 **CHANGE ORDERS.** Without invalidating this Agreement, the OWNER may, at any time or from time to time, order additions, deletions, or revisions to the Work; such changes will be authorized by Change Order to be prepared by the ENGINEER/ARCHITECT for execution by the OWNER and the CONTRACTOR. The Change Order shall set forth the basis for any change in Contract Price, as hereinafter set forth for Extra Work, and any change in Contract Time, which may result from the change.
- 7.04 In accordance with paragraph 1.07 CONTRACTOR'S request to work weekends, the Owner's Construction Manager shall, upon receipt of written notice by the CONTRACTOR of the need to conduct Work on otherwise Non-Work Days, prepare a cost estimate for providing Construction Management and Inspection services during the requested period and submit this to both OWNER and CONTRACTOR. If approved by both parties, the Construction Manager shall prepare a Deductive Change Order in the amount stated in the estimate for the signature of the CONTRACTOR and the OWNER for inclusion in the next Pay Application. The Deductive Change Order must be signed and executed by both the OWNER and the CONTRACTOR prior to the start of work on any Non-Work Day.
- 7.05 **MINOR CHANGES.** The ENGINEER/ARCHITECT may authorize minor changes in the work not inconsistent with the overall intent of the Contract Documents and not involving an increase in the Contract Price or time. If the CONTRACTOR believes that any minor changes authorized by the ENGINEER/ARCHITECT involves Extra Work or entitles him to an increase in the Contract Price or the Contract Time, the CONTRACTOR shall give notice of same by written request to the ENGINEER/ARCHITECT for a written Work Order, with a copy to OWNER. Any such notice and request by the CONTRACTOR shall be given prior to beginning the changed work. The CONTRACTOR's commencement of any minor change in the Work prior to such written notice and request shall constitute a waiver of any and all claims for an increase in the Contract Price or the Contract Time arising out of or related to such changed work.
- 7.06 **EXTRA WORK.** It is agreed that the CONTRACTOR shall perform all Work when presented with a written Change Order, Work Change Directive or Work Order signed by the ENGINEER/ARCHITECT, subject, however, to the right of the CONTRACTOR to require written confirmation of such Change Order, Work Change Directive or Work Order by the OWNER. It is agreed that the basis of compensation or adjustment to the CONTRACTOR for Work either altered, added, or deleted by a Change Order or Work Change Directive, or for which a claim for Extra Work is made, shall be determined by one or more of the following methods:
- Method (A) – By Contract unit prices applicable to the work, if any; or
 - Method (B) – By agreed unit prices or agreed stipulated lump sum price; or
 - Method (C) – If neither Method (A) nor Method (B) can be agreed upon before the Extra Work is commenced, then the CONTRACTOR shall be paid the "Actual Field Cost" of the work plus:
 - a) For subcontractors performing Work mark-up shall be limited to fifteen percent, ten (10%) for the subcontractor plus five (5%) for the General Contractor or
 - b) For the General Contractor alone, self-performing the extra work, without subcontracting, the mark-up shall not exceed ten percent (10%), as full and

final compensation for the Extra Work and all costs and expenses, direct or indirect, arising out of or related thereto.

In the event said Extra Work or Change Order or Work Change Directive work is performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "Actual Field Cost" is hereby defined as the cost to the CONTRACTOR of all workers, such as foremen, timekeepers, mechanics and laborers, and materials, supplies, trucks, rentals of machinery and equipment, for the time actually employed or used on such Extra Work or Change Order or Work Change Directive work, plus actual transportation charges necessarily incurred together with all power, fuel, lubricants, water and similar operating expenses, plus all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and a rateable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workers' Compensation, and all other insurance as may be required by law or ordinance, or the Contract Documents plus all payments to subcontractors for such work.

The ENGINEER/ARCHITECT may direct the form in which accounts of the "Actual Field Cost" shall be kept and the records of these accounts shall be made available to the ENGINEER/ARCHITECT. The ENGINEER/ARCHITECT or OWNER may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise, these matters shall be determined by the CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America where practicable. The mark-up of the "Actual Field Cost" to be paid to the CONTRACTOR, shall cover and compensate him for his profit, overhead, and all other elements of cost and expense not embraced within the "Actual Field Cost" as herein defined, save that where the CONTRACTOR's field office must be maintained solely on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "Actual Field Cost."

