



**McDonald Municipal & Industrial**  
A Division of C. F. McDonald Electric, Inc.

**Project:** Galveston County MUD 12  
Emergency Generator

**Date:**

March 17<sup>th</sup>, 2025

### **Change Order Request #01**

This change order includes the costs associated with the delay of work that occurred on March 5<sup>th</sup>, 2025 when GC MUD 12 directed us to "stop work". The construction of the drilled piers was stopped so the underground exploration could be done by GC MUD 12.

This quotation includes the following:

- \$1,520.00 - MMI Supervision and Labor
- \$5,551.39 - Subcontractor work including drilling, labor, excavation
- \$1,041.00 - Unused concrete that we had to pay for
- \$75.00 - Truck/Tools
- \$1228.11 - Profit and Overhead (15%)
- \$236.00 - Bond Increase

The total cost for the additional work associated with this change is \$9,651.50.

Please note that we constructed the piers exactly as indicated on the drawings. GC MUD 12 excavated around 13' of dirt in the area in which the drilled piers are located and replaced it before we installed the new piers. In the event that the piers shift/settle due to improper compaction we cannot be held accountable for this. (We do not foresee this happening, but we just do not know as the piers were designed to be installed in the soil as it was prior to being removed and reinstalled by GC MUD 12).

Wayne Borkenmeyer  
Vice President-Special Projects  
McDonald Municipal and Industrial

Mark Henry  
County Judge

McDonald Municipal & Industrial  
5044 Timber Creek Dr  
Houston, TX 77017

**CONTRACT AWARD**

**CONTRACT FOR: Galveston County MUD #12 Emergency Generator**

THIS CONTRACT IS ENTERED INTO BETWEEN GALVESTON COUNTY TEXAS AND THE CONTRACTOR NAMED BELOW PURSUANT TO THE REFERENCED INVITATION TO BID.

Bid No: ITB #B242006A

Contractor: McDonald Municipal and Industrial-A Division of C.F. McDonald Electric, Inc.

The Specifications and Drawings are enumerated as follows:

Specifications and Drawings: **As described in and attached to the Invitation to Bid and Addenda.**

Special Items: **4.10 Rest Room and Field Office not required. No liquidated damages under 5.03 due to the vendor extending the bid for several months.**

ADDENDA: 1

The Invitation to Bid, General Provisions, Special Provisions, all forms required to be submitted with the Contractor's Bid, Galveston County Standard Agreement for Building Construction and Related Work, Contractor's Proposal, Affidavit and Surety Forms, Bonds, Addenda, Specifications and Plans and Drawings attached to this Contract Award are all made a part of this Contract and collectively evidence and constitute the entire contract. True and correct copies of the Addenda, Specifications, and Drawings listed above, which are incorporated fully herein as if they were physically attached, are kept in the records of the office of the Galveston County Purchasing Agent, and Contractor acknowledges receipt of the same. Contractor shall furnish all materials, perform all of the work required to be done and do everything else required by these documents.

Time of Completion: The Contractor shall complete the work within **406** Calendar Days of the issuance of the notice to proceed. The time set forth for completion of the work is an essential element of the Contract.

The Contract Sum: The County shall pay the Contractor for performance of the Contract, the sum of **Three Hundred Forty-Six Thousand Four Hundred and Sixty-Nine** Dollars and **00/100 (\$346,469.00)**, payments to be made as described herein.

Performance Bond required: ( x ) yes ( ) no  
Payment Bond required: ( x ) yes ( ) no



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

GALVESTON COUNTY, Texas

BY: \_\_\_\_\_  
Mark Henry, County Judge

ATTEST:

\_\_\_\_\_  
Dwight D. Sullivan, Galveston County Clerk

CONTRACTOR  
McDonald Municipal and Industrial-A Division of  
C.F. McDonald Electric, Inc.

BY: \_\_\_\_\_  
Wayne Berkenmeier  
Vice President Special Projects

**GALVESTON COUNTY  
STANDARD AGREEMENT  
FOR BUILDING CONSTRUCTION AND RELATED WORK**

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## **SECTION 1. DEFINITION OF TERMS**

**1.01 Definitions.** Whenever in this Standard Agreement and in the other Contract Documents, the following terms are used, the intent and meaning shall be interpreted as listed below:

**1.02 Addendum.** A document issued before receipt of Bids to clarify, revise, add to, or delete from original Bidding Documents, conditions of the Contract, Drawings, Specifications or previous Addenda.

**1.03 Agreement.** Written accord between the County and the Contractor covering the Work as described in the Contract Documents.

**1.04 Bid.** The written offer to Galveston County made on the prescribed form by the Bidder to furnish the materials or equipment and/or to perform the Work or services proposed.

**1.05 Bid Security.** The Bid Bond, cashier's check, certified check or other deposit designated in the Specifications to be made by the Bidder, which is to accompany the Bid as a guaranty of good faith to enter into a written Contract.

**1.06 Bidder.** Any individual, firm, joint venture, partnership, corporation or other legal entity submitting a Bid.

**1.07 Bidding Documents.** Instructions to Bidders, Bid form and any Addenda issued by the County to assist Bidders with Bid preparation; used in conjunction with the Contract Documents.

**1.08 Bonds.** Instruments of Security furnished by the Contractor and its Surety, as required by the Contract Documents, including Bid, Performance, Payment and special Bonds.

**1.09 Change Order.** A document added after the Contract execution to revise, add to, or delete from the Work and to adjust the Contract sum or Contract time. To be effective, a Change Order must be executed by the Commissioners Court.

**1.10 Commissioners Court.** The Commissioners Court of Galveston County, Texas.

**1.11 Contract.** The standard form, consisting of the Bid to Commissioners Court executed by the Contractor and acceptance by the County executed by the County Judge or other named person pursuant to authority granted by Commissioners Court, that binds the County and the Contractor covering the performance of Work or services or the furnishing of materials, supplies, or equipment as proposed. The

Contract shall include the Bid, Drawings, Specifications, general and special provisions, this Standard Agreement, and any and all supplements thereto.

**1.12 Contract Documents.** The Contract, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice to Proceed), the Bonds, this Standard Agreement, Supplementary Conditions, the Specifications and Drawings, and the Notice to Proceed, together with all amendments, modifications, and supplements issued pursuant to paragraph 5.06 of the Standard Agreement after Contract Time commences.

**1.13 Contract Time.** The number of calendar days (computed as provided in paragraph 5.03 of the Standard Agreement) or the date stated in the Contract for the completion of the work.

**1.14 Contractor.** The individual, firm, joint venture, partnership, corporation or other legal entity with whom a Contract is entered into with the County.

