

Project Manual for:

**Tree Replacements in Downtown Houston 2024**

Houston, Texas

Project Number 24-927.002-01

A Project for:



Houston Downtown  
Management District

**September 2024  
Bid Set**

Document 00003  
 TABLE OF CONTENTS

PROJECT MANUAL  
 TREE REPLACEMENTS IN DOWNTOWN HOUSTON  
 PROJECT NUMBER 24-927.002-01  
 September 2024

Document	Title	No. of Pages
<b>INTRODUCTORY INFORMATION</b>		
00003	Table of Contents .....	3
<b>BIDDING REQUIREMENTS</b>		
<b>REQUIREMENTS</b>		
00020	Notice to Bidders .....	3
00030	Advertisement for Bids .....	1
00100	Instructions to Bidders .....	6
00200	Proposal Organization and Selection Criteria .....	2
<b>BID FORMS</b>		
00310	Form of Proposal .....	3
00315	Bidder's Bond (For filing; Example Form) .....	2
00316	Letter of Intent Concerning Availability of Performance Bond (Example Form of Letter) .....	1
<b>SUPPLEMENTS TO BID FORMS</b>		
00405	Schedule of Unit Price Work .....	2
00430	Bidder's Statement of M/W/DBE Status .....	1
00440	Conflict of Interest Questionnaire .....	1
00470	Bidder's MWDBE Participation Plan .....	2
00471	Pre-bid Good Faith Efforts .....	2
<b>POST-BID PROCEDURES</b>		
00450	Post-Bid Procedures .....	3
00455	Notice of Intent to Award (Example Form) .....	2
<b>CONTRACT FORMS</b>		
<b>AGREEMENT FORMS</b>		
00510	Agreement Between the Houston Downtown Management District and Contractor .....	4
00511	Resolution of Corporation .....	1
<b>BONDS AND CERTIFICATES</b>		
00610	Performance Bond .....	3
00611	Statutory Payment Bond .....	2
00612	One-Year Maintenance Bond .....	2
00613	One-Year Surface Correction Bond .....	2
00615	Affidavit of Insurance .....	1
00616	Certificate of Insurance (to be filed, provided by contractor)	
00620	List of Proposed Subcontractors and Suppliers .....	2
00622	Name and Qualifications of Proposed Superintendent (to be filed, provided by contractor)	
00630	Office of Business Opportunity Compliance Program .....	28

Document 00003  
 TABLE OF CONTENTS

PROJECT MANUAL  
 TREE REPLACEMENTS IN DOWNTOWN HOUSTON  
 PROJECT NUMBER 24-927.002-01  
 September 2024

Document	Title	No. of Pages
00631	Affidavit of Compliance with Office of Business Opportunity.....	1
00632	Office of Business Opportunity Compliance Certification by Material Suppliers.....	1
00635	Drug Policy Compliance Agreement.....	1
00636	Contractor's Drug Free Workplace Policy (to be filed, provided by contractor)	
00637	List of Safety Impact Positions (to be filed, provided by contractor)	
00638	Contractor's Certification of No Safety Impact Positions.....	1
00640	Bidder Requirements for Minority, Women, and Disadvantaged Business Enterprise (M/W/DBE) Program.....	10
00645	Form of Business.....	1
00649	Contract Approval Notification.....	1
<b>ADMINISTRATIVE FORMS</b>		
00650	Notice to Proceed (Example Form).....	1
00651	Certification of Payment to Suppliers and Subcontractors (to be filed, provided by contractor)	
00655	Drug Policy Compliance Declaration.....	2
<p>Documents listed "(to be filed)" are to be provided by the Bidder and are not included in this Project Manual unless indicated for example only. The Document numbers and titles hold places for actual documents expected to be added during the bid, post-bid, or construction phase of the Project.</p>		
<b>CONDITIONS OF THE CONTRACT</b>		
<b>GENERAL</b>		
00700	General Conditions Table of Articles.....	ai-iii
00700	General Provisions.....	64
<b>SUPPLEMENTARY</b>		
00800	Supplementary Conditions.....	10
00812	Wage Scale for Engineering Construction.....	2

Document 00003  
TABLE OF CONTENTS

PROJECT MANUAL  
TREE REPLACEMENTS IN DOWNTOWN HOUSTON  
PROJECT NUMBER 24-927.002-01  
September 2024

Document	Title	No. of Pages
<b>DIVISION 1 - GENERAL REQUIREMENTS</b>		
01010	Summary of Work.....	9
01145	Use of Premises.....	4
01255	Change Order Procedures.....	4
01270	Measurement and Payment.....	3
01330	Submittal Procedures.....	3
01340	Shop Drawings, Product Data, and Samples.....	2
01450	Contractor's Quality Control.....	1
01502	Mobilization.....	1
01555	Traffic Control and Regulation.....	6
01610	Basic Product Requirements.....	3
01630	Product Substitution Procedures.....	3
01740	Site Restoration.....	4
01770	Closeout Procedures.....	3
01785	Project Record Documents.....	2
<b>DIVISION 2 - SITE WORK</b>		
02035	Tree & Plant Protection.....	4
02050	Demolition.....	3
02810	Sprinkler Irrigation.....	4
02950	Planting.....	12
	Guideline Specifications for Nursery Tree Quality.....	8
	Root Ball Shaving Container Detail.....	1

END OF DOCUMENT

Document 00020

NOTICE TO BIDDERS

OWNER

Houston Downtown Management District (the "Downtown District")  
1221 McKinney Street, Suite 4250  
Houston, TX 77010

1.0 INVITATION

- A. Bidders are invited to submit an offer for performance of a Unit Price Contract to the Downtown District, located at the above address, for the following construction Project:  
Project: Tree Replacements in Downtown Houston  
Project Number: 24-927.002-01  
Located: Downtown Houston, Texas

- B. Work of the Project consists of:

The planting of new trees at various locations within the rights-of-way throughout Downtown Houston, including staking, removal of trees and tree stumps, irrigation, mulching, backfill and raising planter beds, and related work. Proposals shall include all incidental materials, labor, overhead, profit, and insurance required to complete the work in accordance with the project specifications.

- C. The Contract Documents are identified as Downtown District Project Number 24-927.002-01 as listed in the Project Manual dated September 2024, issued by the Downtown District.
- D. The successful Bidder will be required to comply with the City of Houston Code of Ordinances relating to equal opportunity employment as stated in Document 00700 - General Conditions and Document 00800 - Supplementary Conditions.
- E. Bidders will be required to comply with City of Houston, Tex. Ordinance 95-336 (March 29, 1995) and Exec. Order No. 1-2 (June 14, 1995), and City of Houston Affirmative Action and Contract Compliance Division Minority/Women Business Enterprise (M/WBE) Procedures dated June 1995, which revise Minority and Women Business Enterprise (M/WBE) Ordinance (Houston City Code, Ch. 15, art. V. Such revisions grant the right of the Downtown District and City of Houston personnel to examine the books and records of the Contractor and M/WBE, limit the ability of M/WBE to subcontract more than 50% of their work, provide for sanctions when Contractor or M/WBE fail to make good faith efforts to comply with such Ordinance, provide for inclusion of specific language in M/WBE subcontracts, and require Contractor and M/WBE to submit disputes to binding arbitration, including disputes related to payment. The successful Bidder will be required to make good faith efforts to achieve an M/WBE participation goal of 25% percent. In order to meet this goal and comply with the City's current non-discriminatory programs, the Downtown District also recognizes the participation of and Disadvantaged Business Enterprise (DBE), as governed by the Houston City Code, Ch. 15, art. V., in its contracting procurement. In combination, these programs are referenced as "M/W/DBE."
- F. This Notice to Bidders and contents of this Project Manual contain

references to the "City of Houston Affirmative Action Division." The name of this City Department has been changed to the "City of Houston Office of Business Opportunity," hereinafter abbreviated as "OBO."

- G. When requested, the successful Bidder shall present satisfactory evidence that the Bidder has regularly engaged in furnishing products and performing construction work as proposed, and has the capital, labor, equipment, and material to execute the Work required by Contract Documents.

#### 2.0 NOTICE OF PRE-BID CONFERENCE

- A. A pre-bid conference for bidders on the Downtown District Project titled Tree Replacements in Downtown Houston is scheduled to be held at 2:00 p.m. on Monday, September 16, 2024.
- B. The pre-bid conference will convene in the Downtown District's Operations Center Conference Room, located at 1313 Main Street, Houston, Texas 77002.
- C. All general contractors, subcontractors, and suppliers are invited to attend.
- D. Representatives of the Downtown District will attend the online pre-bid conference.
- E. Summarized minutes of this meeting will be sent to those on record as having received Bid Documents.
- F. Information relevant to the Bid Documents will be recorded in an Addendum and made available to Bid Document recipients, those in attendance at the pre-bid conference, and plan rooms with documents on display. Refer to Document 00100 - Instructions to Bidders regarding the notification and issuance of Addenda.

#### 3.0 BID SUBMISSION

- A. Bids signed by an officer of the company and dated will be received by the Director of Operations and Capital Projects, at 1313 Main Street, Houston, Texas 77002 until 11:00 a.m. local time, on Tuesday, October 1, 2024.
- B. Bids submitted after the above time will be returned to the Bidder unopened.
- C. Bids shall be submitted on the Bid Forms and Supplements to Bid Forms provided with this Project Manual.
- D. Oral, telephonic, facsimile, telegraphic, or electronic bids are invalid and will not receive consideration.
- E. Refer to other bid information and related documents given in Document 00100 - Instructions to Bidders.

#### 4.0 MODIFICATION OR WITHDRAWAL

- A. Bids submitted early may be withdrawn prior to the time designated for receipt of Bids.
- B. Oral, telephonic, facsimile, telegraphic, or electronic modification of

Bids will not receive consideration.

- C. Withdrawn Bids may be resubmitted up to the time designated for receipt of Bids.

5.0 CONTRACT TIME

- A. The Work for the entire project shall be performed within seventy-five (75) calendar days from the date established in the Notice to Proceed.
- B. Contractor shall pay liquidated damages in the amounts stated in Document 00700 - General Conditions and Document 00800 - Supplementary Conditions, for failure to complete the Work within the Contract Time.

6.0 AVAILABILITY

- A. Bid Documents are available for download at [www.civcastusa.com](http://www.civcastusa.com) and from the Organization's website at <https://downtownhouston.org/do-business/procurement-rfp>
- B. Bid Documents are made available only for the purpose of obtaining offers for this Project.
- C. On receipt of Bid Documents, verify that documents are legible and complete. Verify that date on Project Manual is September 2024. Compare contents of Project Manual with Table of Contents. Notify Brett DeBord, Director of Operations and Capital Projects ("Director" and "Project Manager"), at [brett.debord@downtownhouston.org](mailto:brett.debord@downtownhouston.org), should the documents be incomplete as issued.

7.0 QUESTIONS AND INTERPRETATIONS

- A. Bidder is required to study Bid Documents, the site, and conditions affecting the Work, and submit questions on interpretation of those documents and conditions, or other factors affecting the Work, through [www.civcastusa.com](http://www.civcastusa.com)
- B. Immediately notify the Downtown District through Brett DeBord upon finding discrepancies or omissions in the Bid Documents.

8.0 ACCEPTANCE/REJECTION OF BIDS

- A. The Downtown District reserves the right to reject or accept any bids as stated in Document 00100 - Instructions to Bidders.

9.0 PRODUCT SUBSTITUTION SUBMITTALS

- A. Bidders will not be allowed to propose substitution during bidding.

END OF DOCUMENT

Document 00030

ADVERTISEMENT FOR BIDS

HOUSTON DOWNTOWN MANAGEMENT DISTRICT

TREE REPLACEMENTS IN DOWNTOWN HOUSTON

The Houston Downtown Management District (the "Downtown District") will receive sealed bids for a Tree Replacement Project located in Downtown Houston, Texas. Bids will be received until 11:00 AM, local time on Tuesday, October 1, 2024, by the Director of Operations and Capital Projects of the Downtown District. Bids received after this time will not be accepted. Bids are to be delivered to 1313 Main Street, Houston, TX 77002.

Beginning September 5, 2024, documents will be available at [www.civcast.com](http://www.civcast.com) and on the Organization's website: <https://downtownhouston.org/do-business/procurement-rfp>

A Pre-bid Conference will be held at 2:00 PM on September 16, 2024, in the Downtown District's Operations Center Conference Room, located at 1313 Main Street, Houston, Texas 77002. All bidders (general contractors, subcontractors, and suppliers) are invited to attend.

Bidders shall comply with City Ordinance 95-336 (March 29, 1995) and Exec. Order No.1-2 (June 14, 1995), and City of Houston Affirmative Action and Contract Compliance Division Minority/Women Business Enterprise (M/WBE) Procedures (June 1995). The successful Bidder will be required to make good faith efforts to achieve an M/W/DBE participation goal of 25 percent.



Document 00100

INSTRUCTIONS TO BIDDERS

DOCUMENT INCLUDES

- 1.0 Related Documents
- 2.0 Bid Documents and Contract Documents
- 3.0 Site Assessment
- 4.0 Subcontractors/Suppliers/Others
- 5.0 Bid Submission
- 6.0 Bid Enclosure Requirements
- 7.0 Offer, Acceptance, Rejection

1.0 RELATED DOCUMENTS

- A. Document 00020 - Notice to Bidders
- B. Document 00310 - Form of Proposal
- C. Document 00315 - Bidder's Bond
- D. Document 00316 - Letter of Intent
- E. Document 00405 - Schedule of Unit Price Work
- F. Document 00430 - Bidder's Statement of M/W/DBE Status
- G. Document 00440 - Conflict of Interest Questionnaire
- H. Document 00450 - Post-Bid Procedures
- I. Document 00510 - Agreement
- J. Document 00700 - General Conditions
- K. Document 00800 - Supplementary Conditions
- L. Document 00812 - Wage Scale For Engineering Construction

2.0 BID DOCUMENTS AND CONTRACT DOCUMENTS

A. Definitions

- 1. Definitions set forth in Document 00700 - General Conditions and in other Contract Documents, are applicable to the Bid Documents.
- 2. **Addenda:** Written or graphic instruments issued prior to the opening of Bids, which clarify, modify, correct, or change the Bid Documents.
- 3. **Alternate Bid:** The total amount bid for additions to the Work, as described in the Bid Documents. Each Alternate Bid shall include the cost of effects on adjacent or related components, and the Contractor's overhead and profit.
- 4. **Bid Documents:** The Project Manual and Drawings, including Addenda, plus Notice to Bidders, Instructions to Bidders, and Supplements to Bid Forms identified in Document 00310 - Form of Proposal.
- 5. **Bidder:** A person or entity who submits a Bid.
- 6. **Selected Bidder:** The Bidder who is selected as the most qualified, responsible Bidder, as described in Document 00200 - Proposal Organization and Selection Criteria.
- 7. **Bid, Offer, Bidding:** The act of submitting a complete and properly signed offer in accordance with these Instructions to Bidders.

8. **Total Bid Price:** The monetary amount for performing the Work as identified by the Bidder in Document 00310 - Form of Proposal and Alternate Bids, if any.

B. Questions, Interpretations

1. Bidder shall: A) carefully study the Bid Documents and compare them with each other, B) examine the site, conditions thereon, and local conditions, and C) report at once to Brett DeBord, Director of Operations and Capital Projects, at [brett.debord@downtownhouston.org](mailto:brett.debord@downtownhouston.org), any errors, inconsistencies or ambiguities discovered.
2. Verbal discussions and answers are not binding. Requests from Bidders for clarifications and interpretations of content of documents, or the extent or use of rights-of-way, must be submitted through [www.civcastusa.com](http://www.civcastusa.com), received not less than ten (10) days before the date set for receipt of Bids.
3. The reply will be by Addendum.