No claim for Extra Work of any kind will be allowed unless ordered by the ENGINEER/ARCHITECT in a written Work Order. In case any orders or instruction, either oral or written, appear to the CONTRACTOR to involve Extra Work for which he should receive compensation or an adjustment in the Contract Time, he shall make written request to the ENGINEER/ARCHITECT for a written Work Order authorizing such Extra Work within ten (10) days of ENGINEER/ARCHITECT's orders or instructions, otherwise the orders or instructions will be considered minor changes. The issuance of a Work Order by the ENGINEER/ARCHITECT shall not constitute or be construed as an agreement or acknowledgement by the ENGINEER/ARCHITECT that the work which is the subject of the Work Order is Extra Work outside the scope of the Contract Work, but shall merely constitute a direction to the CONTRACTOR to perform the work, and the CONTRACTOR shall proceed with the work, and shall keep an accurate account of the "Actual Field Cost" thereof, as provided under Method (C). Upon completion of the alleged Extra Work, the CONTRACTOR shall promptly and within ten (10) days submit his claim to the ENGINEER/ARCHITECT by proper certification and attestation, on forms provided by the ENGINEER/ARCHITECT. The ENGINEER/ARCHITECT shall render a written decision on

the CONTRACTOR'S claim within ten (10) days. It is mutually agreed between the parties that the

The ENGINEER/ARCHITECT's decision on all claims or questions in relation to the Work, CONTRACTOR's performance of the Work, any changes in the Work or Extra Work, the Contract Price and/or the Contract Time, shall be final and conclusive and binding upon the parties. If the ENGINEER/ARCHITECT shall fail to respond in writing to CONTRACTOR's claim within thirty (30) days of the date of submission, or if the CONTRACTOR shall dispute or object to ENGINEER/ARCHITECT's decision on any claim, and CONTRACTOR fails to file a Request for Mediation of such claim in accordance with the provisions of Article 9.0 within sixty (60) days after the date of submission to the ENGINEER/ARCHITECT, or such longer period as the parties may agree to in writing, the CONTRACTOR shall lose and forfeit his right to make such claim for Extra Work at any later date, and all such claims held by the CONTRACTOR shall be deemed waived, forfeited and forever barred. CONTRACTOR shall continue to diligently prosecute the Work notwithstanding any pending claim, dispute or dispute resolution process between OWNER and CONTRACTOR.

7.07 TIME OF FILING CLAIMS. Except as otherwise provided herein, all questions of dispute or adjustment shall be made within the OWNER's Pro-Trak system and filed with the ENGINEER/ARCHITECT within three (3) days after the ENGINEER/ARCHITECT has given any directions, order or instruction to which the CONTRACTOR desires to take exception. The ENGINEER/ARCHITECT shall reply within thirty (30) days to such written exceptions and render his final decision in writing. It is mutually agreed between the parties that the ENGINEER/ARCHITECT's decision on all claims or questions in relation to the Work, CONTRACTOR's performance of the Work, any changes in the Work or Extra Work, the Contract Price and/or the Contract Time, shall be final and conclusive and binding upon the parties. In case the CONTRACTOR should desire to appeal from the ENGINEER/ARCHITECT's decision, the CONTRACTOR may request a meeting between representatives of the OWNER and the CONTRACTOR for the purposes of appealing the ENGINEER/ARCHITECT's decision directly to the OWNER, such meeting to occur within ten (10) days after the date of the CONTRACTOR's request, or such longer period as may be agreed to by the parties in writing. If the CONTRACTOR shall still be aggrieved after a meeting with the OWNER and/or his representative, the CONTRACTOR shall have sixty (60) days after the date of the meeting, or such longer period as the parties may agree to in writing, to file a Request for Mediation of such claim in accordance with the provisions of Article 9.0. In the event the CONTRACTOR shall fail, for any reason, to timely file a Request for Mediation, the OWNER shall be released of all liability, and the CONTRACTOR's failure to timely file a Request for Mediation shall constitute a waiver, forfeit and final bar of all such claims held by the CONTRACTOR against the OWNER. CONTRACTOR shall continue to diligently prosecute the Work notwithstanding any pending claim, dispute, or dispute resolution process between OWNER and CONTRACTOR.