**1.15 County.** Galveston County, Texas.

**1.16 County Auditor.** County Auditor of Galveston County, Texas.

**1.17 County Judge.** County Judge of Galveston County, Texas.

**1.18 Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents officially approved by Galveston County, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**1.19 Payment Bond.** A Surety Bond in the amount of the Contract, solely for the protection of all claimants supplying labor and material in the prosecution of the Work provided for in the Contract.

**1.20 Performance Bond.** A Surety Bond in the amount of the Contract conditioned upon the faithful performance of the Work in accordance with the Drawings, Specifications and Contract Documents. Said Bond is solely for the protection of the County.

**1.21 Project Manual.** The documents containing, but not limited to, Bidding Documents, Contract Documents, all Specifications, special provisions and this Standard Agreement.

**1.22 Purchasing Agent.** The Purchasing Agent of Galveston County, Texas.

**1.23 Representative.** The person designated by the County to provide oversight on behalf of the County. If the County has hired an outside architect or engineer for this project, that architect or engineer is the County's Representative. In the absence of an outside architect or engineer, the Director of Facilities or any other person designated in writing by the Commissioners Court is the Representative. Otherwise, any person designated in writing by the County Judge is the Representative.

**1.24 Sample.** A physical example furnished by the Contractor to illustrate materials, equipment or workmanship; to establish standards by which the Work will be judged.

**1.25 Shop Drawings.** Original Drawings prepared by the Contractor, supplier or distributor which illustrate some portion of the Work and which shows fabrication, layout, setting, or erection details.

**1.26 Specifications.** Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

**1.27 Subcontractor.** An individual, firm, joint venture, partnership, corporation or other legal entity having a contract with the Contractor or with any Subcontractor for performing a part of the Work.

**1.28 Surety.** The legal entity which executes the Performance Bond, Payment Bond or Bid Bond, or guarantees the performance of the Bidder or Contractor.

**1.29 Work.** The entire completed construction or the various separately identifiable parts thereof required to be finished under the Contract Documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

## **SECTION 2. BIDDING AND AWARD**

**2.01 Intent of Drawings and Specifications.** The intent of these Drawings and Specifications is to prescribe definite Work or services to be undertaken, or materials, supplies, or equipment to be furnished by the Bidder if awarded the Contract. The Contract is to be carried out under the observation of the Representative unless otherwise indicated.

In the case of a construction project, the successful Bidder or Contractor shall perform all earthwork, build all structures and incidental construction, and perform extra Work, if necessary, all in accordance with the lines, grades, typical cross-sections, details and dimensions shown on the Drawings and Specifications. The

Contractor shall furnish, unless otherwise provided in the special provisions or in the Contract, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Contract.

Where the Contractor is to furnish only material, supplies, or equipment, the intent is to prescribe the qualifications, quantity, rate of delivery and location of delivery point or points.

**2.02 Interpretation of Drawings and Specifications.** Drawings and Specifications provide graphic and written descriptions of the character and scope of the Work. Modifications in the form of Addenda or Change Orders become an integral part of the Drawings and Specifications.

The Contract Documents are complementary; what is required by any one will be binding as if required by all. The Contract Documents are intended to describe the Work. Any Work not described will not be supplied unless reasonably inferred from Contract Documents.

Drawings and Specifications are considered inseparable documents. The Contractor must rely on both documents and must perform the Work according to combined intent.

Organization of Drawings and Specifications does not imply any control over the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade.

Words which have well known technical or trade meanings have those meanings in relation to materials or Work described in the Contract Documents. Where materials or equipment are specified by a trade or brand name, the intention is not to discriminate against an equal product of another manufacturer, but rather to set a definitive standard of quality or performance. The Representative will be the judge of equivalency. Any substitution of equivalent materials or equipment must be approved in writing by the Representative. The Representative may require a specifically designated material, equipment or process.

Materials specified by reference to other documents, such as Federal Specifications or other recognized standards, must be provided as described in the latest document in effect on the date Bids are received. Where more than one reference is made for a single material, the material may be furnished according to any one of the referred Specifications, at the Contractor's option.

Unless otherwise specified, all materials shall be the best of their respective kinds and shall be in all cases fully equal to approved Samples. All materials

furnished shall be new and free from defects and in accordance with the Specifications applying thereto.

Only Drawing dimensions or dimensions calculated from them will be used by the Contractor. Where the Work is affected by finish dimensions, the Contractor will determine and be responsible for those dimensions. On all Drawings, the figured dimensions shall govern in case of a discrepancy between the figured and scaled dimensions.

The Contractor shall take no advantage of any errors or omissions in the Drawings or Specifications. In the event of a conflict between the Drawings and the Specifications, the Specifications shall control.

**2.03 Reference Specifications.** When Reference is made in these Specifications to the Specifications of other agencies, organizations or departments, such Reference is made for expediency and standardization, and such Specifications referred to are hereby made a part of these Specifications.

**2.04 Special Provisions.** Should any construction, Work or condition which is not covered by standard Specifications be anticipated on any proposed work, special provisions for such Work will be attached to, and shall be considered a part of, the Specifications. Should any special provisions conflict with the standard Specifications, the special provisions shall govern.

**2.05 Examination of Drawings, Specifications, Special Provisions and Site of Work.** When a Bid is submitted, it will be presumed that the Bidder has visited and carefully examined the site of the Work and has made a complete study of the Drawings, Specifications, the Standard Agreement, special provisions and the form of the Contract to be entered into. Information concerning soil boring and water elevations taken on the project site, if available, will be furnished upon request. This information is offered to the Bidder for information purposes only and the County will not be responsible for the information contained therein. This provision is not intended to limit any liability which a third party other than an employee or officer of the County may have to the Contractor.

In the event the Contract covers materials, supplies or equipment, the Contractor is presumed to fully understand the requirements of the County.

If the Contractor encounters conditions or discrepancies differing materially between actual conditions and (1) subsurface or otherwise concealed physical conditions indicated in the Contract Documents or (2) concealed physical conditions of an unusual nature, which are ordinarily anticipated in the construction industry, the Contractor must notify the Representative, document the conditions clearly, and not disturb the conditions in question until the Representative observes and

documents the conditions or discrepancies and provides a written instruction to proceed. The Representative shall make a recommendation to the Commissioners Court as to whether a Change Order with an adjustment to the contract price and/or Contract Time is justified. The Contractor may provide the Representative with a response to the recommendation. The Representative shall submit the recommendation and response to Commissioners Court for consideration, and the Commissioners Court's decision shall be final.

**2.06 Measurement of Quantities.** All Work completed and materials furnished under the Contract on a unit price Bid shall be measured by the Representative according to United States standard measures, unless otherwise agreed upon in writing. Where applicable, the Contractor shall furnish the County with dray tickets with each load of materials. As a minimum, the tickets shall indicate gross, tare and net weights for each load, and the location of delivery.

