



**James E. Darling, Mayor**

<b>Veronica Whitacre, Mayor Pro-tem</b>	<b>Commissioner – District 6</b>
<b>Javier Villalobos,</b>	<b>Commissioner – District 1</b>
<b>Joaquin J. Zamora,</b>	<b>Commissioner – District 2</b>
<b>Tania Ramirez</b>	<b>Commissioner – District 4</b>
<b>J. Omar Quintanilla,</b>	<b>Commissioner – District 3</b>
<b>Victor “Seby” Haddad,</b>	<b>Commissioner – District 5</b>

**Roel Rodriguez, P.E., City Manager**

**Yvette Barrera, P.E., CFM, City Engineer**

**Gerardo Noriega, CTPM, Director of Purchasing & Contracting**

## **Bid, Form of Agreement, Bonds and Specifications for**

**VETERANS WAR MEMORIAL PHASE III**

**PROJECT NO. 08-19-C39-195**

**McAllen, Texas**

**DATED: AUGUST 2019**

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## BID NOTICE

**Solicitation Type and Name:** Invitation to Bid for the Veterans War Memorial Phase III

**Solicitation Number:** 08-19-C39-195

**Summary of Work:** The work consists of the installation and construction of brick pavers, concrete curb, landscaping and irrigation within the Veterans War Memorial

**Bid Opening:** Sealed electronic bids addressed to Mr. Roel “Roy” Rodriguez P.E., City Manager will be received until **Friday, August 23, 2019 at 2:00 p.m., Central Standard Time (CST)** at which time they shall be publicly opened in a meeting held in McAllen City Hall, 2<sup>nd</sup> Floor, Conference Room 2A. All bid responses are only to be submitted **electronically** through the City of McAllen’s bidding portal: <https://mcallen.procurement.com>, on or before the aforementioned date and time. Original, hard copy, and/or late bids shall not be accepted.

**Pre-Submittal Conference:** City of McAllen, City Hall, Conference Room 2A, 1300 Houston Ave., McAllen, Texas 78501 on **Wednesday, August 14, 2019 at 11:00 a.m. CST.** All prospective respondents are encouraged to be in attendance.

A Bidder’s Bond from a reliable surety company licensed to operate in the State of Texas or certified Cashier’s Check, (Bid Security) payable without recourse to the City of McAllen, for the amount of not less than five percent (5%) of the total bid shall be submitted via a sealed envelope as a guaranty that if awarded the contract, the bidder will enter into a contract with the City of McAllen. The Bidder’s bid security shall be submitted before the above-mentioned electronic bid opening date and time. Failure to submit the bid security shall be grounds for disqualification.

Bid Security shall be delivered in a sealed envelope and clearly marked as follows:

### **BID SECURITY FOR PROJECT NO. 08-19-C39-195 VETERANS WAR MEMORIAL PHASE III**

**Hand-deliver Bid Security or if using Land Courier (i.e., FedEx, UPS):**

1300 Houston Avenue; Attn: Purchasing & Contracting Department; McAllen, Texas 78501

**Mail Bid Security:** P.O. Box 220, McAllen, TX 78505-0220

Potential bidders are asked to post their questions on our bidding portal under the tab labeled “Clarifications” under the relative project number.

The City of McAllen reserves the right to refuse and reject any or all Bids and to waive any or all formalities or technicalities, or to accept the Bid considered the best value to the City, and to hold the bids for a period of sixty (**60**) days without taking action.

Applicable Product Categories: 13505 Bricks 91051 Masonry & Concrete; 98852 Landscaping;

## INFORMATION TO BIDDERS

### 1. SUBMITTAL OF BID

Sealed Bids shall be submitted electronically through the City of McAllen's bidding portal: <https://mcallen.procurement.com>. Each bid must be completely filled out and include all required supporting documentation. Bids submitted by facsimile (fax), original/hard-copies and/or late submittals will NOT be accepted. Submittal of a bid in response to this solicitation constitutes an offer by the Bidder, and if accepted by the City of McAllen, a contract. Bids which do not comply with these specifications may be rejected at the option of the City. Bids must be electronically received by the City of McAllen on or before the submittal deadline.

### 2. ELECTRONIC BID SUBMITTAL INSTRUCTIONS:

Bidders must go online to the City's Bidding Portal (<https://mcallen.procurement.com>) to submit bid response. Bidders are asked to read the Welcome Screen (PDF document) and register if they have not done so previously. Once on the bidding portal, follow the steps below to enter the electronic bid:

- I. Click on, "**Bids**" located on left-hand column.
- II. Find the applicable project and click the, "**Project Number**"
- III. Click on, "**Response**" tab.
- IV. In the "**Questions**" tab, upload required scanned documents into the bid portal by clicking "**Browse**" for each item.
- V. Click on, "**Pricing**" tab and enter a Unit Price for each pricing item. A "**Comment**" field is available if needed.
- VI. Once both the Questions and Pricing information has been entered, the yellow "**Question Response and Pricing Response**" information messages will change from incomplete to complete. Then the "**Submit**" button will become available.
- VII. Click "**Submit Bid**" button and review the terms and agreements Popup Window that appears. If you agree to the terms and conditions, click the "**I Accept and Submit this Bid**" button.
- VIII. If you want to remove your bid, click the red, "**Withdraw Bid**" button in the "**Response**" tab.

The City may consider non-responsive any bid not prepared and submitted in accordance with the provisions herein and may waive any formalities and/or technicalities, or reject any and all bids.

### 3. BID SECURITY (BID BONDS/CASHIER'S CHECK)

The bidder is specifically advised that the bid must be accompanied by a bid security in the form of a certified cashier's check or a bid bond from a reliable surety company licensed to operate in the State of Texas totaling five percent (5%) of the greatest amount bid, as a guaranty that if awarded the bid, the successful contractor will enter into a contract with the City of McAllen. The bid securities will be returned promptly after the successful contractor has entered into a contract with the City of McAllen. If no award has been made within sixty (60) days after opening of bids, bid securities will be returned accordingly.

Bid security must be submitted in a sealed envelope marked in the upper left hand corner with the name of Bidder and Title of Project.

#### **Hand-deliver Bid Security or if using Land Courier (i.e., FedEx, UPS):**

1300 Houston Avenue, Purchasing & Contracting Department (3<sup>rd</sup> Floor), McAllen, Texas 78501

**Mail Bid Security:** P.O. Box 220, McAllen, TX 78505-0220

## **INFORMATION TO BIDDERS continued:**

### **4. PAYMENT AND PERFORMANCE BONDS**

The successful contractor shall furnish a Payment Bond and Performance Bond in the amount of 100% of the contract sum, within ten (10) working days from letter of award of contract and upon the forms which are attached hereto. The Payment and Performance Bonds shall be from an approved surety company authorized to do business in the State of Texas (and acceptable according to the latest list of companies holding certificates of authority from the United States Department of the Treasury) and acceptable to Owner.

- 4.1 A Payment Bond is required if the Contract Sum is \$25,000 or over. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries.

If the total contract sum is between \$25,000 and less than \$50,000, the successful contractor has the option to enter into a single payment contract with the City of McAllen in lieu of a Payment Bond, provided that no money shall be paid to the contractor until completion of the work by the contractor and acceptance of same by the City of McAllen.

- 4.2 A Performance Bond is required if the Contract Sum is \$50,000 or over. The performance bond is to be for the Contract Sum and is solely for the protection of Owner to guarantee the faithful performance of the Work in accordance with the Contract Documents. The performance bond shall be effective through Contractor's warranty period.

On all contracts that will equal to or exceed \$50,000.00, the performance bond and the payment bond must be provided from a surety that has a rating of "A" from AM BEST, MOODY'S or STANDARD & POORS.

### **5. BID FORMS**

Bidders are advised that all bidders shall submit their bid utilizing only the forms that make up this bid package. Bids submitted utilizing other forms and/or formats will not be considered. If additional documents are required to be submitted as part of this solicitation, do not submit compressed (zip) files. Bidders must submit an electronic version of their bid through our bidding portal at <https://mcallen.procurement.com>.

### **6. PREPARATION OF BID**

Bids MUST give full firm name and address of bidder and be manually or electronically signed. Failure to do so will disqualify your bid. Person signing bid must show title or AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT. Firm name and authorized signature must appear on each page that calls for this information. The legal status of the Bidder whether corporation, partnership, or individual, shall also be stated in the bid. A corporation shall execute the bid by its duly authorized officers in accordance with its corporate by-laws and shall also list the state in which it is incorporated. A partnership Bidder shall give full names and addresses of all partners. All partners shall execute the bid. Partnership and Individual Bidder shall state in the names and addresses of all persons with a vested interest therein. The place of residence of each Bidder, or the office address in the case of a firm or company with county and state and telephone number, shall be given after the signature.

### **7. ALTERATIONS/AMENDMENTS**

Bids CANNOT be altered or amended after opening time. No bid may be withdrawn after opening time without acceptable reason in writing and only after approval by the City of McAllen.

## **INFORMATION TO BIDDERS continued:**

### **8. SUBSTITUTIONS**

No substitutions or cancellations shall be permitted without written approval by City of McAllen.

### **9. SALES TAX**

The City of McAllen is exempt from all Federal Excise Tax and the State of Texas Limited Sales Excise and Use Tax. **STATE SALES TAX MUST NOT BE INCLUDED IN BID.**

### **10. NO BID RESPONSE**

If unable to submit a bid, no further action is required by bidder. However, all bidders are encouraged to examine their selected categories and revise if necessary.

### **11. COSTS FOR PREPARATION OF BID**

The City of McAllen shall not be held liable for any costs incurred by any bidder for work performed in the preparation of and production of a bid or for any work performed prior to execution of contract

### **12. FIRM PRICES**

Unit prices for all items bid must be firm on bid opening date and continue to remain firm for the duration of the contract term. Bidders must make allowances for any and all peripheral costs associated with the Work. These allowances must be reflected in the unit prices bid per Work rendered. Bids having statements subject to unlimited price increase and/or addressing unknown charges above and beyond the unit prices quoted to the City of McAllen will not be considered and shall be looked upon as non-responsive. Bids submitted on the basis of “prices in effect at time of shipment, or with the potential of added costs based on market fluctuations and/or trends shall not be considered and shall be looked upon as non-responsive.

### **13. METHOD OF AWARD**

Bidders are advised that the City of McAllen will award a Construction Contract based on “Lowest Responsive Responsible Bidder” meeting the requirements of the specifications. The City of McAllen may elect to award to the bidder who, in the opinion of the City of McAllen, is providing the best value for the City, as described in Local Government Code 252.043. All items will be evaluated and awarded individually or in any combination thereof. The City of McAllen’s decision shall be final.

### **14. CONTRACT TERMINATION CLAUSE**

The parties agree that the City of McAllen reserves the right to terminate this contract in whole or in part, at any time, if in the opinion of the City of McAllen, the successful contractor’s performance is not acceptable, if the City is being repeatedly overcharged, improperly charged, or in the event that no funds are appropriated for this specific purpose, or if the City wishes, without cause, to discontinue/cancel this contract. If the City determines at the City’s sole discretion, that termination is in the City’s best interests, the City shall give written notice to the vendor/bidder/contractor of its intention to terminate, and the contract shall terminate after the expiration of thirty (30) days from the date of the written notice. After the expiration of the thirty (30) days and the termination of this contract, the City shall be relieved of any and all obligations and/or responsibilities arising from this contract including but not limited to the payment of any damages and/or penalties. Contractor shall be paid for products and/or services rendered and accepted in accordance with the contract for work performed up to the time of termination. In the event that funds are not made available from one budget year to the next, this contract will automatically become null and void without any penalty to the City of McAllen.

## **INFORMATION TO BIDDERS continued:**

### **15. TIME ALLOWED FOR ACTION TAKEN**

The City may hold the bids received for up to sixty (**60**) days after bid submittal deadline without taking action. Bidders shall be required to hold their bids firm for the same period of time.

### **16. RIGHT TO WAIVE**

The City of McAllen reserves the right to waive or take exception to any part of these specifications when in the best interest of the City of McAllen.

### **17. RIGHT TO REJECT/AWARD**

The City of McAllen reserves the right to refuse and reject any or all Bids, to waive any or all formalities or technicalities, and to make such awards of contract as may be deemed to be the best and most advantageous to the City of McAllen.

### **18. PAST PERFORMANCE**

Bidders are advised that past performance, as it relates to product and/or service on Purchase/Service/Supply/Construction Contracts previously held with the City, shall be a factor in the evaluation and award of this Contract. Bidders that have not complied with their obligation(s) to the City of McAllen/McAllen Public Utility on previous projects will not be considered for award of this project. The City's position on this matter shall be final.

### **19. INTERPRETATIONS**

Any questions concerning the conditions and/or specifications with regards to this solicitation for bids shall be directed to the designated individuals as outlined in the Invitation to Bid. Such interpretations, which may affect the eventual outcome of this Invitation to Bid, shall be furnished in writing to all prospective Bidders via Addendum. No interpretation shall be considered binding unless provided in writing by the City of McAllen in accordance with paragraph entitled "Addenda".

### **20. ADDENDA**

Bidder shall carefully examine the solicitation documents, pricing forms, plans, specifications, visit the project site, and fully inform themselves as to all conditions and matters which can in any way affect the work or cost thereof. Should the bidder find discrepancies in, or omissions from pricing forms, solicitation documents, or other documents, or should bidder be in doubt as to their meaning, bidder should request clarification by posting their questions on the City's bidding portal under the tab labeled "Clarifications" under the applicable project number prior to submitting any bid. Explanations, interpretations, and supplemental instructions shall be in the form of written Addenda which shall become a part of the solicitation and contract documents. Said Addenda shall be posted in the bidding portal. All Addenda issued in respect to this project shall be considered official changes to the original solicitation documents. Verbal statements in response to inquiries and/or requests for explanations shall not be authoritative nor binding. It shall be the Bidder's responsibility to ensure that they have received all Addenda in respect to this project. Furthermore, bidders are advised that they must recognize, comply with, and attach a signed copy of each Addendum which shall be made part of their Bid Submittal. Bidder's signature on Addenda shall be interpreted as the respondent's "recognition and compliance to" official changes as outlined by the City of McAllen and as such are made part of the original solicitation documents. Failure of any bidder to receive any such addendum or interpretation shall not relieve such Contractor/Bidder from its terms and requirements. Addenda are available online at <https://mcallen.procureware.com>.

## **INFORMATION TO BIDDERS continued:**

### **21. OMISSIONS**

At the time of the submittal deadline, each bidder will be presumed to have read and to be thoroughly familiar with the requirements of the solicitation. The failure or omission of any bidder to examine any form, instrument, or contract document shall in no way relieve any bidder from any obligation in respect to their bid.

### **22. MATHEMATICAL ERRORS**

In the event that mathematical errors exist in any bid, unit prices/rates -v- totals, unit prices/rates will govern.

### **23. HUB CERTIFICATION**

State Certified “**HUB Vendor(s)**” are asked to provide a copy of their certification, if they have not previously done so. Information to be emailed to the following email address: [bids@mcallen.net](mailto:bids@mcallen.net).

### **24. PUBLIC INFORMATION**

All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.) after the solicitation is completed. Any information deemed to be confidential by the bidder, including trade secrets, should be clearly noted on the pages where confidential information is contained.

### **25. STATUTORY REQUIREMENTS**

It shall be the responsibility of the successful Bidder to comply with all applicable State & Federal laws, Executive Orders and Municipal Ordinances, and the Rules and Regulations of all authorities having jurisdiction over the work to be performed hereunder and such shall apply to the contract throughout, and that they will be deemed to be included in the contract as though written out in full in the contract documents. (To include issues related to health, environmental, and safety to name a few.)

### **26. ANTI-LOBBYING PROVISION**

During the period between bid submission date and the contract award, bidders, including their agents and representatives, shall not directly discuss or promote, verbal or written, their bid with any member of the City Commission, Board members directly or indirectly through others, seek to influence any City Council member, City staff, or City’s Contractor(s) regarding any matters pertaining to this solicitation, except as herein provided. If a representative of any Bidder violates the foregoing prohibition by contacting any of the above listed parties with whom contact is not authorized, such contact may result in the Bidder being disqualified from the procurement process. Any oral communications are considered unofficial and non-binding with regard to this solicitation. Violation of this provision may result in the rejection of the bidder's bid, except in the course of City-sponsored inquiries, briefings, interviews, or presentations.

### **27. ANTI-COLLUSION STATEMENT**

The respondent shall submit a Non-Collusion affidavit affirming that the bidder has not in any way directly or indirectly, colluded, conspired, or agreed with any other person, firm, corporation, respondent or potential respondent to the amount of this bid or the terms or conditions of this bid. Paid or agreed to pay any other person, firm, corporation respondent or potential respondent any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the submitted bid or the bid of any other respondent.

## **INFORMATION TO BIDDERS continued:**

### **28. CONFLICT OF INTEREST**

#### **CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE**

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of McAllen not later than the seventh (7<sup>th</sup>) business day after the date the person becomes aware of facts that require the statement be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates an offense under this section is a Class C misdemeanor.

For more information or to obtain Questionnaire CIQ go to the Texas Ethics Commission web page at [www.ethics.state.tx.us/forms/CIQ.pdf](http://www.ethics.state.tx.us/forms/CIQ.pdf).

**IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS "C" MISDEMEANOR.**

### **29. HOUSE BILL (HB) 1295 (Certificate of Interested Parties – Form 1295)**

Please be advised that in 2015, the Texas Legislature adopted House Bill 1295 (H.B. 1295). For contracts entered into on or after January 1, 2016, Texas Government Code Chapter §2252.908 (H.B. 1295) provides that a Texas governmental entity or state agency may not enter into a contract that either (1) requires an action or vote by the governing body of the entity or agency or (2) has a value of at least \$1 million, unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The Texas Ethics Commission (Commission) has adopted a certificate of interested parties form (Form 1295) and adopted rules requiring the business entity to file Form 1295 electronically with the Commission. Information from the Commission regarding the requirements, including rules and filing information, are available on the Commission's website at the following links:

<https://www.ethics.state.tx.us/tec/1295-Info.htm>

[https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html)

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

As a business entity under this law, it is your firm's responsibility to comply with all disclosure laws including Chapter 2252. The City of McAllen, as the governmental entity, must ensure compliance of the same.

Note: You will be required to register and create an account. Once registered, you will receive an email containing a password setup link. Click on the link to set your password. After you have established an account, you will use your email address, password, and user type (Business Entity) to log in to the filing application to enter the required information on Form 1295. Print a copy of the completed form which includes a unique certification of filing number assigned by the application. An authorized agent of the business entity must sign the form affirming under the penalty of perjury that the completed form is true and correct. The completed, printed, and signed Form 1295 bearing the unique certification of filing number must be submitted at the time the signed contract is submitted to the City of McAllen/McAllen Public Utility. Failure to comply may result in contract revocation and award to the next compliant contractor/vendor.

## **INFORMATION TO BIDDERS continued:**

### **30. DISCLAIMER**

While all precautions have been taken to ensure that documents on the bidding portal will not interfere with or cause damage to your system or its existing data, the City of McAllen accepts no responsibility for damages that may be caused by these documents and makes no other warranty or representation, neither expressed nor implied, with respect to these documents. These documents are provided “as is” and you, the user, assume the entire risk when you use them.

### **31. LIMITATION OF LIABILITY**

Vendors that use the services available through the bidding portal agree that the City of McAllen shall not be liable for any loss of profits, loss of time, interruption of business, or indirect, special, incidental, or consequential damages of any kind whether under this agreement or otherwise due to vendor’s use of this system.

### **32. WAIVER**

Due to the electronic transmissions, the City of McAllen does not guarantee nor will it be liable for the accuracy of what is read or what is downloaded.

### **33. NON-APPROPRIATION CLAUSE**

In the event that no funds are appropriated for this specific work, the City of McAllen reserves the right to cancel/terminate this contract. The City of McAllen shall be relieved of any and all responsibilities and/or obligations, without penalty(ies) of any sort. The vendor shall be notified in written form of the City of McAllen’s intent to cancel/terminate said contract due to non-appropriated funds.

### **34. NON-DISCRIMINATION/DRUG FREE**

The successful Respondent will comply with all federal and state requirements concerning fair employment and will not discriminate by reason of race, color, age, religion, sex, national origin or physical handicap. The successful Respondent shall provide evidence in form and substance, to the City of McAllen of maintaining a drug free working environment.

### **35. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE)**

The City of McAllen encourages the hiring and participation by MWBEs in the performance of the contract.

### **36. INSURANCE REQUIREMENTS**

During execution of Contracts, the successful Prime Contractor shall provide a Certificate of Insurance made to the City of McAllen, P.O. Box 220, McAllen, TX 78505-0220, (1300 Houston, McAllen, Texas 78501) and should reference the project number and project Name. The prime contractor shall ensure that any and all subcontractors and/or lower-tier subcontractors comply with the insurance requirements as depicted herein. Such coverage(s) shall be acquired and maintained, for the duration of the contract period. (See Section 28. Insurance Requirements of the General Conditions of Contract for additional information.)

END OF SECTION

**BID FORM**  
**PROJECT NO. 08-19-C39-195**  
**VETERANS WAR MEMORIAL PHASE III**

TO: OWNER

The undersigned, as bidder, declares that the only person or parties interested in this bid as principals are those named herein and that this bid is made without collusion with any other person, firm or corporation; the bidder has carefully examined the Bid Notice, Information to Bidders, Form of Agreement, General and Supplemental General Conditions, Special Provisions, Technical specifications and the plans thereon referred to and has carefully examined the locations, conditions, and classes of materials of the proposed work; and Bidder agrees that if awarded the Contract, bidder shall provide all the necessary labor, machinery, tools, apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein and according to the requirements of the Engineer/Architect as therein set forth.