C. Addenda

1. Addenda issued to Bidding Requirements are applicable only during the bidding period. Addenda to the Post-Bid Procedures are applicable only through the issuance of the Notice to Proceed. Any Addenda issued to Contract Forms, Conditions of the Contract, Specifications or Drawings become a part of the Contract Documents. Include resultant costs in the Total Bid Price.
2. Addenda will be issued through [www.civcastusa.com](http://www.civcastusa.com). Bidders shall be responsible for obtaining Addenda after notification.
3. Copies of Addenda will be made available for inspection wherever Bid Documents are on file for that purpose.
4. No Addenda will be issued later than 72 hours prior to the date set for receipt of Bids, except an Addendum withdrawing the Request for Bids, one which includes postponement of the date for receipt of Bids, or one which makes modifications to quantities only.
5. Each Bidder shall ascertain, prior to submitting a Bid; that the Bidder has received all Addenda issued. The Bidder shall acknowledge their receipt in the place indicated in Document 00310 - Form of Proposal.

D. Substitutions of Materials/Equipment

1. No substitutions will be considered during bidding.

3.0 SITE ASSESSMENT

- A. Bidders shall examine the Project site before submitting a Bid, become familiar with local conditions under which the Work will be performed, conduct appropriate explorations, and correlate personal observations with requirements of the Bid Documents.

- B. Bidder shall make site investigations to the extent Bidder deems necessary to ascertain the extent of subsurface conditions and variations thereof.
  - C. Failure to perform such investigations during the bid period shall not relieve Bidder from responsibility for investigations, interpretations, and proper use of available information in preparation of Bidder's proposal.
  - D. Bidder should be aware that this project may require coordination with other construction contractors working for the Downtown District, the City, and METRO as well as private entities on associated work both within and directly adjacent to the project sites.
  - E. Work will be performed in the public right of way. The site may be examined at any time.
- 4.0 SUBCONTRACTORS/SUPPLIERS/OTHERS
- A. The Downtown District reserves the right to reject a proposed Sub-contractor or Supplier for reasonable cause.
  - B. Refer to Paragraph 5.2.2 of Document 00700 - General Conditions.
- 5.0 BID SUBMISSION
- A. Submission Procedures
    - 1. Bidders shall be solely responsible for the delivery of their Bids in the manner and time prescribed in Document 00020 - Notice to Bidders.
    - 2. Submit one copy of the executed offer on the bid forms provided, properly signed and other Supplements to Bid Forms, in a sealed, opaque envelope. On the outside of the envelope, clearly identify the Bidder's name, Project name and Project Number. Bids submitted by mail shall be enclosed in a separate envelope addressed for mailing and identifying the enclosure as a bid.
    - 3. Fill in all blanks in the Bid forms. Acknowledge receipt of Addenda.
    - 4. All costs and expenses incurred by the Bidder that are associated with preparation of the Bid shall be paid by and be the sole responsibility of the Bidder.
  - B. Bid Ineligibility
    - 1. Improperly completed information may be cause for declaring the Bid invalid.
    - 2. Bids that are unsigned, improperly signed, illegible, obscure, altered, or which contain qualifications or irregularities of any kind, may be declared invalid. Document 00310 - Form of Proposal, Supplements to the Bid Forms identified in the Form of Proposal, or enclosures that are improperly prepared may be declared invalid.

3. Failure to submit a letter of intent from a surety as described in paragraph 6.0C will be cause to declare the bid invalid.

#### 6.0 BID ENCLOSURE REQUIREMENTS

##### A. Supplements to Bid Forms

1. Bid submittals shall include other documents specified in Document 00310 - Form of Proposal.

##### B. Bid Bond

1. The bid bond must be a valid and enforceable bond, executed by a corporate Surety authorized by the State Board of Insurance to conduct insurance business in the State of Texas and shall comply with other requirements set out by law or included in the Bid Documents.
2. Endorse the bid bond in the name of the Houston Downtown Management District as obligee, signed by the Contractor as principal and signed and sealed by the Surety.
3. The bid bond must be conditioned such that if the Bidder is named Selected Bidder and then fails either to execute the Agreement timely or to provide any required bonds timely, or to do both, then in that event the Surety will be obligated to pay to the Downtown District an amount equal to the difference between the Bid of the Bidder on whom the bond was written and the Bid of the Bidder who is finally awarded the Contract and who executes the Agreement and provides the required bonds, up to the penal sum of the bond.
4. In addition, the Downtown District expressly reserves the right to reject any Bid if the bid bond (or bid bond rider) conditions the Bid in a way inconsistent with the Bid Documents. Examples include but are not limited to a condition:
  - a. prohibiting the Downtown District from making a Claim against the Performance Bond Surety that would be allowable under the Contract and Performance Bond form published in the Bid Documents;
  - b. that provides that the Performance Bond Surety cannot be held liable for completing the Contract in case of default; or
  - c. limiting the Performance Bond Surety's liability for damages inconsistent with the Contract and Performance Bond form published in the Bid Documents.

##### C. Letter of Intent Concerning Availability of Performance Bond

1. All bidders must submit a letter of intent from a Surety indicating its intent to provide a Performance Bond should the bidder be awarded the contract for Tree Replacements in Downtown Houston Project.
2. The letter of intent must include a maximum dollar amount of the construction contract value (including alternates and allowances) above which the Surety will not be willing to issue a Performance

Bond. This amount must be greater than the bid amount including all allowances and alternates.

3. Any bid that does not have this letter of intent from a Surety meeting the requirements of Article 11, Paragraph 11.6 of the General Conditions (Document 00700 of the Project Manual dated September 2024) shall be declared non-responsive.

D. Bid Form Signature

1. Document 00310 - Form of Proposal shall be signed by the Bidder as follows:
  - a. Sole Proprietorship: Full name, address, and signature of sole proprietor, signed in the presence of a witness who will also sign. Insert the words "Sole Proprietor" under the signature.
  - b. Partnership: Name and address of the firm, signature of each partner in the presence of a witness who will also sign. The full name and address of each partner shall be given.
  - c. Corporation: Signature of duly authorized officer.
  - d. Joint Venture: Each party of the joint venture shall execute Document 00310 - Form of Proposal under their respective seals in a manner appropriate to such party as described above, similar to the requirements of a Partnership.
  - e. Each page of Document 00405 - Schedule of Unit Price Work shall be initialed by the Bidder signing Document 00310 - Form of Proposal.

7.0 OFFER, ACCEPTANCE, REJECTION

A. Acceptance

1. The Downtown District will give notice of intent to award the Contract to the Selected Bidder. Acceptance by the Downtown District is conditioned upon Bidder's submission of information for establishing satisfactory qualifications, if required; and execution of submittals required in Document 00450 - Post-Bid Procedures.
2. The Bid shall remain open to acceptance and shall be irrevocable for the Period for Bid Acceptance stated in paragraph 1.0, Offer, of Document 00310 - Form of Proposal.
3. Additional time taken by Contractor to fulfill requirements for submittals, including review and resubmittal, shall be added to the acceptance period.

B. Rejection

1. The Downtown District reserves the right to reject any and all Bids or to accept any Bid deemed advantageous to it.

C. Bid Tabulation

1. The Project Manager will tabulate, record, and evaluate the Bids of all responsible Bidders.

2. In tabulating Bids, the amount written for a unit price governs over the total amount calculated. Therefore, the Project Manager may correct any mathematical errors in the extension of the total amount based on the unit price given by the Bidder and adjust the Total Bid Price. Furthermore, all unit prices requested must be bid, so if a unit price is omitted, the Project Manager may insert for the omitted unit price, the lowest price bid by any other Bidder and recalculate the total amount bid as applicable. However, the Project Manager is not obligated to make these corrections or other mathematical corrections but may reject the Bid based on irregularities in the Bid.
3. If Alternate Bids are described in the Bid Documents, the Alternate Bids will be accepted by the Project Manager in the preference order, indicated by the Downtown District, as listed in Document 00407 - Schedule of Alternates up to the amount nearest to but not exceeding the estimated budget for the Project. The estimated budget shall be confirmed by the Board of Directors prior to Award, and the Board may, at its option, delete or add Alternates in numerical order at time of Award.
4. After tabulation of bids, the Downtown District will issue Notice of Intent to Award to the Selected Bidder, stating the time within which Bidder must submit bonds and other requirements stated in Document 00450 - Post-Bid Procedures.

END OF DOCUMENT

Document 00200

PROPOSAL ORGANIZATION AND SELECTION CRITERIA

- 1.0 To enable the Houston Downtown Management District (the "Downtown District") to efficiently evaluate bid Proposals for the Tree Replacements in Downtown Houston project, the bidding Proposer shall follow the required format in preparing its Proposal. Proposals that do not conform to the prescribed format may be rejected.
- 2.0 The Proposal shall consist of three (3) standard binders and a separate sealed, opaque envelope containing one (1) original Document 00310 - Form of Proposal, and Proposal Supplements. The binders shall be submitted in a sealed box. The envelope shall be sealed and taped securely to the outside of the box. Proposer shall clearly identify the Project Name and Project Number, Proposal Submittal Date, and Proposer's Name (Contractor) on the outside of the envelope and box.
- 3.0 Binders are used to ensure that pages are not lost. Each binder shall be of adequate size to fit all information being submitted. Pages shall be no larger than letter-size (8½" by 11"). Tabbed sections, as defined below, shall separate information provided.
- 4.0 The selection criteria and corresponding point values are set out in Tabbed Sections I thru IX.
- 5.0 Each of the binders shall be organized in the following order:
  - A. Outside Cover of Binder: This shall clearly identify the Project Name and Project Number, Proposal Submittal Date, and Proposer's Name (Contractor).
  - B. Tabbed Section I: Total Proposal Price (**40 points**).  
Proposer to leave this section BLANK. Upon receipt of Proposal, the Downtown District will insert a copy of Proposer's completed Form of Proposal (Document 00310). Proposer will be evaluated on Total Proposal Price. (Lowest Total Proposal Price will receive the maximum 70 points, with each successively higher Total Proposal Price, thereafter, receiving fewer points, accordingly.)
  - C. Tabbed Section II: Experience (**20 points**).  
Provide examples of Proposer's successful experience over the last ten years with three (3) projects of similar scope and value. Include name, address, and telephone number of project owner and Architect/Engineer/Designer for verification.
  - D. Tabbed Section III: Proposed Subcontractors/Suppliers (**20 points**).  
Proposer's list of Subcontractors/Suppliers proposed to be used on this Project and their planned M/W/DBE participation amount. Proposer to specifically include proposed major subcontractors, noting their experience on projects of similar scope, complexity, and value. Proposers submitting incomplete information will receive fewer points accordingly.
  - E. Tabbed Section IV: Timely Project Closeout (**10 points**).  
Provide three (3) recent examples of proven ability to schedule and phase work properly to minimize impact to the project owners, use of critical path method scheduling and experience meeting deadlines.

- F. Tabbed Section V: References (5 points).**  
Provide three (3) references over the last five years from clients, project owners, Architects/Engineers/Designers, and Executive-level personnel, with their address and telephone number. Do not list any members of the Downtown District or the Downtown Redevelopment Authority, or those references listed under Tab II.
- G. Tabbed Section VI: Claims History (5 points).**  
List all projects in last five years that have gone to claim, litigation, City Engineer's decision, mediation or arbitration with the owner. List outcome of City Engineer's decision, litigation or arbitration. List any construction projects that proposer failed to complete because of financial reasons, labor disputes, failure of employees to perform, or any other reason. List any unsatisfactory evaluations received from the City's Affirmative Action and Contract Compliance Division. Proposer to provide Bond Rating.
- H. Total Point Value for the criteria noted above in Tabbed Sections I thru VI equals 100 possible points.**
- I. Based on the above criteria, a review panel will evaluate all valid bid proposals and render its recommendation to the Board of Directors for the Downtown District.**

END OF DOCUMENT



Document 00310

FORM OF PROPOSAL

To: The Board of Directors  
Houston Downtown Management District  
1313 Main Street  
Houston TX, 77002

Project No.: 24-927.002-01

Project: Tree Replacements in Downtown Houston  
(Project Manual dated September 2024)

Bidder: \_\_\_\_\_  
[Print or type full name of proprietorship, partnership,  
corporation, or joint venture]

1.0 OFFER

Having examined the place of the Work and all matters referred to in the Bid Documents, and the Contract Documents prepared by or approved by the Director of Operations and Capital Projects (Project Manager) for the named Project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the Total Bid Price of

(\$ \_\_\_\_\_.)

[Print or type in words and figures, Bidder's Total Bid Price]

**Unit Price or Combination Stipulated Price and Unit Price Contract.**

The Bid is for a Unit Price Contract, and the Total Bid Price, is tabulated in: Document 00405 - Schedule of Unit Price Work for a Project.

**Period for Bid Acceptance.** This offer shall be open to acceptance and is irrevocable for 90 days from the Bid date. That period may be extended by mutual written agreement of the Downtown District and the Bidder. After 90 days, the Bidder may withdraw without penalty if no mutual agreement can be reached.

2.0 CONTRACT TIME

If this offer is accepted, Substantial Completion of all the Work for the project will be achieved in seventy-five (75) calendar days from the Date of Commencement, as stated in Document 00020 - Notice to Bidders. The Date of Commencement will be established by Document 00650 - Notice to Proceed.

3.0 ADDENDA

The following Addenda have been received. The modifications to the Bid Documents noted therein have been considered and all costs relating thereto are included in the Bid Price:

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_, dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_, dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_, dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

4.0 SUPPLEMENTS TO THIS BID

The following Supplements are attached as an integral part of this Bid. All Supplements must be provided and filled out in their entirety or the bid will be disqualified:

- Document 00316 - Letter of Intent Concerning Availability of Performance Bond
- Document 00405 - Schedule of Unit Price Work
- Document 00430 - Bidder's Statement of M/W/DBE Status
- Document 00440 - Conflict of Interest Questionnaire
- Document 00470 - Bidder's M/W/DBE Participation Plan
- Document 00471 - Pre-Bid Good Faith Efforts
- Others as listed: Bid Qualifications (*Form supplied by Bidder*) as described in Document 00100 - Instructions to Bidders

5.0 SIGNATURES:

Bidder: \_\_\_\_\_  
[Please print or type the full name of your proprietorship, partnership, corporation, or joint venture.\*]

\*\* By \_\_\_\_\_  
[Signature][Date]

Name: \_\_\_\_\_  
[Please print or type name][Title]

Mailing Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Telephone: \_\_\_\_\_  
[Print or type telephone number]

Email Address: \_\_\_\_\_

\* If the Bid is a joint venture, add additional Bid form signature sheets for each member of the joint venture.

\*\* The undersigned, as bidder, certifies that the only person or parties interested in this proposal as principals are those named herein; that the Bidder has not, either directly or indirectly, entered

into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Contract for the Project.

Note: This document constitutes a government record, as defined by §37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in § 37.10 of the Texas Penal Code.

END OF DOCUMENT

Document 00315

BIDDER'S BOND

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

§

**THAT WE,** \_\_\_\_\_  
[Bidder], as Principal, hereinafter called Bidder, and the other subscriber  
hereto, \_\_\_\_\_, as Surety,  
do hereby acknowledge ourselves to be held and firmly bound to the Houston  
Downtown Management District (the "Downtown District"), a body politic and  
corporate, in the sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) (an amount equal to 10 percent of the Total Bid Price,  
including Cash Allowances and Alternate Bids, if any) for the payment of  
which sum, well and truly to be made to the Downtown District and its  
successors, the said Bidder and Surety do bind themselves, their heirs,  
executors, administrators, successors, and assigns, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Bidder has submitted on or about this day a proposal offering to  
perform the following:

\_\_\_\_\_  
[Project Description]

\_\_\_\_\_  
in accordance with the Drawings, Specifications, and terms and conditions  
related thereto to which reference is hereby made.

**NOW, THEREFORE,** if the said Bidder's offer as stated in the Document 00310 -  
Form of Proposal is accepted by the Downtown District, and the said Bidder  
executes and returns to the Downtown District the number of original  
counterparts of the Document 00510 - Form of Agreement required by the  
Downtown District, on the forms prepared by the Downtown District, for the  
work described herein and also executes and returns the same number of the  
Performance, Payment and Maintenance Bonds (such bonds to be executed by a  
Corporate Surety authorized by the State Board of Insurance to conduct  
insurance business in the State of Texas, and having an underwriting  
limitation in at least the amount of the bond) and other submittals as  
required by Document 00450 - Post-Bid Procedures, in connection with the work  
described herein, within the time specified, then this obligation shall  
become null and void; otherwise it is to remain in full force and effect.