**2.07 Bid Quantities.** On other than lump sum Bid items, the quantities listed on the Bid form are approximate and are to be used only for the comparison of Bids and the preparation of the Contract. Payment on other than lump sum Bid items will be based on the unit price Bid and the actual quantities of materials furnished or Work accomplished.

**2.08 Bid.** The unit prices Bid on any items shall govern. The unit prices written in words govern over the unit prices written in figures, and errors of extension will be corrected.

**2.09 Addenda.** The Contractor is responsible for verifying and obtaining all Addenda related to this work.

**2.10 Form of Bid and Signature.** The Bidder shall state in words and in figures the unit prices or the specific sums, as the case may be, for which it proposes to furnish the material, supplies or equipment or to perform the Work or services required by the Drawings and Specifications.

**2.11 Tax Exemptions.** The Bidder obligates himself, if awarded the Contract, to use reasonable diligence to obtain for the County any and all exemptions from State or Federal excise or other tax and if required to pay such taxes or if such taxes are paid, to assist the County in any necessary way to obtain refund of such taxes so paid and to execute any required documents necessary to obtain refunds or to assert such exemptions.

**2.12 Competency of Bidders.** Each Bidder must be capable of performing the various items of Work or services or of furnishing the various items of materials, supplies, or equipment Bid upon.

**2.13 Material Guarantee.** Before any Contract is Awarded, or before a Notice to Proceed is issued, the Bidder may be required to furnish a complete statement of the names and addresses of suppliers or of the origin, composition and manufacture of any or all materials to be used in the performance of its Bid, together with Samples which may be subjected to the tests provided for in the Specifications to determine their quality and fitness.

**2.14 Bonds.** The prescribed form of Performance Bond and Payment Bond are available to the Bidder and it is presumed that the Bidder is familiar with them. The Bidder to whom an Award is made shall, within ten (10) calendar days from the date of the Award, execute and deliver to the County any required Performance Bond and Payment Bond, all in the prescribed form. If the Bidder to whom the Award is made fails to furnish a required Performance Bond or Payment Bond as herein provided, the County may rescind its award and acceptance of Contractor's Bid and make an Award to the next lowest responsible Bidder who shall fulfill every stipulation embraced herein as if the first Award were made to it. If this should occur, the Bidder to whom the Award was first made shall at the option of the County, be required to pay to the County the difference between his Bid and that of the next lowest responsible Bidder up to the maximum amount provided in the Bid security for the project. A corporation to which an Award is made will be required to furnish evidence of the authority of the officers executing the Contract. The Performance Bond and the Payment Bond must be accompanied by a valid power of attorney or proper evidence as approved by the County, providing evidence that the person signing on behalf of the Surety is authorized to so act.

A firm or partnership to which an Award is made will be required to furnish evidence of the authority of the person executing the Bid satisfactory to the County. The Performance Bond and Payment Bond shall be on the forms prescribed by the County, for the full sum of the Contract and shall be executed by the Contractor and a surety company authorized to do business in Texas with an agency or home office in Texas. The Performance Bond and the Payment Bond must be accompanied by a valid power of attorney providing evidence that the person signing on behalf of the Surety is authorized to so act.

**2.15 Notice to Proceed.** Upon execution of the Contract, or later as required by the unique needs of the Work and upon mutual agreement, the County's Representative shall prepare and transmit to the Contractor a Notice to Proceed indicating a date the Contractor shall begin Work.

The time fixed for performance of Contract, (Contract Time) shall begin to run from the date fixed in the Notice to Proceed.

**2.16 Warranty of Title.** No material, supplies, or equipment to be installed or furnished under this Agreement shall be purchased subject to any chattel mortgage

or under a conditional sale, lease-purchase or other agreement by which an interest is retained by the seller or supplier. The Contractor shall warrant good and clear title to all materials, supplies, and equipment installed or incorporated in the Work and upon completion of all Work, shall deliver the same together with all improvements and appurtenances constructed or placed by Contractor to the County free from any claims, liens, or charges. Neither Contractor nor any person, firm, or corporation furnishing any material or labor for any Work shall have any right to a lien upon any improvement, appurtenance, component, or property of the County whatsoever. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law permitting such persons to look to funds due to the Contractor in the hands of the County. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the Work when no formal contract is entered into for such materials.

### **SECTION 3. INSURANCE**

**3.01 INDEMNIFICATION. THE CONTRACTOR SHALL SAVE HARMLESS THE COUNTY, ITS OFFICIALS, EMPLOYEES AND REPRESENTATIVES FROM ALL DAMAGES, EXPENSES, SUITS, ACTIONS AND CLAIMS OF EVERY KIND AND CHARACTER WHATSOEVER WHICH THE COUNTY MAY SUFFER DIRECTLY OR INDIRECTLY AS A RESULT OF THE CONTRACTOR'S NON-PERFORMANCE OF THE CONTRACT, INCLUDING ANY DEGREE OF MIXED NEGLIGENCE OR FAULT OF THE COUNTY. CONTRACTOR SHALL ALSO SAVE HARMLESS AND INDEMNIFY THE COUNTY AND ALL ITS REPRESENTATIVES FROM ALL DAMAGES, EXPENSES, SUITS, ACTIONS AND CLAIMS OF EVERY KIND AND CHARACTER WHATSOEVER WHICH THE COUNTY MAY SUFFER DIRECTLY OR INDIRECTLY DUE TO ANY BANKRUPTCY, STATE OR FEDERAL TAX LEVIES OR LIENS, OTHER LEGAL PROCEEDINGS OR OTHER MATTERS, SIMILAR OR DISSIMILAR, AFFECTING THE CONTRACTOR, IN WHICH THE COUNTY MAY BECOME IN ANY WAY INVOLVED, WHETHER RELATED TO THE CONTRACT AND/OR THE CONTRACTOR'S PERFORMANCE OR NON-PERFORMANCE UNDER THE CONTRACT, INCLUDING ANY DEGREE OF MIXED NEGLIGENCE OR FAULT OF THE COUNTY.**

**3.02 Insurance.** Prior to commencing any work, but no later than ten working days after award of contract, the Contractor shall submit or cause to be submitted any and all Certificate(s) of Insurance, showing that the Contractor has the required insurance, to the County's Representative. Failure to timely comply may cause this Contract to be rescinded and/or cancelled. Such insurance is to be provided at the sole cost of the Contractor. No Work shall be performed until all of the required insurance has been received and approved.