It is understood that the following quantities of work to be done at unit prices are approximate only and are intended principally to serve as a guide in evaluating bids.

It is further agreed that the quantities of work to be done at unit price and materials to be furnished, may be increased or diminished as may be considered necessary, in the opinion of the Engineer/Architect, to complete the work fully as planned and contemplated, and that all quantities of the work, whether increased or decreased, are to be performed at the unit prices set forth below except as provided for in the specifications.

It is further agreed that lump sum prices may be increased to cover additional work ordered by the Engineer/Architect, but not shown on the plans or required by the specifications, in accordance with the provisions of the General Conditions. Similarly, they may be decreased to cover deletion of work so ordered.

The undersigned agrees, unless hereinafter stated otherwise to furnish all materials as shown and specified in the Plans and Specifications.

A bid security in the amount of five percent (5%) of the Total Bid must be submitted in compliance with the Information to Bidders.

It is understood that in the event the successful bidder fails to enter into the Form of Agreement and/or furnish an acceptable Payment and Performance Bond, each in the amount of one hundred percent (100 %) of the Contract Sum, within ten (10) working days of the Letter of Award, the successful bidder shall forfeit the bid security and the bid security shall become the property of the City of McAllen, TX.

It is understood that the City may consider non-responsive any bid not prepared and submitted in accordance with the provisions herein and may waive any formalities and/or

**BID FORM Continued:**

*The following table describes the bid items and quantities reflected on the official bid form maintained on the City's bidding web portal. Do not enter bid amount in this table. Refer to the Information to Bidders (Page B-1) for instructions on how to submit electronic sealed bids. **(BIDDERS ARE ASKED TO CHECK THEIR BID AMOUNT SUBMITTALS IN AN EFFORT TO AVOID DISCREPANCIES).***

**BID ITEM DESCRIPTION AND QUANTITIES APPROXIMATE ONLY:**

Item No.	Internal Reference No.	Type	Description	Unit of Measure	Quantity
1	98852	BASE	PROJECT INCLUDES INSTALLATION AND CONSTRUCTION OF MONUMENT SIGN, BRICK PAVERS, CONCRETE CURB, LANDSCAOING AND IRRIGATION WITHIN THE VETERANS WAR MEMORIAL	LS	1
2	98852	ALT	PROJECT INCLUDES THE INSTALLATION AND CONSTRUCTION OF MONUMENTAL SIGN, BRICK PAVERS, CONCRETE CURB , LANDSCAPING AND IRRIGATION WITHIN THE VETERANS WAR MEMORIAL.	LS	1
3	98852	ALT	PROJECT INCLUDES THE INSTALLATION AND CONSTRUCTION OF MONUMENT SIGN, BRICK PAVERS, CONCRETE CURB,, LANDSCAPING AND IRRIGATION WITHIN THE VETERANS WAR MEMORIAL	LS	1

Bidder hereby agrees to commence work under this contract within ten (10) working days after Notice to Proceed is issued by the City.

Bidder hereby agrees to complete work within \_\_\_\_\_ calendar days. **Number of days to complete work shall not exceed forty-five 45 calendar days.**

DATE: \_\_\_\_\_

Respectfully submitted,

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or Print Name of Authorized Signer)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Legal Company Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Fax Number)

\_\_\_\_\_  
(E-Mail)

(Seal - If bidder is a Corporation)

**SUPPLEMENT NO. 1 TO BID FORM: NON-RESIDENT BIDDER**

**NON-RESIDENT BIDDER:** Non-resident bidder is a bidder whose principal place of business is not in the State of Texas, but excludes a contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.

**Nonresident Bidder:** Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, does your state have a preference law?

Yes \_\_\_\_\_ No \_\_\_\_\_

Percent (%) of preference \_\_\_\_\_

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Fax Number)

**SUPPLEMENT NO. 2 TO BID FORM: BOND INFORMATION**

**(Form to be Executed & Submitted with Bid)**

On all contracts that will equal to or exceed \$50,000.00, the Performance Bond and the Payment Bond must be provided from a surety that has rating of "A" from AM BEST, MOODY'S STANDARD & POORS.

**MAIN COMPANY**

**AGENT'S NAME:** \_\_\_\_\_  
PLEASE TYPE/PRINT NAME

**COMPANY NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**MAIN OFFICE  
TELEPHONE NO.:** \_\_\_\_\_

**LOCAL COMPANY**

**AGENT'S NAME:** \_\_\_\_\_  
PLEASE TYPE/PRINT NAME

**COMPANY NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**LOCAL MAIN OFFICE  
TELEPHONE NO.:** \_\_\_\_\_

**PROJECT NO.:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PLEASE TYPE/PRINT NAME

\_\_\_\_\_  
COMPANY NAME

**SUPPLEMENT NO. 3 TO BID FORM: NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, of lawful age, being first duly sworn, on oath says, that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the respondent/bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to purpose at a fixed price or to refrain from proposing; or with any state official, city employee, Board Trustee, or benefit consultant as to quantity, quality, or price in the prospective contract, or any other terms of said prospective contract; or in any discussions or actions between bidders, city employee, Board Trustee, or benefit consultant concerning exchange of money or other things of value for special consideration in the letting of this contract.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Notary Public  
State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## SPECIAL PROVISIONS

### Specifications which Apply

All work under this contract shall conform to the requirements of these specifications.

In cases where the standard specifications are in conflict with either Plans and Specifications or the Special Provisions, the order of supersedence shall be Special Provisions and Plans and Specifications.

All labor, materials, equipment, supervision and other services required for this construction will be furnished in accordance with plans and specifications as prepared by the City of McAllen.

City of McAllen has delineated work areas and access routes. Any damaged property not otherwise mentioned within plans or specifications to be installed, shall be the responsibility of the contractor (product and installation) as approved by City of McAllen.

The City of McAllen is a franchised area for sanitation and debris removal. Materials and debris can be disposed of by means of a dump truck or pickup truck. Should a roll-off container be needed due to the amount discarded a roll-off container would need to be set up through the City of McAllen Public Works Department (956-681-4050). Outside roll-off companies are not permitted on city projects.

Where conflicts occur between the drawings and specifications, between different drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

### Security Measures

A contractor's superintendent shall be on the job at all times that construction workers are present at the construction site.

### Testing

The owner reserves the option of testing any and all materials used in this construction. All testing will be made by an independent laboratory designated and paid by the owner, unless otherwise stated in the specifications of the items to be tested. Any costs associated with retesting of materials shall be the responsibility of the contractor as required by the City of McAllen. Any construction materials not meeting specifications may be rejected at contractor's expense or may be accepted by the city provided a deduction is granted. The Engineering Department must be notified 24 hours in advance of materials testing

### Schedule and Sequence of Construction

The Contractor shall, prior to beginning work, prepare and submit a proposed schedule of work to the Owner for his approval. Work schedule to be planned in coordination with **Veterans War Memorial of Texas Phase III** personnel and performed such that there is minimal interference to **Veterans War Memorial of Texas Phase III**. Recommended construction hours are between the hours of 7:00am. to 6:00 pm.

## **SPECIAL PROVISIONS Continued:**

### **Utilities**

Contractor to provide for his own utility requirements.

### **Building Permit and Taxes**

A building permit will be required for the construction of this project. Contractor is responsible for obtaining permit and any related fees.

### **Inspection of Work**

The Owner will provide sufficient competent personnel for the inspection of the work while such work is in progress to ascertain that the completed work will comply in all respects with the standards and requirements set forth in the Specifications. Contractor will be responsible for payment of city inspection personnel if major work related issues are scheduled outside of the normal business hours, as is required by the City of McAllen. Not with standing such inspection, the Contractor will be held responsible for the acceptability of the finished work.

Owner's representatives shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access, and for inspection.

If the Specifications, the Engineer's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection. Inspections by the Engineer shall be made promptly, and where practicable at the source of supply. If any work should be covered up without approval or consent of the Architect/Engineer, it must be uncovered at the Contractor's expense, unless the Architect/Engineer has unreasonably delayed inspection.

Re-examination of the work may be ordered by the Architect/Engineer and, if so ordered, the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the Owner shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, the Contractor shall pay such cost.

### **Changes in the Work**

The Owner may make changes in the Drawings and Specifications of scheduling of the Contract within the general scope at any time by a written order. If such changes, add to or deduct from the contractor's cost of the work, the Contract shall be adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. In giving instructions, the Engineer shall have authority to make minor changes in the work not involving cost, and not inconsistent with the purposes of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Architect/Engineer, an no claim for an addition to the Contract Sum shall be valid unless the additional work was so ordered.

## **SPECIAL PROVISIONS Continued:**

### **Competency of Bidders**

The Bidder must be capable of performing each of the various items of work bid upon. Upon request, the successful Bidder shall submit a complete statement of his financial resources and his previous experience in similar work.

### **Guarantee of Work**

All workmanship, equipment and materials, furnished or installed by the Contractor shall be guaranteed for a period of at least one (1) year against faulty workmanship or defective materials. The warranty period shall begin on the date of substantial completion and acceptance of the project by the Owner and extend for a period of 365 days thereafter. Warranty Periods on punch list items shall begin when items are approved as corrected.

### **Maintenance Support**

Within ten days of the date of Substantial Completion of the project, deliver to the Owner three copies of the manufacturer's printed instructions regarding care and maintenance of the roof.

### **Final Clean Up**

At the end of each day's work session contractor shall clean the premises, remove all construction debris and leave the Public Works site in a condition that daily work activities can proceed. Remove all trash, surplus and discarded materials, temporary services, materials and debris of every kind. The Contractor shall leave the site of the work in a neat and orderly condition equal to that which originally existed. Waste materials removed from the site shall be disposed of and **secured** at locations satisfactory to the City Of McAllen and shall be considered incidental to the bid.

### **Correction of Work Before Final Payment**

The Contractor shall promptly remove from the premises all materials and work condemned by the Owner/Designer as failing to meet Contract requirements, whether incorporated in the work or not. The Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not take action to remove such condemned materials and work within 10 days after written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten days' time thereafter, the Owner may, upon ten days', written notice, sell such materials at auction or at private sale and shall pay the Contractor any net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

# FORM OF AGREEMENT FOR ENGINEERING/ARCHITECTURAL CONSTRUCTION

This Agreement is made as of \_\_\_\_\_, 20\_\_\_\_\_, (the “Effective Date”) by and between

The Owner: The City of McAllen, acting herein through the Board of Commission

and Contractor: \_\_\_\_\_

for the Project: VETERANS WAR MEMORIA PHASE III

Project Number: 08-19-C39-195

The Owner and the Contractor agree as follows:

## ARTICLE 1. SCOPE OF THE WORK

The Contractor hereby agrees to furnish all of the materials and all of the equipment and labor necessary and to perform all of the Work in accordance with the Owner’s requirements and as shown on the drawings and described in the specifications for the project entitled VETERANS WAR MEMORIAL PHASE III **PROJECT NO: 08-19-C39-195.**

## ARTICLE 2. CONTRACT DOCUMENTS

The Contract Documents consist of:

- a. This Form of Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. Special Provisions
- c. General Conditions of Contract for Engineering/Architectural Construction
- d. Supplemental General Conditions of Contract for Engineering/Architectural Construction
- e. *Reserved*
- f. All Addenda issued before the Effective Date of this Agreement;
- g. All Alternate Bids accepted by the Owner before the Effective Date of this Agreement;
- h. All Change Orders issued after the Effective Date of this Agreement;
- i. Drawings, Specifications, details and other documents developed by Owner and/or Project Architect to describe the Project and accepted by Owner
- j. Drawings and Specifications developed or prepared by Owner’s other consultants, if any, and accepted by Owner
- k. Contractor’s Bid. To the extent of any conflict between Contractor’s Bid and any other Contract Document, the Contact Document shall govern.
- l. Solicitation Documents.

The Contract Documents form the entire and integrated Contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

**FORM OF AGREEMENT continued:**

**ARTICLE 3. CONTRACT SUM**

The Owner shall pay the Contractor for performance of the Contract, including the Base Bid and Alternate Bid, the sum of \_\_\_\_\_ (\$\_\_\_\_\_), and make payment on account as provided in the General Conditions of Contract for Engineering/Architectural Construction.

**ARTICLE 4. TIME OF COMPLETION**

The Owner shall issue a Notice to Proceed identifying the date for commencement of the Work. The commencement date shall be ten (10) working days after the date the notice is issued. The Contractor shall achieve completion of the Work within \_\_\_\_\_ ( ) working days after the commencement date, as such completion date may be extended by approved Change Orders.

**ARTICLE 5. LIQUIDATED DAMAGES**

The time set forth in the bid for the completion of the work is an essential element of the contract. For each consecutive working day after the expiration of the completion date set forth in the Notice to Proceed that any incomplete Work prevents or impairs the Owner’s ability to operate and use the Project for its intended purposes, including the correction of deficiencies found during the final testing and inspection, the following amounts shall be deducted from the money due or that becomes due to the Contractor, not as a penalty, but as liquidated damages representing added expense for Engineering/Architectural supervision.

CONTRACT SUM	LIQUIDATED DAMAGES COST PER DAY
\$5,000.00 to \$25,000.00	\$100.00
\$25,001.00 to \$100,000.00	\$200.00
\$100,001.00 to \$500,000.00	\$250.00
\$500,001.00 and over	\$300.00

**ARTICLE 6. BONDS AND INSURANCE**

The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the General Conditions of Contract for Engineering/Architectural Construction. The penal sum of the payment and performance bonds shall be equal to the Contract Sum.

The Contractor shall not commence work under the Agreement until it has obtained all insurance coverage as required by the General Conditions of Contract and until evidence of the required insurance has been reviewed and approved by the Owner. Owner’s review of the insurance shall not relieve nor decrease the liability of the Contractor.

**ARTICLE 7. CONTRACTOR’S SPECIAL WARRANTIES AND RESPONSIBILITIES**

7.1 Contractor agrees and acknowledges that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner’s requirements and procedures.

## **FORM OF AGREEMENT continued:**

7.2 Contractor represents and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

7.3 Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

7.4 Contractor's duties shall not be diminished by any approval by Owner nor shall the Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the services required by this Agreement.

7.5 Contractor represents and agrees that all persons connected with the Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

7.6 Contractor represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

7.7 The Contractor represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

7.8 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

7.9 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

7.10 Contractor shall designate a representative authorized to act on Contractor's behalf with respect to the Project.

7.11 Contractor shall establish and maintain a numbering and tracking system for all Project records including, but not limited to, changes, requests for information, submittals, and supplementary instructions and shall provide updated records to the Owner when requested.

7.12 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or City Official of Owner, or of the components comprising the City of McAllen, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

**FORM OF AGREEMENT continued:**

**ARTICLE 8. Party Representatives**

8.1 The Owner’s Designated Representative (ODR) authorized to act in the Owner's behalf with respect to the Project is:

City of McAllen Engineering Department:  
Yvette Barrera, PE, CFM, City Engineer  
(956) 681-1151

*Name, Title  
Contact Phone Number*

8.2 The Contractor’s designated representative authorized to act on the Contractor’s behalf and bind the Contractor with respect to the Project is:

*Company Name  
Contact name and Title  
Phone number  
Email Address*

8.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

**ARTICLE 9. NOTICES**

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner: Gerardo Noriega, CTPM, Director of Purchasing & Contracting  
1300 Houston Avenue, Purchasing & Contracting Department  
McAllen, Texas 78501  
Mailing: P.O. Box 220, McAllen, TX 78505-0220  
Email: gnoriega@mcallen.net  
Fax No. (956) 681-1138

If to Contractor: *Company Name  
Contact name and Title  
Address  
Email Address  
Fax No.*

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

**FORM OF AGREEMENT continued:**

IN WITNESS WHEREOF the parties hereto have executed this Agreement, the day and year first above written.

(Contractor)

(CORPORATE SEAL)

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
LEGAL COMPANY NAME

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

\_\_\_\_\_  
Name and Title of Authorized Representative  
(Type/Print)

CITY OF McALLEN  
(Owner)

By: \_\_\_\_\_  
GERARDO NORIEGA, CTPM,  
DIRECTOR PURCHASING & CONTRACTING

By: \_\_\_\_\_  
ROEL "ROY" RODRIGUEZ, P.E.,  
CITY MANAGER

**PERFORMANCE BOND**

STATUTORY PERFORMANCE BOND PURSUANT TO ARTICLE 2253  
OF THE TEXAS LOCAL GOVERNMENT CODE AS AMENDED BY ACTS OF THE 1993,  
73<sup>RD</sup> LEGISLATURE, CH. 268, § 1, EFF. SEPT. 1, 1993, AMENDED BY ACTS 1999, 76<sup>TH</sup>  
LEGISLATURE, CH. 62, SECTION 8.20, EFF. SEPT. 1, 1999

\*\*\*\*\*

KNOW ALL MEN BY THESE PRESENTS, THAT \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called the Principal(s), as Principal(s), and \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called the Surety(s), as Surety(s), are held and firmly bound unto \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called the Obligee), in the amount of \_\_\_\_\_

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

for the payment whereof the 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 entered into a certain written contract with the Obligee, dated the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for the \_\_\_\_\_

\_\_\_\_\_

which contract is hereby referred to and made a part hereof as fully and to the same extent as if

copies at length herein.

**PERFORMANCE BOND Continued:**

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with plans, specifications and contract documents, during the original term of said contract and any extension thereof that may be granted by the City of McAllen with or without notice to the surety and during the life of any guaranty required under the contract, and shall also truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all authorized modifications of said contract that may hereafter be made, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Statutory Performance Bond Pursuant To Article 2253 of the Texas Local Government Code as Amended by Acts of the 1993, 73<sup>rd</sup> Legislature, Ch. 268, § 1, Eff. Sept. 1, 1993, Amended By Acts 1999, 76<sup>th</sup> Legislature, Ch. 62, Section 8.20, Eff. Sept. 1, 1999, and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, this instrument is executed in five counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_\_.

**ATTEST:**

\_\_\_\_\_  
(Principal) Secretary  
(SEAL)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)

**ATTEST:**

\_\_\_\_\_  
(Surety) Secretary  
(SEAL)

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print/Type Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Attorney-in-Fact (Signature)

\_\_\_\_\_  
(Print/Type Name)

\_\_\_\_\_  
(Address)

NOTE: Date of Bond must not be prior to date of Contract (1) Correct name of Contractor; (2) A Corporation, a Partnership or an Individual, as case may be; (3) Correct name of Surety; (4) Correct name

of Owner; (5) County or Parish and State; (6) Owner; (7) If Contractor is Partnership, all partners should execute bond.

**PAYMENT BOND**

STATUTORY PAYMENT BOND PURSUANT TO ARTICLE 2253  
OF THE TEXAS LOCAL GOVERNMENT CODE AS AMENDED BY ACTS OF THE 1993,  
73<sup>RD</sup> LEGISLATURE, CH. 268, § 1, EFF. SEPT. 1, 1993, AMENDED BY ACTS 1999, 76<sup>TH</sup>  
LEGISLATURE, CH. 62, SECTION 8.20, EFF. SEPT. 1, 1999

\*\*\*\*\*

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called the Principal(s), as Principal(s), and \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called the Surety(s), as Surety(s), are held and firmly bond unto \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called the Oblige), in the amount of \_\_\_\_\_

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

for the payment whereof, the said Principal and Surety bind themselves, and their heirs,  
administrators, executors, successors and assigns, jointly severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige,  
dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to which contract is hereby

referred to and made a part hereof as fully and to the same extent as if copies at length herein.

**P A Y M E N T B O N D Continued:**

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, and any extension thereof that may be granted by the City of McAllen with or without notice to the surety and during the life of any guaranty required under the contract, and shall also truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all authorized modifications of said contract that may hereafter be made, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Statutory Payment Bond Pursuant To Article 2253 of the Texas Local Government Code as Amended by Acts of the 1993, 73<sup>rd</sup> Legislature, Ch. 268, § 1, Eff. Sept. 1, 1993, Amended By Acts 1999, 76<sup>th</sup> Legislature, Ch. 62, Section 8.20, Eff. Sept. 1, 1999, and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, this instrument is executed in five counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_\_.

\_\_\_\_\_  
Principal

**ATTEST:**

\_\_\_\_\_  
(Principal) Secretary  
(SEAL)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Print/Type Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

**ATTEST:** \_\_\_\_\_

\_\_\_\_\_  
Surety

\_\_\_\_\_  
(Surety) Secretary  
(SEAL)

\_\_\_\_\_  
Attorney-in-Fact (Signature)

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Print/Type Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of Bond must not be prior to date of Contract

- (1) Correct name of Contractor; (2) A Corporation, a Partnership or an Individual, as case may be; (3) Correct name of Surety; (4) Correct name of Owner; (5) County or Parish and State; (6) Owner;
- (7) If Contractor is Partnership, all partners should execute bond.