8.0 DEFAULT

8.01 DEFAULT BY CONTRACTOR. In the case the CONTRACTOR should abandon and fail or refuse to resume Work within five (5) days after written notification from the OWNER or the ENGINEER/ARCHITECT, or if the CONTRACTOR fails to comply with the orders of

the ENGINEER/ARCHITECT when such orders are consistent with the Contract Documents, or if the CONTRACTOR otherwise defaults on its obligations under the Contract, OWNER shall have the right, if it so elects and without prejudice to any other rights it may have, after giving five (5) days written notice of default to CONTRACTOR and any surety, to terminate the Contract or any part thereof and/or to take over or cause others to take over the Work or any part thereof, and to complete such Work for the account of CONTRACTOR. Where Performance and Payment Bonds exist, the sureties on these bonds shall be directed to complete the Work in conjunction with the notice of default, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving said notice of default, the CONTRACTOR shall promptly and within no more than three (3) days, remove from the Work any machinery, equipment, or tools then on the job, not intended for incorporation into the Work. Should CONTRACTOR fail to promptly remove such machinery, equipment or tools, OWNER may remove such machinery, equipment or tools and store same at CONTRACTOR's expense; return such machinery, equipment, or tools to their purported owner; or otherwise dispose of such machinery, equipment or tools as OWNER sees fit. Any materials, supplies and/or equipment delivered for use in the Work, may be used in the completion of the Work by the OWNER or the surety on the Performance Bond, or another contractor in completion of the Work; it being understood that the use of such equipment, supplies, and materials will ultimately reduce the cost to complete the Work and be reflected in the final settlement.

Where there is no Performance Bond or in the case the surety should fail to commence compliance with the notice for completion hereinabove provided for within ten (10) days after the service of such notice, then the OWNER may provide for completion of the Work in either of the following elective manners:

- (a) The OWNER may thereupon employ such force of workers and use such machinery, equipment, tools, materials and supplies as the OWNER may deem necessary to expeditiously complete the Work, and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said CONTRACTOR, and expense so charged shall be deducted and paid by the OWNER out of such monies as may be due or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement or any other agreement between OWNER and CONTRACTOR. In case such expense is less than the sum which would have been payable under this Contract if the same had been completed by the CONTRACTOR, then said CONTRACTOR shall be credited with the difference. In case such expense is greater than the sum which would have been payable under this Contract if the same had been completed by such CONTRACTOR, then the CONTRACTOR and/or his surety shall promptly pay the amount of such excess to the OWNER upon demand; or
- (b) The OWNER, under sealed bids, under the ties and procedures provided for by law, may let the contract for completion of the Work under substantially the same terms and conditions which are provided in this Contract. In case of any increase in cost to the OWNER under the completion contract, as compared to what would have been the cost under this Contract such increase shall be charged to the CONTRACTOR, and the amount of such increase may be

deducted by the OWNER out of such monies as may be due or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement or any other agreement between the OWNER and the CONTRACTOR, or the CONTRACTOR and/or his surety shall promptly pay the amount of such increase to the OWNER upon demand. However, should the cost to complete any such completion contract prove to be less than what would have been the cost to complete under this Contract, the CONTRACTOR and/or his surety shall be credited therewith.