**\*NOTE: See Item "D" Workers' Compensation prior to award of Contract**

The Contractor shall be the "Named Insured" on ALL policies. At all times during the term of this contract, the Contractor shall maintain insurance coverage of the type and in the amounts which are not less than the minimum amounts shown. These requirements do not establish limits of the Contractor's liability. No policies shall be cancelled or lapsed on account of any partial occupancy or substantial completion.

All insurance coverage shall be written by companies holding a Certificate of Authority from the Texas State Board of Insurance, have a Best Financial rating of at least "A" or better and being otherwise acceptable to the County. In the event that coverage is not procurable, after diligent effort has been made to do so, from among the insurers licensed to transact and actually write the type and class of insurance in the State of Texas, the County may consider "Surplus Lines Insurance" pursuant to the Texas Insurance Code Ann. § 981.

#### ENDORSEMENTS

1. The County must be "Additional Insured" on the commercial general liability and business automobile liability (with Contractor's insurance policy as primary).

2. All policies shall waive all rights of subrogation against the County, its officers, employees and agents.

3. All policies shall provide that a thirty (30) day written notice shall be submitted to the County's Representative, in the event of cancellation or material change. If the coverage period shown on the Contractor's current certificate ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate with the County showing that coverage has been extended.

\*\* All certificates must contain the Work description and all of the above endorsements.

## MINIMUM REQUIREMENTS

<b>Insurance Coverage</b>	<b>Limits of Liability</b>
<b>A. Commercial General Liability,</b> occurrence form, including coverage for bodily injury, personal injury, and property damage, Independent Contractor's Liability, Premises and Operation, Products Liability, Products-Completed Operations, Contractual Liability, and, if applicable to the project, coverage for watercraft, blasting, collapse, explosions, blowout, cratering, underground damage, pollution, and asbestos	\$1,000,000 each occurrence \$2,000,000 aggregate
<b>B. Business Automobile Liability,</b> including hired and non-owned coverages	\$1,000,000 each occurrence
<b>C. Builder's Risk (building construction only) all risk</b>	100% of the dollar value of the Contract
<b>D. Workers' Compensation</b>	Statutory Limits

In regard to Workers' Compensation Coverage, the following special requirements shall apply:

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 providing services on a project, for the duration of the Work.

Duration of the Work – includes the time from the beginning of the Work on the project until the Contractor's Work on the project has been completed and accepted by the County.

Persons providing services on the project ("Subcontractor" Texas Labor Code in section 406.121) - 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.

2. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the Work.
3. The Contractor must provide a certificate of coverage to the County prior to being awarded the Contract.
4. 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 County showing that coverage has been extended.
5. The Contractor shall obtain from each person providing services on a project, and provide to the County:
  - a. a certificate of coverage, prior to that person beginning Work on the project, so the County 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.
6. The Contractor shall retain all required certificates of coverage for the duration of the Work and for one year thereafter.

7. The Contractor shall notify the County in writing by certified mail or personal delivery, within 10 days after the Contractor knows or should know, of any change that materially affects the provision of coverage of any person providing services on the project.
8. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, 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. (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.)

#### REQUIRED WORKERS COMPENSATION COVERAGE

"The law requires 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 Division of Workers' Compensation at 1-800-252-7031 or access the division's website at [www.tdi.texas.gov/wc/indexwc.html](http://www.tdi.texas.gov/wc/indexwc.html) to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

9. The Contractor shall 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, 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;
  - b. 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;

- c. provide to 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;
- d. 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. 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;
- e. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- f. notify the County in writing by certified mail or personal delivery, within 10 days after the person knows or should know, of any change that materially affects the provision of coverage of any person providing services on the project; and
- g. 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.

10. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the County 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, civil penalties, or other civil actions.

11. The Contractor's failure to comply with any of these provisions is a breach of Contract by the Contractor which entitles the County to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the County.

## **SECTION 4. REGULATORY REQUIREMENTS**

**4.01 LAWS TO BE OBSERVED. THE CONTRACTOR IS ASSUMED TO BE FAMILIAR WITH AND AT ALL TIMES SHALL OBSERVE AND COMPLY WITH ALL FEDERAL, STATE, COUNTY AND CITY LAWS, ORDINANCES AND REGULATIONS IN ANY MANNER AFFECTING THE CONDUCT OF THE WORK, AND SHALL INDEMNIFY AND SAVE HARMLESS THE COUNTY AND ITS REPRESENTATIVES AGAINST ANY CLAIM ARISING FROM THE VIOLATION OF, OR FAILURE TO COMPLY WITH ANY SUCH LAWS, ORDINANCES, OR REGULATIONS, BY THE CONTRACTOR OR ITS EMPLOYEES.**

**4.02 Permits and Licenses.** The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work.

**4.03 Barricades, Warning Lights and Signs on Projects Involving Public Roads.** Unless provided otherwise in the Contract Documents, the Contractor is solely responsible for furnishing, erecting and maintaining, suitable barricades, warning signs, flares, barriers, cones, lights, flags, signals, flagmen and other traffic control devices as are or may be necessary to adequately protect the Work and shall warn, advise and safeguard the public over the entire project, including, but not limited to, sections of the project which the Contractor closes to traffic.

The Contractor's responsibility in this regard extends for the entire duration of the Work, from the start of construction until acceptance by the County. All barricades, signs and other types of devices necessary for traffic control and to protect the Work shall be in accordance with the "Texas Manual on Uniform Traffic Control Devices".

**4.04 Sanitary Provisions.** The Contractor shall provide and maintain in a neat, sanitary condition, such accommodations for the use of its employees as may be necessary to comply with the requirements of any Federal, State, County or City laws, ordinances or regulations.

**4.05 Safety and Health Standards.** The Contractor shall observe and comply with all safety and health standards and to all legislation and amendments enacted for the safety and health of Contractor's employees. Such safety and health standards shall apply to all Subcontractors, and the Contractor shall be responsible for initiating, maintaining, supervising and inspecting safety programs, safety systems and safety precautions, including, but not limited to, trench safety requirements, in connection with the Work.

**4.06 Environmental Protection.** The Contractor shall be responsible for compliance with all applicable environmental protection requirements, codes, regulations, laws and ordinances.

The Contractor shall recognize the environmental requirements of the project. Disturbed areas shall be strictly limited to boundaries established by the County's Representative. Particular attention is drawn to the avoidance of any pollution of any "on-site" streams, sewers, wells or other water sources.

Contractor shall prevent erosion of soil and excess runoff of surface or subsurface water from the construction site during the construction period. To retain existing drainage patterns external to the construction site, the Contractor shall construct temporary ground cover as needed to control conditions. The Contractor shall legally dispose of all solid waste materials and other materials to be removed from the site by transporting to disposal areas that are approved by State and local authorities. No burning shall be permitted unless otherwise noted. All Work shall be performed in such a manner as may be required to avoid pollution of the air by dust or other contaminants. The Contractor shall control excessive noise at the job site.