# **GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING/ARCHITECTURAL CONSTRUCTION**

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- Section 1 - Definitions
- Section 2 - Copies of Drawings Furnished
- Section 3 - Order of Completion
- Section 4 - Owner of Drawings
- Section 5 - Familiarity With Work
- Section 6 - Changed Conditions
- Section 7 - Materials and Appliances
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- Section 20 - Correction of Work Before Final Payment
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- Section 31 - Rights of Various Interests
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# **GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING/ ARCHITECTURAL CONSTRUCTION**

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Section 35 - Engineer's/Architect's Decision

Section 36 - Jurisdiction and Venue; Mediation, Litigation and Arbitration

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Section 49 - Indemnity and Hold Harmless Agreement

Section 50 - Limitation of Liability

Section 51 - Chapter 2252, Texas Government Code

Section 52 - Chapter 2270, Texas Government Code

# **GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING/ARCHITECTURAL CONSTRUCTION**

## **SECTION 1. DEFINITIONS**

1.1 The *Contract Documents* shall consist of Form of Agreement and all exhibits and attachments listed, contained or referenced in the Agreement; Special Provisions; General and Supplemental Conditions of Contract for Engineering/Architectural Construction; All Addenda issued before the Effective Date of the Agreement; All Alternate Bids accepted by the Owner before the Effective Date of the Agreement; All Change Orders issued after the Effective Date of the Agreement; Drawings, Specifications, details and other documents developed by Owner and/or Project Architect to describe the Project and accepted by Owner; Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by Owner; and Contractor's Bid.

1.2 The *Owner* shall represent the City of McAllen.

1.3 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.

1.4 Wherever in this contract the word "*Engineer/Architect*" is used it shall be understood as referring to the Engineer/Architect of the Owner, acting personally or through assistants duly authorized in writing by the Engineer/Architect.

1.5 *Subcontractor* shall mean anyone (other than the Contractor) who furnished at the site, under an Agreement with the Contractor, labor, materials, or equipment, or a combination thereof, but shall not include any person who furnishes services of a personal nature.

1.6 *Work* shall mean the furnishing of all labor, materials, equipment, and other incidentals as are required to complete the Project for the purpose for which it was intended

1.7 *Dispute* shall mean lack of agreement between any parties that have any obligations, duties, or responsibilities under the terms of the contract, Drawings, or Specifications.

1.8 *Written notice* shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or to an authorized representative of such individual, firm, or corporation, or if delivered at or sent by registered mail to the last business address known to him who gives the notice, with a copy sent to the central office of the contractor.

## **SECTION 2. COPIES OF DRAWINGS FURNISHED**

Unless otherwise provided in the Contract Documents, the Engineer/Architect will furnish to the Contractor, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the work.

## **SECTION 3. ORDER OF COMPLETION**

On the first day of every month in which any portion of the work is to be completed, and at such times thereafter as may be reasonably requested by the Owner's Representative, the Contractor shall submit schedules that show the order in which the Contractor proposes to carry out the work for the duration of the project and, in particular, for the current month, with dates at which the Contractor will start each portion or part of the work, specific estimated dates of completion of each portion or part of the work, and a detailed description of the specific portion or part of the work to be completed by the end of the current month.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 4. OWNER OF DRAWINGS**

The City of McAllen shall be the owner of all drawings, specifications, and copies thereof furnished by the Engineer/Architect. Contractor shall not reuse the same on other work and sets are to be returned to Engineer/Architect at the completion of the work on request.

### **SECTION 5. FAMILIARITY WITH WORK**

The Owner shall make known to all prospective bidders, prior to the receipt of bids, all information that Owner may have as to subsurface conditions in the vicinity of the work, topographical maps, or other information that might assist the bidder in properly evaluating the amount and character of the work that might be required. Such information is given, however, as being the best factual information available to the Owner. The Contractor shall carefully examine the nature and location of the work, the character of equipment and facilities needed preliminary to and during the prosecution of the work, general and local conditions, and all other matters which can in any way affect the work under the Contract.

### **SECTION 6. CHANGED CONDITIONS**

Before project conditions are disturbed, the Contractor shall notify the Owner in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or (2) previously unknown physical or other conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Owner's Representative shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Contract, the Contractor shall submit a claim for an adjustment in compensation and/or time. Contractor must provide written notice to the Owner within seven (7) days after the Contractor knew, or reasonably should have known, of such changed condition(s). Any claim of the Contractor for an adjustment of compensation and/or time hereunder after the required notice period shall not be allowed or approved, and the Contractor waives all right to additional compensation or time. If the Contractor timely provides written notice in accordance with this Section 6 and the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Section 36 hereinafter.

### **SECTION 7. MATERIALS AND APPLIANCES**

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work. Unless otherwise specified, all materials incorporated in the permanent work shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Unless otherwise stipulated, the Owner will not pay for materials stored on hand.

### **SECTION 8. EMPLOYEES**

8.1 Neither the Contractor nor his/her employees engaged in fulfilling the terms and conditions of the awarded Construction Contract shall be considered employees of the Owner.

8.2 The Contractor shall at all times enforce strict discipline and good order among his employees, and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned to him. The Owner shall have the authority to request that Contractor remove any objectionable employee from project site.

8.3 Adequate sanitary facilities shall be provided by the Contractor.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 9. ROYALTIES AND PATENTS**

9.1 The Contractor shall hold and save the owner and its officers, agents, servants and employees, harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the Owner.

9.2 *License or Royalty Fee:* License and/or royalty fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his/her authorized licensee, directly by the Contractor. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he/she shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his/her Sureties shall indemnify and hold harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

### **SECTION 10. SURVEYS**

10.1 Unless otherwise specified, the Owner shall furnish all land surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of bench marks adjacent to the work. From the information provided by the Owner, the Contractor shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations, and other working points, lines and elevations.

10.2 The contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

### **SECTION 11. PERMITS, LICENSES AND REGULATIONS**

Permits and licenses of a temporary nature necessary for the prosecution and completion of the work shall be secured and paid for by the Contractor. Permits, licenses, and easements of a permanent nature that will be required after the completion of the project will be secured and paid for by the Owner, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the Drawings and Specifications are at variance therewith, Contractor shall promptly notify the Engineer/Architect in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work.

### **SECTION 12. PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY**

12.1 The Contractor shall provide and maintain all necessary watchmen, barricades, warning lights and signs and take all necessary precautions for the protection, and safety of the public. Contractor shall take all reasonable precautions to protect the Owner's property from injury or loss arising in connection with this contract. Contractor shall make good any damage, injury or loss to his work and to the property of the Owner resulting from lack of reasonable protective precautions, except such as resulting from lack of reasonable protective precautions, except such as may be due to errors in the Contract Documents, or caused by agents or employees of the Owner. Contractor shall adequately protect adjacent private and public property, as provided by law and the Contract Documents.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 12. PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY continued:**

12.2 In an emergency affecting the safety of life, work, or of adjoining property, the Contractor is hereby permitted to act at Contractor's discretion to prevent such threatened loss or injury. Contractor shall act without special instructions or authorization from the Engineer/Architect and without appeal, if so authorized or instructed by the Engineer/Architect.

12.3 Any compensation claimed by the Contractor on account of emergency work, shall be determined by agreement, litigation or arbitration.

### **SECTION 13. INSPECTION OF WORK**

13.1 The Owner shall provide sufficient competent personnel, under the supervision of a qualified Engineer/Architect, for the inspection of the work while such work is in progress to ascertain that the completed work will comply in all respects with the standards and requirements set forth in the Specifications. Notwithstanding such inspection, the Contractor will be held responsible for the acceptability of the finished work.

13.2 The Engineer/Architect and his representatives shall at all times have access to the work whenever it is in preparation and/or progress, and the Contractor shall provide proper facilities for such access and inspection.

13.3 If the Specifications, the Engineer's/Architect's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer/Architect timely notice of its readiness for inspection, and scheduled date of such inspection if the inspection is by an authority other than the Engineer/Architect. Inspections by the Engineer/Architect shall be made promptly and at the source of supply, where practicable. If any work should be covered up without approval or consent of the Engineer/Architect, it must be uncovered if required by the Engineer/Architect at the Contractor's expense, unless the Engineer/Architect has unreasonably delayed inspection.

13.4 Re-examination of the work may be ordered by the Engineer/Architect and if so ordered, the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the Owner shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, the Contractor shall pay such cost.

### **SECTION 14. SUPERINTENDENCE**

The Contractor shall keep a competent superintendent and any necessary assistants on the project site throughout the duration of the work. The superintendent shall represent the Contractor and all directives given to superintendent shall be binding as if given to the Contractor. Directives shall immediately be confirmed in writing to the Contractor. The Contractor shall give efficient superintendence to the work using best skill and attention.

### **SECTION 15. DISCREPANCIES**

If in the course of the work, the Contractor finds any discrepancy between the Drawings and the physical conditions of the locality, or any errors or omissions in Drawings or in the layout as given by survey points and instructions, Contractor shall immediately inform the Engineer/Architect in writing, and the Engineer/Architect shall promptly verify the same. Any work done by Contractor after such discovery without prior authorization will be done at the Contractor's risk.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 16. CHANGES IN THE WORK**

16.1 The Owner may make changes to the contract drawings and specifications at any time by a written order. Changes shall be within the general scope of work and reasonable for the completion of the project scope. If such changes add to or deduct from the contractor's cost of the work, the Contract Sum shall be adjusted accordingly. All such changes in the work shall be executed under the conditions of the original Contract in at mutually agreed-upon unit price and through approved Change Orders, except that any claim for extension of time or additional compensation caused thereby shall be adjusted only at the time of ordering such change. Changes to work shall be in accordance to Texas Local Government Code Chapter 252.

16.2 The Engineer/Architect shall have authority to give directives and make minor changes in the work only to the extent that the work does not involve additional cost and changes are consistent with the purposes of the work.

16.3 Except as provided for in Section 12, no extra work or change shall be made unless in pursuance of a written order by the Engineer/Architect, and no claim for additional compensation to the Contract Sum shall be valid unless the additional work was so ordered.

16.3 The Contractor shall proceed with the work as changed and the value of any changes in work or change shall be determined as provided in the Agreement. The Contractor's acceptance of any written order(s) for changes in the work constitutes the Contractor's acknowledgement that all extensions, increases or deductions of time and/or compensation, and claims and disputes related to the subject of the written order(s) have been or were resolved by the written order(s). By accepting the written order(s) for changes in the work, the Contractor waives and releases any and all claims and causes of action, including, but not limited to, claims for additional compensation or extensions of time, related to or arising from any work added to, deducted from, or affected by the written order(s).

### **SECTION 17. EXTENSION OF TIME**

17.1 Extension of time for completion of the Work may be granted by the Owner by means of a change order and shall apply in the following instances:

- a. changes in the work, as provided in Section 16;
- b. when work is suspended as provided in Section 21;
- c. when Contractor's performance of the work is delayed on account of conditions which could not have been foreseen, or which were beyond the control of the Contractor, his Subcontractors or suppliers, and which were not the result of their fault or negligence.
- d. neglect of the Owner or of his employees or by other contractors employed by the Owner, or by any delay in the furnishing of Drawings and necessary information by the Engineer/Architect;
- e. or by any other cause which in the opinion of the Engineer/Architect entitled the Contractor to an extension of time, including but not restricted to, acts of the public enemy, acts of any government in either its sovereign or any applicable contractual capacity, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, freight embargoes, usually severe weather, or labor disputes.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 17. EXTENSION OF TIME continued:**

17.2 The Contractor shall notify the Owner's Representative in writing within seven (7) working days of any occurrence or conditions which describes in detail the Contractor's claim to an extension of time. Such notice shall permit full investigation and evaluation of the contractor's claim. The Engineer/Architect shall acknowledge receipt of the Contractor's notice within five (5) working days of its receipt. Contractor's failure to provide such notice shall constitute a waiver by the Contractor of any claim.

### **SECTION 18. CLAIMS**

If the Contractor claims that any directives issued after the date of the Contract, either by Drawings or other means, involve additional cost under the Contract, Contractor shall give the Engineer/Architect written notice thereof within seven (7) working days after the receipt of such instructions, and in any event before proceeding to execute the work, except as provided for in Section 12. No such claim shall be valid unless so made.

### **SECTION 19. DEDUCTIONS FOR UNCORRECTED WORK**

If the Engineer/Architect deems it inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made thereof, unless the Contractor elects to correct to work.

### **SECTION 20. CORRECTION OF WORK BEFORE FINAL PAYMENT**

20.1 The Contractor shall promptly remove from the premises all materials and work rejected by the Engineer/Architect due to failing to meet Contract requirements, whether incorporated in the work or not. The Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

20.2 If the Contractor does not take action to remove such rejected materials and work within ten (10) working days after written notice, the Owner may remove such rejected materials and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten (10) working days' time thereafter, the Owner may, upon ten (10) working days' written notice, sell such materials at auction or private sale and shall pay to the Contractor any net proceeds thereof after deducting all the costs and expenses that should have been borne by the Contractor.

### **SECTION 21. SUSPENSION OF WORK**

21.1 The Owner may at any time suspend the work, or any part thereof by giving one (1) day written notice to the Contractor. The work shall be resumed by the Contractor within ten (10) working days after the date of the written notice from the Owner to the Contractor so to do. The Owner may reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of such suspension; eligibility and amount of disbursement shall be determined by the Engineer/Architect.

21.2 If the work, or any part thereof, shall be suspended by written notice by Owner and if the Owner does not give written notice to the Contractor to resume work within fifteen (15) working days of the notice to suspend, then the Contractor may abandon that portion of the work and Contractor shall be entitled to the estimates and payments for all work done on the portions so abandoned, if any; Contractor is not entitled to any compensation for loss of overhead, plant expense, and anticipated profit.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 22. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

If the work should be stopped under an order of any court, or other public authority, for a period of more than three (3) months, through no act or fault of the Contractor or of anyone employed by Contractor, or if the Engineer/Architect should fail to issue any estimate for payment within seven (7) working days after it is due, then the Contractor, may, upon seven (7) working days' written notice to the Owner's Representative, stop work or terminate this Contract and recover from the Owner payment for all work executed.

### **SECTION 23. THE OWNER'S RIGHT TO TERMINATE CONTRACT**

If the Contractor is adjudged as bankrupt, or if Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed as a result of Contractor's insolvency, or if Contractor is guilty of a substantial violation of the Contract, then the Owner, upon the certificate of the Engineer/Architect that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy terminate the Contract with the Contractor, after giving the Contractor and his Surety seven (7) working days' written notice, and take possession of the premises and of all materials, tools, equipment and other facilities installed on the work and paid for by the Owner, and finish the work by whatever method Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If the expense of finishing the work shall exceed such unpaid balance to the Contractor, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided and the damage incurred through the Contractor's default, shall be certified by the Engineer/Architect.

### **SECTION 24. REMOVAL OF EQUIPMENT**

In the case of termination of the Contract for any cause before the completion of the work, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment and supplies from the Owner's property. If Contractor fails to do so, the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor.

### **SECTION 25. RESPONSIBILITY FOR WORK**

25.1 The Contractor assumes full responsibility for the work. Until its final acceptance, the Contractor shall be responsible for damage to or destruction of the work (except for any part covered by partial acceptance as set forth in Section 26). Contractor agrees to make no claims against the Owner for damages to the work from any cause (except negligence or willful acts of the Owner), acts of an enemy, acts of war, or as provided for in Section 32.

25.2 Existing Structures: The Contractor shall, at Contractor's expense, immediately make permanent repairs and restore to original condition any and all utility lines, irrigation lines, pipe lines, pavement, or structures that are to remain in place and damaged by the Contractor's equipment or workmen during the performance of work under this contract, or damaged as a result of improperly executed work.

25.3 Traffic Areas, Driveways, Entrances: All traffic areas, driveways and entrances shall be restored to usable condition at the Contractor's expense as the work progresses. The Contractor shall make every effort to cooperate with the wishes of the individual property owners in providing access to private property along the site of the work.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 25. RESPONSIBILITY FOR WORK continued:**

25.4 Detours: The Contractor shall do such work as may be necessary to provide and maintain a detour adjacent to all road structures for public travel. The Contractor shall maintain the detours in such condition that the public can travel over same in comfort and safety, and shall at his own expense perform such work as may be required to keep said detours open to the public at all times. The Contractor shall cooperate with the Engineer/Architect in the regulation of traffic and Contractor shall govern its work that when it becomes necessary to suspend construction for a considerable period of time, the roadways will be re-opened to public travel. Materials and equipment shall be stored and the work shall be so conducted as to obstruct public travel as little as possible, and in no case shall there be less than twenty (20) feet in width of unobstructed roadway for the use of traffic. Materials and equipment stored in or near the path of traffic shall be protected with applicable traffic control devices in compliance with the Texas Manual on Uniform Traffic Control Devices (TMUTCD).

25.5 Traffic Control Devices: When any section of the contraction site is closed to traffic, the Contractor shall furnish and maintain at each end of the closed section and at all intersecting streets - roads - construction site within the section, standard barricades, adequate warning signs and directional signs. All lights shall be kept burning from sunset to sunrise. If at any time the barricades are not, in the opinion of the Engineer/Architect, sufficient to prevent traffic from entering the closed portions of the street-road-construction site, the Contractor shall provide and maintain watchmen at such points and for such periods of time as the Engineer/Architect may direct. When directed by the Engineer/Architect, the Contractor shall provide and maintain such standard barricades, signs, lights and flags within the closed portion of the street-road-construction site as may be necessary to protect the work and safeguard local traffic.

25.6 No direct compensation, except as specifically provided in these specifications, will be made to the Contractor for the work and material involved in constructing and maintaining detours and approaches; furnishing, installing and maintaining barricades, danger, warning, and necessary for the proper direction, safety, and convenience of traffic during the Contract period, as this work is to be considered subsidiary to the several items for which unit prices are requested in the bid.

### **SECTION 26. PARTIAL COMPLETION AND ACCEPTANCE**

If at any time prior to the issuance of the final payment, referred to in Section 40 hereinafter, any portion of the permanent construction has been satisfactorily completed, and if the Engineer/Architect determines that such portion of the permanent construction is not required for the operations of the Contractor but is needed by the Owner, the Engineer/Architect shall issue to the Contractor a certificate of partial completion, and thereupon or at any time thereafter the Owner may take over and use the portion of the permanent construction described in such certificate, and exclude the Contractor therefrom. The issuance of a certificate of partial completion shall not be construed to constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates if he has failed to complete it in accordance with the terms of this contract. The issuance of such a certificate shall not operate to release the Contractor or his sureties from any obligations under this contract or the performance bond. If any prior use increases the cost of or delays the work, the Contractor shall be entitled to extra compensation, or extension of time, or both, as the Engineer/Architect may determine, unless otherwise provided.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 27. PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK**

27.1 The Owner, as a result of subsequently discovered evidence, may withhold or nullify the whole or part of any payment certificate to such extent as may be necessary to protect himself from loss caused by:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor.
- (c) Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- (d) Damage to another contractor.
- (e) Claims filed or reasonable evidence indicating probable filing of claims by Contractor against Owner.

27.2 No money may be withheld under (b) and (c) above if a payment bond is included in the Contract.

### **SECTION 28. CONTRACTOR'S INSURANCE REQUIREMENTS**

During execution of Contracts, the successful Contractor shall provide a Certificate of Insurance made to the City of McAllen, P.O. Box 220, McAllen, TX 78505-0220, (1300 Houston, McAllen, Texas 78501) and should reference the project number and project Name. The prime contractor shall ensure that any and all subcontractors and/or lower-tier subcontractors comply with the insurance requirements as depicted herein. Such coverage(s) shall be acquired and maintained for the duration of the contract period.

All certificates must be received prior to commencement of service/work. All Certificates of insurance shall be approved by the Risk Manager and/or his/her designated representative **prior** to the commencement of any work.

In the event the insurance coverage expires prior to the completion of the executed contract, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The City must be notified at least thirty (30) days prior to any material change in and/or cancellation and/or non-renewals of such policies.

The term "City" shall include The City of McAllen and/or McAllen Public Utilities (MPU) and their employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement.

The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage.

During the term of the Contract, the successful contractor/respondent/selected firm shall acquire and maintain, for the duration of the contract period the following insurances:

A. **Comprehensive Commercial General Liability:** The Contractor/Respondent/Selected Firm shall provide minimum limits of \$250,000 each occurrence, \$500,000 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent contractors, products, completed operations, personal and advertising injury, and contractual liability. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "City of McAllen" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 28. CONTRACTOR'S INSURANCE REQUIREMENTS continued:**

#### **A. Comprehensive Commercial General Liability continued:**

Blanket "XCU" – Explosion, Collapse & Underground  
Independent Contractors  
Care, Custody and Control  
Contractual Liability

No endorsements excluding these coverages are allowed.

Additional Insured Requirement:

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, the City of McAllen and/or McAllen Public Utilities (MPU) shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations

**B. Business Automobile Liability:** The Contractor/Respondent/Selected Firm shall maintain limits of no less than \$250,000 combined single limit per occurrence for bodily injury and property damage, and \$500,000 annual aggregate. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "City of McAllen" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

Applicable as long as no fragile or perishable products are transported; otherwise, Cargo Insurance is required.

Additional Insured Requirement:

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, the City of McAllen and/or McAllen Public Utilities (MPU) shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations

#### **C. Builder's Risk/Fire & Extended Coverage**

The Contractor shall insure the building or other work included in this contract on an all-risk (special causes of loss) policy, with an insurance company or companies acceptable to the Owner. The amount of the insurance at all times to be at least equal to the amount paid on account of work and material and plus the value of the work or materials furnished or delivered but not yet paid for by the Owner. Builder's Risk Policies shall cover loss of materials by theft, vandalism, malicious mischief or other loss whether materials are incorporated in the work or not.