In the event that the Bidder is unable to or fails to perform the obligations  
undertaken herein, the undersigned Bidder and Surety shall be liable to the  
Downtown District for the full amount of this obligation which is hereby  
acknowledged as the amount of damages which will be suffered by the Downtown  
District on account of the failure of such Bidder to perform such  
obligations, the actual amount of such damages being difficult to ascertain.

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

**IN WITNESS THEREOF**, the said Bidder and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation) \_\_\_\_\_  
WITNESS: (if not a corporation)

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/SURETY WITNESS: (SEAL)

\_\_\_\_\_  
[Full Name of Surety]

\_\_\_\_\_  
[Address of Surety for Notice]

\_\_\_\_\_  
[Telephone Number of Surety]

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

END OF DOCUMENT

Document 00316

LETTER OF INTENT CONCERNING AVAILABILITY OF PERFORMANCE BOND  
EXAMPLE FORM OF LETTER

*Note that this letter should be on letterhead of Surety.*

DATE

Mr. Kris Larson  
President and CEO  
Houston Downtown Management District  
1221 McKinney Street, Ste. 4250  
Houston, Texas 77010

Re: Tree Replacements in Downtown Houston  
Availability of Performance Bond

Dear Mr. Larson:

Representing \_\_\_\_\_, this letter acknowledges our intent to act as Surety for \_\_\_\_\_ if \_\_\_\_\_ is awarded the construction contract as general contractor on the Tree Replacements in Downtown Houston project by the Houston Downtown Management District. Our intent to act as Surety is based on the Conditions of Obligation contained in Document 00610 of the Project Manual dated September 2024. The maximum Contract Price covered by this letter of intent is \$ \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Name  
Title with Surety

END OF DOCUMENT

Document 00405

**SCHEDULE OF UNIT PRICE WORK**

This document, consisting of 2 pages, constitutes a Supplement to Document 00310 – Form of Proposal for Downtown District Project titled Tree Replacements in Downtown Houston (Project Manual dated September, 2024).

When a Contract is awarded, this Document becomes a supplement to Document 00510 – Form of Agreement between the Houston Downtown Management District and Contractor.

Item No.	Item Description	Unit	Unit Qty.	Unit Price (1)	Extended Amount
<b>A</b>	<b>GENERAL ITEMS:</b>				
A1	Mobilization	L.S.	1	\$	\$
A2	Traffic Control and Regulation	L.S.	1	\$	\$
<b>GENERAL ITEMS SUBTOTAL:</b>					<b>\$</b>

Item No.	Item Description	Unit	Unit Qty.	Unit Price (1)	Extended Amount
<b>B</b>	<b>DEMOLITION ITEMS:</b>				
B1	Remove and dispose of existing tree rootball. Material to be taken to an approved TCEQ permitted landfill	Ea.	153	\$	\$
<b>DEMOLITION ITEMS SUBTOTAL:</b>					<b>\$</b>

Item No.	Item Description	Unit	Unit Qty.	Unit Price (1)	Extended Amount
<b>C</b>	<b>PLANTING ITEMS:</b> Refer to Spec Section -01010 for Tree Sizes				
C1	<b>Live Oak</b> -Furnish and install new tree with Platipus (RF2P) anchoring system, including soil backfill, reestablishing existing irrigation dripper line assembly, and 2" mulch layer, complete in place	Ea.	23	\$	\$
C2	<b>"Trinity" Mexican Sycamore</b> - Furnish and install new tree with Platipus (RF2P) anchoring system, including soil backfill, reestablishing existing irrigation dripper line assembly, and 2" mulch layer, complete in place	Ea.	52	\$	\$
C3	<b>Shumard Red Oak</b> - Furnish and install new tree with Platipus (RF2P) anchoring system, including soil backfill, reestablishing existing irrigation dripper line assembly, and 2" mulch layer, complete in place	Ea.	12	\$	\$

C4	<b>Allee Elm-</b> Furnish and install new tree with Platipus (RF2P) anchoring system, including soil backfill, reestablishing existing irrigation dripper line assembly, and 2" mulch layer, complete in place	Ea.	4	\$	\$
C5	<b>Drake Elm-</b> Furnish and install new tree with Platipus (RF2P) anchoring system, including soil backfill, reestablishing existing irrigation dripper line assembly, and 2" mulch layer, complete in place	Ea.	57	\$	\$
C6	<b>Overcup Oak-</b> Furnish and install new tree with Platipus (RF2P) anchoring system, including soil backfill, reestablishing existing irrigation dripper line assembly, and 2" mulch layer, complete in place	Ea.	26	\$	\$
<b>PLANTING SUBTOTAL</b>					<b>\$</b>

SUMMARY – SCHEDULE OF UNIT PRICE WORK

Total Base Unit Prices for General Items \$ \_\_\_\_\_

Total Base Unit Prices for Demolition Items \$ \_\_\_\_\_

Total Base Unit Prices for Planting Items \$ \_\_\_\_\_

TOTAL BID PRICE (Carry forward to Document 00310 – Form of Proposal) \$ \_\_\_\_\_

Project Name: **Tree Replacements in Downtown Houston**  
 Bidder's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name (print or type): \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company: \_\_\_\_\_

Notes: (1) In the event of a discrepancy, this column shall govern.

END OF DOCUMENT



Document 00430

BIDDER'S STATEMENT OF M/W/DBE STATUS

This certifies that the status of the Bidder, \_\_\_\_\_,  
(Bidder's Name)  
in regard to the City of Houston Code of Ordinances, Chapter 15, Article V,  
relating to City-wide percentage goals for contracting with Minority and  
Women Business Enterprises plus Disadvantaged Business Enterprises (M/W/DBE)  
is as follows:

1. The Bidder (individual, partnership, corporation) does []  
does not [] declare itself to be a Minority Business  
Enterprise as defined above.
2. The Bidder (individual, partnership, corporation) does []  
does not [] declare itself to be a Women's Business  
Enterprise as defined above.
3. The Bidder (individual, partnership, corporation) does []  
does not [] declare itself to be a Disadvantaged Business  
Enterprise as defined above.
4. **(Applicable only if bidder is M/W/DBE.)**  
The Bidder (individual, partnership, corporation) is [] is  
not [] registered and certified with the City of Houston  
Office of Business Opportunity (OBO).  
**(If not, call the OBO at (832) 393-0600.)**

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

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

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

END OF DOCUMENT

Document 00440

CONFLICT OF INTEREST QUESTIONNAIRE

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b>		<b>FORM CIQ</b>
<b>For vendor doing business with local governmental entity</b>		
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<p><b>OFFICE USE ONLY</b></p> <p>Date Received</p>	
<p><b>1 Name of vendor who has a business relationship with local governmental entity.</b></p>		
<p><b>2</b> <input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p><b>3 Name of local government officer about whom the information is being disclosed.</b></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p><b>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</b></p> <p style="text-align: center; margin-top: 20px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No         </p> <p style="text-align: center; margin-top: 10px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No         </p>		
<p><b>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</b></p>		
<p><b>6</b> <input type="checkbox"/> <b>Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</b></p>		
<p><b>7</b></p> <p style="text-align: center; margin-top: 20px;">             _____              Signature of vendor doing business with the governmental entity         </p> <p style="text-align: right; margin-top: 20px;">             _____              Date         </p>		

Document 00470

**BIDDER'S MWBE PARTICIPATION PLAN**

The Bidder shall submit this completed form with the bid, to demonstrate the Bidder's plan to meet the contract-specific M/W/DBE goal. If Bidder cannot meet the contract goal, the Bidder has the burden to demonstrate "Good Faith Efforts," which shall include correctly and accurately preparing and submitting this form, a Record of Good Faith Efforts (Document 00471), the documentation evidencing their "Good Faith Efforts." The City will review the Participation Plan and Good Faith Efforts at the time of bid opening. For more information: <http://www.houstontx.gov/obo>

<b>MWDBE Goal</b> 25%	<b>Bidder's Participation Plan Percentage</b>	<b>MBE</b>	<b>WBE</b>	<b>DBE</b>	<b>Total</b>
--------------------------	---	------------	------------	------------	--------------

NAICS Code (6 digit)	Description of Work (Plan Sheet #, Unit Price #, Scope of Work #, as applicable)	% of Total Bid Price (2 decimal places)	Cert. Type for Goal: MBE, WBE, DBE	Certified Firm Contact Information (Name, Address, Phone, and Email)

Signature for Company: \_\_\_\_\_ \*

Printed Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Phone #: \_\_\_\_\_

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

\*I understand that supplying inaccurate information may violate Texas Penal Code Section 37.10 and lead to City sanctions.

Document 00470

CONTINUATION PAGE

NAICS Code (6 digit)	Description of Work (Plan Sheet #, Unit Price #, Scope of Work #, as applicable)	% of Total Bid Price (2 decimal places)	Cert. Type for Goal: MBE, WBE, DBE	Certified Firm Contact Information (Name, Address, Phone, and Email)

Signature for Company: \_\_\_\_\_ \*

Printed Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Phone #: \_\_\_\_\_

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

\*I understand that supplying inaccurate information may violate Texas Penal Code Section 37.10 and lead to City sanctions.

Document 00471

**PRE-BID GOOD FAITH EFFORTS**

**Bidder Name:** \_\_\_\_\_ **Project Name:** \_\_\_\_\_

A Bidder that may be unable to complete or follow a Participation Plan (Document 00470) to meet the Contract Goal in the Supplemental Conditions (Document 00800) must submit this completed form, providing supporting documentation evidencing their "Good Faith Efforts" as required by the City of Houston's Good Faith Efforts Policy (see City of Houston Document 00808).

The Bidder has the burden to demonstrate "Good Faith Efforts" to meet the MWDBE goal, which includes correctly and accurately preparing and submitting this form and other efforts described in the City's Good Faith Efforts Policy (see City of Houston Document 00808). The Office of Business Opportunity will review Good Faith Efforts and Participation Plan after selection of an apparent low bidder.

*UNLESS THE BIDDER'S PARTICIPATION PLAN MEETS THE CONTRACT GOAL, FAILURE TO SUBMIT THIS FORM MAY RESULT IN THE BID BEING FOUND NON-RESPONSIVE.*

NAICS Code	Plan Item No.	MWDBE Type for Goal	Certified Firm Name Address, Phone No., and E-Mail	Certified Firm Contact Person	Methods of Contact	Prime Contact Dates	Certified Firm Response	Results of Contact (why suitable or not suitable for work)
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: \_\_\_\_\_

Print Name: \_\_\_\_\_ Email Address: \_\_\_\_\_

Company Name: \_\_\_\_\_

Document 00471

CONTINUATION PAGE

NAICS Code	Plan Item No.	MWDBE Type for Goal	Certified Firm Name Address, Phone No., and E-Mail	Certified Firm Contact Person	Methods of Contact	Prime Contact Dates	Certified Firm Response	Results of Contact (why suitable or not suitable for work)
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			
					Phone <input type="checkbox"/> E-mail <input type="checkbox"/>			

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: \_\_\_\_\_

Print Name: \_\_\_\_\_ Email Address: \_\_\_\_\_

Company Name: \_\_\_\_\_

Document 00450

POST-BID PROCEDURES

DOCUMENT INCLUDES

- 1.0 Notice of Intent to Award
- 2.0 Form of Agreement
- 3.0 Requirements of Bidder
- 4.0 Failure of Bidder to comply with requirements
- 5.0 Notice to Proceed
- 6.0 Pre-construction Conference
- 7.0 Starting the Project

1.0 NOTICE OF INTENT TO AWARD

- A. The Houston Downtown Management District (the "Downtown District") will provide written Notice of Intent to Award (the Contract) to the Selected Bidder, stating that, upon compliance with the conditions listed herein, within ten (10) days after receipt of the notice, and on approval by its Board of Directors, the Downtown District will execute and deliver the Agreement.

2.0 FORM OF AGREEMENT

- A. The Agreement shall be Document 00510 - Agreement between the Downtown District and Contractor, together with Supplements enumerated in and attached thereto.

3.0 REQUIREMENTS OF BIDDER

- A. Within eight (8) days of receipt of the Notice of Intent to Award, the Selected Bidder shall execute and deliver to the Director of Construction or Project Manager for the Downtown District's approval those documents indicated by an "X" below:

- 1.  Document 00510 - Four Agreement Forms Between the Downtown District and Contractor signed by the Contractor
- Document 00511 - Resolution of Corporation
- Document 00610 - Performance Bond
- Document 00611 - Statutory Payment Bond
- Document 00612 - One-year Maintenance Bond
- Document 00613 - One-year Surface Correction Bond
- Document 00615 - Affidavit of Insurance (*with Certificate of Insurance attached*)
- Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/W/DBE Participation Plan
- Executed Subcontract(s), Letter(s) of Intent, or documentation of good faith efforts to meet the M/W/DBE goal
- Document 00620 - List of Proposed Subcontractors and Suppliers, Part B - Schedule of Non M/W/DBE Subcontractors and Suppliers
- Document 00622 - Name and Qualifications of Proposed Superintendent (*Contractor creates this document.*)
- Document 00626 - History of OSHA Actions and On-the-job Injuries
- Document 00630 - Office of Business Opportunity Compliance Program
- Document 00631 - Affidavit of Office of Business Opportunity Contract Compliance

- [ X ] Document 00632 - Certification by Proposed Material Suppliers, Lessors, and Professional Service Providers Regarding Equal Employment Opportunity
  - [ X ] Document 00635 - Drug Policy Compliance Agreement
  - [ X ] Document 00636 - Contractor's Drug-free Workplace Policy  
*(Contractor creates this document.)*
  - [ X ] Document 00637 - List of Safety Impact Positions *(Contractor creates this list. Do not submit if submitting Document 00638.)*
  - [ X ] Document 00638 - Contractor's Certification of No Safety Impact Positions *(Do not submit if submitting Document 00637.)*
  - [ X ] Document 00640 - Bidder Requirement For Minority, Women and Disadvantaged Business Enterprise (M/W/DBE) Program
  - [ X ] Document 00645 - Form of Business
  - [ X ] Others as listed:  
Form 1295 - Texas Ethics Commission Certificate of Interested Parties
2. Original forms contained in Document 00630 - Affirmative Action Compliance Program:
- [ X ] Page 00630-5, Certification by Bidder Regarding Equal Employment Opportunity
  - [ X ] Page 00630-6, Certification by Bidder Regarding Equal Employment Opportunity (continued), or copy of latest EEO-1 form *(required only if Contractor has a work force of 50 or more people and the Contract Amount is \$50,000 or more)*
  - [ X ] Page 00630-7, Office of Business Opportunity Compliance Program
  - [ X ] Page 00630-8, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees
  - [ X ] Page 00630-9, The Name of the Company's EEO Officer
3. An original completed form Document 00632 - Certification by Proposed Material Suppliers, Lessors, and Professional Service Providers Regarding Equal Employment Opportunity, for each proposed material supplier and equipment supplier.
4. Designations of Subcontractors and Suppliers, who have been selected by the Contractor in Part A - M/W/DBE Participation Plan of Document 00620 - List of Proposed Subcontractors and Suppliers, and accepted by the Downtown District, may be changed only with prior notice and acceptance by the Director of Construction or Project Manager as provided in Document 00640 - Bidder Requirements for Minority, Women and Disadvantaged Business Enterprise (M/W/DBE) Program.
5. Designations of Subcontractors and Suppliers, who have been selected by the Contractor in Part B - Schedule of Non-M/W/DBE Subcontractors and Suppliers of Document 00620 - List of Proposed Subcontractors and Suppliers, and accepted by the Downtown District, may be changed only with prior notice and acceptance by the Director of Construction or Project Manager as provided in Document 00700 - General Conditions. For each material or equipment supplier subsequently added or substituted, provide an original completed form, Document 00632 - Certification by Proposed Material Suppliers, Lessors, and Professional Service Providers Regarding Equal Employment Opportunity, directly to the Director of Construction.