In the event of a default by the CONTRACTOR, no further payments shall be made to CONTRACTOR under the Contract until the Work is Finally Completed. When the Work is Finally Completed, the CONTRACTOR and his surety shall be so notified. A complete itemized statement of the Contract accounts, certified by the ENGINEER/ARCHITECT as being correct, shall then be prepared and delivered to the CONTRACTOR and his surety, whereupon the CONTRACTOR and/or his surety shall pay the balance due as reflected by said statement. The OWNER, prior to incurring an obligation to make payment hereunder, shall have such statement of completion attested to by the CONTRACTOR and the surety as accurate, and in exchange for payment of the sum stated therein, the OWNER shall be entitled to a full and final release of any claims or demands by the CONTRACTOR or the surety.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the OWNER had the work been completed by the CONTRACTOR under the terms of this Contract, or when the CONTRACTOR and/or his surety shall pay the balance shown to be due by them to the OWNER, then all machinery, equipment, tools or supplies left on the site of the Work shall be turned over to the CONTRACTOR and/or his surety. Should the cost to complete the Work exceed the Contract Price, and the CONTRACTOR and/or his surety fail to pay the amount due the OWNER within the time designated above, and there remains any machinery, equipment, tools, materials or supplies which are the property of the CONTRACTOR on the site of the Work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the CONTRACTOR and his surety at the respective address designated in the Contract, provided, however, that actual written notice given in any manner will satisfy this condition. After mailing or giving of such notice, such property shall be held at the risk of the CONTRACTOR and his surety, subject only to the duty of the OWNER to exercise ordinary care to protect such property. After fifteen (15) days from the date of this notice, the OWNER may sell such property, equipment, tools, materials, or supplies, and apply the net sum derived from such sale to the credit of the CONTRACTOR and his surety. Such sale may be made at either public or private sale with or without notice, as the OWNER may elect. The OWNER shall release any machinery, equipment, tools, materials, or supplies, which remain on the Work, and belong to persons other than the CONTRACTOR or his surety, to their reputed owners.

8.02 SUPPLEMENTATION OF CONTRACTOR FORCES. If CONTRACTOR at any time shall, in OWNER's sole opinion, fail to furnish skilled workers, suitable materials, supplies or adequate equipment sufficient for the prompt, timely and diligent prosecution of the Work in accordance with OWNER's direction, OWNER shall have the right, without prejudice to the exercise of other remedies for the same default and without fully taking

over the Work, to supplement CONTRACTOR's forces and to expedite delivery of and to procure and furnish such workers, materials, tools, supplies or equipment for CONTRACTOR's account by employing other contractors and suppliers engaged in the same class of work and charge the entire cost thereof to the CONTRACTOR, said cost to be deducted from sums due or to become due to CONTRACTOR under the Contract or any other agreement with OWNER or any parent, subsidiary or affiliate of OWNER.

8.03 CUMULATIVE REMEDIES & SPECIFIC PERFORMANCE. All rights and remedies of OWNER, under the terms of the Contract and/or available at law or in equity, are cumulative. In the event the CONTRACTOR or any of its subcontractors, vendors, or suppliers fails or refuses for any reason to provide timely manufacture, fabrication, delivery, installation, erection, construction or completion of any supplies, materials, expendables, equipment, machinery, accessories or appurtenances to be furnished hereunder, the CONTRACTOR acknowledges and agrees that such items are required, necessary, essentially unique to the Project and the Work and will cause irreparable harm to OWNER and the Project if not furnished in accordance with the Contract, and OWNER shall have the right to obtain a decree of specific performance and mandatory injunctive relief from any Court of competent jurisdiction to ensure the timely furnishing of such items.

8.04 CROSS DEFAULT. If, for any reason, CONTRACTOR is declared in default and/or terminated by OWNER under any other agreement with OWNER, whether related to the Project or not related to the Project, OWNER shall have the right to offset and apply any amounts which might be owed to OWNER by CONTRACTOR under any other such agreements against any earned but unpaid amounts owing to CONTRACTOR by OWNER under the Contract, any retainage earned by CONTRACTOR under the Contract or any unearned, unpaid amount under the Contract.