The policies shall be in the names of the City and the Contractor, as their interests may appear, and certificates of insurance shall be delivered to the Owner before monthly partial payments are made. The policy shall provide for the inclusion of names of all other contractors, subcontractors and other employed on the premises as ensured and shall stipulate that the insurance companies shall have no right to subrogation against any contractors, subcontractors or other parties employed on the premises for any work building alterations, construction or erection to the described property.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 28. CONTRACTOR'S INSURANCE REQUIREMENTS continued:**

- D. **Workers' Compensation:** The contractor/respondent/selected firm shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Texas. Employer's Liability insurance shall be provided in amounts not less than \$500,000 per accident for bodily injury by accident; \$500,000 policy limit by disease; and \$500,000 per employee for bodily injury by disease."

In addition, a Waiver of Subrogation Endorsement shall be provided by the contractor naming the City of McAllen in said policy for Worker's Compensation Insurance. Contractor/Respondent/Selected Firm shall further ensure that all of its sub-contractors maintain appropriate levels of workers' compensation insurance.

- E. **Professional Services - Insurance Provisions:** Errors & Omissions (Professional Liability): \$1,000,000 Each Claim Limit \$1,000,000 Aggregate Limit. If coverage is written on a claims-made basis, the retroactive date shall be on or prior to the date of the contractual Agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual Agreement and for four (4) years following completion of the services provides under the contractual Agreement or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence coverage-
- F. **Deductible Clause:** Contractor/Respondent/Selected Firm to declare self-insured retention or deductible amounts in excess of \$25,000.
- G. **Other Provisions:** All insurance carriers shall be rated A6 or better and be published on a current A.M. Best Rating Guide, or some other recognized equivalent rating service (e.g., Moody's, Standard & Poor's). The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier. All Certificates of Insurance shall be provided on the Acord Form 25. All insurance requirements are imposed and must be complied with by any and all sub-contractors, and/or lower-tier sub-contractors. A copy of endorsements providing Additional Insured, Primary Insurance and Waiver of Subrogation wording shall be attached to the certificates of insurance.

### **SECTION 29. PAYMENT AND PERFORMANCE BONDS**

The Owner shall have the right, prior to the signing of the Contract, to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder, in such form as the Owner may prescribe in the bidding documents and executed by one or more financially responsible sureties. If such bonds are required, the premium shall be paid by the Contractor. The Owner may require additional bond if the contract is increased appreciably.

### **SECTION 30. ASSIGNMENT**

Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due to Contractor or to become due to Contractor hereunder, except to bank or financial institution acceptable to the Owner.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 31. RIGHTS OF VARIOUS INTERESTS**

If work by the Owner's or Contractor's forces is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Engineer/Architect to secure the completion of the various portions of the work in general harmony.

### **SECTION 32. SEPARATE CONTRACTS**

32.1 The Owner reserves the right to permit other contracts in connection with the project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate Contractor's work with other contracted parties. The parties agree that the Owner shall not be responsible or liable for any delays in Contractor's progress or completion of the work that are caused, in whole or in part, by the acts or omissions of other contractors, subcontractors, or third parties.

32.2 If the proper execution or results of any part of the Contractor's work depends upon the work of any other contract, the Contractor shall inspect and promptly report to the Engineer/Architect any defects in such work that render it unsuitable for such proper execution and results.

### **SECTION 33. SUBCONTRACTS**

33.1 The Contractor shall, as soon as practical after signing of the Contract, notify the Engineer/Architect in writing of the names of Subcontractors proposed for the work.

33.2 The Contractor shall be fully responsible to the Owner for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them.

33.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner.

### **SECTION 34. ENGINEER'S/ARCHITECT'S STATUS**

The Engineer/Architect shall perform technical observation of the work. Engineer/Architect has authority to stop and suspend the work as may be necessary to insure the proper execution of the contract. Engineer/Architect shall also have authority to reject all work and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

### **SECTION 35. ENGINEER'S/ARCHITECT'S DECISION**

The Engineer/Architect shall, within a reasonable time after having received proper notification, make decisions in writing on all claims of the Owner or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

### **SECTION 36. JURISDICTION AND VENUE; MEDIATION, LITIGATION AND ARBITRATION**

36.1 As a condition precedent to any suit or arbitration being filed or initiated, any controversy or claim arising out of or relating to this contract, or the breach thereof, is subject to mandatory mediation to take place in Hidalgo County, Texas at a time agreed upon by the parties. Such mediation must be held within thirty (30) days after the date either party requests mediation, unless otherwise agreed.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 36. JURISDICTION AND VENUE; MEDIATION, LITIGATION AND ARBITRATION continued:**

36.2 The Parties agree that any dispute arising out of or related to this Contract would likely involve an inquiry and interpretation of a substantial federal issue. Accordingly, the parties further agree that, if such mediation is unsuccessful, the proper and exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of this Contract shall be in the United States District Court for the Southern District of Texas, McAllen Division. The Owner and Contractor agree and stipulate that the United States District Court for the Southern District of Texas, McAllen Division, has personal jurisdiction over the parties. However, if federal subject matter jurisdiction is found to be lacking in any legal action, or if a federal court otherwise refuses or fails to exercise jurisdiction over the parties or the dispute, the Parties agree to submit any dispute arising out of or related to this Contract to binding arbitration pursuant to the Texas General Arbitration Act, Chapter 171 of the Texas Civil Practice and Remedies Code (“TAA”) and the terms of this Section 36. To the extent that TAA and this Section 36 conflict, the provisions of this Section 36 will apply.

36.3 The parties will select a single arbitrator in accordance with the rules of the American Arbitration Association. The parties further agree that all depositions in any arbitration shall be limited to a total of 24 hours for each party. The parties further agree that the parties shall not serve interrogatories or requests for admission on the other party. The parties further agree that the parties will instruct the Arbitrator, and the Arbitrator is required, to follow the substantive law of the State of Texas and to issue a reasoned award with findings of fact and conclusions of law. **The Arbitrator does not have authority to render a decision which contains a reversible error of state or federal law; the Arbitrator exceeds the Arbitrator’s powers if the Arbitrator renders a decision which contains a reversible error of state or federal law.** The parties further agree that a court reporter shall be present and keep a record of all hearings, which shall be conducted in Hidalgo County, Texas, and the cost of which will be divided equally among the parties notwithstanding any final award entered by the Arbitrator.

36.4 The parties further agree that the award of the Arbitrator may be reviewed based on the record by a state district court having jurisdiction over the parties and the subject matter and that, notwithstanding the applicability of the TAA, such district court shall conduct a *de novo* review of the award of the Arbitrator and consider any improper application of the law, and/or abuse of discretion by the Arbitrator, in considering the award of the Arbitrator and determining whether to confirm, vacate or modify the award of the Arbitrator. The parties further agree that any judgment or final order entered by the district court is subject to further appellate review consistent with applicable rules of appellate procedure that otherwise would be followed upon a judgment or final order being issued by such District Court.

### **SECTION 37. COORDINATION WITH OTHER PARTIES**

The Contractor shall coordinate the Contractor’s schedule with the schedule, work, labor, materials and/or equipment provided by all other contractors, subcontractors, manufacturers and suppliers to ensure timely completion of the project. The Contractor shall be responsible for reducing, mitigating, eliminating or limiting any delays or damages caused, in whole or in part, by all other contractors, subcontractors, manufacturers, suppliers and any other third parties, including, but not limited to, delays or damages caused by a lack of access to the lands upon which the work under the Contract is to be done. The parties agree that the Owner is not liable for any delays or damages caused, in whole or in part, by any other contractors, subcontractors, manufacturers, suppliers and/or any other third parties. The Contractor shall provide at his own expense and without liability to the Owner any land and access thereto that may be required for temporary construction facilities, or for storage of material.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 38. LAND FOR WORK**

38.1 The Owner shall provide as indicated on Drawings, and not later than the date when needed by the Contractor, the lands upon which the work under this Contract is to be done, right-of-ways for access to same, and such other lands which are designated on the Drawings for the use of the Contractor. Such lands and right-of-ways shall be adequate for the performance of the Contract. Any delay in the furnishing of these lands by the Owner shall be deemed proper cause for an equitable adjustment in both Contract price and time of completion.

38.2 The Contractor shall provide at his own expense and without liability to the Owner any additional land and access thereto that may be required for temporary construction facilities, or for storage of material.

### **SECTION 39. CLEANING UP**

The Contractor shall remove from the Owner's property and from all public and private property all temporary structures, rubbish and waste materials resulting from Contractor's operations, at Contractor's expense. This requirement shall not apply to property used for permanent disposal of rubbish or waste, and materials in accordance with permission granted of such disposal to the Contractor by the Owner thereof.

### **SECTION 40. ACCEPTANCE AND FINAL PAYMENT**

40.1 Upon receipt of written notice that the work is substantially completed or ready for final inspection and acceptance, the Engineer/Architect will promptly make such inspection, if Engineer/Architect finds the work acceptable under the Contract, and Contract fully performed, or substantially completed, Engineer/Architect shall promptly issue a signed certificate stating that the work required by this Contract has been completed or substantially completed and is accepted by Engineer/Architect under the terms and conditions thereof. The certificate shall contain the entire balance found to be due and payable to the Contractor, including the retained percentage, less a retention based on the Engineer's/Architect's estimate of the fair value of the claims against the Contractor and the cost of completing the incomplete or unsatisfactory items of work with specified amounts for each incomplete or defective item of work. The date of substantial completion of a project or specified area of a project is the date when the construction is sufficiently completed in accordance with the Contract Documents as modified by any change orders agreed to by the parties so that the Owner can occupy the project for the use for which it was intended.

40.2 Before issuance of final payment, the Contractor, if required in the Special Conditions, shall certify in writing to the Engineer/Architect that all payrolls, material bills, and other indebtedness or liens, with the work have been paid, or otherwise satisfied, except that in case of disputed indebtedness or liens, if the Contract does not include a payment of all such disputed amounts, including all related costs and interest in connection with said disputed indebtedness or lien which the Owner may be compelled to pay upon adjudication.

40.3 The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from unsettled liens, from faulty work appearing within a one year guarantee period from date of acceptance, from the requirements of the Drawings and Specifications, or from the manufacturer's guarantees. It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 40. ACCEPTANCE AND FINAL PAYMENT continued:**

40.4 In the event that the Contractor has previously made a claim that is still unsettled, the Owner shall be entitled to withhold from the final payment, as an offset, any amounts that the Owner, in its sole discretion, believes that the Contractor may owe to the Owner for liquidated damages or for the Contractor's failure to timely complete the project. Notwithstanding anything to the contrary herein, the Owner shall not be liable, in any event, for any interest that accrues on any amount(s) withheld from the final payment, as an offset, that the Owner, in its sole discretion, believes that the Contractor may owe to the Owner for liquidated damages or for the Contractor's failure to timely complete the project.

40.5 If after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor's and the Engineer/Architect so certified, the Owner shall, upon certificate of the Engineer/Architect, and without terminating the contract, make payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

40.6 Payments shall be in accordance with Texas Government Code § 2251. The Owner shall not be responsible for paying any interest on any amounts withheld from any progress payments or from final payment that the Owner, in its sole discretion, believes that the Contractor may owe to the Owner for liquidated damages or for the Contractor's failure to timely complete the project.

40.7 Contractor is advised that it shall be a requirement of this contract to submit the following forms, properly executed, along with their final Request for Payment: "AFFIDAVIT AND WAIVER OF LIEN-PRIME CONTRACTOR", "RELEASE AND WAIVER OF CLAIMS BY SUBCONTRACTORS AND PRODUCT VENDORS", "CONTRACTOR'S AFFIDAVIT AS TO STATUS OF LIENS". **Failure to submit these forms as required will cause a delay in payment to the contractor.**

### **SECTION 41. GENERAL GUARANTY**

41.1 Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of Substantial Completion. The Contractor warrants and guarantees for a period of one (1) year from the date of Final Acceptance of the system that the completed system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system or other work resulting from such defects.

41.2 The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 42. SHOP DRAWINGS**

The approval of shop drawings by the Engineer/Architect shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the Contractor of the responsibility for any error which may exist as the Contractor shall be responsible for the dimensions and design of adequate connections, details and satisfactory construction of all work.

### **SECTION 43. TESTING**

All testing authorized by the Engineer/Architect that meets specification requirements will be paid for by the Owner. Tests on materials that fail will be billed to and paid for by the Contractor.

### **SECTION 44. PAYMENTS**

44.1 Payments shall be in accordance with Texas Government Code § 2251.

44.2 Contractor shall submit to the Owner a Certificate for Payment on or before the 1<sup>st</sup> of the month.

44.3 The Owner shall pay to the Contractor for the performance of the work the amounts determined for the total number of each of the units of work completed at the unit price stated thereafter. The total number of units contained in the schedule is approximate only, and the final payment shall be made for the actual number of units that are incorporated in or made necessary by the work covered by the contract.

### **SECTION 45. PROGRESS PAYMENTS**

The owner shall make payments on account of the Contract as follows:

45.1 On not later than the first day of every month the Contractor shall present to the Engineer/Architect a Certificate for Payment covering the total quantities under each item of work that has been completed from the start of the job to and including the last day of the preceding month, and the value of the work so completed determined in accordance with the schedule of unit prices for such items together with such supporting evidence as may be required by the Engineer/Architect.

45.2 Measurements of units for payment shall be made in accordance with the Special Conditions of the contract.

45.3 Owner's duty to pay shall be after receipt of complete certificate for payment certified by Engineer/Architect. Owner shall pay by mail to the Contractor (90%) of the amount of the invoice--less previous payments made. The (10%) retained percentage may be held by the Owner until the value of the work completed at the end of any month equals 50 percent of the total amount of the Contract after which, if the Engineer/Architect finds that satisfactory progress is being made, recommendation shall be that all of the remaining monthly payments be paid at a percentage of retainage less than stated above. Payments for work under subcontracts of the Contractor, shall be subject to the above conditions applying to the Contract after the work under a Subcontract has been 50 percent completed.

45.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when the Owner's Designated Representative (ODR) approves the Application for Payment.

## **GENERAL CONDITIONS OF CONTRACT continued:**

### **SECTION 46. RETAINAGE**

Contracts equaling a total amount of \$400,000.00 or over will bear a retainage of five percent (5%) on each partial disbursement. Contracts totaling less than \$400,000.00 will bear a retainage of ten percent (10%) on each partial disbursement.

### **SECTION 47. OVERTIME**

Contractor shall pay its employees performing work under the contract time and one half for all hours worked in excess of forty (40) hours in one work week.

### **SECTION 48. RIGHT TO AUDIT**

The Owner reserves the right to audit the Contractor's books and records relating to the performance of the contract. The Owner, at its own expense, shall have the right at all reasonable times during normal business hours and upon at least twenty-four (24) hours' advance notice, to audit, examine, and make copies of or extracts from the books of account and records maintained by the Contractor with respect to the Construction Contract. If such audit shall disclose overpayment by Owner to Contractor, written notice of such overpayment shall be provided to the Contractor and the amount of overpayment shall be promptly reimbursed by Contractor to the Owner. In the event any such overpayment is not paid within ten (10) business days after receipt of such notice, the unpaid amount of such overpayment shall bear interest at the rate of one percent (1%) per month from the date of such notice until paid.

### **SECTION 49. INDEMNITY AND HOLD HARMLESS AGREEMENT**

TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S REPRESENTATIVE, THE ENGINEER/ARCHITECT AND THEIR AGENTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE WORK, INCLUDING, BUT NOT LIMITED TO, CLAIMS, DAMAGE, LOSS OR EXPENSES ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DEATH OR TO ANY INJURY TO DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF THE CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

### **SECTION 50. LIMITATION OF LIABILITY**

THE OWNER'S LIABILITY TO CONTRACTOR UNDER ANY CLAIM FOR BREACH OF CONTRACT IS LIMITED PURSUANT SECTION 271.153 OF THE TEXAS LOCAL GOVERNMENT CODE.

NOTWITHSTANDING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE OWNER'S LIABILITY TO CONTRACTOR SHALL NOT EXCEED THE DIFFERENCE BETWEEN CONTRACTOR'S ACTUAL COSTS TO COMPLETE THE WORK, ON ONE HAND, AND THE TOTAL AMOUNT OF COMPENSATION FOR WHICH CONTRACTOR AGREED TO PERFORM ALL OF THE WORK DESCRIBED IN THE CONTRACT DOCUMENTS AS REFERENCED IN THE BID SCHEDULE AND IN ARTICLE 1 OF THE FORM OF AGREEMENT, ALLOWING FOR ADJUSTMENTS IN THE COMPENSATION OWED TO CONTRACTOR PURSUANT TO ANY CHANGE ORDERS AGREED UPON BY THE PARTIES IN WRITING, ON THE OTHER HAND.

**GENERAL CONDITIONS OF CONTRACT continued:**

**SECTION 50. LIMITATION OF LIABILITY continued:**

ADDITIONALLY, REGARDLESS OF THE NATURE OF ANY CLAIM(S) ASSERTED AGAINST THE OWNER, THE PARTIES AGREE THAT THE OWNER SHALL NOT BE LIABLE TO THE CONTRACTOR FOR ANY LABOR OVERRUN, EQUIPMENT OVERRUN, MATERIAL ESCALATION, EXTENDED FIELD COSTS, DELAYS CAUSED BY THE SUBMISSION OF INCORRECT OR INCOMPLETE SUBMITTALS, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, PUNITIVE OR EXEMPLARY DAMAGES, OR ANY OTHER NON-DIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF BONDING CAPACITY, UNABSORBED HOME OFFICE OVERHEAD, LOSS IN LABOR PRODUCTIVITY, OR ANY CONSEQUENTIAL DAMAGES THAT OTHERWISE WOULD BE ALLOWED UNDER SECTION 271.153(A)(1) OF THE TEXAS LOCAL GOVERNMENT CODE.

**SECTION 51. CHAPTER 2252, TEXAS GOVERNMENT CODE**

In accordance with Chapter 2252 of the Texas Government Code, the Contractor hereby certifies that (a) Contractor does not engage in business with Iran, Sudan or any foreign terrorist organization and (b) Contractor is not listed by the Texas Comptroller as a terrorist organization.

**SECTION 52. CHAPTER 2270, TEXAS GOVERNMENT CODE**

If Respondent is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that Respondent does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Respondent does not make that certification, Respondent must indicate that in its Response and state why the certification is not required.

END OF SECTION

# **SUPPLEMENTAL GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING/ARCHITECTURAL CONSTRUCTION**

## **1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110**

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved. *For required coverages see General Conditions of Contract Section 28. Contractor's Insurance Requirements.*

Contractor shall abide by the Texas Workers' Compensation Commission rule §110.110 concerning requirements for governmental entities awarding a contract for a building or construction project, and for persons providing services on a building or construction project for a governmental entity.

Preamble to Rule 110.110 is provided as a guide to Contractor:

### **PREAMBLE TO RULE 110.110**

The Texas Workers' Compensation Commission adopts new §110.110, concerning requirements for governmental entities awarding a contract for a building or construction project, and for persons providing services on a building or construction project for a governmental entity. The new rule is adopted with changes to the proposed text published in the April 26, 1994 issue of the Texas Register (19 TexReg 3131). Subsections (a)(7) and (c)(7) were amended by adding language to further clarify who is covered by the rule. Subsections (c)(7)(J) and (e)(3) were added to clarify that a contractor or subcontractor is representing to the governmental entity that workers' compensation coverage is provided. Subsections (d)(8)(C) were added to require specific language regarding representations of coverage to be added to contracts to provide services on the project. Subsections (c)(7)(F), and (c)(7)(I)(5), (d)(5), (d)(8)(F), (e)(6), and (e)(8)(F) were amended to reduce the retention period for contractors and other persons providing services on the project from three years to one year. Subsection (g) was changed to state that this rule applies to contract advertised for bid after September 1, 1994, rather than awarded after September 1, 1994.

The Texas Labor Code, §406.096, requires workers' compensation insurance coverage for all persons providing services on a building or construction project for a governmental entity. The commission is aware that this statutory requirement is not being met, and this rule is designed to achieve compliance and to implement a recordkeeping process which will enable oversight of compliance. The rule does this by placing requirements on the governmental entity and on contractors and other persons providing services on a project. These requirements include coverage, certificates of coverage, posted notices of coverage, and notification of changes in coverage status. The rule does not create any duty or burden on anyone which the law does not establish.

The rule defines terms which apply to governmental entity building or construction projects and sets up a clear procedure for governmental entities and contractors that bid for building and construction projects to follow in complying with the requirements of the Texas Labor Code §406.096. It also defines "persons who provide services on a project" who are subject to the statutory requirement of coverage, and sets forth their requirements to comply with the statute and the rule.

## **1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110 continued:**

It specifically excludes persons such as food/beverage vendors whose deliveries and labor are not permanently incorporated into the project. The rule puts persons on notice that providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other persons providing services on the project to administrative penalties, civil penalties, or other civil actions.

The rule requires a governmental entity to timely obtain certificates of coverage, retain them for the duration of the project plus three years, and provide them to the commission upon request and to others entitled to them by law. It also requires the governmental entity, as a prerequisite to awarding a contract, and as part of the contract, to require that the contractor: provide coverage and certificates of coverage for the contractor's employees; timely obtain and provide the governmental entity all required certificates of coverage for all persons providing services on the project; retain certificates of coverage on file for the duration of the project and for one year thereafter; notify the governmental entity in writing by certified mail or person delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; post notices on each project site; and contractually require persons with whom it contracts to do the same, with the certificates of coverage to be provided to the person for whom they are providing services. The rule also sets out the language to be included in bid specifications and in contracts awarded by a governmental entity and the information required to be in the posted notice to employees. It further established a method for obtaining the certificates from persons providing services on the project and providing them to the governmental entity.