**4.07 Cultural Artifacts.** The Contractor shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. In the event such items are discovered on the premises, the Contractor shall immediately notify the Representative, and the site and the material shall be protected by the Contractor from further disturbance until a professional examination of them can be made, or until clearance to proceed is authorized by the Representative.

**4.08 Use of Explosives.** When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care not to endanger life or property. All explosives shall be stored in a secure manner and all such storage places shall be marked clearly "Dangerous", "Explosives" and shall be in the care of competent watchmen. The Contractor shall be solely responsible for damage caused by explosives.

**4.09 Project Signs.** When required, the Contractor shall provide, install and maintain a project sign at the construction site. The borders and block style letters will be black, while the sign background and other exposed surfaces shall be white. Inscriptions shall include the name of the project, County officials, County's Representative, and Contractors as shown on the Drawings.

**4.10 Rest Room and Field Office.** When required by the County's Representative, the Contractor shall provide and maintain at its own expense an office and a rest room for the exclusive use of the Representative and the Representative's staff for all projects over one hundred (100) calendar days in duration. The office will be

approximately 200 square feet in size, mounted on skids, wheels or other approved mobility with 7 feet minimum ceiling height and shall be of weather-tight construction. The inside walls of the office shall be lined with paneling or other material approved by the Representative, and the office shall have no fewer than six double-hung windows, a door with hasp for padlock and a floor a minimum of 8 inches above the ground covered in tile or other material approved by the Representative. The office shall have a closet at least 3 feet wide, 1-1/2 feet deep and 7 feet in height, a sloped top stand-up height table and stool, a desk, 3 chairs, and a lockable two-drawer legal size file cabinet. The Contractor shall also provide two racks for holding Drawings and an office sign 24" X 36", painted as directed by the Representative. All exterior openings shall be screened. The rest room and field office shall be complete and ready for use on or before the first day construction begins. The rest room and field office shall be placed at a location satisfactory to the Representative. The office shall be wired and furnished with electricity, shall be air-conditioned, heated and shall have WiFi and/or wireless internet service and contain a working telephone with a separate line and an outside bell for the exclusive use of the Representative and Representative's staff.

The Contractor and Subcontractors may maintain such office and storage facilities on the site as are necessary for the proper conduct of the work. These shall be located as to cause no interference to any Work to be performed on the site nor the County's operations. The Representative must approve of the locations.

These buildings, and the items furnished with the buildings, shall remain the Contractor's property, and all such temporary facilities shall be removed by the Contractor at the end of the project, leaving the site of the Work in the condition required by the Contract. No direct payment will be made for these structures or the furnishings.

## **SECTION 5. PROSECUTION OF THE WORK**

**5.01 Prosecution of Work.** The Contractor shall notify the Representative at least twenty-four (24) hours before beginning Work. The Contractor shall start the Work at any part of the project designated by the Representative and shall prosecute the Work at as many different points as the Representative shall direct.

**5.02 Construction Schedule.** For all Work of one million to five million dollars, the Contractor will submit a detailed construction schedule within seven days of Notice to Proceed. The schedule will be a bar type schedule and shall be of sufficient detail to show construction sequence, proposed start dates and estimated completion dates for major parts of the Work. Projects over five million dollars require the Contractor to provide a computer based critical path method schedule to the satisfaction of the Representative within thirty (30) days from Notice to Proceed.

**5.03 Time of Completion.** Time is of the essence of this Contract. If the Contractor fails to acceptably complete the Contractor's undertaking to the County within the time specified in its Bid and Contract, the County will be damaged. The exact amount of damage is, and will be, difficult of exact ascertainment. Such damages shall be at the rate, or the amount hereinafter fixed. The Contractor specially binds and obligates himself to pay such damages to the County on demand, or at the County's option the County may withhold the amount thereof from any sums due the Contractor under this Contract.

The County's Representative shall record on forms furnished by the County the time worked each calendar day, if any, by the Contractor. When requested by the County's Representative, such records or reports shall be signed by the Contractor or the Contractor's Representative and the Contractor shall be entitled to a copy thereof. Failure of the Contractor to sign or to receive a copy shall not affect the result of the findings made in such reports. One copy of such report shall be filed daily with the County's Representative. Work shall begin on the date fixed in the Notice to Proceed. The Work will be completed and ready for Final Payment in accordance with paragraph 6.04 of the Standard Agreement within \_\_\_\_\_ calendar days after the date when the Contract Time commences to run. The County will suffer financial loss if the Work is not completed within the time specified herein, plus any extension thereof allowed in accordance with paragraph 5.06 of the Standard Agreement. The County and the Contractor recognize the delays, expense, and difficulties involved in proving, in a legal proceeding, the actual loss suffered by the County if the Work is not complete on time. Accordingly, instead of requiring any such proof, the County and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the County \_\_\_\_\_ (\$ \_\_\_\_\_) for each day that expires after the time specified herein for completion until the Work is complete. In case full payment for the Work shall have been made, the County shall have the right to recover from the Contractor and the Contractor's Surety the amount of such liquidated damages as determined under this Contract.

If the Work is delayed or impeded at any time by (1) the act or omissions of the County or the Representative; (2) changes in the work; (3) other causes not reasonably foreseeable by the parties at the time of the execution of the contract which are beyond the control and without the fault or negligence of the Contractor, including without limitation: acts of God, fire, epidemic, quarantine, blockade, war, strikes, or embargoes; or (4) any other cause which the Contractor and Representative agree justifies an extension of Contract Time, then the Contractor's sole and exclusive remedy is an extension of Contract Time. To obtain the extension of Contract Time, the Contractor must promptly notify the Representative within 10 days of the onset of the delay. Upon receipt of notice, the Representative shall ascertain the facts and the cause and extent of the delay. The Representative has the authority to grant an extension of Contract Time under this paragraph.

**COMPUTATION OF CONTRACT TIME** – When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last date of any such period falls on a Saturday and Sunday or on a day made a legal holiday by Commissioners Court, such day will be omitted from the computation.

The specified number of calendar days in which the Work is to be completed pursuant to the Contract are consecutive Gregorian calendar days inclusive of Saturdays, Sundays, and all legal holidays. A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.