6. On Contractor's request, the Project Manager may grant an extension of time, not to exceed 10 days, to furnish documents specified in Paragraph 3.0A. If Contractor is required to resubmit documents specified in Paragraph 3.0A, he shall do so within the time limits provided in the request for resubmission.

4.0 FAILURE OF BIDDER TO COMPLY WITH REQUIREMENTS

- A. Should the Bidder on receipt of the Notice of Intent to Award fail to comply with requirements of this Document 00450 within the stated time, the Downtown District may declare the award in default.
- B. After the Downtown District's written notice of default to the Bidder, the Downtown District may award the Contract to the responsible Bidder whose offer is the next lowest bid.

5.0 NOTICE TO PROCEED

- A. Upon the Downtown District's execution of the Agreement and delivery to Contractor, the Project Manager shall give the Contractor Document 00650 - Notice to Proceed on that same day, which notice shall establish the Date of Commencement of the Work.
- B. The Contractor shall acquire all permits required for the construction of the project.

6.0 PRE-CONSTRUCTION CONFERENCE

- A. Not later than 10 days after the date of Document 00650 - Notice to Proceed, but before Contractor starts work at the site, the Downtown District will convene a Pre-construction Conference and a Site Mobilization conference as specified in Section 01312 - Coordination and Meetings.

7.0 STARTING THE PROJECT

- A. Contractor shall start performance of the Work upon Notice to Proceed, but no Work shall be done at the site prior to that date.
- B. As Contractor, verify that you and all Subcontractors pay the Prevailing Wage.
- C. A copy of certified payrolls for Contractor and for all Subcontractors must be submitted to the Downtown District weekly, from the first to the last week of the Project. The forms for Subcontractors located in Document 00630 - Office of Business Opportunity Compliance Program (pages 00630-26 through 00630-29) shall be submitted to the Downtown District prior to, or in conjunction with, the first certified payroll.
- D. There are other requirements placed on the Contractor upon receipt of Notice to Proceed described in Section 01010 - Summary of Work.

END OF DOCUMENT

Document 00455

NOTICE OF INTENT TO AWARD

ADD DATE HERE

COMPANY  
ATTN: NAME  
ADDRESS  
CITY/ST/ZIP

RE: NOTICE OF INTENT TO AWARD (Document 00455)  
Tree Replacements in Downtown Houston  
Project Number: 24-927.002-01

Dear \_\_\_\_\_:

You are hereby notified that your Bid dated \_\_\_\_\_ for the above Contract has been considered. You are the Selected Bidder and, subject to the approval of the Board of Directors on project funding, it is the intent of the Houston Downtown Management District (the "Downtown District"), on your satisfactory compliance with requirements listed in the attached Document 00450 - Post-Bid Procedures, and below, to award a construction contract for:

Tree Replacements in Downtown Houston

The Contract Price of the Agreement is \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

One copy of the proposed Agreement accompanies this Notice. Comply with the following conditions by \_\_\_\_\_, 2020. **FAILURE OF BIDDER TO MEET SUCH CONDITIONS ON OR BEFORE SUCH DATE MAY RESULT IN APPLICATION OF PROVISIONS OF DOCUMENT 00450 - POST-BID PROCEDURES, PARAGRAPH 4.0.**

1. Deliver to the Downtown District 1313 Main Street, Houston, TX 77002, two executed copies (original signatures, not reproduced) of the Agreement, each document listed in Document 00450, and those items listed in Paragraph 2 below.
2. Requirements other than those listed in Document 00450:

\_\_\_\_\_  
\_\_\_\_\_  
After complying with these conditions, the Downtown District will return one fully executed counterparts of the Agreement with the Contract Documents attached.

Failure to comply with the stated conditions within the time specified will entitle the Downtown District to consider your bid in default, to void this Notice of Intent to Award.

Sincerely,

Brett DeBord  
Director of Operations and Capital Projects

cc: Keith Gould, Quality Control Manager  
Dusty McCartney, Construction Manager

END OF DOCUMENT

Document 00510

AGREEMENT BETWEEN THE HOUSTON DOWNTOWN MANAGEMENT DISTRICT  
AND CONTRACTOR

**The Owner:** The Houston Downtown Management District (the "Downtown District"), 1313 Main Street, Houston, Texas 77002 and

**The Contractor:** \_\_\_\_\_  
(Address for Written Notice) \_\_\_\_\_

**Project Number:** \_\_\_\_\_ 24-927.002-01 \_\_\_\_\_

**The Project Title:** \_\_\_\_\_ Tree Replacements in Downtown Houston \_\_\_\_\_

**The Project Location:** \_\_\_\_\_ Downtown Houston, TX \_\_\_\_\_

**The Director of Operations and Capital Projects:** \_\_\_\_\_ Brett DeBord \_\_\_\_\_  
(Address for Written Notice) \_\_\_\_\_ 1313 Main Street \_\_\_\_\_  
Houston, TX 77002 \_\_\_\_\_

**THE OWNER AND THE CONTRACTOR AGREE AS SET FORTH BELOW:**

**ARTICLE 1  
WORK OF THIS CONTRACT**

1.1 The Contractor shall execute the Work in accordance with the provisions of the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as otherwise provided herein.

**ARTICLE 2  
DATE OF COMMENCEMENT OF WORK AND DATE OF SUBSTANTIAL COMPLETION**

2.1 The Date of Commencement of the Work, as defined in General Conditions, is the date from which the Contract Time is measured, which date is the date established by Notice to Proceed from the Downtown District to the Contractor.

2.2 The Contractor shall achieve Substantial Completion of the Work for work not later than seventy-five (75) days after the Date of Commencement of the Work, subject to adjustments of the Contract Time as provided in Contract Documents.

2.3 Should Contractor fail to achieve Substantial Completion of the Work within that Contract Time; the Contractor shall be liable to the Owner for LIQUIDATED DAMAGES as stipulated in the General Conditions and Supplementary Conditions.

**ARTICLE 3  
THE CONTRACT PRICE**

3.1 Subject to all the terms and conditions of the Contract Documents, the Downtown District shall pay the Contractor in current funds for the Contractor's performance of the Contract, the Contract Price of

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

3.2 The Contract Price, for those unit price items of Work which are listed in Document 00405 - Schedule of Unit Price Work, when attached, is subject to adjustment at completion of the Work due to variation in quantities of units of work actually incorporated in the completed Work and other adjustments as provided in Contract Documents.

3.3 The Contract Price is based upon the Contractor's Bid, including the Alternate Bids, if any, described in the Contract Documents and hereby accepted by the Downtown District:

---

---

**ARTICLE 4**  
**PAYMENTS**

4.1 The Owner shall make progress payments to the Contractor on account of the Contract Price as provided below and elsewhere in the Contract Documents.

4.2 The period covered by each progress payment shall be one calendar month ending on the last day of the month.

4.3 The Contractor shall submit an Application for Payment, and upon review and approval, the Downtown District will make a progress payment on the basis of such Application as provided in the General Conditions.

4.4 Final payment, constituting the entire unpaid balance of the Contract Price, shall be made by the Downtown District to the Contractor as provided in the General Conditions or as follows:

---

---

**ARTICLE 5**  
**MISCELLANEOUS PROVISIONS**

5.1 Where reference is made in this Agreement to a provision of the General Conditions or other Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

5.2 The Contract may be terminated by the Downtown District or by the Contractor as provided in the General Conditions.

5.3 The Work may be suspended by the Downtown District as provided in the General Conditions.

**ARTICLE 6**  
**ENUMERATION OF CONTRACT DOCUMENTS**

- 6.1 The basis for this Agreement is this executed Document 00510 - Agreement between the Downtown District and Contractor. Other Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated under this Article and, unless otherwise noted, are contained in the Project Manual dated September 2024.
- 6.2 The General Conditions are Document 00700, current edition, **INCLUDING THE INDEMNITY PROVISIONS STATED IN PARAGRAPH 3.24.**
- 6.3 The Supplementary Conditions of the Contract are those stated in Document 00800.
- 6.4 The Specifications.
- 6.5 The Drawings are identified by Cover Sheet and bound separately.
- 6.6 The Addenda, issued separately, which apply to Contract Documents, are as follows:

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

- 6.7 Attachments to this Agreement are as follows:

<u>Document No.</u>	<u>Title</u>
[X] 00405	Schedule of Unit Price Work
[X] 00511	Resolution of Corporation (if a corporation)
[X] 00610	Performance Bond
[X] 00611	Payment Bond
[X] 00612	One-Year Maintenance Bond
[X] 00613	One-Year Surface Correction Bond
[X] 00615	Affidavit of Insurance (with the Certificate of Insurance attached)
[X] 00631	Affidavit of Compliance with Office of Business Opportunity Program
[X] 00645	Form of Business

This Agreement is effective as of the date of countersignature by the Executive Director and is executed in four original copies, two of which are to be retained by the Executive Director and two are to be delivered to the Contractor.

**CONTRACTOR:**

(If Joint Venture)

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**HOUSTON DOWNTOWN MANAGEMENT DISTRICT**

By: \_\_\_\_\_  
[Executive Director]

END OF DOCUMENT

Document 00511

RESOLUTION OF CORPORATION

I hereby certify that it was RESOLVED by a quorum of the directors  
of \_\_\_\_\_

[Name of Corporation / Contractor]

on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, that \_\_\_\_\_,

[Corporate Representative]

be, and hereby is, authorized to act on behalf of the Corporation, as its  
representative, in all business transactions conducted in the State of Texas,  
and

That the above resolution was unanimously ratified by the Board of Directors  
at said meeting and that the resolution has not been rescinded or amended and  
is now in full force and effect; and

In authentication of the adoption of this resolution, I subscribe my name on  
this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Secretary/Assistant Secretary

END OF DOCUMENT



Document 00610

PERFORMANCE BOND

**THAT WE,** \_\_\_\_\_, as Principal, (the "Contractor"), and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the Houston Downtown Management District (the "Downtown District"), governmental agencies of the State of Texas, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which sum, well and truly to be made to the Downtown District, its successors and assigns, Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally. Further, provided that if the Downtown District assigns all of its interests in the contract to the City of Houston, the Downtown District may in conjunction with such assignment similarly assign all its interests under this bond to the City of Houston and Principal and Surety shall be bound by such assignment.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has on or about this day executed a Contract in writing with the Downtown District for Tree Replacements in Downtown Houston, Project Number 24-927.002-01, all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the Board of Directors of the Houston Downtown Management District, all of which are made a part of this instrument as fully and completely as if set out in full herein.

**NOW THEREFORE,** if the said Contractor shall faithfully and strictly perform the Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of the Contract and with this Bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect. Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that the Downtown District may suffer in consequence thereof, as more fully set forth herein.

It is further understood and agreed that the Surety does hereby relieve the Downtown District or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety agrees that it shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the Downtown District will retain certain amounts due the Contractor until the expiration of 30 days from the acceptance of the Work is intended for the Downtown District's benefit, and the Downtown District will have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the Downtown District or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions

thereof, or to make any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the Downtown District from any liability, loss, cost, expense, or damage arising out of Contractor's performance of the Contract.

If the Downtown District gives Surety notice of Contractor's default, Surety shall, within 45 days, take one of the following actions:

1. Arrange for Contractor, with consent of the Downtown District, to perform and complete the Contract; or
2. Take over and assume completion of the Contract itself, through its agents or through independent contractors, and become entitled to the payment of the balance of the Contract Price.

If the Surety fails to take either of the actions set out above, it shall be deemed to have waived its right to perform and complete the Contract and receive payment of the balance of the Contract Price and the Downtown District shall be entitled to enforce any remedies available at law, including but not limited to completing the Contract itself and recovering any cost in excess of the Original Contract Price from the Surety.

This Bond and all obligations created hereunder shall be performable in Harris County, Texas. This Bond is given in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which is incorporated herein by this reference.

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

**IN WITNESS THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)  
WITNESS: (if not a corporation)

\_\_\_\_\_  
Name of Contractor

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/SURETY WITNESS:

\_\_\_\_\_  
Full Name of Surety

(SEAL)

\_\_\_\_\_  
Address of Surety for Notice

\_\_\_\_\_  
Telephone Number of Surety

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title: Attorney-in-Fact  
Date:

THE FOREGOING BOND IS ACCEPTED ON BEHALF OF HOUSTON DOWNTOWN MANAGEMENT DISTRICT

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date

END OF DOCUMENT

Document 00611

STATUTORY PAYMENT BOND

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called Contractor and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound unto the Houston Downtown Management District (the "Downtown District"), governmental agencies of the State of Texas, in the sum of, \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment of which sum, well and truly to be made to the Downtown District, and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally. Further, provided that if the Downtown District assigns all of its interests in the contract to the City of Houston, the Downtown District may in conjunction with such assignment similarly assign all its interests under this bond to the City of Houston and Principal and Surety shall be bound by such assignment.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has on or about this day executed a contract in writing with the Downtown District for Tree Replacements in Downtown Houston, Project Number 24-927.002-01, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the Board of Directors of the Houston Downtown Management District, all of which are made a part of this instrument as fully and completely as if set out in full herein;

**NOW, THEREFORE,** if the said Contractor shall pay all claimants supplying labor and materials to him or a Subcontractor in the prosecution of the Work provided for in the Contract, then, this obligation shall be void; otherwise the same is to remain in full force and effect;

**PROVIDED HOWEVER,** that this Bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, 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 THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation) \_\_\_\_\_  
WITNESS: (if not a corporation) Name of Contractor

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: Name:  
Title: Title:  
Date: Date:

ATTEST/SURETY WITNESS: (SEAL) \_\_\_\_\_  
Full Name of Surety  
\_\_\_\_\_  
Address of Surety for Notice  
\_\_\_\_\_  
Telephone Number of Surety

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: Name:  
Title: Title: Attorney-in-Fact  
Date: Date:

THE FOREGOING BOND IS ACCEPTED ON BEHALF OF HOUSTON DOWNTOWN MANAGEMENT DISTRICT

\_\_\_\_\_  
Executive Director Date

END OF DOCUMENT

Document 00612

ONE-YEAR MAINTENANCE BOND

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called Contractor, and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the Houston Downtown Management District (the "Downtown District"), in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment of which sum well and truly to be made to the Downtown District and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has on or about this day executed a Contract in writing with the Downtown District for Tree Replacements in Downtown Houston, Project Number 24-927.002-01, all of such work to be done as set out in full in said Contract documents therein referred to and adopted by the Board of Directors of the Houston Downtown Management District, all of which are made a part of this instrument as fully and completely as if set out in full herein.

**NOW THEREFORE,** if the said Contractor shall comply with the provisions of Paragraph 11.5.1 of the General Conditions, and correct work not in accordance with the Contract documents discovered within the established one-year period, then this obligation shall become null and void, and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

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

**IN WITNESS THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)  
WITNESS: (if not a corporation)

\_\_\_\_\_  
Name of Contractor

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/SURETY WITNESS: (SEAL)

\_\_\_\_\_  
Full Name of Surety

\_\_\_\_\_  
Address of Surety for Notice

\_\_\_\_\_  
Telephone Number of Surety

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title: Attorney-in-Fact  
Date:

THE FOREGOING BOND IS ACCEPTED ON BEHALF OF HOUSTON DOWNTOWN MANAGEMENT DISTRICT

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date

END OF DOCUMENT

Document 00613

ONE-YEAR SURFACE CORRECTION BOND

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called Contractor, and the other subscriber hereto, \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the Houston Downtown Management District (the "Downtown District"), a public non-profit local government corporation, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) such sum being equal to four percent of the Original Contract Price, for the payment of which sum to be made to the Downtown District and its successors, Contractor and Surety do bind themselves, their successors, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has entered into a Contract in writing with the Downtown District, dated of even date herewith, for Tree Replacements in Downtown Houston, Project Number 24-927.002-01, all of such work to be done in accordance with the Contract documents therein referred to, and adopted by the Board of Directors of the Downtown District.