It requires a contractor awarded a building or construction contract to: provide workers' compensation coverage to the contractor's employees for the duration of the project; file a certificate of coverage of the contractor's employees with the governmental entity prior to being awarded a contract; obtain and provide to the governmental entity, certificates of coverage from each other person with whom it has contracted to provide services on the project, prior to that person beginning work on the project; obtain and provide new certificates of coverage shown on the current certificate ends during the duration of the project; retain all certificates of coverage for the duration of the project and for one year thereafter; notify the governmental entity of material changes in coverage; contractually require each other person with whom it contracts to provide a certificate of coverage; and post notices on each project site.

All other persons providing services on a project have the same requirements as a contractor, with the exception of posting notices and with the exception that the certificate of coverage is given to the person for whom they contracted to provide services on the project. The rule uses the term "persons providing services on the project" in lieu of the statutory term "subcontractor" because the term "subcontractor" as used in the statute (§406.096) and in this rule is broader than standard industry usage. The use of the different terminology will prevent confusion.

The rule does not create any duty or burden on anyone which the law does not establish.

The new rule is adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and Texas Labor Code, §406.096, which establishes requirements for governmental entities, contractors, and subcontractors ("persons providing services on the project") regarding workers' compensation coverage for workers on compensation coverage for workers on public building or construction projects.

**1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110 continued:**

Rule 110.100 Reporting Requirements for Building or Construction Projects for Governmental Entities

- (a) The following word and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this rule shall have the meaning defined in the Texas Labor Code, if so defined.
- (1) Certificate of coverage (“certificate”)-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers’ compensation insurance coverage for the person’s or entity’s employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.
  - (2) Building or construction - Has the meaning defined in the Texas Labor Code, (e)(1).
  - (3) Contractor - A person bidding for or awarded a building or construction project by a governmental entity.
  - (4) Coverage - Workers’ compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).
  - (5) Coverage agreement - A written agreement on form TWCC-81, form TWCC-82, form TWCC-83, or form TWCC-84, filed with the Texas Workers’ Compensation Commission which establishes a relationship between the parties for purposes of the Workers’ Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G as one of employer/employee and establishes who will be responsible for providing workers’ compensation coverage for person providing services on the project.
  - (6) Duration of the project - Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the governmental entity.
  - (7) Persons providing services on the project (“subcontractor” in §406.096 of the Act) - Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. “Services” includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
  - (8) Project - Includes the provision of all services related to a building or construction contract for a governmental entity.

**1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110 continued:**

- (b) Providing or causing to be provided a certificate of coverage pursuant to this rule is a representation by the insured that all employees of the insured who are providing services on the project are covered by workers' compensation coverage, that the coverage is based on proper reporting of classification codes and payroll amounts, and that all coverage agreements have been filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other person providing services on the project to administrative penalties, criminal penalties, civil penalties, or other civil actions.
  
- (c) A governmental entity that enters into a building or construction contract on a project shall:
  - (1) include in the bid specifications, all the provisions of subsection (d) of this rule, using the language required by paragraph (7) of this subsection;
  - (2) as part of the contract, using the language required by paragraph (7) of this subsection, require the contractor to perform as required in subsection (d) of this rule;
  - (3) obtain from the contractor a certificate of coverage for each person providing services of the project, prior to that person beginning work on the project;
  - (4) obtain from the contractor a new certificate of coverage showing extension of coverage:
    - (A) before the end of the current coverage period, if the contractor's current certificate of coverage shows that the coverage period ends during the duration of the project; and
    - (B) no later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project;
  - (5) retain certificates of coverage on file for the duration of the project and for three years thereafter;
  - (6) provide a copy of the certificates of coverage to the commission upon request and to any person entitled to them by law; and
  
- A
  - (7) use the following language for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standard of documentation in Figure 1:

**1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110 continued:**

Article \_\_. Worker's Compensation Insurance Coverage.

A. Definitions:

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

Duration of the project-includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity. Persons providing services on the project ("subcontractor" in §406.096)-includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The contractor shall provide coverage, based on proper reporting a classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.044(44) for all employees of the contractor providing services on the project, for the duration of the project.

C. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificate of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

**1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110 continued:**

- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, for and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) obtain from each person with whom it contracts, and provide to the contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any persons providing services on the project; and
  - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

**1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110 continued:**

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

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

(d) A contractor shall:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
  - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

**1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110 continued:**

- (7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text in Figure 2 provided by the commission on the sample notice, without any additional word or changes:

(Figure 2)

**REQUIRED WORKERS' COMPENSATION COVERAGE**

“The law required that each person working on this site or providing services related to this construction project must be covered by workers’ compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee.”

“Call the Texas Workers’ Compensation Commission at 512-440-3789 to receive information on the legal requirements of coverage, to verify whether your employer has provided the required coverage or to report an employer’s failure to provide coverage.” and

- (8) contractually require each person with whom it contracts to provide services on a project, to:
- (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
  - (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;
  - (C) include in all contracts to provide services on the project the language in subsection (e)(3) of this rule;
  - (D) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (E) obtain from each other person with whom it contracts and provide to the contractor:
    - (i) a certificate of coverage, prior to the other person beginning work on the project; and
    - (ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

**1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110 continued:**

- (F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (H) contractually require each other person with whom it contracts, to perform as required by paragraphs (A) - (H), with the certificate of coverage to be provided to the person for whom they are providing services.

(e) A person providing services on a project, other than a contractor, shall:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) provide a certificate of coverage as required by its contract to provide services on the project, prior to beginning work on the project;
- (3) have the following language in its contract to provide services on the project:

“By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers’ compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission’s Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties criminal penalties, civil penalties, or other civil actions.”

- (4) provide the person for whom it is providing services on the project, prior to the end of the coverage period shown on its current certificate of coverage, a new certificate showing extension of coverage, if the coverage period shown on the certificate of coverage ends during the duration of the project;
- (5) obtain from each person providing services on a project under contract to it, and provide as required by its contract:
  - (A) a certificate of coverage, prior to the other person beginning work on the project; and
  - (B) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

**1. TEXAS WORKERS' COMPENSATION COMMISSION RULE §110.110 continued:**

- (6) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (7) notify the governmental entity in writing by certified mail or personal delivery, of any change that materially affects the provision of coverage of any person providing services on the project and send the notice within 10 days after the person knew or should have known of the change; and
- (8) contractually require each other person with whom it contracts to:
  - (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
  - (B) provide a certificate of coverage to it prior to that other person beginning work on the project;
  - (C) include in all contracts to provide services on the project the language in subsection (e)(3) of this rule;
  - (D) provide, prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (E) obtain from each other person under contract to it to provide services on the project, and provide as required by its contract;
  - (F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (H) contractually require each person with whom it contracts, to perform as required by paragraphs (A) - (H), with the certificate of coverage to be provided to the person for whom they are providing services.
- (f) If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or applications, and to this end the provisions of this rule are declared to be severable.
- (g) This rule is applicable for building or construction contracts advertised for bid by a governmental entity on or after September 1, 1994.

## **2. PREVAILING WAGE LEGAL REQUIREMENTS**

The Contractor's attention is called to Articles 5159A and 5160 of the Revised Civil statutes of Texas which Statutes must be complied with. These articles are as follows:

### **ARTICLE 5159A:**

**SECTION 1.** Not less than the general prevailing rate of per diem wages for work of a similar character in the locality which the work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work, shall be paid to all laborers, workmen and mechanics employed by or on behalf of any County, City and County, City, Town, District or other political subdivision of the State, engaged in the construction of public works, exclusive of maintenance work. Laborers, workmen and mechanics employed by contractors or subcontractors in the execution of any contract or contracts for public works with the State, or any officer or public body thereof, or in the execution of any contract or contracts for public works, with any County, City and County, City, Town, District or other political subdivision of this State, or any officer or public body thereof, shall be deemed to be employed upon public work.

**SECTION 2.** The public body awarding any contract for public work on behalf of the State, or on behalf of any County, City and County, City, Town, District or other political subdivision thereof, or otherwise undertaking any public work, shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workmen or mechanic needed to execute the contract, and shall specify in the call for bids for said contract, and in the contract itself, what the general prevailing rate of per diem wages in the said locality is for each craft or type of workmen needed to execute the contract, also the prevailing rate for legal holiday and overtime work, and it shall be needed to execute the contract, also the prevailing rate for legal holiday and overtime work, and it shall be mandatory upon the Contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen and mechanics employed by them in the execution of the contract. The Contractor shall forfeit as a penalty to the State, County, City and County, City, Town, District or other political subdivision on whose behalf the contract is made or awarded, Ten Dollars (\$10.00) for each laborer, workman or mechanic employed for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the stipulated rates for any work done under said contract, by him, or by any subcontractor under him, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such public body awarding the contract, and its agents and officers to take cognizance of complaints of all violations of the provisions of this Act committed in the course of the execution of the contract, and when making payments to the contractor of monies becoming due under said contract to withhold and retain therefrom all sums and amounts which shall have been forfeited pursuant to the herein said stipulation and the terms of this Act; provided, however, that no sum shall be so withheld, retained or forfeited, except from the final payment, without a full investigation by the awarding body. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of said subcontractor's failure to comply with the terms of this Act, and if payment has already been made to him the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

**SECTION 3.** The contractor and each subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed by him, in connection with the said public work, and showing the actual per diem wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the public body awarding the contract, its officers and agents.

## **2. PREVAILING WAGE LEGAL REQUIREMENTS Continued:**

**SECTION 4.** Any construction or repair work done under contract, and paid for in whole or in part out of public funds, other than work done directly by any public utility company pursuant to order of the Railroad Commission or other public authority, whether or not done under public supervision or direction or paid for wholly or in part out of public funds, shall be held to be “public works” within the meaning of political subdivision of this State in which the building, highway, road, excavation, or other structures, project, development or improvement is situated in all cases in which the contract is awarded by the State, or any public body thereof, and shall be held to mean the limits of the County, City and County, City, Town, District or other political subdivision on whose behalf the contract is awarded in all other cases. The term “general prevailing rate of per diem wages” shall be the rate determined upon as such rate by the public body awarding the contract, or authorizing the work, whose decision in the matter shall be final. Nothing in this act, however, shall be construed to prohibit the payment to any laborer, workman or mechanic employed on any public work as aforesaid of more than the said general prevailing rate of wages.

### **ARTICLE 5160. Bond for Wages:**

Any person or persons, firm or corporation, entering into a formal contract with this State or its counties or school districts or other subdivisions thereof or any municipality therein for the construction of any public building, or the prosecution and completion of any public work shall be required, before, commencing such work, to execute the usual Penal Bond, with additional obligation that such contractor shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract. Any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the State or any adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claims and judgment of the State or municipality.

If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due to the State or municipality, the remainder shall be distributed pro-rata among said intervenors. Provided, further, that all claims for labor and materials furnished to said Contractor, and all claims for labor and material furnished to any contractor shall be itemized and sworn to as required by Statutes as to mechanic’s lien claims, and such claims shall be filed with the County Clerk of the County, in which said work is being prosecuted, within ninety days from the date of the delivery of said material and the performance of said work. The County Clerk shall note on the mechanic’s lien record, the name of the claimant, the amount claimed, the name of the contractor and the name of the county, School District, other subdivisions, or municipality with which the contract was made; and the County Clerk shall index the claim under the name of the contractor and under the name of the County, School District, other subdivision or municipality; with which the contract was made.

Provided further, that after completion and acceptance of completed project all moneys due contractor under said contract shall be held by the state or its counties or school districts or other subdivision, thereof or an affidavit made by Contractor that all just bills for labor and material under this contract has been paid in full by the Contractor.

Acts 1913, P. 185; Acts 1929, 41<sup>st</sup> leg., P.4881. Ch. 22 paragraph 1.

**GENERAL PREVAILING WAGE RATES**

"General Decision Number: TX20190255 01/04/2019

Superseded General Decision Number: TX20180305

State: Texas

Construction Type: Building

County: Hidalgo County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/04/2019

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER.....	\$ 28.00	22.35

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ENGI0178-005 06/01/2014

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 29.00	10.60
(2) Cranes with Pile Driving or Caisson		

Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 27.50	10.60

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\* IRON0084-011 06/01/2018

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 23.77	7.12

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PLUM0412-004 04/01/2013

	Rates	Fringes
PLUMBER.....	\$ 31.14	12.43

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SUTX2014-031 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 16.17	0.00
CARPENTER.....	\$ 14.21	2.22
CEMENT MASON/CONCRETE FINISHER....	\$ 12.46	0.00
ELECTRICIAN.....	\$ 18.44	4.53
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 11.54	2.17
IRONWORKER, REINFORCING.....	\$ 12.01	0.00
IRONWORKER, STRUCTURAL.....	\$ 15.04	4.34
LABORER: Common or General.....	\$ 8.00	0.00
LABORER: Mason Tender - Brick....	\$ 10.00	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.89	0.96
LABORER: Pipelayer.....	\$ 11.00	3.47
LABORER: Roof Tearoff.....	\$ 10.06	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.04	1.01
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22	0.34
OPERATOR: Forklift.....	\$ 14.83	0.00

OPERATOR: Grader/Blade.....	\$ 10.00	0.00
OPERATOR: Loader.....	\$ 12.87	0.70
OPERATOR: Mechanic.....	\$ 17.00	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03	0.00
OPERATOR: Roller.....	\$ 12.70	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 11.27	0.00
PIPEFITTER.....	\$ 15.22	3.16
ROOFER.....	\$ 11.42	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 18.40	2.12
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 21.13	6.53
TILE FINISHER.....	\$ 11.22	0.00
TILE SETTER.....	\$ 12.15	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00	4.11

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
for Federal Contractors applies to all contracts subject to the  
Davis-Bacon Act for which the contract is awarded (and any  
solicitation was issued) on or after January 1, 2017. If this  
contract is covered by the EO, the contractor must provide  
employees with 1 hour of paid sick leave for every 30 hours  
they work, up to 56 hours of paid sick leave each year.  
Employees must be permitted to use paid sick leave for their  
own illness, injury or other health-related needs, including  
preventive care; to assist a family member (or person who is  
like family to the employee) who is ill, injured, or has other  
health-related needs, including preventive care; or for reasons  
resulting from, or to assist a family member (or person who is  
like family to the employee) who is a victim of, domestic  
violence, sexual assault, or stalking. Additional information  
on contractor requirements and worker protections under the EO  
is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the

interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**EXHIBIT L-1**

**AFFIDAVIT AND WAIVER OF LIEN PRIME CONTRACTOR**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally appeared before me, the undersigned Notary Public for said County and State

\_\_\_\_\_(Name of Individual),

\_\_\_\_\_(Title) of \_\_\_\_\_

(Prime Contractor), who being duly sworn by me states on oath that all product suppliers and Subcontractors, payrolls, sales tax, privilege tax or license, old age benefits tax, state and federal unemployment insurance, and other liabilities incurred in the performance of \_\_\_\_\_

(Type of Contract) Contract for the construction of improvements at **Project No. #** \_\_\_\_\_

**Project Title** \_\_\_\_\_(Name of Project), have been paid in full and

that the above named Prime Contractor waives any claims and released \_\_\_\_\_

(Owner) from any rights or claims (including lien rights) for debts due and owing by virtue of the furnishing of any labor, products, and supplies furnished for such improvements.

The above named Prime Contractor agrees to indemnify the Owner and save him harmless on account of any loss he may sustain in reliance upon this Affidavit and Waiver of Lien including the amount of any lien he may be compelled to pay all costs relating thereto and a reasonable attorney's fee.

\_\_\_\_\_  
(Prime Contractor)

By: \_\_\_\_\_  
Type/Print Name

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

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

Sworn to and subscribed before me  
this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT L-2**

**RELEASE AND WAIVER OF CLAIMS BY  
SUBCONTRACTORS AND PRODUCT VENDORS**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally appeared before me the undersigned authority in and for said County and State (Name of Individual), \_\_\_\_\_ (Title) of \_\_\_\_\_ (Company), who, being duly sworn by me states on oath that all bills for labor and products, sales tax, privilege tax or license, old age benefits tax, state and federal unemployment insurance and other liability have been paid in full, or that funds are in hand to discharge such liabilities when due, incurred in the performance of its Subcontract for furnishing labor or products in the construction of improvements at **Project No. #** \_\_\_\_\_ **Project Title** \_\_\_\_\_ (Name of Project & Location), upon receipt of check in the amount \$ \_\_\_\_\_, the undersigned company waives any claims and releases (Owner) \_\_\_\_\_ (Contractor) from any rights or claims for debts due and owing by virtue of the furnishing of any labor or products and any lien therefore.

\_\_\_\_\_  
(Name of Company)

Signature: \_\_\_\_\_

By: \_\_\_\_\_  
Type/Print Name

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

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

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT L-3**

**CONTRACTOR’S AFFIDAVIT AS TO STATUS OF LIENS**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally appeared before me, the undersigned Notary Public for said County and State, \_\_\_\_\_(Name of Individual), \_\_\_\_\_(Title), of \_\_\_\_\_(Prime Contractor), who being duly sworn by me states on oath that to the best of his knowledge and belief, except as listed below, the Releases and Waivers of Claim attached hereto include all Subcontractors and all suppliers of labor, products, and equipment provided by all persons who may have lien against the property of \_\_\_\_\_(Owner), **Project No. #\_\_ Project Title \_\_\_\_\_**, located at \_\_\_\_\_(Location of Project), arising out of the construction of improvements thereon.

Exceptions: (If none, write “NONE.” Any exception listed shall be bonded by the Contractor to indemnify the Owner, and a copy of each such bond shall be attached hereto.)

- 1.
- 2.
- 3.
- 4.

\_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_  
Type/Print Name

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

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

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## **M. TECHNICAL SPECIFICATIONS**

**TECHNICAL SPECIFICATIONS INDEX**

Section 01010	Summary of Work
Section 01045	Cutting and Patching
Section 01100	Summary
Section 01200	Price and Payment Procedures
Section 01300	Administrative Requirements
Section 01340	Submittals
Section 01500	Temporary Facilities and Controls
Section 01600	Product Requirements
Section 01601	Substitution Procedures
Section 01700	Execution Requirements
Section 01732	Selective Demolition
Section 01740	Cleaning
Section 01770	Closeout Procedures
Section 01800	General Notes
Section09200-1	Lath and Plaster
Section09201-2	Dryvet Application

END OF SECTION

**SECTION 01010 - SUMMARY OF WORK****PART 1 - GENERAL**

## 1.01 SUMMARY

- A. Project identification:
- Veterans War Memorial of Texas Phase III  
3129 Galveston Ave,  
McAllen, TX 78501
- B. Work Covered by Contract Documents:
1. Base Bid:  
**Summary of Work:** Project includes the installation and construction of brick pavers, concrete curb, landscaping and irrigation within the Veterans War Memorial.
- C. Particular project requirements:
- Existing site conditions and restrictions:  
(To be covered at pre-construction meeting)
  - Requirements for sequencing or scheduling:  
(To be covered at pre-construction meetings)
  - Prior or concurrent work by Owner or others:  
(To be covered at pre-construction meetings)
  - Owner's partial occupancy:  
(To be covered at pre-construction meetings)
  - Contractor's use of existing facilities: Not Allowed.
- D. Permits: Apply for, obtain, and pay for permits required to perform the work. Submit copies to Architect.
- E. Codes: Comply with applicable codes and regulations of authorities having jurisdiction. See individual specification Sections for requirements and submittals. Submit copies of inspection reports, notices and similar communications to Owner.
- F. Dimensions: Verify dimensions indicated on drawings with field dimensions before fabrication or ordering of materials. Do not scale drawings.

- G. Existing Conditions: Notify Owner of existing conditions differing from those indicated on the drawings. Do not remove or alter structural components without prior written approval.
- H. Definitions for terms used in the specifications:
  - 1. Provide: Furnish and install, complete with all necessary accessories, ready for intended use. Pay for all related costs.
  - 2. Approved: Acceptance of item submitted for approval. Not a limitation or release for compliance with the Contract Documents or regulatory requirements. Refer to limitations of 'Approved' in General and Supplementary Conditions.
  - 3. Match Existing: Match existing as acceptable to the Owner.
- I. Intent: Drawings and specifications are intended to provide the basis for proper completion of the work suitable for the intended use of the Owner. Anything not expressly set forth but which is reasonable implied or necessary for proper performance of the project shall be included.
- J. Writing style: Specifications are written in the imperative mode. Except where specifically intended otherwise, the subject of all imperative statements is the Contractor. For example, 'Provide tile' means 'Contractor shall provide tile.'

END OF SECTION-01010

**SECTION 01010 - SUMMARY OF WORK****PART 1 - GENERAL**

## 1.01 SUMMARY

- A. Project identification:  
Veterans War Memorial of Texas Phase III  
3129 Galveston Ave,  
McAllen, TX 78501
- B. Work Covered by Contract Documents:  
1. Base Bid:  
**Summary of Work:** Project includes the installation and construction of brick pavers, concrete curb, landscaping and irrigation within the Veterans War Memorial.
- C. Particular project requirements:  
1. Existing site conditions and restrictions:  
(To be covered at pre-construction meeting)  
2. Requirements for sequencing or scheduling:  
(To be covered at pre-construction meetings)  
3. Prior or concurrent work by Owner or others:  
(To be covered at pre-construction meetings)  
4. Owner's partial occupancy:  
(To be covered at pre-construction meetings)  
5. Contractor's use of existing facilities: Not Allowed.
- D. Permits: Apply for, obtain, and pay for permits required to perform the work. Submit copies to Architect.
- E. Codes: Comply with applicable codes and regulations of authorities having jurisdiction. See individual specification Sections for requirements and submittals. Submit copies of inspection reports, notices and similar communications to Owner.
- F. Dimensions: Verify dimensions indicated on drawings with field dimensions before fabrication or ordering of materials. Do not scale drawings.