Contract Time includes \_\_\_\_\_ calendar days to accommodate inclement weather. If the number of inclement weather days exceeds 110% of the above-mentioned number of calendar days to accommodate inclement weather, the Contractor may make a written application to the Representative for, and receive, an extension of the Contract Time, for such number of days that the inclement weather days exceeds 100% of the above mentioned number of calendar days to accommodate inclement weather. After receipt of such application, the Representative shall make a determination as to which days, if any, during the Contract Time are inclement weather days, and the Representative's decision shall be final. The Contractor shall be entitled to an extension of the Contract Time equal to such excess as determined by the Representative. The term "inclement weather day", as used herein, means a day in which weather or wet soil does not permit the performance of the Work for a continuous period of not less than seven hours between the hours of 7 a.m. and 6 p.m.

**5.04 Abandonment of Work or Default of Contractor.** If the Contractor fails to begin the Work within the time specified; or fails to make deliveries or to provide sufficient workmen and equipment or sufficient materials to insure the prompt completion; or performs the Contract unsuitably; or neglects or refuses to remove materials or perform anew such Work as shall have been rejected as defective or unsuitable; or discontinues the prosecution of the Work; or becomes insolvent or is declared bankrupt; or commits any act of bankruptcy or insolvency; or allows any final judgment to stand against the Contractor unsatisfied for a period of forty-eight (48) hours or longer; or makes an assignment for the benefit of creditors; or fails to comply with any of the conditions of the Contract to such an extent that the Contract is forfeited or abandoned by the Contractor, or declared abandoned or suspended by the County; or if the Contractor for any other cause whatsoever shall not carry on the Work or perform the Contract in an acceptable manner, then and in that event, the Surety on the Contractor's Performance Bond shall have the right and privilege, within seven (7) calendar days after the date of notice of such action from the County, to assume control of the Contract and all Work thereunder and to sublet or complete the Work in strict conformity with the provisions of said Contract. Failure of the Surety to do so within said seven (7) calendar days will result in an immediate forfeiture of all right to thereafter assume control of the Contract and the Work

thereunder, in which event the County shall have the right to take the prosecution of the Work out of the hands of the Contractor and to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and enter into an Agreement for the completion of the Contract according to the terms and provisions thereof or use such other methods as in the Representative's opinion may be required or desirable for the completion of the Contract in an acceptable manner. All costs and charges incurred by the County, together with the costs of completing the Work, shall be deducted from any money due or which may become due said Contractor. In the event the cost and expense so incurred by the County is less than the sum which would have been payable under the Contract if it had been completed by said Contractor, then the said Contractor and/or Surety shall be entitled to receive the difference. In the event such cost shall exceed the amount which would have been payable under the Contract, then the Contractor and Surety shall be liable and shall pay to the County the amount of said excess.

**5.05 Termination for Convenience of the County.** The County may terminate this Agreement at any time by notice in writing to the Contractor. Upon receipt of such notice, the Contractor shall stop all work. Within ninety (90) days after receipt of notice of termination, the Contractor shall submit a statement, showing in detail the Work performed under this Agreement to the date of termination. The County shall then pay the Contractor that proportion of the Contract price which the Work actually performed under this Agreement bears to the total Work called for under this Agreement, less such payments as have been previously made. The County suggests that the Contractor have a similar termination provision in all its contracts inasmuch as the County will not compensate the Contractor for loss of profits or any other damage resulting from such termination.

**5.06 Change Orders.** The County may make changes in the scope of Work required to be performed by the Contractor under the Agreement via Change Orders without relieving or releasing the Contractor from any obligations under the Agreement or any guarantee given by the Contractor pursuant to the Contract Documents, and without affecting the validity of the Bonds, and without relieving or releasing the Surety of said Bonds. All such Work shall be performed under the terms of the original Contract unless a Change Order expressly provides otherwise.

Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the Work, materials used, the specified manner of constructing and/or installing the improvements, nor supply additional labor, services, or materials beyond that actually required for the execution of the Contract as originally agreed unless pursuant to a written Change Order authorizing the Contractor to proceed with the change. No claim for additional compensation will be valid unless pursuant to a written Change Order.

The net value of all changes does not increase the original total amount of the Agreement by more than twenty-five percent (25%) or decrease the original total amount by more than eighteen percent (18%). In the case of a unit price contract, unit prices specified in the Contract shall govern the Change Order. .

Each Change Order shall include:

1. A detailed description of the change in the work.
2. The Contractor's proposal (if any).
3. A definite statement as to the resulting change in the Contractor's compensation and/or Contract Time.
4. The statement that all work involved in the Change Order shall be performed in accordance with the Contract except as modified by the Change Order.

**5.07 Subcontracting.** Within ten days after Contract award, the Contractor is required to furnish a list of Subcontractors proposed for principal portions of the Work. Subcontractors will not be replaced by the Contractor without notice to the County.

Nothing contained in the Contract Documents will create any contractual relation between the County or the Representative and any Subcontractor.

The Contractor shall promptly make payments to all persons supplying labor and materials or furnishing any equipment in the execution of the Contract. Neither the County nor the Representative has any obligation to pay, or see to the payment of, any monies to any Subcontractor except as may otherwise be required by law.

No Subcontractor shall, under any circumstances, relieve the Contractor of the Contractor's liabilities and obligations under this Contract, should such Subcontractor fail to perform the Work undertaken by it in a satisfactory manner. The Contractor shall be fully responsible to the County for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them.

If County notifies Contractor that this Agreement will be funded in whole or in part by federal funds, the Contractor shall not execute any agreement with any Subcontractor or permit any Subcontractor to perform any work included in this contract until Contractor has verified the Subcontractor as eligible to participate in federally funded contracts.

**5.08 Character of Workmen and Equipment.** Any foreman or workman employed by the Contractor or by any Subcontractor who, in the opinion of the County's Representative, does not perform their Work in a proper and skillful manner or is disrespectful, intemperate, disorderly or otherwise objectionable, shall at the written request of the Representative, be forthwith removed from the job site by the

Contractor or any Subcontractor employing such foreman or workman and shall not be employed again on any portion of the Work without the prior written consent of the Representative. Should the Contractor fail to remove such person or persons or fail to furnish suitable and sufficient machinery, equipment or force for the proper prosecution of the Work, the Representative may withhold all estimates which are, or may become, due, or may suspend the Work until such workmen, engaged on special Work or skilled Work, shall be replaced by persons having sufficient experience in such Work to properly and satisfactorily perform it and operate the equipment involved, and shall perform the Work in the manner prescribed in these Specifications.

**5.09 PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIALMEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES. THE CONTRACTOR SHALL INDEMNIFY AND SAVE THE COUNTY HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THE CONTRACT. WHEN SO DESIRED BY THE COUNTY, THE CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREIN ABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.**

**5.10 Authority of Representative.** The Work shall be done under the direct observation of the Representative and to the Representative's satisfaction. The Representative shall decide any and all questions which may arise as to the quality or acceptability of materials furnished, Work performed, and rate of progress of the Work, and shall decide all questions which may arise as to the interpretation of the Drawings and Specifications and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor. The Representative's decisions under this provision shall be final and binding on both parties hereto.