**NOW THEREFORE,** if the Contractor shall comply with the provisions of Paragraph 11.5.2 of the General Conditions, and repair, replace, restore, and correct surface work associated with backfill operations of subsurface work not in accordance with the Contract documents discovered within one year from the date that the One-year Maintenance Bond has expired, then this obligation shall become null and void, and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

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



**IN WITNESS THEREOF**, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

\_\_\_\_\_  
Name of Contractor

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/SURETY WITNESS: (SEAL)

\_\_\_\_\_  
Full Name of Surety

\_\_\_\_\_  
Address of Surety for Notice

\_\_\_\_\_  
Telephone Number of Surety

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title: Attorney-in-Fact  
Date:

THE FOREGOING BOND IS ACCEPTED ON BEHALF OF HOUSTON DOWNTOWN MANAGEMENT DISTRICT

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date

END OF DOCUMENT

Document 00615

AFFIDAVIT OF INSURANCE

THE STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS

§

**BEFORE ME**, the undersigned authority, on this day personally appeared

\_\_\_\_\_, who  
[Affiant]

being by me duly sworn on his oath stated that he is \_\_\_\_\_, of  
[Title]

\_\_\_\_\_,  
[Contractor's Company Name]

the Contractor named and referred to within the Contract Documents; that he is fully competent and authorized to give this affidavit and that the attached original insurance certificate truly and accurately reflects the insurance coverage that is now available and will be available during the term of the Agreement.

\_\_\_\_\_  
[Affiant's Signature]

SWORN AND SUBSCRIBED before me on \_\_\_\_\_  
[Date]

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
[Print or type Notary Public name]

My Commission Expires: \_\_\_\_\_  
[Expiration Date]

END OF DOCUMENT

Document 00620

LIST OF PROPOSED SUBCONTRACTORS AND SUPPLIERS - PART A<sup>1</sup>  
M/W/DBE PARTICIPATION PLAN

PROJECT NAME: \_\_\_\_\_ TOTAL CONTRACT AMOUNT: \$ \_\_\_\_\_  
PROJECT NO.: \_\_\_\_\_ M/W/DBE PARTICIPATION AMOUNT: \$ \_\_\_\_\_  
DATE OF REPORT: \_\_\_\_\_ M/W/DBE PERCENTAGE: \_\_\_\_\_%

SUBCONTRACTOR OR SUPPLIER <sup>2</sup> (DESIGNATE AS MINORITY, WOMAN, OR DISADVANTAGED BUSINESS)	ADDRESS	SCOPE OF WORK <sup>3</sup>	AGREED PRICE

- NOTES:**
1. RETURN PART A FOR PROJECTS WITH A STATED M/W/DBE PERCENTAGE GOAL. RETURN WITHIN THE SPECIFIED NUMBER OF DAYS AFTER RECEIPT OF NOTICE OF INTENT TO AWARD AS REQUIRED IN DOCUMENT 00640 - BIDDER REQUIREMENTS FOR M/W/DBE PROGRAM.
  2. FIRMS LISTED IN PART A MUST BE CERTIFIED BY THE CITY OF HOUSTON OFFICE OF BUSINESS OPPORTUNITY CONTRACT COMPLIANCE DIVISION.
  3. DESCRIBE THE WORK TO BE PERFORMED, SUCH AS PAVING, ELECTRICAL, ETC.

CONTRACTOR SHALL EXECUTE CONTRACTS WITH APPROVED SUBCONTRACTORS AND SUPPLIERS WITHIN 30 DAYS AFTER THE DATE OF THE NOTICE TO PROCEED.

SIGNATURE: \_\_\_\_\_ COMPANY NAME: \_\_\_\_\_  
NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_  
(Type or Print)

Document 00620

LIST OF PROPOSED SUBCONTRACTORS AND SUPPLIERS - PART B<sup>1</sup>  
SCHEDULE OF NON-M/W/DBE SUBCONTRACTORS AND SUPPLIERS

PROJECT NAME: \_\_\_\_\_ DATE OF REPORT: \_\_\_\_\_

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

SUBCONTRACTOR OR SUPPLIER	ADDRESS	SCOPE OF WORK <sup>2</sup>

- NOTES:** 1. RETURN PART B FOR ALL PROJECTS WITHIN 10 DAYS OF NOTICE OF INTENT TO AWARD.  
2. DESCRIBE THE WORK TO BE PERFORMED, SUCH AS PAVING, ELECTRICAL, ETC.

CONTRACTOR SHALL EXECUTE CONTRACTS WITH APPROVED SUBCONTRACTORS AND SUPPLIERS WITHIN 30 DAYS AFTER THE DATE OF THE NOTICE TO PROCEED.

SIGNATURE: \_\_\_\_\_ COMPANY NAME: \_\_\_\_\_

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_  
(Type or Print)

END OF DOCUMENT

Document 00630

OFFICE OF BUSINESS OPPORTUNITY COMPLIANCE PROGRAM  
(Houston Downtown Management District Information Requirements for the Successful  
Bidder on Construction Contracts)

CONTRACT COMPLIANCE REQUIREMENTS .....CC-2

DOCUMENTS THAT MUST BE SIGNED AND RETURNED TO THE HOUSTON DOWNTOWN MANAGEMENT  
DISTRICT PRIOR TO FINAL EXECUTION OF CONTRACT

Certification by Bidder Regarding Equal Employment Opportunity.....CC-5

Office of Business Opportunity Compliance Program For [Company].....CC-7

Certificate from Contractor.....CC-8  
Appointing Officer or Employee to Supervise Payment of Employees

Special Provisions.....CC-9  
Specific Equal Employment Opportunity Policy

INFORMATION THAT MUST BE SUPPLIED DURING THE COURSE OF THE WORK

Certification By Proposed Subcontractor Regarding Equal Employment OpportunityCC-26

Certificate from Subcontractor.....CC-28  
Appointing Officer or Employee to Supervise Payment of Employees

PLEASE COMPLETE PAGES CC-5 THROUGH CC-9 AND MAIL TO:

Houston Downtown Management District  
1313 Main Street  
Houston, Texas 77002  
Attn: Director of Operations and Capital Projects

The remainder of the reports can be mailed at the appropriate time.

**OFFICE OF BUSINESS OPPORTUNITY AND CONTRACT COMPLIANCE OFFICE  
CONTRACT COMPLIANCE REQUIREMENTS**

The following are Contract Compliance requirements to be met and documents to be submitted to:

HOUSTON DOWNTOWN MANAGEMENT DISTRICT (the "District")  
1313 Main Street  
Houston, Texas 77002

Under the conditions and terms of this District construction contract, the prime contractor is responsible for all labor and M/W/DBE compliance, including subcontractor compliance.

**CONTRACT COMPLIANCE FORMS (CC Forms)**

These forms are submitted only once by prime contractors at the beginning of the Project:

CC Forms 6-8, 9, 10 and 11-16 by prime contractors.

These forms are submitted only once by subcontractors for each subcontract:

CC Forms 34-36 and 37 by subcontractors.

**CERTIFIED PAYROLLS**

1. Payrolls are submitted weekly unless the prime Contractor has been instructed to do otherwise by the District. (In some cases, field audits will be conducted instead of weekly payroll submittals.) Contractors will be notified by letter when projects are audited by the field audit process. When no work is done after a Contractor has started work, the Contractor is required to submit weekly compliance statement with no work performed. The payrolls must reflect the exact work and classification of the workers, the exact amount that they were paid. Workers must be paid the contracted amount (prevailing wage rates.) The Contractor will be penalized \$60.00 a day for each employee who is underpaid per General Government Code 2258-023 for all contracts except Federally Funded Contract.
2. Payrolls must be signed by an authorized person. Only ORIGINAL signatures are acceptable - no copied signatures. Payrolls must clearly indicate whether the worker worked inside or outside the project's construction area.
3. Payrolls must be numbered and clearly marked: the first payroll as No. 1; etc. Payroll for the final week worked on the job should be marked "FINAL."
4. Payrolls must have "Week Ending" dates.
5. Payrolls must have employees' names, addresses, social security numbers, and job classifications. The job classifications must be the same as the classifications on the prevailing wage rate schedule.
6. A payroll deduction authorization form must be submitted for each employee for any deductions other than Federal and FICA taxes and court ordered child support.

7. Employees must be paid overtime (time and a half) for all hours worked over forty (40) hours a week on both federally and City-funded contracts.
8. The Contractor has the responsibility to comply with all Internal Revenue Service rules and regulations. Contractors who submit certified payrolls with owner operators (truckers) must submit a signed statement from each worker acknowledging the worker's responsibility for payment of Federal Income Tax and FICA.
9. Companies that have computerized payroll systems must copy the back of the certified payroll, WH-Form 347, and submit it with the authorized official's original signature.
10. Apprenticeship certificates, when applicable, must be submitted with payrolls.

Prime Contractor must submit a list of all Subcontractors (both minority and non minority). The list must contain the names, addresses, types of work, amount of contracts and M/W/DBE status.

#### **POSTINGS**

The following posters should be clearly displayed on each job site, or in case of annual service agreements, in the Contractor's office:

1. Prevailing Wage Rate Schedule
2. Equal Employment Opportunity

#### **JOB SITE VISITS**

Site visits and field audits will be made by a District representative. He/She will make his/her presence known to the office manager, supervisor, or foreman, and will conduct interviews with employees on site.

#### **M/W/S/DBE COMPLIANCE**

1. It is the responsibility of the prime Contractor to determine the ability of all Subcontractors to perform the work.
2. Only companies certified by the City of Houston Office of Business Opportunity will be counted toward the participation goal. The City provides a Directory of certified companies for use by contractors in meeting M/W/DBE goals. CREDIT FOR PARTICIPATION WILL BE GIVEN ONLY IN THE SPECIFIC CATEGORY OF CERTIFICATION LISTED IN THE M/W/DBE DIRECTORY.
3. The percentage goal applies to the value of the contract, which includes the value of any amendments or change orders.
4. Only 50% of the M/W/DBE goal can be used toward supplies purchased.
5. A Contractor may be declared in default of its Contract; if it fails to achieve the M/W/DBE goal set out in its Contract, AND fails to meet the City's objective good faith efforts test. A Contractor who fails to make good faith efforts may be declared non-responsible and eliminated from consideration for future City contracts for a reasonable period of time (not to exceed three years).

6. After execution of a contract or receipt of a purchase order, the contractor shall comply with the submitted M/W/DBE plan, unless it has received approval from the Director of Construction for a deviation therefrom.
7. The prime Contractor must submit a monthly M/W/DBE participation report to:

Houston Downtown Management District  
1313 Main Street  
Houston, Texas 77002

**PAYMENT AND EVALUATION**

Upon completion of the Project, as part of the District's total clearance process, the District must certify that all labor compliance requirements have been met.

The District may provide to the administering department a rating of Outstanding, Satisfactory, or Unsatisfactory on the matter of Labor and M/W/DBE Compliance.

Outstanding and Satisfactory are given when all labor compliance and M/W/DBE terms are met timely.

Unsatisfactory is given when the prime Contractor fails to submit labor compliance documents and/or fails to meet or exceed to the M/W/DBE goal.



CERTIFICATION BY BIDDER REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY

GENERAL

In accordance with Executive Order 11246 (30 F.R. 12319-25), the implementing rules and regulations thereof, and orders of the Secretary of Labor, a certification regarding Equal Opportunity is required of bidders or prospective contractors and their proposed subcontractors prior to the award of contracts or subcontracts.

CERTIFICATION OF BIDDER

Bidder's Name \_\_\_\_\_

Address \_\_\_\_\_

IRS Employer Identification Number \_\_\_\_\_

Job Description \_\_\_\_\_

1. Participation in a previous contract or subcontract.
  - a. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  YES  
NO
  - b. Compliance reports were required to be filed in connection with such contract or subcontract.  YES  NO
  - c. Bidder has filed all compliance reports required by Executive Orders 10925, 11114, 11246, or by regulations of the Equal Employment Opportunity Commission issued pursuant to Title VII of the Civil Rights Act of 1964.  YES  NO
  - d. If answer of Item c. is "No", please explain in detail on reverse side of this certification.
2. Dollar amount of bid: \$ \_\_\_\_\_
3. Anticipated performance period in days: \_\_\_\_\_
4. Expected total number of employees to perform the proposed construction: \_\_\_\_\_
5. Nonsegregated facilities.
  - a. Notice to prospective federally-assisted construction contractors
    - (1) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted to the recipient prior to the award of a federally-assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.
    - (2) Contractors receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from

the provisions of the Equal Opportunity Clause will be required to provide the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause.

The federally-assisted construction Contractor certifies that he/she does not maintain or provide any segregated facilities at any of his/her establishments, and does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction Contractor certifies further that he/she will not maintain or provide segregated facilities at any of his/her establishments, and will not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The federally-assisted construction Contractor agrees that (except where he/she has obtained identical certifications from proposed Subcontractors for specific time periods) he/she will obtain identical certifications in duplicate from proposed Subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain the duplicate of such certifications in his/her files. The Subcontractor will include the original in his/her bid package.

6. Race or ethnic group designation of bidder. Enter race or ethnic group in appropriate box:

\_\_\_\_\_ White                      \_\_\_\_\_ Black                      \_\_\_\_\_ Hispanic  
\_\_\_\_\_ Pacific Islander, Asian      \_\_\_\_\_ American Indian, Aleut

REMARKS:

Certification - The information above is true and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Company Officer (Please Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

OFFICE OF BUSINESS OPPORTUNITY  
COMPLIANCE PROGRAM FOR

---

Name of Company

The Company's Office of Business Opportunity Compliance Program shall consist of documented good faith efforts to comply with the goals, timetables, and objectives set forth in the following Office of Business Opportunity steps:

- A. City of Houston's Specific Equal Employment Opportunity Policy and Clause as contained in City Council Ordinance No. 78-1538, passed August 9, 1978.
- B. Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246).
- C. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

Project: \_\_\_\_\_

---

Company Officer (Please Type)

---

Signature

Date

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATE FROM CONTRACTOR  
APPOINTING OFFICER OR EMPLOYEE  
TO SUPERVISE PAYMENT OF EMPLOYEES

Project Name \_\_\_\_\_ Date \_\_\_\_\_

Location \_\_\_\_\_ Project No. \_\_\_\_\_

(I) (We) hereby certify that (I am) (we are) the prime Contractor for

\_\_\_\_\_ (specify type of job)

in connection with construction of the above-mentioned Project, and that (I) (we) have appointed \_\_\_\_\_, whose signature appears below, to supervise the payment of (my) (our) employees beginning \_\_\_\_\_, 20 \_\_\_\_; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the District a new certificate appointing some other person for the purposes hereinabove stated.

Phone: \_\_\_\_\_

(Identifying Signature of Appointee)

Attest:

\_\_\_\_\_ (Name of Firm or Corporation)

By: \_\_\_\_\_ (Signature)

By: \_\_\_\_\_ (Signature)

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

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

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

SPECIAL PROVISIONS  
SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY POLICY

1. GENERAL

- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity are required by Executive Order 11246, as amended. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for Project activities under this Contract and shall supplement the notice of requirement for affirmative action to ensure equal employment opportunity and standard federal equal employment opportunity construction contract specifications.
- b. The Contractor shall work with the District and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the Contract.
- c. The prime Contractor and all Subcontractors holding subcontracts of \$10,000 or more shall comply with the following minimum specific requirement activities of equal employment opportunity. The Contractor shall include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the Subcontractor.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

The Contractor shall accept as his/her operating policy the following statement, which is designed to further the provision of equal employment opportunity to all persons without regard to their race, age, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER

The Contractor shall designate and make known to the District an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active Contractor program of equal employment opportunity and who must be assigned adequate authority and responsibilities to do so.

The name of the company's EEO Officer is \_\_\_\_\_.

Special Provisions (continued)

4. DISSEMINATION OF POLICY

a. All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement the Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions shall be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and then not less often than once every six (6) months, at which time the Contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings shall be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations, within 30 days following their reporting for duty with the Contractor.

(3) The EEO Officer or appropriate company official shall instruct all employees engaged in the direct recruitment of employees for the Project relative to the methods followed by the Contractor in locating and hiring minorities and females.

b. In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees, and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor shall take the following actions:

(1) Notices and posters setting forth the Contractor's equal employment opportunity policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.