- G. Existing Conditions: Notify Owner of existing conditions differing from those indicated on the drawings. Do not remove or alter structural components without prior written approval.
- H. Definitions for terms used in the specifications:
  - 1. Provide: Furnish and install, complete with all necessary accessories, ready for intended use. Pay for all related costs.
  - 2. Approved: Acceptance of item submitted for approval. Not a limitation or release for compliance with the Contract Documents or regulatory requirements. Refer to limitations of 'Approved' in General and Supplementary Conditions.
  - 3. Match Existing: Match existing as acceptable to the Owner.
- I. Intent: Drawings and specifications are intended to provide the basis for proper completion of the work suitable for the intended use of the Owner. Anything not expressly set forth but which is reasonable implied or necessary for proper performance of the project shall be included.
- J. Writing style: Specifications are written in the imperative mode. Except where specifically intended otherwise, the subject of all imperative statements is the Contractor. For example, 'Provide tile' means 'Contractor shall provide tile.'

END OF SECTION-01010

**SECTION 01045 – CUTTING AND PATCHING****PART 1 - GENERAL****1.1 COORDINATION**

- A. The General Conditions of the Contract for Construction and the Supplementary Conditions to the General Conditions of the Contract for Construction shall be considered as part of this section of the specifications.
- B. Each Bidder shall be responsible for determining during the bidding period the extent that any addenda issued during the bidding period may affect this section of the specifications.
- C. Reference Instructions to Bidders for requirements regarding substitutions of materials and products.
- D. Where conflicts occur between the drawings and specifications, between different drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

**1.2 SECTION INCLUDES**

- A. Requirements and limitations for cutting and patching of Work.

**1.3 RELATED SECTIONS**

- A. Section 01100 – Summary: Work by Owner or by separate Contractors.
- B. Section 01120 – Alteration Project Procedures.
- C. Section 01600 – Substitution Procedures.
- D. Individual Product Specification Sections:
  - 1. Cutting and patching incidental to work of the section.
  - 2. Advance notification to other sections of openings required in work of those sections.
  - 3. Limitations on cutting structural members.

**1.4 SUBMITTALS**

- A. Submit written request in advance of cutting or alteration, which affects:
  1. Structural integrity of any element of Project.
  2. Integrity of weather exposed or moisture resistant element.
  3. Efficiency, maintenance, or safety of any operational element.
  4. Visual qualities of sight exposed elements.
  5. Work of Owner or separate Contractor.
- B. Include in request:
  1. Identification of Project.
  2. Location and description of affected Work.
  3. Necessity for cutting or alteration.
  4. Description of proposed Work and Products to be used.
  5. Alternatives to cutting and patching.
  6. Effect on work of Owner or separate Contractor.
  7. Written permission of affected separate Contractor.
  8. Date and time work will be executed.

## **PART 2 - PRODUCTS**

### **2.1 MATERIALS**

- A. Primary Products: Those required for original installation.
- B. Product Substitution: For any proposed change in materials, submit request for substitution in accordance with Section 01600 – Substitution Procedures.

## **PART 3 - EXECUTION**

### **3.1 EXAMINATION**

- A. Examine existing conditions prior to commencing Work, including elements subject to damage or movement during cutting and patching.
- B. After uncovering existing Work, assess conditions affecting performance of work.

- C. Beginning of cutting or patching means acceptance of existing conditions.

### 3.2 PREPARATION

- A. Provide temporary supports to ensure structural integrity of the Work. Provide devices and methods to protect other portions of Project from damage.
- B. Provide protection from elements for areas, which may be exposed by uncovering work. Avoid unnecessary or extended exposure to weather of work exposed by cutting. Avoid entrapment of moisture or other deleterious mater between existing substrates and new work.
- C. Maintain excavations free of water.

### 3.3 CUTTING

- A. Execute cutting and fitting including excavation and fill to complete the Work.
- B. Uncover work to install improperly sequenced work.
- C. Remove and replace defective or non-conforming work.
- D. Remove samples of installed work for testing when requested.
- E. Employ skilled and experienced installer to perform cutting for weather exposed and moisture resistant elements, and sight-exposed surfaces.
- F. Cut rigid materials using masonry saw or core drill. Pneumatic tools not allowed without prior approval.

### 3.4 PATCHING

- A. Execute patching to complement adjacent Work.
- B. Fit Products together to integrate with other Work.
- C. Execute work by methods to avoid damage to other Work, and which will provide appropriate surfaces to receive patching and finishing.

- D. Employ skilled installer to perform patching for weather exposed and moisture resistant elements, and sight-exposed surfaces.
- E. Restore work with new Products in accordance with requirements of Contract Documents.
- F. Fit work air tight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces.
- G. Refinish surfaces to match adjacent finish. For continuous surfaces, refinish to nearest intersection or natural break. For an assembly, refinish entire unit.

END OF SECTION-01045

**SECTION 01100 - SUMMARY****PART 1 - GENERAL****1.1 SUMMARY OF WORK****A. Project Identification: As follows:**

1. Project: Veterans War Memorial of Texas Phase III, 3129 Galveston Ave, McAllen, TX 78501
2. Owner: City of McAllen

**B. Contract Documents, dated July 2019 were prepared by City of McAllen Staff. Base Bid: This project consists of the following:**

**Summary of Work:** Project includes the installation and construction of brick pavers, concrete curb, landscaping and irrigation within the Veterans War Memorial.

Upon substantial completion of this project, the sign will be a complete working system. Contractor's Use of Premises: During construction, Contractor shall have limited use of site and building indicated. Contractor's use of premises is limited only by Owner's right to perform work or employ other contractors on portions of Project:

1. These facilities will continue its occupancy and operations as such, contractor's activities shall not interfere with the occupancy and operations as currently exist. A cooperative effort and relationship shall be established and exist between contractor and all involved personnel.
2. 24-hour notice to owner to advise occupied building personal of work to be performed.

Normal business working hours will be observed.

**END OF SECTION - 01100**

## SECTION 01200 - PRICE AND PAYMENT PROCEDURES

### PART 1 - GENERAL

#### 1.1 COORDINATION

- A. The General Conditions of the Contract for Construction and the Supplementary Conditions to the General Conditions of the Contract for Construction shall be considered as part of this section of the specifications.
- B. Each Bidder shall be responsible for determining during the bidding period the extent that any addenda issued during the bidding period may affect this section of the specifications.
- C. Reference Instructions to Bidders for requirements regarding substitutions of materials and products.
- D. Where conflicts occur between the drawings and specifications, between different drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

#### 1.2 UNIT PRICES

- A. Changes to the Work incorporating Unit Prices will be made by Change Order.

#### 1.3 CONTRACT MODIFICATION PROCEDURES

- A. On Owner's approval of a proposal from Contractor, Architect will issue a Change Order on AIA Document G701, for all changes to Contract Sum or Contract Time.
- B. When Owner and Contractor disagree on the terms of a proposal, Architect may issue a Construction Change Directive on AIA Document G714, instructing Contractor to proceed with the change. Construction Change Directive will contain a description of the change and designate the method to be followed to determine changes to Contract Sum or Contract Time.

#### 1.4 PAYMENT PROCEDURES

- A. Submit a Schedule of Values **at least 10 days before** the first Application for Payment. In Schedule of Values, break down Contract Sum into at least one line item for each Specification Section. Correlate the Schedule of Values with Contractor's Construction Schedule.

- B. Submit 3 copies of each application for payment on AIA Document G702/703, according to the schedule established in Owner/Contractor Agreement.
1. For the second Application for Payment through the Application for Payment submitted at Substantial Completion, submit partial releases of liens from each subcontractor or supplier for whom amounts were requisitioned in the previous Application for Payment.
  2. Submit final Application for Payment after completion of Project closeout procedures with release of liens and supporting documentation. Include consent of surety to final payment and insurance certificates.

END OF SECTION - 01200

**SECTION 01300 - ADMINISTRATIVE REQUIREMENTS****PART 1 - GENERAL****1.1 COORDINATION**

- A. The General Conditions of the Contract for Construction and the Supplementary Conditions to the General Conditions of the Contract for Construction shall be considered as part of this section of the specifications.
- B. Each Bidder shall be responsible for determining during the bidding period the extent that any addenda issued during the bidding period may affect this section of the specifications.
- C. Reference Instructions to Bidders for requirements regarding substitutions of materials and products.
- D. Where conflicts occur between the drawings and specifications, between different drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

**1.2 PROJECT MANAGEMENT AND COORDINATION**

- A. Verify layout information shown on Drawings, in relation to property survey and existing benchmarks, before laying out the Work.
- B. Coordinate construction to ensure efficient and orderly execution of each part of the Work.
- C. Progress meetings will be held at Project site every two weeks. Notify Owner and Architect of meeting dates. Each subcontractor or other entity concerned with current progress or involved with planning or coordination of future activities, shall attend. The Contractor shall:
  - 1. **Prepare a progress meeting agenda.**
  - 2. **Prepare a sign in sheet for each progress meeting.**
  - 3. **Prepare minutes of each meeting and distribute to parties present.**

**1.3 CONSTRUCTION SCHEDULE**

- A. Prepare a horizontal bar-chart construction schedule. Provide a separate time bar for each activity and a vertical line to identify the first workday of each week. Use same breakdown of Work indicated in the Schedule of Values. As Work progresses, mark each bar to indicate actual completion.
1. Submit within twenty (20) days after date established for Commencement of the Work.
  2. Coordinate each element with other activities. Show each activity in proper sequence. Indicate sequences necessary for completion of related Work.
  3. Indicate Substantial Completion and allow time for Architect's procedures necessary for certifying Substantial Completion.
  4. Schedule Distribution: Distribute copies to Owner, Architect, subcontractors, and parties required to comply with dates.
  5. Updating: Revise the schedule after each meeting or activity where revisions have been made. Distribute revised copies to Owner, Architect, subcontractors, and parties required to comply with dates.

#### 1.4 SUBMITTAL PROCEDURES

- A. Coordinate submittal preparation with construction schedule, fabrication lead-times, other submittals, and activities that require sequential operations.
1. No extension of Contract Time will be authorized due to failure to transmit submittals in time to permit processing sufficiently in advance of when materials are required in the Work.
  2. Architect will not accept submittals from sources other than Contractor.
- B. Prepare submittals by placing a permanent label on each for identification. Provide a 4 by 5 inch space on the label or beside title block to record review and approval markings and action taken. Include the following information on the label:
1. Project name.

2. Date.
  3. Name and address of Contractor.
  4. Name and address of subcontractor or supplier.
  5. Number and title of appropriate Specification Section.
  6. Contractor's certification that materials comply with specified requirements.
- D. Coordinate each submittal with other submittals and with work that does not require submittals.
- E. Product Data: Mark each copy to show applicable choices and options. Include the following:
1. Data indicating compliance with specified standards and requirements.
  2. Notation of coordination requirements.
  3. For equipment data, include rated capacities, dimensions, weights, required clearances, and furnishes specialties and accessories.
- F. Shop Drawings: Submit newly prepared information drawn to scale. Do not reproduce Contract Documents or copy standard information. Submit 1 reproducible print and 1 blue- or black-line print on sheets at least 8-1/2 by 11 inches but no larger than 30 by 42 inches. Architect will return the reproducible print.
- G. Include the following:
1. Dimensions, profiles, methods of attachment, coordination with adjoining work, large scale details, and other information, as appropriate for the Work.
  2. Identification of products and materials.
  3. Notation of coordination requirements.

4. Notation of dimensions established by field measurement.
  5. Identification of deviations from Contract Documents.
- F. Samples: Submit Samples finished as specified and identical with the material proposed. Where variations are inherent in the material, submit sufficient units to show limits of the variations. Include product name or name of the manufacturer.
- H. Architect will review each submittal, mark as appropriate to indicate action taken, and return copies less those retained. Compliance with specified requirements remains Contractor's responsibility.

**PART 2 - PRODUCTS (Not Applicable)**

END OF SECTION-01300

**SECTION 01340 - SUBMITTALS****PART 1 - GENERAL****1.1 COORDINATION**

- A. The General Conditions of the Contract for Construction and the Supplementary Conditions to the General Conditions of the Contract for Construction shall be considered as part of this section of the specifications.
- B. Each Bidder shall be responsible for determining during the bidding period the extent that any addenda issued during the bidding period may affect this section of the specifications.
- C. Reference Instructions to Bidders for requirements regarding substitutions of materials and products.
- D. Where conflicts occur between the drawings and specifications, between different drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

**1.2 WORK INCLUDED**

- A. Provide shop drawings, product data, physical samples and color samples as indicated herein and in each technical section of these specifications.

**1.3 RELATED WORK SPECIFIED IN OTHER SECTIONS**

- A. Additional submittal requirements specific to the particular section of the specifications.

**PART 2 - PRODUCTS****2.1 SHOP DRAWINGS**

- A. Prepare shop drawings using competent draftsmen, clearly and precisely showing the following:
  - 1. The size and gage of members.
  - 2. The method of anchoring and securing members of parts together.

3. The quantity and location of each item.
  4. Other pertinent data necessary to show the Work to be done and where and how it is to be done.
- B. Prepare Drawings to scale, including full size details as required to fix and illustrate the Work required. Do not use Contract Documents or reproductions thereof as shop drawing submittals.
- C. Each sheet of Drawings shall be 30 x 40 inches maximum size with borders. Provide a title block in the lower right hand corner with the following information:
1. Title of the sheet.
  2. Name and location of Project.
  3. Names of:
    - a. Architect/Engineer.
    - b. General Contractor.
    - c. Manufacturer of the specified materials and equipment.
  4. The date of the Submittal.
  5. The date of each correction or revision.
  6. **Submittal number including Division No.** (such as submittal no. 3 under Division 11 numbered "11-03").
- C. Fold drawings to 8-1/2x11 inch dimensions with title block exposed to top.
- D. Check the Drawings and add any corrections of field measurements needed. Stamp and sign the Contractor's approval, checker's signature, and date of approval before submitting to the Architect. Shop Drawings which do not bear the Contractor's stamp or have not been reviewed by the Contractor, will be returned by the Architect without review or approval.
- F. Number Shop Drawings consecutively. Indicate working and erection dimensions, arrangements, sectional views, necessary details including complete information for making connections with other Work, kinds of materials, and finishes.

- G. Provide a transmittal letter in duplicate, pointing out any deviations from items, methods or named manufacturers included in the Specifications or on the Drawings. Note submittal file number including Division.
- H. Submit **six (6)** blue line prints of each Shop Drawing sheet. Make such corrections, changes, resubmit bound sets of Shop Drawings prints, as required herein, until approved is obtained. Any corrections or changes indicated on Shop Drawings shall not be considered as an extra work order.

## 2.2 PHYSICAL SAMPLES

- A. Provide duplicate samples of items as specified. Samples shall be 12 inches square or 12 inches long unless noted otherwise. Minimum liquid samples shall be 1 pint. Installed materials shall match approved samples.
- B. For Architect's permanent files provide one (1) 6" x 6" sample of all interior finishes, colors and materials (aluminum finish, glazing, plastic laminate, paint finish flooring materials, ceiling finish, etc.)
- C. Provide a transmittal letter with each sample, listing the following:
  - 1. Specification section title and paragraph specifying the material.
  - 2. Name and location of Project
  - 3. Names of:
    - a. Architect/Engineer.
    - b. General Contractor.
    - c. Manufacturer of the specified materials and equipment.
  - 4. The date of the Submittal.
  - 5. Submittal file number including Division.
- E. If samples are not acceptable they will be returned directly to the Contractor for modification and resubmission.
- F. If samples are acceptable, notification will be sent directly to the Contractor, and the sample retained for comparison with the complete Work.

## 2.3 MANUFACTURER'S PRODUCT DATA

- A. Provide **six (6)** copies of pre-printed Product Data of items as specified. Carefully mark out all items not applicable to the specified item.
- B. Standard catalogs, brochures, etc. including information not applicable to the project and not marked through, will be returned without review or approval.
- C. Provide a transmittal letter with the Product Data from each manufacturer, listing the following information:
  - 1. Name and location of Project.
  - 2. Names of:
    - a. Architect/Engineer.
    - b. General Contractor.
    - c. Manufacturer of the specified materials and equipment.
  - 3. The date of the Submittal.
  - 4. Submittal file number including Division.
- D. If Product Data is not approved, one copy will be marked and returned directly to the Contractor for modification and resubmission.
- E. If Product Data is approved, notification and one copy of the acceptable Product Data will be sent directly to the Contractor.
- F. When requested by the Architect, provide six (6) copies of each ASTM Federal Specification, or other applicable documents referenced in the material Section.

## PART 3 - EXECUTION

### 3.1 REVIEW PROCEDURE

- A. Submittals will be reviewed with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the project and with the information given in the Contract Documents. Architect shall be allowed a maximum review period of **fourteen (14)** calendar days. The review of a separate item shall not indicate a review of an assembly in which the item functions. Submittals that contain excessive errors or that are incomplete will be returned without review and approval and any delay caused thereby shall be the responsibility of the Contractor.

- B. If any submittals are not approved as submitted, all copies will be returned directly to the Contractor for revision. The reviewed submittals will be returned to the Contractor as soon as practicable.
- C. The Contractor shall make all revisions as noted and shall resubmit the required number of corrected copies of submittals, until no exceptions are taken. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, to revisions other than those requested on previous submissions.
- D. The review of submittals shall not relieve the Contractor of responsibility for deviations from the requirements of the Contract Documents unless the Contractor has submitted, in writing, such deviations and written approval has been given to each specific deviation. The review shall not relieve the Contractor from responsibility for errors and omissions in the Shop Drawings and samples.
- E. No portion of the Work requiring a submittal shall commence until the submittal has been approved as designated in the Conditions of the Contract. All such portions of the Work shall be in accordance with the submittal that has been stamped with final "Reviewed Without Exceptions" note, or "Approved" note.
- F. Materials and equipment specified or approved prior to beginning the Work are required to be used on the Project. Any proposed substitution resulting from no availability of specified items must be proven "better than" by the Contractor and approved in writing by the Architect. Substitutions included in submittals shall be so noted and brought to the Architect's attention in the submittal and on the transmittal. Failure to follow this procedure will render the substitution as not acceptable whether or not reviewed by the Architect.
- G. The Contractor shall have the approved shop drawings at the site at all times for use in the construction of the Work. Failure of the Contractor to supply such drawings will be deemed sufficient cause to delay the Work until such drawings are available for field use and reference.
- H. For submittals that will be reviewed by one of the Architect's consultants, these submittals shall be delivered directly to the Architect. The Architect will then be responsible to provide the Consultant with a copy of the submittal.

- I. For submittals that will be reviewed by one of the Architect's consultants, do not send to the Consultant as part of the package any items which will be reviewed by the Architect. As an example, do not provide a single submittal package combining Structural Steel and Miscellaneous Metal Fabrications.

END OF SECTION-01340

**SECTION 01500 – TEMPORARY FACILITIES AND CONTROLS****PART 1 - GENERAL****1.1 COORDINATION**

- A. The General Conditions of the Contract for Construction and the Supplementary Conditions to the General Conditions of the Contract for Construction shall be considered as part of this section of the specifications.
- B. Each Bidder shall be responsible for determining during the bidding period the extent that any addenda issued during the bidding period may affect this section of the specifications.
- C. Reference Instructions to Bidders for requirements regarding substitutions of materials and products.
- D. Where conflicts occur between the drawings and specifications, between different drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

**1.2 SECTION INCLUDES**

- A. Temporary Utilities: Electricity, lighting, heat, ventilation, telephone and fax service, water, and sanitary facilities.
- B. Temporary Controls: Barriers, enclosures and fencing, protection of the Work, and water control.
- C. Construction Facilities: Access roads, parking, progress cleaning, project signage and temporary buildings.

**1.3 TEMPORARY ELECTRICITY**

- A. Cost: By General Contractor. Utilize existing power service if approved by Owner. Extend temporary outlets in NEC and OSHA approved manner to facilitate construction.
- B. Provide power outlets for construction operations, with branch wiring and distribution boxes located as required. Provide flexible power cords as required.

- C. Provide main service disconnect and over correct protection at convenient location.
- D. Provide sufficient and adequate distribution equipment, wiring, and outlets to ensure unimpeded progress of the Work.
- E. Permanent convenience receptacles may be utilized during construction.

#### 1.4 TEMPORARY LIGHTING

- A. Provide and maintain lighting for construction operations to achieve a minimum lighting level of 2 watt/sq ft.
- B. Provide and maintain 1 watt/sq ft lighting to exterior staging and storage areas after dark for security purposes.
- C. Provide branch wiring from power source to distribution boxes with lighting conductors, pigtails, and lamps as required.
- D. Permanent building lighting may be utilized during construction.
- E. Maintain lighting and provide routine repairs.

#### 1.5 TEMPORARY HEAT

- A. Provide and pay for heating devices and heat as needed to maintain specified conditions for construction operations.
- B. Maintain minimum ambient temperature of 50 degrees F (10 degrees C) in areas where construction is in progress, unless indicated otherwise in product sections.