8.05 INSOLVENCY. It is recognized that if CONTRACTOR becomes a debtor in voluntary or involuntary bankruptcy proceedings, makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of his insolvency, such events could seriously impair or frustrate CONTRACTOR's performance of the Work. Accordingly, it is agreed that should CONTRACTOR become a debtor in bankruptcy, either voluntary or involuntary, CONTRACTOR shall notify the OWNER in writing within twenty-four (24) hours of the filing with the bankruptcy court. Further, it is agreed that upon occurrence of any one or more such events, the OWNER shall be entitled to request of CONTRACTOR or its successors, trustees or receivers, adequate assurances of future performance. In the event such adequate assurances are not given to the reasonable satisfaction of OWNER within seventy-two (72) hours of such request, OWNER shall have the right to immediately invoke the remedies of this Section 8 or as provided by law. Pending receipt of such adequate assurances of such future performance OWNER may proceed with the Work on a temporary basis and deduct the costs, plus reasonable overhead, and profit, from any amounts due or which may become due to CONTRACTOR under the Contract or any other agreement with OWNER. In this regard, OWNER and CONTRACTOR agree that delays in performance could result in more damages to CONTRACTOR than would be sustained if OWNER failed to exercise such remedies.

8.06 CONTINGENT ASSIGNMENT. CONTRACTOR hereby assigns to OWNER, all of CONTRACTOR's rights under and interest in all subcontracts and/or purchase orders entered into by CONTRACTOR pursuant to this Agreement, such assignment to become

effective upon CONTRACTOR's default under this Agreement or OWNER's termination of this Contract, and OWNER's acceptance of such assignment. Upon CONTRACTOR's default or OWNER's termination of this Contract, OWNER may, in the event there is no performance bond for the Contract, or in the event the performance bond surety fails to complete the Contract, or if OWNER otherwise so elects in its sole discretion, accept such assignment by written notice of such acceptance to CONTRACTOR and subcontractor, and may require subcontractors to perform all of the then unperformed duties and obligations under the subcontract, for the direct benefit of OWNER. In the event OWNER requires such performance by a subcontractor, then OWNER shall be obligated to pay such subcontractor any amounts due and owing under the terms of the subcontract/purchase order, at the subcontract prices and rates, and subject to any rights of withholding or offset and other terms and conditions of the subcontract, for all work properly performed by such subcontractor, to the date of OWNER's acceptance and thereafter. OWNER's liability in this connection, however, shall not exceed the amount obtained by subtracting all payments made by CONTRACTOR to subcontractor from the Subcontract Price at the time of CONTRACTOR's default or OWNER's termination of CONTRACTOR. CONTRACTOR shall include a provision in its subcontracts that allows such assignment and allows OWNER to take these actions and further provides that in the event of CONTRACTOR's termination for default, the subcontractor agrees to give the OWNER or its agent the right to inspect all books and records of subcontractor relating to the Work.

8.07 WAIVER OF CONSEQUENTIAL DAMAGES. CONTRACTOR expressly waives any and all claims for consequential damages against OWNER arising out of or related to the Contract, or any other agreements between CONTRACTOR and OWNER, including but not limited to, claims for damages incurred by CONTRACTOR for principal office expenses, including the compensation of personnel stationed there, losses of financing, bonding capacity, business and reputation, and claims for lost profit, whether on this Contract or otherwise.

8.08 TERMINATION FOR CONVENIENCE. The OWNER may at its sole discretion, upon five (5) days' written notice to CONTRACTOR, terminate this Contract, in whole or in part, when OWNER determines that it is in the best interest of OWNER to do so. Upon receipt of such written notice from OWNER, CONTRACTOR shall cease all terminated Work and take reasonable precautions to protect and preserve such work and shall take all reasonable measures after consultation with OWNER to terminate or assign to OWNER all subcontracts, purchase orders or other commitments related to the Work or the Project on terms and conditions acceptable to the OWNER. CONTRACTOR will be paid for all Work performed in strict accordance with the Contract Documents, based upon the Contract Price and the percentage of completion on the date of termination, and less amounts previously paid, subject to any reasonable back charges attributable to CONTRACTOR's failure to comply with any of the provisions of this Contract and further subject to the other terms of this Contract regarding payment. In no event will CONTRACTOR receive or be entitled to any payment or compensation whatsoever for interruption of business or loss of business opportunities, any other items of consequential damages, for overhead or loss of profits on the unperformed Work and/or services and unfurnished materials or for any intangible, impact or similarly described cost, damages or expense, and under no circumstances shall the total sum paid to or received by

CONTRACTOR under this Contract exceed the Contract Price. The compensation provided herein shall be CONTRACTOR's sole and exclusive remedy arising out of a termination for convenience.