(2) The Contractor's equal employment opportunity policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. RECRUITMENT

a. When advertising for employees, the Contractor shall include in all advertisements for employees the notation "An Equal Opportunity Employer." All such advertisements will be published in newspapers, or other publications, having a large circulation among minority groups in the area from which the Project work force would normally be derived.

Special Provisions (continued)

- b. The Contractor shall, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee-referral sources likely to yield qualified minority-group applicants, including, but not limited to, State employment agencies, schools, colleges, minority-group organizations, and female recruitment agencies. To meet this requirement, the Contractor shall, through his/her EEO Officer, identify sources of potential minority and female employees, and establish with such identified sources procedures whereby such group applicants may be referred to the Contractor for employment consideration.

In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he/she is expected to observe the provisions of that agreement to the extent that the system permits the Contractor's compliance with equal employment opportunity Contract provisions. (The U. S. Department of Labor has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246 as amended).

- c. The Contractor shall encourage his/her present employees to refer female or minority-group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring such applicants will be discussed with employees.

6. PERSONNEL ACTIONS

- a. Wage, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff and termination, shall be taken without regard to race, color, religion, sex, national origin, or age. The following procedures shall be followed:
  - (1) The Contractor shall conduct periodic inspections of Project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of Project-site personnel.
  - (2) The Contractor shall periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
  - (3) The Contractor shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

Special Provisions (continued)

- (4) The Contractor shall promptly investigate all complaints of alleged discrimination made in connection with his/her obligations under this Contract, shall attempt to resolve such complaints, and shall take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor shall inform every complainant of all avenues of appeal.

7. TRAINING AND PROMOTION

- a. The Contractor shall assist in locating, qualifying, and increasing the skills of minority-group and women employees and applicants for employment.
- b. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship and on-the-job training programs, for the geographical area of Contract performance.
- c. The Contractor shall advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The Contractor shall periodically review the training and promotion potential of minority-group and women employees and shall encourage eligible employees to apply for such training and promotion.

8. UNIONS

If the Contractor relies in whole or in part upon unions as a source of employees, he/she shall use his/her best efforts to obtain the cooperation of such unions to increase minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor, either directly or through a contractor's association acting as his/her agent, will include the procedures set forth below:

- a. The Contractor shall use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority-group members and women for membership in the unions and increasing the skills of minority-group employees and women so that they may qualify for higher-paying employment.
- b. The Contractor shall use best efforts to incorporate an equal employment opportunity clause into all union agreements to the end that such unions will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, or age.
- c. The Contractor is to obtain information as to the referral practices and policies of the labor union, except that to the extent such information is within the exclusive possession of the



labor union, and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the District and shall set forth what efforts have been made to obtain such information.

- d. In the event the union is unable to provide the Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Contractor shall, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, age, sex, or national origin, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U. S. Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such Contractor shall immediately notify the District.

9. SUBCONTRACTING

- a. The Contractor shall use his/her best efforts to solicit bids from and to utilize minority-group and female subcontractors or subcontractors with meaningful minority-group and/or female representation among their employees.
- b. The Contractor shall use his/her best efforts to assure Subcontractors' compliance with their equal employment opportunity obligations.

10. RECORDS AND REPORTS

- a. The Contractor shall keep such records as are necessary to determine compliance with the Contractor's equal employment opportunity obligations. The records kept by the Contractor will be designed to indicate:
  - (1) The number of minority and non-minority group members and women employed in each work classification on the Project.
  - (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
  - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
  - (4) The progress and efforts being made in securing the services of female and minority subcontractors.
- b. All records, including payrolls, must be retained for a period of three (3) years following completion of the Contract work and shall be available at reasonable times and places for inspection by authorized representatives of the District, the City and/or the appropriate federal agency.

CITY OF HOUSTON, TEXAS  
EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

Pursuant to City Council Ordinance No. 78-1538, passed August 9, 1978 and Ordinance No. 99-444 passed April 20, 1999 establishing an Agreement between the City of Houston and the District, all contracts entered into by the District involving the expenditure of \$10,000 or more, shall incorporate the following Equal Employment Opportunity Clause:

1. The Contractor, Subcontractor, vendor, Supplier, or lessee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Contractor, Subcontractor, vendor, Supplier, or lessee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor, Subcontractor, vendor, Supplier, or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the District setting forth the provisions of this Equal Employment Opportunity Clause.
2. The Contractor, Subcontractor, Vendor, Supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.
3. The Contractor, Subcontractor, Vendor, Supplier, or lessee shall send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or workers' representative of the Contractor's and Subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor, Subcontractor, Vendor, Supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal opportunity and affirmative action provisions applicable, and shall likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officers for purposes of investigation to ascertain and effect compliance with this program.
5. The Contractor, Subcontractor, Vendor, Supplier, or lessee shall furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to all books, records, and accounts by the appropriate District, the City and Federal officials for purposes of investigation to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the Contractor, Subcontractor, Vendor, Supplier, or lessee.

Equal Employment Opportunity Clause (continued)

6. In the event of a Contractor's, Subcontractor's, Vendor's, Supplier's, or lessee's non-compliance with the non-discrimination clause of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Contractor, Subcontractor, Vendor, Supplier, or lessee may be declared ineligible by the District or the City of Houston for further District projects sponsored by the City of Houston, or for further City contracts, in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The Contractor shall include the provisions of paragraphs 1 through 8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 so that such provisions will be binding upon each Subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a Subcontractor or Vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The Contractor shall file and shall cause each of his Subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Affirmative Action and Contract Compliance Office. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, employment policies, and employment statistics of the Contractor and each Subcontractor.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION  
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY  
(EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

---

Timetables	Goals for Minority Participation for Each Trade	Goals for Female Participation for Each Trade
	26.2% - 27.3%	6.9%

---

Time Interval	Time Interval
January 1, 1992 to December 31, 1994	April 1, 1992 to December 31, 1995

---

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally-assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the Contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order, and regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is The Houston, Texas Standard Metropolitan Statistical Area.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS  
(EXECUTIVE ORDER 11246)

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good efforts to achieve the Plan goals and timetables.

Standard Federal EEO Construction Contract Specifications (continued)

4. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women, shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources; provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason

therefor, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.



- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare, through appropriate training, etc., for such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved

- its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under utilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
  11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
  12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
  13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.B.
  14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily-understandable and retrievable form; however to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
  15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

DESCRIPTION OF JOB CATEGORIES

Officials, Managers, and Administrators

Occupations requiring administrative personnel who set board policies, exercise overall responsibility for the execution of these policies, or provide specialized consultation on a regional, district, area basis, or direct individual departments or special phases of a firm's operations.

Includes: Officials, executives, middle management, plant managers, department managers, superintendents, salaried foremen who are members of management, purchasing agents, buyers, bureau chiefs, directors, deputy directors, wardens, examiners, sheriffs, police and fire chiefs, and kindred workers.

Professionals

Occupations which require specialized and theoretical knowledge which is usually acquired through college or experience of such kind and amount as to provide a comparable background.

Includes: Accountants, auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations workers, physical scientists, teachers, social workers, doctors, psychologists, economists, systems analysts, employment and vocational rehabilitation counselors, instructors, police and fire captains and lieutenants, and kindred workers.

Paraprofessionals

Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a "New Careers" concept.

Includes: Library assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemakers aides, home health aides, and kindred workers.

Technicians

Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about two (2) years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training.

Includes: Computer programmers and operators, draftsmen, engineering aides, junior engineers, mathematical aides, licensed practical or vocational nurses, photographers, radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronics, physical sciences), police and fire sergeants, and kindred workers.

Protective Service Workers

Occupations in which workers are entrusted with public safety, security, and protection from destructive forces.

Includes: Police patrol officers, fire fighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

#### Sales Workers

Occupations engaging wholly or primarily in direct selling.

Includes: Advertising agents and salespersons, insurance agents and brokers, real estate agents and brokers, stock and bond salespersons, demonstrators, salespersons and sales clerks, grocery clerks, cashiers, and kindred workers.

#### Office and Clerical

Occupations in which workers are responsible for internal and external communications, recording and retrieval of data and/or information and other paper work required in an office predominantly non-manual, though some manual work not directly involved with altering or transporting the products is included.

Includes: Bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

#### Skilled Craft Workers

Occupations in which workers perform jobs, which require special manual skill through on-the-job training and experience, or through apprenticeship or other formal training programs. These workers exercise considerable independent judgment and usually receive an extensive period of training.

Includes: The building trades, hourly paid foremen and leadmen who are not members of management, mechanics and repairmen, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors, heavy equipment operators, carpenters, and kindred workers.

#### Operatives (semi-skilled)

Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training.

Includes: Apprentices (auto mechanics), plumbers, bricklayers, carpenters, electricians, mechanics, building trades, metal workers, machinists, printing trades, operatives, attendants (auto service and parking), blasters, chauffeurs, deliverymen, dressmakers and seamstresses (except factory), dryers, furnacemen, heaters (metal), laundry and dry cleaning operatives, milliners, miners, motormen, oilers, greasers, etc. (except auto), painters (except construction and maintenance), photographic process workers, stationary firemen, truck and tractor drivers, weavers (textile), welders and flame cutters, and kindred workers.

#### Laborers (unskilled)

Workers in manual occupations, which generally require no special training. These workers perform elementary duties that may be learned in a few days and require the application of little or no independent judgment.

Includes: Garage workers, car washers and greasers, gardeners (except farm) and groundskeepers, longshoremen and stevedores, lumbermen, craftsmen, and wood choppers, laborers performing lifting, digging, mixing, loading, and pulling operations, and kindred workers.

Service/Maintenance Workers

Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety for the general public or which contribute to the upkeep and care of buildings, facilities or grounds, or public property. Workers in this group may operate machinery.

Includes: Chauffeurs, laundry and dry cleaning operatives, truck drivers, trash collectors, custodial personnel, gardeners and groundskeepers, construction laborers, attendants (hospital and other institutions), professional and personal service, counter and fountain workers, elevator operators, firemen and fire protection, guards, watchmen and doorkeepers, stewards, porters, waiters, and kindred workers.

CERTIFICATION BY PROPOSED SUBCONTRACTOR REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY

Name of Prime Contractor \_\_\_\_\_

Address \_\_\_\_\_

GENERAL

In accordance with Executive Order 11246 (30 F.R. 12319-25), the implementing rules and regulations thereof, and orders of the Secretary of Labor, a certification regarding Equal Opportunity is required of bidders or prospective contractors and their proposed subcontractors prior to the award of contracts or subcontracts.

SUBCONTRACTOR'S CERTIFICATION

Subcontractor's Name \_\_\_\_\_

Address \_\_\_\_\_

IRS Employer Identification Number \_\_\_\_\_

Job Description \_\_\_\_\_

1. Participation in a previous contract or subcontract.
  - a. Subcontractor has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  YES  NO
  - b. Compliance reports were required to be filed in connection with such contract or subcontract.  YES  NO
  - c. Subcontractor has filed all compliance reports required by Executive Orders 10925, 11114, 11246, or by regulations of the Equal Employment Opportunity Commission issued pursuant to Title VII of the Civil Rights Act of 1964.  YES  NO
  - d. If answer of Item c. is "No", please explain in detail on reverse side of this certification.
2. Dollar amount of proposed subcontract: \$ \_\_\_\_\_
3. Anticipated performance period in days: \_\_\_\_\_
4. Expected total number of employees to perform the proposed subcontract: \_\_\_\_\_
5. Nonsegregated facilities.
  - a. Notice to prospective federally-assisted construction contractors
    - (1) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted to the Contractor prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

(2) Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

b. Certification of nonsegregated facilities

The federally-assisted construction contractor certified that he/she does not maintain or provide any segregated facilities at any of his/her establishments, and does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction Contractor certifies further that he/she will not maintain or provide any segregated facilities at any of his/her establishments, and will not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants, and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The federally-assisted construction Contractor agrees that (except where he/she has obtained identical certifications from proposed Subcontractors for specific time periods) he/she will obtain identical certifications in duplicate from proposed Subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain the duplicate of such certifications in his/her files. The Contractor will include the original in his/her Bid Package.

6. Race or ethnic group designation of bidder. Enter race or ethnic group in appropriate box:

\_\_\_\_\_ White                                  \_\_\_\_\_ Black                                  \_\_\_\_\_ Hispanic  
\_\_\_\_\_ Pacific Islander, Asian                  \_\_\_\_\_ American Indian, Aleut.

REMARKS:

Certification - The information above is true and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Company Officer (Please Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATE FROM SUBCONTRACTOR APPOINTING OFFICER OR EMPLOYEE  
TO SUPERVISE PAYMENT OF EMPLOYEES

Project Name \_\_\_\_\_ Date \_\_\_\_\_

Location \_\_\_\_\_ Project No. \_\_\_\_\_

(I) (We) hereby certify that (I am) (we are) a Subcontractor for \_\_\_\_\_

\_\_\_\_\_  
(specify type of job)

in connection with construction of the above-mentioned Project, and that (I) (we)  
have appointed

\_\_\_\_\_, whose signature appears below, to  
supervise the payment of (my) (our) employees beginning \_\_\_\_\_, 20\_\_\_\_; that

Phone: \_\_\_\_\_

\_\_\_\_\_  
(Identifying Signature of Appointee)

Attest:

\_\_\_\_\_  
(Name of Firm or Corporation)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

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

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

NOTE: This certificate must be executed by an authorized officer of a corporation  
or by a member of a partnership, and shall be executed prior to and be submitted  
with the first payroll. Should the appointee be changed, a new certificate must  
accompany the first payroll for which the new appointee executes a statement of  
compliance required by the Copeland Act and the City of Houston.

END OF DOCUMENT



Document 00631

AFFIDAVIT OF COMPLIANCE WITH  
OFFICE OF BUSINESS OPPORTUNITY PROGRAM

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS §

**BEFORE ME**, the undersigned authority, on this day personally appeared

\_\_\_\_\_, who  
[Affiant]

being by me duly sworn on his oath stated that he is \_\_\_\_\_,  
[Title]

of \_\_\_\_\_,  
[Contractor]

the Contractor named and referred to within the Contract Documents; that he is fully competent and authorized to give this affidavit and that the Contract is in compliance with the Office of Business Opportunity Program of the City of Houston and has done all that is required by the Contract Documents, the Office of Business Opportunity Program, and pursuant to Chapter 15, Code of Ordinances, City of Houston, §15.16 et seq.

\_\_\_\_\_  
[Affiant's Signature]

SWORN AND SUBSCRIBED before me on \_\_\_\_\_  
[Date]

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
[Print or type Notary Public name]

My Commission Expires: \_\_\_\_\_  
[Expiration Date]

END OF DOCUMENT

Document 00632

CERTIFICATION BY PROPOSED MATERIAL SUPPLIERS,  
LESSORS, AND PROFESSIONAL SERVICE PROVIDERS  
REGARDING EQUAL EMPLOYMENT OPPORTUNITY

Company Name: \_\_\_\_\_ \$ \_\_\_\_\_  
[Supplier, Lessor, Professional Service Provider] [Amount of Contract]

Company Address: \_\_\_\_\_

Project Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

In accordance with the City of Houston Ordinance 78-1538, the Houston Downtown Management District (the "Downtown District"), the Supplier, Lessor, Professional Service Provider represents to be an equal opportunity employer and agrees to abide by the terms of the Ordinance. This certification is required of all Suppliers, Lessors, and Professional Service Providers (herein Supplier) with contracts in the amount of \$10,000.00 or more.

Yes  No Supplier agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age.

Yes  No Supplier agrees that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.

Yes  No Supplier will comply with all provisions of Executive Order No. 11246 and rules, regulations and applicable orders of the Department of Labor or other Federal Agency responsible for enforcement of applicable equal opportunity and affirmative action provisions and will likewise furnish all information and reports required by the Downtown District for the purpose of investigation to ascertain and effect compliance with the City of Houston's Office of Affirmative Action and Contract Compliance.