**5.11 Cooperation of Contractor.** The Contractor shall give the Work constant attention to facilitate the progress thereof and shall cooperate with the Representative in every way possible. The Contractor shall have at all times, regardless of how much of the Work may be sublet, a competent and reliable English-speaking superintendent on the job site authorized to receive orders and to act for the Contractor.

The Contractor shall give the Representative full opportunity to inspect the Work at all stages, and where there has been any Work stoppages the Contractor shall give the Representative at least twenty-four (24) hours notice before resuming operations. Where any gas, water, or other utility installations will be affected by the

Work to be carried on by the Contractor, the Contractor must provide ample notice to the owners, operators or persons in charge so that the prosecution of the Work under this Contract is not delayed.

**5.12 Contractor's Drawings.** Supplementary Drawings, shop details, working Drawings and other data required by Contract Documents shall be furnished by the Contractor but shall not be used prior to approval. Authorized alterations will be endorsed by the Representative on approved Drawings or shown on supplementary sheets. Shop Drawings for steel structures shall consist of shop details, erection and other working Drawings showing details, dimensions, sizes of members and other information necessary for the complete fabrication and erection of the metal work. Working Drawings of concrete structures shall consist of such detailed Drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings furnished by the Representative. It is expressly understood that the approval of the Representative of the Contractor's shop working Drawings is general, and such approval will not relieve the Contractor of any responsibility whatsoever. The Contractor shall furnish the Representative with such print copies of the working Drawings as may be required for approval and for construction purposes. The Contract price shall include the cost of furnishing all Shop Drawings, and the Contractor will be allowed no extra compensation for such Drawings.

**5.13 Record Drawings.** The Contractor shall maintain in a safe place at the site one i copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These Record documents, together with all approved Samples and a counterpart of all approved Shop Drawings, will be available to Representative for reference. Upon completion of the Work, these Record documents, along with all Samples and Shop Drawings, must be delivered to the County's Representative.

**5.14 Reference Points.** The County shall provide engineering surveys to establish reference points for construction which in the Representative's judgment are necessary to enable the Contractor to proceed with the Work. The Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without prior written approval of the County. The Contractor shall report to the Representative whenever any reference point is lost or destroyed or requires relocations because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

**5.15 Materials and Workmanship.** The Contractor shall submit Samples or specimens of the materials to be furnished or used in the Work as the Representative may require. All materials must be of specified quality and equal to approved Samples,

and shall be stored so as to ensure the preservation of their quality and fitness for the Work.

All materials not conforming to the Specifications shall be considered defective and all such materials, whether in place or not, shall be rejected and shall be removed immediately from the site of the Work, unless otherwise permitted by the Representative. No rejected materials, the defects of which have been subsequently corrected, shall be used until approval has been given by the Representative. All Work which has been rejected shall be remedied or removed and replaced in an acceptable manner by the Contractor at the Contractor's own expense, and no compensation shall be allowed for such removal or replacement. Upon failure of the Contractor to forthwith comply with any order of the Representative made under the provisions of this article, the Representative shall have the authority to remove and replace defective material or Work and to deduct the cost of removal and replacement from any monies due, or to become due, the Contractor.

**5.16 Patented Devices, Materials and Processes.** If the Contractor uses any design, material, or process covered by letters, patent or copyright, the Contractor shall provide for such use with the patentee or owner. **THE CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE COUNTY FROM ANY AND ALL CLAIMS FOR INFRINGEMENT.**

**5.17 Inspection.** The Representative shall be authorized to inspect all Work in progress, all Work completed, and all materials furnished. The Representative shall not be authorized to revoke, alter, enlarge, relax, or release any requirements of these Specifications. The Contractor shall also furnish the Representative a statement from the Subcontractor that the Subcontractor understands the Drawings and Specifications and is properly qualified to perform such Work. No Subcontract will in any way affect the terms of the Contract between the County and the Contractor or relieve the Contractor of any of its obligations thereunder.

The Representative shall at all times have access to all parts of the shop where material under this Contract is being manufactured. Material that does not conform to the Specifications, accepted through oversight or otherwise, may be rejected at any stage of the Work. The Contractor shall remove and rebuild at the Contractor's own expense any part of the project that has been improperly executed, even if it has been included in the monthly estimates. If the Contractor refuses or neglects to correct any defective work, it may be corrected by the County, at the Contractor's expense.

Whenever the Contractor is permitted or directed to do night work, or to vary the period during which the Work is carried on each day, the Contractor shall give the Representative due notice so that inspections may be performed. Such Work shall be done without extra compensation. The Contractor will furnish the Representative a schedule for this night work.

Should the Representative require it, the Contractor shall at any time during the construction of Work, make openings for inspection through any part of said Work to such extent as the Representative may direct, and the Contractor shall make the same good again to the satisfaction of the Representative. Should the Work, in the opinion of the Representative, be found to be faulty in any respect, all such faulty Work shall be replaced by the Contractor.

**5.18 Material Testing.** The County will assign a testing laboratory and will pay for testing and inspection directly, unless otherwise noted in the Specifications. Final testing and inspection may be made after the delivery of materials to the project site. Structural materials may be tested and inspected at points of origin. Should materials or construction not be in accordance with the Specifications when first tested, additional testing shall be required. If the materials or construction meets Specifications and passes the retest, the cost of the retest will be at the County's expense. If the retest does not meet Specifications and fails, the cost of the retest and all subsequent retests shall be at the Contractor's expense. Testing and retesting may be made at any time during the progress of the Work. It shall be the responsibility of the Contractor to notify the Representative in advance as to the time of individual concrete placements. This is necessary in order to schedule the laboratory without unduly delaying construction.

**5.19 Contractor's Responsibility for Work.** Until the acceptance of the Work by the Representative as evidenced in writing, the Work shall be under the charge and care of the Contractor. The Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause, whether arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, restore and make good at the Contractor's own expense all injuries or damages to any portion of the Work before its completion and acceptance. The Contractor shall keep the premises free from accumulation of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, the Contractor shall leave the site clean and ready for its use by the County.

**5.20 Preservation and Restoration of Property.** The Contractor shall be responsible for the preservation of the County's property adjacent to the project. When or where any direct or indirect damage is done to the County's, or adjacent, property by or on account of any act, omission, neglect or misconduct in the performance of the Work or in consequence of the non-performance thereof on the part of the Contractor, the Contractor shall restore, at the Contractor's own expense, such property to a condition equal to that existing before such damage was done by repairing, rebuilding or otherwise restoring same, or the Contractor will make good such damage in a manner acceptable to the Representative.