8.09 DEFAULT BY OWNER. In case the OWNER shall default on its material obligations under this Contract, other than OWNER's failure to pay CONTRACTOR a disputed amount due within the time limits provided in the Contract or applicable law, as addressed by Section 6.13 of this Agreement, and shall fail or refuse to cure, or to commence and diligently pursue cure of such default within fifteen (15) days after written notification by the CONTRACTOR, then the CONTRACTOR may suspend or wholly abandon the Work, and may remove therefrom all machinery, tools and equipment, and all materials on the site of the Work that have not been included in payments to the CONTRACTOR and have not been incorporated into the Work. And thereupon, the ENGINEER/ARCHITECT shall make an estimate of the total amount earned by the CONTRACTOR, which estimate shall include the value of all Work actually completed by said CONTRACTOR (at the Contract Prices), the value of all partially completed Work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the terms of this Contract, and a reasonable sum to cover the cost of any provisions made by the CONTRACTOR to carry the whole Work to completion and which cannot be utilized. The ENGINEER/ARCHITECT shall then make a final statement of the balance due the CONTRACTOR by deducting from the above estimate all previous payments by the OWNER and all other sums that may be retained by the OWNER under the terms of this Agreement, and shall present the same to the OWNER, and OWNER's payment of said sum to the CONTRACTOR, on or before thirty (30) days after OWNER's receipt of such statement, shall satisfy any and all rights, claims or causes of action of CONTRACTOR arising out of or related to such default by OWNER, and shall be CONTRACTOR's sole and exclusive remedy for such default. A disputed or unilateral claim by the Contractor cannot by itself constitute a default hereunder.

9.0 DISPUTE RESOLUTION

Any dispute or pending claim or dispute resolution process between OWNER and CONTRACTOR shall not excuse or relieve CONTRACTOR of its obligations under this Contract, and CONTRACTOR shall diligently prosecute the Work notwithstanding any pending claim, dispute, or dispute resolution process between OWNER and CONTRACTOR.

All claims, disputes and other matters in question arising out of or relating to, the Contract, or the breach thereof, shall be subject to mediation as a condition precedent to any other dispute resolution process as may be selected by OWNER. Unless mutually agreed otherwise the mediation shall be conducted by a third party who will be selected by agreement between OWNER and CONTRACTOR, and Request for Mediation shall be filed with the other party. The parties shall share the mediator's fee and any filing fees equally.

If a claim, dispute or other matter in question between OWNER and CONTRACTOR involves the work of a subcontractor or supplier, OWNER or CONTRACTOR may join such subcontractor or supplier as a party to any mediation proceeding between OWNER and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts and/or purchase orders related to the Work a specific provision whereby the subcontractor or supplier consents to

being joined in mediation between OWNER and CONTRACTOR involving the work of such subcontractor or supplier.

This contract shall be governed by the laws of the State of Texas and shall be considered performable in Harris County, Texas, for venue purposes. Further the OWNER and CONTRACTOR stipulate that venue for any dispute resolution proceeding involving or touching upon the Contract other than the conduct of an arbitration hearing shall be in Harris County, Texas, or, if such choice of venue is prohibited or unenforceable by law, shall be held in the county where the Project is located.

CONTRACTOR agrees to pay OWNER all reasonable attorney's fees incurred by OWNER in the event OWNER seeks to enforce any provision of this Contract whether by arbitration or other dispute resolution process. Further, in the event OWNER defends any claim instituted by CONTRACTOR against OWNER, whether in arbitration or other dispute resolution process, CONTRACTOR agrees to pay OWNER all reasonable attorneys' fees incurred by OWNER in defending such claim provided OWNER is the prevailing party, in whole or in part, in such proceeding.