Yes  No The Supplier shall file and cause their sub-tier contractors to file compliance reports with the Downtown District in the form and to the extent as may be prescribed by the Downtown District. Compliance reports filed at such times as directed shall contain information including, but not limited to, the practices, policies, programs, and employment policies.

I hereby certify that the above information is true and correct.

\_\_\_\_\_  
COMPANY OFFICER [Signature]

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME AND TITLE [Print or type]

END OF DOCUMENT



Document 00638

CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A HOUSTON DOWNTOWN MANAGEMENT DISTRICT CONTRACT

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS §

**BEFORE ME**, the undersigned authority, on this day personally appeared

\_\_\_\_\_  
[Affiant]

who being by me duly sworn on his oath stated that he is \_\_\_\_\_  
[Title]

of \_\_\_\_\_  
[Contractor]

and that no employee safety impact positions, as defined in §5.17 of  
Executive Order No. 1-31, will be involved in performing

\_\_\_\_\_  
[Project]

Contractor agrees and covenants that it shall immediately notify the Director  
of Construction if any safety impact positions are established to provide  
services in performing this Contract.

\_\_\_\_\_  
[Affiant's Signature]

SWORN AND SUBSCRIBED before me on \_\_\_\_\_  
[Date]

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
[Print or type Notary Public name]

My Commission Expires: \_\_\_\_\_  
[Expiration Date]

END OF DOCUMENT

Document 00640

BIDDER REQUIREMENTS FOR  
MINORITY, WOMEN, AND DISADVANTAGED  
BUSINESS ENTERPRISE (M/W/DBE) PROGRAM

CONSTRUCTION CONTRACTS

- 1.0 DOCUMENTS THAT MUST BE SIGNED AND RETURNED TO HOUSTON DOWNTOWN MANAGEMENT DISTRICT (THE "DOWNTOWN DISTRICT") WITHIN TEN DAYS OF NOTIFICATION OF SELECTED BIDDER OF INTENT TO AWARD
  - A. Original Document 00620 and copy - List of Proposed Subcontractors and Suppliers, Part A - M/W/DBE Participation Plan.
  - B. Original executed Subcontract(s), Letter(s) of Intent, or documentation of Good Faith Efforts documentation to meet the M/W/DBE participation goal.
  - C. Original Documents and copy required pursuant to Document 00630 - Office of Business Opportunity Compliance Program.
  - D. Mail documents described above to:

Houston Downtown Management District  
1313 Main Street  
Houston, Texas 77002  
Attn: Director of Operations and Capital Projects
- 2.0 REPORTS THAT MUST BE SUBMITTED DURING THE COURSE OF THE CONTRACT
  - A. M/W/DBE Monthly Utilization Report (Attachment B), Page 00640-10
  - B. Mail original and 2 copies of completed M/W/DBE Monthly Utilization Report to:

Houston Downtown Management District  
1313 Main Street  
Houston, Texas 77002  
Attn: Director of Operations and Capital Projects
- 3.0 M/W/DBE REQUIREMENTS
  - A. Purpose
    1. To support implementation of City of Houston, Tex. Code of Ordinances Chapter 15, Article V, §15-81 et seq., City of Houston, Tex. Ordinance 95-336 (March 29, 1995) and Executive Order No. 1-2 (June 14, 1995) relating to M/WBE contract participation.
  - B. Policy
    1. It is the policy of the City to encourage the full participation of Minority, Women and Disadvantaged Business Enterprises in all phases of its procurement activities and to afford them a full and fair opportunity to compete for City contracts at all levels. Through its Agreement with the City, the Downtown District is obligated to support implementation of this policy for all Sub-contractors.

C. Policy Elements

1. The Contractor agrees to ensure that M/W/DBEs have a full and fair opportunity to participate in the performance of Downtown District contracts. In this regard the Contractor shall take all reasonable Good Faith Efforts to meet the M/W/DBE goal for this Contract.
2. The Contractor and any Subcontractor shall not discriminate on the basis of race, color, religion, national origin, or sex in the performance of Downtown District contracts.
3. The Selected Bidder will be notified by the Downtown District and will have ten (10) days after such notification to submit Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/W/DBE Participation Plan in accordance with instructions in Article 1.0 hereof.
4. Contractor's plan for performance in meeting the M/W/DBE participation goal will be evaluated as part of the selection process and will be monitored during the construction phase of the Contract by the Downtown District.

D. Percentage Goal

1. The M/W/DBE participation goal for M/W/DBE participation in the Work will be as shown in the Bid Documents.

E. Contractor Responsibilities

1. Prior to Award: Upon completion of the bid tabulation, the Selected Bidder will be notified by the Downtown District. The following requirements must be satisfied by the Contractor:
  - a. After notification, the Contractor will have ten (10) days to file Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/W/DBE Participation Plan (Plan).
  - b. The Contractor shall be bound by the Plan submitted unless a waiver is received from the Director of Construction. Contractor must submit a Plan which shall include:
    - 1) Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/W/DBE Participation Plan.
    - 2) Executed Subcontract(s) or Letter(s) of Intent for each M/W/DBE Subcontractor/Supplier, including:
      - a) Name and address of each M/W/DBE Subcontractor/Supplier used to satisfy the M/W/DBE goal;
      - b) Description of the scope of work for each M/W/DBE Subcontractor/Supplier;
      - c) Dollar value of each proposed M/W/DBE subcontract by Subcontractor/Supplier;
      - d) Subcontract provisions required in Document 00800-Supplementary Conditions;

- e) Other information as required by the Director of Construction.
  - 3) Documentation of Good Faith Efforts if the M/W/DBE goal is not met. See Attachment A for minimum standards for Good Faith Efforts. Such documentation shall be presented to the Director of Construction or Project Manager for review by the City of Houston Office for Business Opportunity (the "OBO").
  - c. All M/W/DBEs listed on Document 00620 - List of Subcontractors and Suppliers must be certified prior to bid date. Non-certified M/W/DBEs may obtain similar priority certification if there are less than three certified M/W/DBEs with the same capability as the non-certified M/W/DBE.
  - d. If Contractor fails to prepare and submit a Plan within the designated period or comply with Document 00620 - List of Subcontractors and Suppliers, and fails to satisfactorily document Good Faith Efforts to meet the goal, Contractor may be deemed non-responsive and recommendation could be made to award the Contract to the next highest evaluated bidder based on Document 00200 - Proposal Organization and Selection Criteria.
  - e. The Downtown District is authorized to suspend any Contractor who has failed to make Good Faith Efforts to meet an established M/W/DBE goal; and to suspend any M/W/DBE who has failed to make Good Faith Efforts to meet all requirements necessary for participation as an M/W/DBE.
  - f. Contractor shall execute written contracts with all M/W/DBE Subcontractors and shall include in all such contracts those provisions provided in Article 5 of Document 00800 - Supplementary Conditions.
  - g. Contractor shall designate an M/W/DBE liaison officer who will administer the Contractor's M/W/DBE program and who shall be responsible for maintenance of records of Good Faith Efforts to subcontract with M/W/DBE Subcontractors/Suppliers.
2. After Award:
- a. Contractor shall submit M/W/DBE Monthly Utilization Reports, requested in Article 2.0 hereof.
  - b. The Contractor, upon approval of the Director of Construction or Project Manager, shall make Good Faith Efforts to replace a certified M/W/DBE Subcontractor or Supplier that is displaced, for any reason, with another certified M/W/DBE Subcontractor.
  - c. After award of the Contract, Contractor shall comply with Document 00620 - List of Proposed Subcontractors and Suppliers, Part A - M/W/DBE Participation Plan unless the Director of Construction or Project Manager approves deviation therefrom. Approval shall not be unreasonably withheld.
  - d. Contractor shall submit all disputes with M/WBE Subcontractors and Suppliers to binding arbitration as set out in the City's

Affirmative Action/ Contract Compliance Division, Minority/Women  
Business Enterprise (M/WBE) Procedures dated June 1995.

F. Eligibility of an M/WBE

1. To ensure that the M/WBE program benefits only those firms that are owned and controlled by a minority person(s) or a woman (women), the OBO will certify the eligibility of M/WBE Subcontractors/Suppliers. Contact the City of Houston Office of Business Opportunity at (832) 393-0600 for information regarding certification.
2. The OBO publishes and maintains a Minority and Women Disadvantaged Business Enterprise Directory. This Directory is available from the OBO for Contractor use.

NOTE: All M/WBE firms, even if certified by another agency, must be certified by the OBO in order to qualify for attainment of the M/WBE goal.

G. Determination of M/W/DBE Participation

1. M/W/DBE participation shall be counted toward meeting the M/W/DBE goal in accordance with the following:
  - a. Once a firm is certified as an M/W/DBE, the total dollar value of the subcontract awarded to the M/W/DBE is counted toward the M/W/DBE participation goal (See paragraphs d and e directly below).
  - b. When Contractor or Subcontractor is in a joint venture with one or more M/WBEs to satisfy its M/W/DBE goal, the Director of Construction shall determine the percent of participation resulting from such joint venture to be counted toward the M/WBE goal.
  - c. Contractor may count toward its M/W/DBE goal, those M/W/DBE Subcontractors/ Suppliers performing a Commercially Acceptable Function.
    - 1) **Commercially Acceptable Function** means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the M/W/DBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the M/W/DBE is responsible. Without limiting the generality of the foregoing, an M/W/DBE will not be considered to be performing a commercially acceptable function if it subcontracts to non-M/W/DBE firms or to other M/W/DBE firms, more than 50 percent of a contract being counted toward the applicable participation goal, unless such subcontracting in excess of 50 percent has been expressly permitted by the Director of Construction or Project Manager in a written waiver of this requirement. A waiver shall be granted upon demonstration that the industry standard for the type of work involved is to subcontract over 50 percent of the work.
  - d. An M/W/DBE cannot subcontract more than 50 percent of the Work for which it is responsible to perform unless waived by the Director of Construction or Project Manager.



- e. Contractor may count 100 percent of M/W/DBE Supplier's participation toward its M/W/DBE goal and such M/W/DBE Supplier contracts shall not exceed 50 percent of the Contract's M/W/DBE goal.

#### H. Compliance of the Contractor

1. To ensure compliance with M/WBE requirements, the Downtown District will monitor Contractor's efforts regarding M/W/DBE Subcontractors/Suppliers during the performance of this Contract. This may be accomplished through the following: job site visits, reviewing of records and reports, and interviews of randomly-selected personnel.

#### I. Records and Reports

1. Contractor shall submit an initial report outlining M/W/DBE participation, 30 days after the Notice to Proceed date, and on or before the fifteenth day of each month thereafter until all M/W/DBE subcontracting or material supply activity is completed. Each report shall cover the preceding month's activity. The M/W/DBE Monthly Utilization Report form is Attachment B.

2. Contractor shall maintain the following records for review upon request by the Director of Construction or Project Manager.

- a. Copies of executed Subcontractor agreements and purchase orders
- b. Documentation of payments and other transactions with M/W/DBE Subcontractors/Suppliers
- c. Appropriate explanations of any changes or replacements of M/W/DBE Subcontractors/Suppliers

NOTE: All replacement M/W/DBE Subcontractors/Suppliers must be certified by the City's OBO.

- d. Any other records required by the Director of Construction or Project Manager.
3. If the goal is not being met, the monthly report shall include a narrative description of the progress being made in M/W/DBE participation. If sufficient M/W/DBE Subcontractors or Suppliers to meet the M/W/DBE goal are being utilized, they should be identified by name and the dollar amount paid to date for work performed or materials furnished by each M/W/DBE during the monthly period. Reports are required when no activity has occurred in a monthly period.
4. All such records must be retained for a period of four (4) years following completion of the Work and shall be available at reasonable times and places for inspection by authorized representatives of the Downtown District and the City including the City Controller.

#### 4.0 SANCTIONS

##### A. Suspension Period and Waiver

1. Pursuant to Section 15-86 of the Code of Ordinances, the Director of the City of Houston Office for Business Opportunity is authorized to suspend for a period of up to, but not to exceed, five years, any Contractor who has failed to make Good Faith Efforts. The OBO Director is also authorized to suspend any M/W/DBE who has failed to make Good Faith Efforts from engaging in any Contract affected by Article V of Chapter 15 of the Code of Ordinances for a period of up to, but not to exceed, five years.
2. It is the intent of the Downtown District to honor any such suspension of contractors or sub-contractors in this or any other City funded contracts.

B. City Guidelines for Imposition of Sanctions

1. General

- a. No suspension shall be imposed by the Downtown District except upon evidence of specific conduct on the part of an M/W/DBE or a Contractor that is inconsistent with or in direct contravention of specific applicable requirements for Good Faith Efforts as determined by the City of Houston OBO Director.
- b. Imposition and enforcement of suspensions shall be consistent with applicable state law.

2. Severity of Sanctions

- a. In determining the length of any suspension, the Downtown District and/or the OBO Director shall consider the following factors:
  - 1) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the Contractor or M/W/DBE of the duties imposed on them by Article V of Chapter 15 of the Code of Ordinances and these procedures;
  - 2) The number of specific incidences of failure by the Contractor or M/W/DBE to comply;
  - 3) Whether the Contractor or M/W/DBE has been previously suspended;
  - 4) Whether the Contractor or M/W/DBE has failed or refused to provide the Director of Construction, Project Manager or OBO Director with any information as requested or required to be submitted pursuant to law or these procedures;
  - 5) Whether the Contractor or M/W/DBE has materially misrepresented any applicable facts in any filing or communication to the Downtown District, the City, or the OBO;
  - 6) Whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

- b. Suspensions may be for any length of time not to exceed five years. Suspensions in excess of one year shall be reserved for cases involving intentional or fraudulent misrepresentation or concealment of material facts, multiple acts in contravention of applicable requirements, cases where the Contractor or M/W/DBE has been previously suspended, or other similarly egregious conduct.

C. Delegation

1. A decision to implement a suspension may be taken after notice and an opportunity for a hearing by the City of Houston OBO Director or by another impartial person designated by the OBO Director for that purpose. The OBO Director or other person conducting the hearing shall not have participated in the actions or investigations giving rise to the suspension hearing.

D. Notice

1. Prior to the imposition of any suspension, the OBO Director shall deliver written notice to the Contractor or M/W/DBE setting forth the grounds for the proposed suspension and setting a date, time, and place to appear before the hearing officer for a hearing on the matter.
2. Any notice required or permitted to be given hereunder to any Contractor or M/W/DBE may be given either by personal delivery or by certified United States Postal Service mail, postage prepaid, return receipt requested, addressed to their most recent address as specified in the records of the City's OBO or in the Contract if no address is on file with the OBO.

E. Hearing Procedures

1. Proceedings before the OBO Director or other hearing officer shall be conducted informally, provided that each party may be represented by counsel and may present evidence and cross-examine witnesses. The burden shall be upon the City by a preponderance of evidence. The decision shall be reduced to writing and notice provided to the Contractor or M/W/DBE.

F. Appeals

1. Appeals authorized pursuant to Section 15-86(b) of the Code of Ordinances shall be conducted by an arbitrator who shall act as the hearing officer. Alternatively, an appeal may be taken to City Council, subject to the appellant's compliance with Rule 12 of the City Council Rules of Procedure. Appeals shall be initiated by filing a written notice of appeal with the OBO Director no later than fifteen days following the mailing of notice of the decision of the OBO Director, and the appeal notice shall state whether the appeal is requested to City Council or to an arbitrator. If an arbitration appeal is requested, then the arbitrator shall be selected as provided in Section 9 of these procedures. The arbitrator's or City Council's decision, as applicable, shall be final. The OBO Director shall determine whether to suspend his or her order pending an appeal, taking into account the criteria set forth in Section 6(B) (2) of these procedures.

ATTACHMENT A

CONTRACTOR GOOD FAITH EFFORTS

"Good Faith Efforts" means those efforts required to be made and demonstrated by: (1) an apparently successful Bidder or proposer prior to award of a Contract (whether a Goal-Oriented Contract or a Regulated Contract), (2) a Contractor upon award of a Contract or receipt of Purchase Order, and (3) a Contractor during performance of the Contract, in attempting to meet the Contract's M/W/DBE goal.