**5.21 Emergencies.** In emergencies affecting the safety or protection of persons, or the Work, or Property at the site, or adjacent thereto, the Contractor, without special instruction or authorization from the County or the Representative, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Representative prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Document have been caused thereby.

**5.22 Public Utility Obstruction.** When public utilities, such as poles, pipes, conduits, etc. must either be removed or adjusted to a new location on the site to make way for new construction, the Contractor shall cooperate with the public utility making the changes and shall use every precaution to protect their property.

**5.23 Guarantee.** The Contractor agrees to replace, without cost to the County, any Work found to be improper or defective and to make good all damage or other Work caused by such replacement. The guarantee period for the Work is one year from substantial completion of the project. Additional guarantees for specific items may also be required by the Specifications. The guarantees must be presented to, and approved by, the Representative before project acceptance and Final Payment is made.

The Contractor will supply the County with copies of all guarantees and warranties, which have been made to the Contractor by suppliers or Subcontractors, with an assignment of these guarantees and warranties to the County. Assignments will not relieve the Contractor of the Contractor's responsibility in the case of a supplier's or Subcontractor's failure to fulfill guarantee or warranty provisions. If the Contractor is prevented for any reason from making any such assignment to the County, the Contractor hereby gives the County permission to enforce any and all non-assignable guarantees and warranties in the Contractor's name, and the Contractor shall pass on to the County any benefits derived therein.

Neither final completion of the project, nor any provision in the Contract Documents relieves the Contractor of responsibility for faulty materials or workmanship during guarantee periods.

**5.24 Substantial Completion.** When the Contractor considers the entire Work ready for its intended use, the Contractor shall notify the County in writing that the entire Work is substantially complete (except for items specifically listed as incomplete) and request that the Representative issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Parties to the Contract shall make an inspection of the Work to determine the status of completion. If the Representative does not consider the Work substantially complete, he will notify the Contractor in writing giving the reasons therefore. If the Representative considers the Work substantially complete, he will prepare a certificate of Substantial Completion which shall fix the

date of Substantial Completion. There shall be attached to the certificate, a punch list of items to be completed or corrected before Final Payment. The Substantial Completion certificate will allow a reasonable period for the Contractor to complete the punch list items. Upon satisfactory completion of all punch list items the Contractor may apply for Final Payment.

**5.25 Partial Utilization.** Acceptance and use by the County, at the County's option, of any substantially completed part of the Work which (a) has specifically been identified in the Contract Documents, or (b) the County and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the County for its intended purpose without significant interference with the Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work.

## **SECTION 6. PAYMENT**

**6.01 Schedule of Values.** Before the first Partial Payment the Contractor shall submit to the Representative a Schedule of Values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Representative may require. The schedule must be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown as a single line item. This schedule, unless objected to by the Representative, shall be used as a basis for reviewing the Contractor's payments.

**6.02 Partial Payments.** At the earliest possible date after the first day of each calendar month, the Representative will make a current estimate in writing of the materials in-place complete, and the amount of Work performed through the last day of the preceding calendar month, and the value thereof based on the Contract price, the value being hereinafter called the "Current Value of the Work". The Representative shall also, unless otherwise provided in the Contract Documents, determine the reasonable invoice cost of all materials and equipment for subsequent incorporation into the Work that have been delivered and suitably stored at the site (or, with advance approval by the Representative, stored off-site at an agreed location) but which remain unincorporated into the Work, such reasonable cost being hereinafter called the "Current Value of Stored Materials and Equipment". The Representative shall determine the number of elapsed calendar days during the performance of the Work, and the amount of any accrued liquidated damages. Within thirty (30) days after audit and approval of the Representative's determinations for each month by the County Auditor, the County shall pay to the Contractor an amount equal to 90% of both the approved Current Value of the Work and the approved Current Value of Stored Materials and Equipment, less the amount of all prior payments hereunder to the Contractor and less the amount of any accrued liquidated damages. Stored materials and equipment for which reimbursement has been received by the Contractor may not be removed from its place of storage without the

Representative's permission except for incorporation into the Work. The value of materials for which payment has been made while stored shall not be included in the Current Value of the Work. The 10% withheld from partial payments will be payable to the Contractor, subject to any adjustments made in accordance with this Agreement, at the time of final payment.

**6.03 Adjusting Payment.** If Change Orders diminish the amount of Work, any resulting decrease in the amount to be paid the Contractor pursuant to the Contract will not constitute the basis for a claim. If Change Orders increase the amount of Work, and the Work can be classified under Contract Documents, the Contract sum will be increased according to the Work actually done at established unit prices.

If the Representative deems it not expedient to require Contractor to correct portions of the Work which are not in conformity with the Contract Documents, Representative may reach a written agreement with Contractor to reduce the amount due to the Contractor for the nonconforming portions of the Work rather than requiring correction thereof.

**6.04 Acceptance and Final Payment.** The Representative shall, as soon as practicable after the completion of this Contract, make a Final Estimate of the amount due the Contractor under the provisions of the Contract and submit same to the Commissioners Court. Within thirty (30) days after approval by the Commissioners Court and the County Auditor, the County shall pay the Contractor the amount of the estimate or Final Estimate after deducting therefrom all previous payments and all amounts to be retained under the provisions of this Contract. All prior Partial Estimates and Payments shall be subject to correction in the Final Estimate and Payment. No estimate or payment except the Final Payment shall be evidence of performance by the Contractor. No payment by the County shall be construed to be an acceptance of any defective Work or improper materials, or a release from any claim for damages. The payment of the final amount due under the Contract, and the adjustment and payment of the bill rendered for any Work done in accordance with any alterations of the Contract by a Change Order, shall release the County and the Representative from any and all claims or liability on account of Work performed under the Contract or alterations thereof. The Contractor will examine the Final Estimate and if correct will certify under oath to the payment by the Contractor of all claims against the Contractor for labor, materials, and supplies furnished the Contractor by all persons and firms in the performance of the Contract.

**6.05 Auditor's Certification of Funds.** The laws governing the awarding of Contracts by the County require the approval of the County Auditor and the County Auditor certify that funds are, or will be, available for the payment of the obligations created thereunder before such Contracts become effective. Despite any provisions in the Specifications, the Drawings or the Contract to the contrary, no change or addition of any character in the Specifications, the Drawings or the Contract which will increase

the obligations of the County, or the amount to be paid by the County shall ever be binding on the County unless and until such changes or additions have been submitted to the County Auditor and the County Auditor certifies that funds are, or will be, available for the payment of such obligation.