#### 1.6 TEMPORARY COOLING

- A. If required for the proper installation of particular materials, systems, or equipment, provide and pay for cooling devices and cooling as needed to maintain specified conditions.

#### 1.7 TEMPORARY VENTILATION

- A. Ventilate enclosed areas to assist cure of materials, to dissipate humidify, and to prevent accumulation of dust, fumes, vapors, or gases.

- B. Utilize existing ventilation equipment if approved by Owner. Extend and supplement equipment with temporary fan units as required to maintain clear air for construction operations.

#### 1.8 TELEPHONE SERVICE

- A. Provide, maintain and pay for telephone service to field office.

#### 1.9 FACSIMILE SERVICE

- A. Provide, maintain and pay for separate telephone line to be used solely for fax service to field office.

#### 1.10 TEMPORARY WATER SERVICE

- A. Utilize existing water service if approved by Owner for construction operations.
- B. Extend branch piping with outlets located so water is available by hoses with threaded connections. Provide temporary pipe insulation to prevent freezing as required.

#### 1.11 TEMPORARY SANITARY

- A. Provide and maintain required facilities and enclosures. Existing facility use is **not** permitted. Provide at time of project mobilization.

#### 1.12 BARRIERS

- A. Provide barriers to prevent unauthorized entry to construction areas to protect existing facilities and adjacent properties from damage from construction operations and demolition. Barriers must isolated occupied use from construction activities. If and when needed, barriers must be capable of attenuating sound.
- B. Provide protection for existing plant life and landscaped. Maintain plant life and landscaped areas as necessary during construction operations. Replace damaged plant life.
- C. Protect non-owned vehicular traffic, stored materials, site, and structures from damage.
- D. Barrier plan and method subject to approval by the Architect and the Owner.

### 1.13 FENCING

- A. Construction: Commercial grade chain link fence.
- B. Provide 6 foot high fence around construction site, equip with vehicular and pedestrian gates with locks. Fence must be capable of restricting entry by on-site facility users.

### 1.14 WATER CONTROL

- A. Grade site to drain where additions are undertaken. Maintain excavations free of water. Provide, operate, and maintain pumping equipment and/or any other means, methods or techniques necessary to maintain excavation and site free of water.
- B. Protect site from puddling or running water. Provide water barriers as required to protect site from soil erosion.

### 1.15 EXTERIOR ENCLOSURES

- A. Provide temporary insulated weather tight closure of exterior openings to accommodate acceptable working conditions and protect for products, to allow for temporary heating and maintenance of required ambient temperatures identified in individual specification sections, and to prevent entry of unauthorized persons. Provide access doors with self-closing hardware and locks.
- B. Provide temporary protection of existing wall cavities, substrates, and surfaces exposed to weather during cutting and minor demolition operations to prevent entrapment of moisture and development of mildew.

### 1.16 PROTECTION OF INSTALLED WORK

- A. Protect installed Work and provide special protection to prohibit damage and where specified in individual specification sections.
- B. Provide temporary and removable protection for installed Products. Control activity in immediate work area to minimize damage.
- C. Provide protective coverings at walls, projections, jambs, sills, and soffits of openings.

- D. Protect finished floors, stairs, and other surfaces from traffic, dirt, wear, damage, or movement of heavy objects, by protecting with durable sheet materials.
- E. Prohibit traffic or storage upon waterproofed or roofed surfaces. If traffic or activity is necessary, obtain recommendations for protection from waterproofing or roofing material manufacturer.
- F. Prohibit traffic in all landscaped areas.

#### 1.17 SECURITY

- A. Provide security and facilities to protect Work and existing facilities from unauthorized entry, vandalism, or theft.
- B. Coordinate project security program with Owner's existing security operations at project mobilization.
- C. Maintain program throughout construction period until Owner acceptance precludes the need for Contractor security.
- D. Restrict entrance of persons and vehicles into Project site and existing facilities, allowing entrance only to authorized persons and persons identified by the Contract Document and/or the Architect or Owner as authorized to visit Project site.

#### 1.18 ACCESS

- A. Provide and maintain temporary roads accessing public thoroughfares to serve construction area.
- B. Extend and relocate as work progress requires. Provide detours necessary for unimpeded traffic flow.
- C. Provide and maintain access to fire hydrants, free of obstructions.
- D. Provide means of removing mud from vehicle wheels before entering streets.
- E. Existing on-site roads may be used for construction traffic.

#### 1.19 PARKING

- A. Provide temporary surface parking areas to accommodate construction

personnel. Existing site areas may be used if approved in advance by the Owner.

- B. Contractor to propose plan for Owner concurrence and approval.

#### 1.20 PROGRESS CLEANING AND WASTE REMOVAL

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition.
- B. Remove debris and rubbish from pipe chases, plenums, attics, crawl spaces, and other closed or remote spaces, prior to enclosing the space.
- C. Broom and vacuum clean interior areas prior to start of surface finishing, and continue cleaning to eliminate dust.
- D. Collect and remove waste materials, debris, and rubbish from site weekly and dispose off-site.

#### 1.21 PROJECT IDENTIFICATION

- A. Provide project sign. Refer to drawings for size and content.
- B. Erect on site at location established by Architect.
- C. No other signs are allowed without Owner permission except those required by law.

#### 1.22 FIELD OFFICES AND SHEDS

- A. Office: Weather tight with lighting, electrical outlets, heating, cooling and ventilating equipment, and equipped with sturdy furniture drawing rack, and drawing display table, phone and fax.
- B. Provide space for Project meetings, with table and chairs to accommodate 6 persons.
- C. Provide storage sheds and facilities to accommodate Work. Size to storage requirements for products of individual Sections, allowing for access and orderly provision for maintenance and for inspection of products to requirements of Section 01600.

- D. Designated existing covered and uncovered hard paved areas and facilities may be used for field storage areas. Protect and secure existing areas used for storage. Upon completion of Work, clean, repair, and restore all existing areas used for storage and restore to acceptable condition.

#### 1.23 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Remove temporary utilities, equipment, facilities, and materials prior to Substantial Completion.
- B. Remove underground installation to a minimum depth of 2 feet. Grade site to drain.
- C. Clean and repair damage caused by installation or use of temporary work.
- D. Restore existing and permanent facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

END OF SECTION - 01500

**SECTION 01600 - PRODUCT REQUIREMENTS****PART 1 - GENERAL****1.1 SECTION REQUIREMENTS**

- A. Provide products of same kind from a single source. The term "product" includes the terms "material," "equipment," "system," and similar terms.
- B. Deliver, store, and handle products according to manufacturer's written instructions, using means and methods that will prevent damage, deterioration, and loss, including theft.
  - 1. Schedule delivery to minimize long-term storage and to prevent overcrowding construction spaces.
  - 2. Deliver in manufacturer's original sealed packaging with labels and written instructions for handling, storing, protecting, and installing.
  - 3. Inspect products at time of delivery for compliance with the Contract Documents and to ensure items are undamaged and properly protected.
  - 4. Store heavy items in a manner that will not endanger supporting construction.
  - 5. Store products subject to damage on platforms or pallets, under cover in a weather tight enclosure, with ventilation adequate to prevent condensation. Maintain temperature and humidity within range required.
- C. Product Substitutions: Substitution will only be considered during the bidding period. Substitutions include products and methods of construction differing from that required or specified by the Contract Documents.
  - 1. Submit three (3) copies of CSI Substitution Request Form for each request for product substitution no less than 10 days prior to bid date. Identify product to be replaced and provide complete documentation showing compliance of proposed substitution with applicable requirements. Include a full comparison

with the specified product, a list of changes to other Work required to accommodate the substitution, and any proposed changes in Contract Sum or Contract Time should the substitution be accepted.

2. Owner will review the proposed substitution and notify Contractor of its acceptance or rejection.

## PART 2 - PRODUCTS

### 2.1 PRODUCT OPTIONS

- A. Provide products that comply with the Contract Documents, are undamaged, and are new at the time of installation.
  1. Provide products complete with accessories, trim, finish, and other devices and components needed for a complete installation and the intended use and effect.
- B. Do not attach manufacturer's labels or trademarks, except for required nameplates, on surfaces exposed to view in occupied spaces or on the exterior.
- C. Select products as follows:
  1. Where a product or manufacturer is named, provide the item indicated or comply with provisions concerning product substitutions to obtain approval for use of an unnamed product or manufacturer.
  2. Where products or manufacturers are specified by name, accompanied by the term "or equal," provide the named item or comply with provisions concerning "product substitutions" to obtain approval for use of an unnamed product or manufacturer.

3. Where a product is described with required characteristics, with or without naming a brand or trademark, provide a product that complies with those characteristics and other Contract requirements.
  4. Where compliance with performance requirements is specified, provide products that comply and are recommended in writing by the manufacturer for the application.
  5. Where compliance with codes, regulations, or standards, is specified, select a product that complies with the codes, regulations, or standards referenced.
- D. Unless otherwise indicated, City will select color, pattern, and texture of each product from manufacturer's full range of options.

**END OF SECTION - 01600**

**SECTION 01601 - SUBSTITUTION PROCEDURES****PART 1 - GENERAL****1.1 COORDINATION**

- A. The General Conditions of the Contract for Construction and the Supplementary Conditions to the General Conditions of the Contract for Construction shall be considered as part of this section of the specifications.
- B. Each Bidder shall be responsible for determining during the bidding period the extent that any addenda issued during the bidding period may affect this section of the specifications.
- C. Where conflicts occur between the drawings and specifications, between different drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

**1.2 SUBSTITUTION REQUIREMENTS**

- A. When material, article, or method is specified using name of proprietary product manufacturer, vendor, or method followed by phrase "or equal," specific item mentioned establishes basis upon which projects are to be built.
  - 1. Other manufacturers' materials, articles, and methods not named will be as substitutions provided required information is submitted on "SUBSTITUTION REQUEST FORM" and will not require substantial revisions of Contract Documents.
  - 2. This applies to specific construction methods when required by Contract Documents.
  - 3. Substitution Requests must be filled out on enclosed "Substitution Request Form".
- B. Whenever material, article, or method is specified or described without phrase "or equal," no substitutions will be allowed.

- C. Costs for redesigns due to substituted items are responsibility of Applicant.
- D. In making request for substitution, Applicant/Contractor represents that he:
  - 1. Has personally investigated proposed product or method and determined that it is equal in all respects to that specified.
  - 2. Will provide same guarantee for substitution as for product or method specified.
  - 3. Will coordinate installation of accepted substitution into work, making design and construction changes to complete work in all respects following the Contract Documents.

### 1.3 SUBMITTAL OF DATA FOR PROPOSED SUBSTITUTIONS

- A. In order for substitutions that do not change design intent to be considered, submit no later than 10 days prior to bid date deadline, 3 copies of complete data set forth herein to permit complete analysis of proposed substitutions listed on submitted "SUBSTITUTION REQUEST FORM".
  - 1. For Products:
    - a. Identification including manufacturer's name and address.
    - b. Manufacturer's literature, including but not necessarily limited to:
      - 1) Product description, performance, and test data.
      - 2) Reference standards.
    - c. Samples where appropriate.
    - d. Name and address of similar projects on which product was used and dates of installation with contact name and telephone number.
  - 2. For Construction Methods:
    - a. Detailed description of proposed method.
    - b. Drawings illustrating methods.
    - c. Name and address of similar projects on which method was used and dates of use with contact name and telephone number.
  - 3. Comparison of proposed substitution with product or method specified

4. Data relating to impact on construction schedule by proposed substitution.
5. Impact on other contracts.

1.4 APPROVAL OF SUBSTITUTION

- A. Architect's decision regarding evaluation of substitutions will be final and binding.
- B. All approved substitutions will be incorporated into the Contract Documents by Addendum.

END OF SECTION-01601

**SECTION 01700 - EXECUTION REQUIREMENTS****PART 1 - GENERAL****1.1 CLOSEOUT SUBMITTALS**

A. Record Specifications: Maintain one copy of the Project Manual, including addenda, as Record Specifications. Mark to show variations in Work performed in comparison with the text of the Specifications and modifications.

B. Operation and Maintenance Data: Organize data into three-ring binders, with pocket folders for folded sheet information. Mark identification on front and spine of each binder. Include the following:

1. Emergency instructions.
2. Copies of warranties.
3. Product Data.

**PART 2 - EXECUTION****2.1 EXAMINATION AND PREPARATION**

A. Examine substrates and conditions for compliance with manufacturer's written requirements including, but not limited to, surfaces that are sound, level, and plumb; substrates within installation tolerances; surfaces that are smooth, clean, and free of deleterious substances; and application conditions within environmental limits. Proceed with installation only after unsatisfactory conditions have been corrected.

B. Prepare substrates and adjoining surfaces according to manufacturer's written instructions, including, but not limited to, filler and primer application.

**2.2 CUTTING AND PATCHING**

A. Do not cut structural members without prior written approval of City Engineer.

B. For patching, provide materials whose installed performance will equal or surpass that of existing materials. For exposed surfaces, provide or finish materials to visually match existing adjacent surfaces to the fullest extent possible.

## 2.3 INSTALLATION

A. Comply with manufacturers written instructions for installation. Anchor each product securely in place, accurately located and aligned. Clean exposed surfaces and protect from damage. If applicable, prepare surfaces for field finishing.

## 3.4 FINAL CLEANING

- B. Clean each surface or item as follows before requesting inspection for certification of Substantial Completion:
1. Remove labels that are not permanent.
  2. Clean exposed finishes to a dust-free condition, free of stains, films, and foreign substances. Leave concrete floors broom clean.
  3. Clean the site. Sweep paved areas; remove stains, spills, and foreign deposits. Rake grounds to a smooth, even-textured surface.

## 3.5 CLOSEOUT PROCEDURES

- C. Request Substantial Completion inspection once the following are complete:
1. Advise Owner of pending insurance changeover requirements.
  2. Submit Record Drawings and Specifications, maintenance manuals, warranties, and similar record information.
  3. Deliver spare parts, extra materials, and similar items.
  4. Remove temporary facilities and controls.
  5. Complete final cleanup.
  6. Touch up, repair, and restore marred, exposed finishes.

7. On receipt of a request for inspection, City's Engineering Department Personnel will proceed with inspection or advise Contractor of unfilled requirements. City's Engineering Department Personnel will prepare the Certificate of Substantial Completion after inspection or advise Contractor of items that must be completed or corrected before the certificate will be issued.
- D. Arrange for each installer of equipment that requires operation and maintenance to provide instruction to Owner's personnel. Include a detailed review of the following:
1. Spare materials.
  2. Identification systems.
  3. Hazards.
  4. Warranties and bonds.
- E. Request inspection for certification of final acceptance, once the following are complete:
1. Submit a copy of the Substantial Completion inspection list stating that each item has been completed or otherwise resolved for acceptance.
- F. City's Engineering Department Personnel will reinspect the Work on receipt of notice that the Work has been completed.
1. On completion of reinspection, City's Engineering Department Personnel will prepare a certificate of final acceptance. If the Work is incomplete, Architect will advise Contractor of the Work that is incomplete or obligations that have not yet been fulfilled.

**END OF SECTION 01700**

**SECTION 01732 - SELECTIVE DEMOLITION****PART 1 - GENERAL****1.1 COORDINATION**

- A. The General Conditions of the Contract for Construction and the Supplementary Conditions to the General Conditions of the Contract for Construction shall be considered as part of this section of the specifications.
- B. Each Bidder shall be responsible for determining during the bidding period the extent that any addenda issued during the bidding period may affect this section of the specifications.
- C. Reference Instructions to Bidders for requirements regarding substitutions of materials and products.
- D. Where conflicts occur between the drawings and specifications, between different drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

**1.2 SECTION REQUIREMENTS**

- A. Unless otherwise indicated, demolished materials become Contractor's property. Remove from Project site.
- B. Items indicated to be removed and salvaged remain Owner's property. Remove, clean, and deliver to Owner's designated storage area.
- C. Comply with EPA regulations and disposal regulations of authorities having jurisdiction.
- D. Conduct demolition without disrupting Owner's use of the building.

**PART 2 - PRODUCTS (Not Applicable)****PART 3 - EXECUTION****3.1 DEMOLITION**

- A. Maintain and protect existing utilities to remain in service before proceeding with demolition, providing bypass connections to other parts of the building.

- B. Locate, identify, shut off, disconnect, and cap off utility services to be demolished.
- C. Employ a certified, licensed exterminator to treat building and to control rodents and vermin.
- D. Conduct demolition operations and remove debris to prevent injury to people and damage to adjacent buildings and site improvements.
- E. Provide and maintain shoring, bracing, or structural support to preserve building stability and prevent movement, settlement, or collapse.
- F. Protect building structure or interior from weather and water leakage and damage.
- G. Protect remaining walls, ceilings, floors, and exposed finishes. Erect and maintain dustproof partitions. Cover and protect remaining furniture, furnishings, and equipment.
- H. Neatly cut openings and holes plumb, square, and true to dimensions required. Use cutting methods least likely to damage construction to remain or adjoining construction.
- I. Promptly patch and repair holes and damaged surfaces of building caused by demolition. Restore exposed finishes of patched areas and extend finish restoration into remaining adjoining construction.
- J. Promptly remove demolished materials from Owner's property and legally dispose of them. Do not burn demolished materials.

END OF SECTION-01732

**SECTION 01740 - CLEANING****PART 1 GENERAL****1.1 SUMMARY**

- A. During the course of the Work, maintain premises and adjacent sites free of waste, debris, and rubbish caused by construction operations.
- B. At completion of work, or at such other times as directed by the Engineer or Owner, remove waste, debris, rubbish, tools, equipment, machinery, and surplus materials. Clean sight-exposed surfaces; leave work area clean and ready for use.

**1.2 SAFETY REQUIREMENTS**

- A. Standards: Maintain Project in accordance with the following safety and insurance standards:
  - 1. Occupation Safety and Health Administration (OSHA)
- B. Hazards Control:
  - 1. Store volatile wastes in an approved manner or remove from premises daily.
  - 2. Prevent accumulation of wastes that create hazardous conditions.
  - 3. Provide adequate ventilation during use of volatile or noxious substances.
- C. Conduct cleaning and disposal operations to comply with federal, state and local antipollution laws.
  - 1. Rubbish and waste materials shall not be burned or buried on Project site.
  - 2. Volatile wastes, such as mineral spirits, oil, or paint thinner, shall not be disposed of into storm or sanitary drains.
  - 3. Wastes shall not be disposed of into streams or waterways.

**1.3 SUBMITTALS**

- A. Product Data:

1. Manufacturer's recommendations for cleaning specified products.
2. Proposed cleaning products for products where manufacturer's recommendations are not specified.

## **PART 2 PRODUCTS**

### **2.1 MATERIALS**

- A. Select and use cleaning materials and equipment with care to avoid scratching, marring, defacing, staining, or discoloring surfaces cleaned.
- B. Use only cleaning materials recommended by manufacturer of surface material to be cleaned.
- C. Use cleaning materials only on surfaces recommended by cleaning material manufacturer.

## **PART 3 EXECUTION**

### **3.1 GENERAL**

- A. Execute cleaning to ensure that buildings, grounds and public properties are maintained free from accumulations of waste materials and rubbish on a daily basis.
- B. Wet down materials and rubbish to lay dust and to prevent blowing dust.
- C. Clean site and public properties daily, and dispose of waste materials, debris, and rubbish.
- D. Provide on-site transportable cart containers for collection of waste, materials, debris, and rubbish as required.
- E. Remove waste materials, debris, and rubbish from site and legally dispose of at public or private dumping areas off Owner's property.
- F. Handle materials in a controlled manner with as few handlings as possible. Materials shall not be thrown from heights.
- G. Maintain equipment on site, while work is in progress, in clean and dust-free condition.
- H. Schedule cleaning operations so that dust and other contaminants resulting from cleaning process will not fall on wet, newly finished surfaces.

- I. Contain all runoff from Work and do not allow construction waste to leach into ground or water.

### 3.2 FINAL CLEANING

- A. Employ experienced workmen for final cleaning.
- B. In preparation for Substantial Completion, or occupancy, conduct final inspection of sight-exposed surfaces and of concealed spaces.
- C. Remove grease, dust, dirt, stains, labels, fingerprints, and other foreign materials from sight-exposed finished surfaces.
- D. Repair, patch, and touch up marred surfaces to specified finish and to match adjacent surfaces.
- E. Broom clean paved surfaces; rake clean other surfaces on grounds.
- F. Clean equipment units if cleaning is required due to construction dust and activities.
- G. Maintain cleaning until project, or designated portion thereof, is occupied by Owner.

**END OF SECTION-01740**

## SECTION 01770 - CLOSEOUT PROCEDURES

### PART 1 GENERAL

#### 1.1 SUMMARY

- A. Section Includes:
  - 1. Closeout procedures.
  - 2. Final cleaning.
  - 3. Adjusting.
  - 4. Project record documents.
  - 5. Operation and maintenance data.
  - 6. Warranties.
  - 7. Spare parts and maintenance materials.
  - 8. Demonstration and instructions.
- B. Related Sections:
  - 1. Section 01200 - Payment Procedures
  - 2. Section 01500 - Temporary Facilities and Controls:
  - 3. Section 01740 - Cleaning

#### 1.2 CLOSEOUT PROCEDURES

- A. Final Inspection:
  - 1. Submit written certification that Contract Documents have been reviewed, Work has been inspected, and that Work is complete in accordance with the Contract Documents and ready for inspection by the Project Manager and Engineer.
  - 2. If Project Manager or Engineer performs reinspection due to failure of Work to comply with claims of status of completion made by

Contractor, Owner will compensate the Project Manager and Engineer for such additional services and will deduct the amount of such compensation from final payment.

- B. Submit final Application for Payment showing original Contract Sum, adjustments, previous payments, retainage withheld from previous payments, and sum remaining due.
- C. Closeout Submittals:
  - 1. Evidence of compliance with requirements of governing authorities.
  - 2. Construction photographs.
  - 3. List of subcontractors and suppliers, indicating firm name, area of responsibility or specialty, address, and telephone number.
  - 4. Certificate of Occupancy.
  - 5. Project Record Documents.
  - 6. Operation and Maintenance Data.
  - 7. Warranties.
  - 8. Keys and keying schedule.
  - 9. Spare parts and maintenance materials.
  - 10. Evidence of payment of Subcontractors and suppliers.
  - 11. Final lien waiver.
  - 12. Certificate of insurance for products and completed operations.
  - 13. Consent of Surety to final payment.

### 1.3 FINAL CLEANING

- A. Execute final cleaning in areas affected by work on this project prior to final inspection.
- B. Clean surfaces exposed to view:

1. Clean glass.
  2. Remove temporary labels, stains and foreign substances.
  3. Polish transparent and glossy surfaces.
  4. Vacuum carpeted surfaces; damp mop hard surface flooring.
  5. Pressure wash all horizontal surfaces with 1000 psi removing dirt and debris.
  6. Pressure wash all vertical surfaces with 100 psi removing dirt and debris
- C. Clean equipment and fixtures to a sanitary condition.
- D. Clean or replace filters of operating equipment.
- E. Clean debris from roofs and drainage systems
- F. Clean site; sweep paved areas, rake clean landscaped surfaces.
- G. Remove waste and surplus materials, rubbish, and construction facilities from the site.

#### **1.4 FINAL PAYMENT**

- A. Application for Payment at Substantial Completion: After issuing the Certificate of Substantial Completion, submit an Application for Payment showing 100 percent completion for portion of the Work claimed as substantially complete.
1. Include documentation supporting claim that the Work is substantially complete and a statement showing an accounting of changes to the Contract Sum.
  2. This application shall reflect Certificates of Partial Substantial Completion issued previously for Owner occupancy of designated portions of the Work.
- B. Final Payment Application: Submit final Application for Payment with releases and supporting documentation not previously submitted and accepted, including, but not limited, to the following:

1. Evidence of completion of Project closeout requirements.
2. Insurance certificates for products and completed operations where required and proof that taxes, fees, and similar obligations were paid.
3. Updated final statement, accounting for final changes to the Contract Sum.
4. AIA Document G706, "Contractor's Affidavit of Payment of Debts and Claims."
5. AIA Document G706A, "Contractor's Affidavit of Release of Liens."
6. AIA Document G707, "Consent of Surety to Final Payment."
7. Evidence that claims have been settled.
8. Final meter readings for utilities, a measured record of stored fuel, and similar data as of date of Substantial Completion or when Owner took possession of and assumed responsibility for corresponding elements of the Work.

## **1.5 ADJUSTING**

- A. Adjust operating Products and equipment to ensure smooth and unhindered operation.

## **1.6 PROJECT RECORD DOCUMENTS**

- A. Maintain on site one set of the following record documents; record actual revisions to the Work:
  1. Drawings.
  2. Specifications.
  3. Addenda.
  4. Change Orders and other Modifications to the Contract.
  5. Reviewed Shop Drawings, Product Data, and Samples.
- B. Store Record Documents separate from documents used for construction.

- C. Record information concurrent with construction progress.
- D. Specifications: Legibly mark and record at each Product section description of actual Products installed, including the following:
  - 1. Manufacturer's name and product model and number.
  - 2. Product substitutions or alternates utilized.
  - 3. Changes made by Addenda and Modifications.
- E. Record Documents and Shop Drawings: Legibly mark each item to record actual construction including:
  - 1. Location, type and size of work completed.
  - 2. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
  - 3. Field changes of dimension and detail.
  - 4. Details not on original Contract Drawings.
- F. Prior to Substantial Completion transfer marks made during construction to two sets of sepia reproducible transparency prints, and one half size set.
- G. Submit documents to Project Manager with final Application for Payment.

#### **1.7 OPERATION AND MAINTENANCE DATA**

- A. Provide three copies, 8-1/2 x 11 inches text pages, bound in three ring binders with durable plastic covers.
- B. Prepare binder covers with printed title "OPERATION AND MAINTENANCE INSTRUCTIONS", title of project, and subject matter of binder when multiple binders are required.
- C. Contents:
  - 1. Directory: List names, addresses, and telephone numbers of Engineer, Subcontractors, and major equipment suppliers.

2. Operation and maintenance instructions: Arranged by system and subdivided by specification section. For each category, identify names, addresses, and telephone numbers of Subcontractors and suppliers. Identify the following:
  - a. Significant design criteria.
  - b. List of equipment.
  - c. Parts list for each component.
  - d. Operating instructions.
  - e. Maintenance instructions for equipment and systems.
  - f. Maintenance instructions for special finishes, including recommended cleaning methods and materials and special precautions identifying detrimental agents.
3. Project documents and certificates including:
  - a. Shop drawings and product data.
  - b. Certificates.
  - c. Photocopies of warranties and bonds.

D. Submittal:

1. Submit one copy of completed volumes in final form 15 days prior to final inspection.
2. Engineer will notify of any required revisions after final inspection.
3. Revise content of documents as required prior to final submittal.
4. Submit revised volumes within 10 days after final inspection.

## 1.8 WARRANTIES

- A. Provide two copies of each warranty.
- B. Execute and assemble documents from Subcontractors, suppliers, and manufacturers.
- C. Provide Table of Contents and assemble in three ring binder with durable plastic cover.
- D. Submit prior to final Application for Payment.

- E. For items of Work delayed beyond date of Substantial Completion, provide updated submittal within 10 days after acceptance, listing date of acceptance as start of warranty period.

#### **1.9 SPARE PARTS AND MAINTENANCE MATERIALS**

- A. Provide products, spare parts, maintenance and extra materials in quantities specified in individual specification Sections.
- B. Deliver to Project site in location as directed; obtain receipt prior to final payment.

#### **1.10 DEMONSTRATION AND INSTRUCTIONS**

- A. Demonstrate operation and maintenance of Products to Owner's personnel two weeks prior to date of Substantial Completion.
- B. For equipment or systems requiring seasonal operation, perform demonstration for other season within six months.
- C. Utilize Operation and Maintenance Manuals as basis for instruction. Review contents of manual with Owners' personnel in detail to explain all aspects of operation and maintenance.
- D. Demonstrate startup, operation, control, adjustment, troubleshooting, servicing, maintenance, and shutdown of each item of equipment at agreed upon times, at equipment location.
- E. Prepare and insert additional data in Operation and Maintenance Manuals when need for additional data becomes apparent during instruction.

**END OF SECTION-01770**

**SECTION 01800 - GENERAL NOTES****PART 1 - GENERAL**

## 1.1 COORDINATION

- A. The General Conditions of the Contract for Construction and the Supplementary Conditions to the General Conditions of the Contract for Construction shall be considered as part of this section of the specifications.
- B. Each Bidder shall be responsible for determining during the bidding period the extent that any addenda issued during the bidding period may affect this section of the specifications.
- C. Reference Instructions to Bidders for requirements regarding substitutions of materials drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

## 1.2 GENERAL NOTES

- A. **Do not dimension the drawings. Any dimensions, questions, should be directed to the Architect or Engineer.**
- B. Contractor shall protect all streets and sidewalks and shall make all necessary repairs at his own expense.
- C. Shall at all times protect the excavations, trenches, and/or the building from damage from rain water, ground water, backing up drains or sewers and all other water. He shall provide all pumps and equipment and enclosures to provide this protection.
- D. Contractor shall provide all shoring, bracing and sheathing as required for safety and proper execution of the work and remove same when work is completed. Contractor shall be responsible for all scaffolding, shoring, bracing, sheathing, temporary construction and temporary walkways, etc., and shall hold harmless the Owner and Architect from any injury or litigation as a result of causes related to any scaffolding, shoring, bracing, sheathing, temporary construction and temporary walkways.
- E. Contractor shall comply with the Trench Safety Law Requirements.

## 1.3 WAIVER OF LIEN:

- A. In submitting a proposal (Bid) Contractor, if awarded the Contract, explicitly warrants that the Owner shall be held free of any claim or lien of any nature resulting from Contractor's pursuance or prosecution of the work. This shall cover any third party lien in any manner whatsoever concerning Contractor's performance or payment on this project.

1.4 CONTRACTOR'S ASBESTOS FREE AFFIDAVIT:

- A. In order to protect staff, employees and public in general from any unnecessary exposure to asbestos fibers, the Asbestos Hazard Emergency Response Act prohibits the use of asbestos containing materials in all forms in the construction and operation of this facility.
- B. Failure to complete this waiver constitutes non-compliance with the job specifications. This document shall be attached to the Contract between Owner and Contractor.

1.5 AFFIDAVIT:

- A. I, certify that I am familiar with the materials used in the construction of, and incorporated into, the construction described below. I further certify that to the best of my knowledge and belief no asbestos containing materials, either friable or otherwise were used in the process of constructing or incorporated into the construction.
- B. The undersigned, being duly sworn upon his/her oath deposes and says that he/she is the person making the foregoing statements and that they are made in good faith and are true in every respect.
- C. Contractor's signature:

STATE OF

COUNTY OF

D. I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO THEREBY CERTIFY THAT, \_\_\_\_\_ personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledge that he/she signed, sealed, and delivered said instrument as his/her free and voluntary act, for the uses and purposes herein set forth.

GIVEN UNDER MY HAND AND NOTARIAL SEAL THIS, DATE OF, 20

NOTARY PUBLIC:

MY COMMISSION EXPIRES:

(NOTARY SEAL)

END OF SECTION-01800

## SECTION 09200 – LATH AND PLASTER

## PART 1 - GENERAL

## 1.1 COORDINATION

- A. The General Conditions of the Contract for Construction and the Supplementary Conditions to the General Conditions of the Contract for Construction shall be considered as part of this section of the specifications.
- B. Each Bidder shall be responsible for determining during the bidding period the extent that any addenda issued during the bidding period may affect this section of the specifications.
- C. Reference Instructions to Bidders for requirements regarding substitutions of materials and products.
- D. Where conflicts occur between the drawings and specifications, between different drawings, between different portions of this section of the specifications, or between different sections of the specifications, the more stringent requirements and the greater quantity shall apply.

## 1.2 WORK INCLUDED

- A. Provide and install plaster lathing and accessories, three coat stucco system with floated finish as indicated in the drawings and specified herein.

## 1.3 RELATED WORK SPECIFIED IN OTHER SECTIONS

- A. Metal studs and gypsum sheathing.
- B. Insulation
- C. Dampproofing and waterproofing.
- D. Painting

## 1.4 SUBMITTALS

- A. Submit manufacturer's product data describing masonry mix, waterproofing additive, oriental stucco, lath and metal accessories.

- B. Submit mix design.
- C. Submit a 12" x 12" lath and plaster, metal edged sample for each type of plaster and each finish texture for Architect's approval.
- D. Reference Section 01340 SUBMITTALS for additional submittal requirements.

#### 1.5 WARRANTY

- A. Provide written warranty against defects in materials and workmanship for the work under this section for a period of one year after the date of Substantial Completion of the project.
- B. Warranted defects shall include but not necessarily be limited to cracking, water infiltration, loss of adhesion, spalling or discoloration.

#### 1.6 QUALITY ASSURANCE

- A. Plaster contractor shall have a minimum of 3 years experience in the installation of plaster systems for projects of similar size and scope as this project.

### PART 2 - PRODUCTS

#### 2.1 LATHING MATERIALS

- A. CHANNELS: 16 gauge, cold rolled pressed steel, galvanized. Flanges minimum 7/16" wide. Minimum weight shall be 475 pounds per 1000 lineal feet for 1-1/2" channels and 300 pounds per 1000 lineal feet for 3/4" channels.
- B. METAL LATH: Copper - alloy steel as follows: 1. Interior dry areas: Flat expanded diamond mesh at ceilings and soffits. Self-furring type at sheathed walls. Galvanized or painted finish. Minimum 3.4 lbs. per square yard. 2. Exterior and interior wet areas: Flat expanded diamond mesh at ceilings and soffits. Self-furring type at sheathed walls. Galvanized finish meeting requirements of FS QQ-Z-325C, Type 1. Minimum 3.4 lbs. per square yard.
- C. WIRE: Annealed galvanized metal wire. Minimum 18 gauge tie wire; minimum 8 gauge hanger wire.
- D. LATHING ACCESSORIES: Galvanized for interior dry areas; solid zinc alloy for exterior work.
  - 1. Casino Beads: MUcor #66 with expanded metal flange, 26 gauge.

2. Corner Beads: U.S.G. NO. 4-R, or approved equal, 26 gauge expansion type.
  3. Control Joints: No. 75 per U.S.G.
  4. Expansion Joints: No. 40 zinc expansion flange type per Keene.
- E. Wire clips for attachment of furring channels to runner channels shall be formed hairpin clips, 8 gauge galvanized soft steel wire.
- F. METAL STUDS: Provided and installed under another section of these specifications

## 2.2 PLASTERING MATERIALS

- A. REINFORCING: Alkaline resistant fiberglass strands, 1/2".
- B. PORTLAND CEMENT: ASTM C-150, Type I, white for finish coat.
- C. SAND: ASTM C-144, red torpedo sand for scratch and brown coats.
- D. MASONRY MIX: Pre-mixed dry masonry mortar mix meeting requirements of A.S.T.M. C-91, Type N, as manufactured by Trinity, Ideal, TXI or Lonestar.
- E. FINISH: "Oriental Exterior" stucco as manufactured by United States Gypsum Company, or approved equal. Colors shall match existing stucco colors unless otherwise selected by the Architect. Deliver to job in manufacturer's original packages, with labels intact, seals unbroken. Prepare stucco finish coat for application by mixing with water only.
- F. WATERPROOFING: "Hvdrocide" as manufactured by Sonneborn.
- G. WATER: Clean, potable and free from any amounts of mineral and organic substances that would affect set of Plaster.
- H. No asbestos or admixtures.

## 2.3 MIXES

- A. SCRATCH COAT:
  1. 1 sack Portland cement.
  2. 2 sacks masonry mix.
  3. 9 cu. ft. sharp sand

4. 1-1/2 lbs. fiberglass strands.
- B. BROWN COAT:
1. 1 sack Portland cement.
  2. 2 sacks masonry mix.
  3. 10 cu. ft. sharp sand.
  4. 1-1/2 lbs. fiberglass strands
  5. Integral waterproofing per manufacturer's recommendations
- C. Plaster mixes shall comply with ASTM C926.

### PART 3 - EXECUTION

#### 3.1 GENERAL

- A. Install furring, lathing, and all plaster work level and plumb, true and rigid. Ensure that all work to be concealed by plaster has been completed and inspected prior to beginning plaster work.
- B. Obtain access panels, frames, or other built-in items from the appropriate trades before beginning plaster work.
- C. Exercise precautions to prevent damage to work of other crafts. Plaster droppings on glass or aluminum surfaces shall be immediately removed with clean water and soft cloths.

#### 3.2 EXTERIOR PLASTER (STUCCO)

- A. All exterior work and interior wet areas to have Portland Cement Finish "Oriental Exterior" sand finish 3/16" to 1/4" thick finished coat, texture to match existing as approved by Architect. Color and texture shall be uniform.
- B. Exterior plaster and interior wet areas to include integral waterproofing, galvanized lath, and pure zinc accessories.

#### 3.3 SUSPENDED CEILING & SOFFIT INSTALLATION

- A. Install suspended ceilings or exterior soffits in indicated locations. Unless otherwise indicated, suspension system shall consist of 1-1/2" runner channels, 3/4" furring channels, suspended from structure above by galvanized hanger wires.

- B. Space hanger wire 48" maximum in either direction for interior ceilings. Maximum 36" in either direction for stucco soffits.
- C. Space runner channels 48" on center maximum for interior plaster ceilings, supported from resilient hangers; space 36" on center maximum for plaster soffits
- D. Wrap each hanger wire twice around channels; secure by at least 3 turns around itself. Space furring channels 12-1/2" on center maximum and at right angles to runners.
- E. Secure to runner channels with wire clips or saddle tied with 2 strands of 16 gauge tie wire giving wire ends 3 twists.
- F. Isolate penetrations (such as light fixtures) with control joints and reinforce with furring channels

#### 3.4 METAL LATH & ACCESSORIES

- A. Apply metal lath to form true surfaces, straight, without sags or buckles, with long dimension at right angles to direction of supports. Secure lath to supports at 6" intervals. Secure side laps on ceilings to supports; tie at 6" intervals between supports. Lap lath at sides at least 1/2". Lap lath at ends at least 1", stagger laps; and locate only over supports. Break end joints of lath on alternate sheets of lath. Lath ties shall have a minimum of three complete turns.
- B. Provide corner beads on external plaster corners and where indicated. Corner beads shall be single lengths where length of corner does not exceed standard stock lengths. Miter or cope beads at corners; fasten securely with tie wire spaced 8" maximum; stagger on two wings.
- C. Install casing beads (stops) where plaster abuts other surfaces, at edges of plaster panels, and elsewhere as indicated. Set casing beads level, true to line. Install casing beads in lengths as long as practicable, with joints in straight runs aligned with suitable formed splices. Secure casing beads to metal lath with tie wire spaced 8" maximum.
- D. Provide expansion joints in exterior and interior plaster as shown. Expansion joints shall be in single lengths where possible. Secure expansion joints to metal lath with tie wire; space ties or nail anchors not over 8" apart.
- E. Provide control joints in exterior and interior plaster between expansion joints so that no panel dimension exceeds 12' or 120 square feet of area.

### 3.5 APPLICATION

- A. Maintain temperature of at least 40 degrees F. in building prior to plaster application, until it is dry. Plaster shall be three coat work on all bases. Plaster thickness from plaster base to finished plaster surface shall be as noted on drawings but shall be a minimum thickness of 3/4" at its thinnest point. Do not combine scratch and brown coats. No irregularities shall show in finished surface, such as "cat faces", streaks, waviness, trowel, float or brush marks. Finished surfaces shall be true, uniform in texture and finish.
- B. Apply scratch coat with sufficient pressure to force mortar through mesh and key firmly to lath. Scratch to form rough surfaces. Apply brown coat 48 hours after scratch coat has set; bring out to grounds; straighten to true surface with rod, darby; leave rough, and ready for finish coat.
- C. Apply finish over base coat which has been wetted evenly by brushing or spraying. Apply finish coat not sooner than seven (7) days after brown coat. Provide light sand finish per approved sample.
- D. Keep plaster moist for the curing period between coats. Limit thickness of scratch, and brown coat to maximum 3/8" each.

### 3.6 PLASTER CUTTING & PATCHING

- A. Execute after other work is in place, and after painter has applied priming coat. Thoroughly rake out, or cut out, moisten and fill with finishing material. Float finish with adjoining work. Point up around fixtures, outlet boxes, switch plates, fittings, piping and other appliances abutting or extending into plastering.

### 3.7 FINISH PLASTER PROTECTION

- A. Provide protection against damage for finished plaster work. Protect plastering from freezing or premature drying. Execute no plastering work in cold weather, except where work is adequately protected and proper temperatures are maintained to prevent freezing.

END OF SECTION

## Dryvet Application Instruction-

1. Qualifications; Contractor's Application of Dryvet has at least three years local proven experience. Provide references upon request.
2. Dryvet finish- See Plans
  - A. Trim - Pearl Haze
  - B. Open Area- Sonora Red
  - C. Dryvet products ONLY from certified Dryvet distributor open on site.
  - D. Flag pole pedestal and path markers - emerald isle

### 3. Application Steps:

- Memorial driveway entrance; 6 Walls. 28 days drying.  
See Plans. Concrete wall, Flush, smooth, concrete wash.

Step 1: Genesis with mesh see paper.

Step 2: Stop application; allow contractor to install 10 granite panels on 6 walls.

Step 3: Cover tops of 10 granite panels with paper to protect from damage. Place tape on top of edges.

4. Apply color Dryvet primer
  - Open area- Sodona red - provide submittal
  - Trim- Pearl Haze - provide submittal
  - Applicators- Trowel Brush or paint roller on front wall and back wall- brush, trowel or sprayer.
  - Color primer can be diluted with 2 gallons of water per container. See Dryvet instruction DS 410.
  - Min. Drying time-24 hours
5. Finish CO
  - Dryvet instructions DS-416
  - Trowel front wall. Back wall trowel or sprayer.
  - Finish Smooth-firm trowel
  - Use tape to obtain sharp outline of trim lines.

- Coating thickness 1/16" - 1/4"
  - Minimum drying- 24 Hours
  - Then re-point as necessary
  -
6. Owner instructions shall be complied with.

Submittal

Contractor Display Dryvet Document

1. DS 410-Color Prime
2. DPS Finishes- DS416 2pgs
3. "Genesis", Primer coat with reinforced fiberglass mesh DS-147

Specification applies to: driveway walls, Pearl haze, Sonora red, flag pole pedestals, historical pedestal and markers emerald isle.

Special Instructions for 10' granite walls re-granite

- A.) Granite panels 42" x 67" (10) 1 1/4" thick
- 1.) Caulked at panel and wall 1 1/4" Thickness
  - 2.) Identified Genesis
  - 3.) Textured acrylic finishes (TAFS) specifications DS-147 (7pgs)

## **N. DRAWINGS**