A. Good Faith Efforts for Bidders and Contractors in construction, procurement, and professional services shall mean at a minimum the following:

1. Delivery of written notice to the following:

- a. All local certified M/W/DBEs in the directory for the month prior to the month of the bid or proposal submission date and identified as performing work or services or providing commodities for all potential subcontracting or supply categories in the Contract;
- b. All minority and women focused associations identified in the directory for the month prior to the month of the bid or proposal submission date;
- c. All news media focused toward minority persons and women identified in the directory for the month prior to the month of the bid or proposal submission date;
- d. All M/WBEs which requested information on the Contract.

2. The written notices will contain:

- a. Adequate information about the plans, specifications, and relevant terms and conditions of the Contract and about the work to be subcontracted to or the goods to be obtained from Subcontractors and Suppliers;
- b. A contact person within the Selected Bidder's or proposer's office to answer questions;
- c. Information as to the Selected Bidder's or proposer's bonding requirements, the procedure for obtaining any needed bond, and the name and telephone number of one or more acceptable surety companies to contact;
- d. The last date for receipt by the Bidder or proposer of M/W/DBE bids or price quotations.

3. Attendance at any special pre-bid meeting called to inform M/W/DBEs of subcontracting or supply opportunities, if set forth in the bidding or proposal documents.

4. Division of the Contract, in accordance with normal industry practice, into small, economically feasible segments that could be performed by M/W/DBEs.

5. Providing an explanation for rejection to any M/W/DBE whose bid or price quotation is rejected, unless another M/W/DBE is accepted for the same work, as follows:
    1. Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected M/W/DBE.
    2. Where price competitiveness is the reason for rejection, a meeting must be held, if requested, with the price-rejected M/W/DBE to discuss the rejection.
  6. Providing an explanation for rejection of any M/W/DBE to the Office of Business Opportunity and Contract Compliance Division, unless another M/W/DBE firm is accepted for the same work, including the name of the non-M/W/DBE firm proposed to be awarded the subcontract or supply agreement, and if price competitiveness is the reason for rejection, the M/W/DBE's price quotation and the successful non-M/W/DBE's price quotation.
  7. If awarded the prime contract, entering into subcontracts with M/W/DBEs as provided and in accordance with the Plan, unless deviation therefrom is requested by Contractor and approved by the Director of Construction or Project Manager as provided in these procedures.
  8. Submitting a dispute with an M/W/DBE participant, potential participant, or subcontractor to arbitration/mediation when requested to do so by either the Director of Construction, the Project Manager or the City of Houston's OBO Director.
- B. Good Faith Efforts for M/W/DBEs in construction, procurement, and professional services shall mean at a minimum the following:
1. Furnishing prompt written responses to any written inquiry from the Director of Construction, the Project Manager, the City of Houston OBO Director, or any employee of the City of Houston Office of Business Opportunity regarding the M/W/DBE's performance or information germane to the M/W/DBE's certification.
  2. Ensuring that at all times during the performance of any Contract or subcontract subject to the requirements of Chapter 1 of the Code of Ordinances the M/WBE is engaging in a commercially acceptable function as that term is defined herein
  3. Ensuring that no application, response to a request for information, or other factual material submitted to the Director of Construction, the Project Manager, the OBO Director, or any employee of the Office for Business Opportunity contains any material misrepresentation.
  4. Furnishing prompt responses to requests from the Downtown District, the OBO Director, or any employee of the Office for Business Opportunity, the City Attorney and the City Controller for information, books, and records needed to verify compliance.

END OF DOCUMENT

**ATTACHMENT B**

City of Houston  
 Affirmative Action and Contract Compliance  
 MW/DBE Monthly Utilization Report  
 Report Period \_\_\_\_\_

PROJECT NAME & NUMBER \_\_\_\_\_ REPORT DATE \_\_\_\_\_  
 PRIME CONTRACTOR \_\_\_\_\_ CONTRACT NO. \_\_\_\_\_  
 ADDRESS \_\_\_\_\_ CONTRACT AMOUNT \_\_\_\_\_  
 \_\_\_\_\_ MW/DBE GOAL 20%  
 LIAISON \_\_\_\_\_ PHONE \_\_\_\_\_

SUBVENDOR NAME	DATE OFF AA CERTIFICATION	SUBCONTRACT AMOUNT	% OF TOTAL CONTRACT		AMOUNT PAID THIS PERIOD	AMOUNT PAID TO DATE	% OF CONTRACT TO DATE	RETAINAGE HELD
PRIME AMOUNT PAID BY COH TO DATE \$ -								
<b>TOTALS</b>								

SUBMIT BY THE 15<sup>TH</sup> DAY FOLLOWING THE END OF THE REPORTING PERIOD TO: OFFICE OF BUSINESS OPPORTUNITY  
 ATTN: CARLECA D. WRIGHT  
 611 WALKER, 7<sup>TH</sup> FLOOR  
 HOUSTON, TEXAS 77002  
 832-393-0600  
 FAX: 832-393-0622

Document 00645

FORM OF BUSINESS

Please mark the box describing your firm's form of business, fill in the requested information, and include the relevant attachments.

**Corporation**

Corporate Name: \_\_\_\_\_  
State of Incorporation: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

Certificate of Assumed Name, if operating under a name different than that on the corporate charter (the Certificate must have been issued within the past ten years to be valid)

\*Certificate of Good Standing

\*Certificate of Existence (if non-Texas corporation, Certificate of Authority)

**Partnership/Joint Venture**

Partnership/Joint Venture Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

Copy of the Partnership or Joint Venture Agreement, **or** Affidavit with the name of the partnership or joint venture, the names of the individual partners or participants in the joint venture, and a statement that the partnership or joint venture is in existence

Certificate of Assumed Name (the Certificate must have been issued within the past ten years to be valid)

If firm is a limited partnership, the Certificate of Limited Partnership

If any partner or joint venturer is a corporation, the above information relating to corporation must be included as to each sum partner or joint venturer.

**Sole Proprietorship**

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

Certificate of Assumed Name, if operating under a name different than that of the sole proprietor (the Certificate must have been issued within the past ten years to be valid)

*\* Must be furnished upon request of the Houston Downtown Management District and must be less than 90 days old.*

END OF DOCUMENT

Document 00649

CONTRACT APPROVAL NOTIFICATION

[Date]

CONTRACTOR  
NAME  
ADDRESS  
ADDRESS

RE: CONTRACT APPROVAL NOTIFICATION (Document 00649)  
Tree Replacements in Downtown Houston  
Project Number: 24-927.002-01

Dear NAME:

This letter is to notify you that the Houston Downtown Management District (the "Downtown District") Board of Directors has approved your contract for the referenced project. The Agreement is not effective until all forms have been submitted by you as required in Document 00450 - Post-Bid Procedures, after which you will receive a Notice to Proceed. The scheduled start date for this project is [*Commencement Date*]. However, there are a number of items listed in this letter that you may complete to expedite project startup. You may prepare for the construction schedule, plan project mobilization, begin making project submittals, and place orders for materials and equipment.

We are also ready to receive and process shop drawings, product data, and sample submittals. Refer to Section 01340 - Shop Drawings, Product Data, and Samples. Product options and substitutions may be submitted for the first fifteen percent (15%) of the contract or the first 30 days, whichever is less. Contractor may begin ordering materials and equipment as specified in the Contract Documents.

Mobilization can begin on the Date of Commencement, which will be given in the Notice to Proceed. Refer to Section 01502 - Mobilization.

As Contractor, it is your responsibility to see that your own work force and those of your subcontractors are paid the prevailing wage. A copy of certified payrolls for you and your subcontractors is required weekly beginning the first week of the contract. Make the submittals and refer any related questions to me.

Sincerely,

Brett DeBord  
Director of Operations and Capital Projects

cc: Keith Gould, Quality Control Manager  
Dusty McCartney, Construction Manager



Document 00650

NOTICE TO PROCEED

[Date]

NAME  
CONTRACTOR  
ADDRESS  
ADDRESS

RE: NOTICE TO PROCEED (Document 00650)  
Tree Replacements in Downtown Houston  
Project Number: 24-927.002-01

Dear NAME:

You are hereby notified that the Date of Commencement of the Work is [Commencement Date]. On this date you are to start performing your obligations under the Contract Documents. In accordance with Article 2 of the Agreement, the Contract Time is seventy-five (75) days for all work.

Sincerely,

Brett DeBord  
Director of Operations and Capital Projects

cc: Keith Gould, Quality Control Manager  
Dusty McCartney, Construction Manager

Document 00655

DRUG POLICY COMPLIANCE DECLARATION

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS §

**BEFORE ME**, the undersigned authority, on this day personally appeared

\_\_\_\_\_ who being by me duly sworn on his oath  
[Affiant]

stated that he is \_\_\_\_\_ of \_\_\_\_\_  
[Title] [Contractor's Company Name]

the Contractor named and referred to within the Contract Documents; that he is fully competent and authorized to give this affidavit and that he has personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_.

A written Drug Free Workplace Policy has been implemented and **Initials** employees notified.

The policy meets the criteria established by the Mayor's Amended **Initials** Policy on Drug Detection and Deterrence (Mayor's Policy).

Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified **Initials** of such procedures.

Collection/testing has been conducted in compliance with federal **Initials** Health and Human Services (HHS) guidelines.

Appropriate safety impact positions have been designated for employee positions performing on the Houston Downtown Management District contract.

The number of employees in safety impact positions during this **Initials** reporting period is \_\_\_\_\_.

From \_\_\_\_\_ to \_\_\_\_\_ the  
[Start date] [End date]

**Initials** following testing has occurred:

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

Any employee who tested positive was immediately removed from the worksite consistent with the Mayor's Policy and Executive Order

**Initials** No. 1-31.

I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered

**Initials** a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

\_\_\_\_\_  
[Affiant's Signature]

SWORN AND SUBSCRIBED before me on

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
[Print or type Notary Public name]

My Commission Expires:

\_\_\_\_\_  
[Expiration Date]

END OF DOCUMENT

Document 00700

GENERAL CONDITIONS

TABLE OF ARTICLES

- |    |  |     |  |
|----|--|-----|--|
| 1. | GENERAL PROVISIONS   | 8.  | TIME   |
| 2. | THE OWNER  | 9.  | PAYMENTS AND COMPLETION                      |
| 3. | THE CONTRACTOR   | 10. | SAFETY PRECAUTIONS                           |
| 4. | ADMINISTRATION OF THE<br>CONTRACT                                  | 11. | INSURANCE AND BONDS                          |
| 5. | SUBCONTRACTORS AND SUPPLIERS                                       | 12. | UNCOVERING AND CORRECTION OF<br>WORK         |
| 6. | CONSTRUCTION BY DOWNTOWN<br>DISTRICT OR BY SEPARATE<br>CONTRACTORS | 13. | MISCELLANEOUS PROVISIONS                     |
| 7. | CHANGES IN THE WORK  | 14. | TERMINATION OR SUSPENSION OF<br>THE CONTRACT |



**ARTICLE I -GENERAL PROVISIONS . . . . .1**

1.1 BASIC DEFINITIONS . . . . .1

    1.1.1 Agreement . . . . .1

    1.1.2 Approve, approved . . . . .1

    1.1.3 Bonds . . . . .1

    1.1.4 Conditions of the Contract . . . . .1

    1.1.5 Contract . . . . .1

    1.1.6 Contract Documents . . . . .1

    1.1.7 Drawings . . . . .2

    1.1.8 Furnish . . . . .2

    1.1.9 General Conditions . . . . .2

    1.1.10 General Requirements . . . . .2

    1.1.11 Install . . . . .2

    1.1.12 Modification . . . . .2

    1.1.13 Notice of Intent to Award . . . . .2

    1.1.14 Notice to Proceed . . . . .2

    1.1.15 Product . . . . .2

    1.1.16 Project . . . . .2

    1.1.17 Project Manual . . . . .2

    1.1.18 Provide . . . . .2

    1.1.19 Right-of-way . . . . .2

    1.1.20 Specifications . . . . .3

    1.1.21 Supplementary Conditions . . . . .3

    1.1.22 Surety . . . . .3

    1.1.23 Work . . . . .3

    1.1.24 City of Houston . . . . .3

    1.1.25 Downtown Redevelopment Authority . . . . .3

    1.1.26 City of Houston Tax Increment Reinvestment Zone Number 3 ..3

    1.1.27 METRO . . . . .3

    1.1.28 Not-In-Contract . . . . .3

    1.1.29 TxDOT . . . . .3

1.2 EXECUTION, CORRELATION AND INTENT . . . . .3

1.3 CONFLICTS, ERRORS, OR DISCREPANCIES . . . . .5

1.4 OWNERSHIP AND USE OF CONTRACT DOCUMENTS . . . . .5

1.5 INTERPRETATION . . . . .6

**ARTICLE 2 - THE OWNER . . . . .6**

2.1 DEFINITION . . . . .6

2.2 LIMITATIONS OF DOWNTOWN DISTRICT OFFICERS AND EMPLOYEES . . . . .7

2.3 INFORMATION AND SERVICES REQUIRED OF THE DOWNTOWN DISTRICT . . . . .7

2.4 AVAILABILITY OF LAND . . . . .7

2.5 DOWNTOWN DISTRICT'S RIGHT TO STOP WORK . . . . .7

2.6 DOWNTOWN DISTRICT'S RIGHT TO CARRY OUT WORK . . . . .8

**ARTICLE 3 - THE CONTRACTOR . . . . .8**

3.1 DEFINITION . . . . .8

3.2 REVIEW OF CONTRACT DOCUMENTS & FIELD CONDITIONS BY CONTRACTOR . . . . .8

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES . . . . .9

3.4 SUPERINTENDENT . . . . .10

3.5 LABOR, MATERIALS, AND EQUIPMENT . . . . .10

3.6 PREVAILING WAGE RATES . . . . .12

3.7 LABOR CONDITIONS . . . . .12

3.8 PRODUCT OPTIONS AND SUBSTITUTIONS . . . . .12

3.9 CASH ALLOWANCES . . . . .13

3.10 WARRANTY . . . . .14

3.11 TAXES . . . . .15

3.12 PERMITS, FEES, AND NOTICES . . . . .16

3.13 CONSTRUCTION SCHEDULES . . . . .16

3.14	DOCUMENTS AND SAMPLES AT THE SITE .....	17
3.15	MANUFACTURER'S SPECIFICATIONS .....	17
3.16	SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES .....	17
3.17	USE OF SITE .....	19
3.18	CULTURAL RESOURCES .....	19
3.19	CUTTING AND PATCHING .....	20
3.20	CLEANING .....	20
3.21	SANITATION .....	20
3.22	ACCESS TO WORK AND TO INFORMATION .....	20
3.23	ROYALTIES, PATENTS, AND TRADE SECRETS .....	21
3.24	INDEMNIFICATION .....	23
 <b>ARTICLE 4 - ADMINISTRATION OF THE CONTRACT .....</b>		<b>25</b>
4.1	DEFINITIONS .....	25
4.1.1	Director .....	25
4.1.2	Project Manager .....	25
4.1.3	Inspector .....	25
4.1.4	Architect/Engineer/Designer .....	26
4.1.5	Underground Facilities .....	26
4.2	CONTRACT ADMINISTRATION .....	26
4.3	COMMUNICATIONS IN CONTRACT ADMINISTRATION .....	28
4.4	CLAIMS AND DISPUTES .....	28
4.5	RESOLUTION OF CLAIMS AND DISPUTES .....	31
4.6	MEDIATION .....	31
 <b>ARTICLE 5 - SUBCONTRACTORS AND SUPPLERS .....</b>		<b>32</b>
5.1	DEFINITIONS .....	32
5.1.1	Subcontractor .....	32
5.1.2	Supplier .....	32
5.2	AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK .....	32
5.3	CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS .....	33
5.4	M/W/S/DBE CONTRACT TERMS .....	34
 <b>ARTICLE 6 - CONSTRUCTION BY DOWNTOWN DISTRICT OR BY SEPARATE CONTRACTORS</b>		<b>34</b>
6.1	DOWNTOWN DISTRICT'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS .....	34
6.2	COORDINATION .....	34
6.3	MUTUAL RESPONSIBILITY .....	34
6.4	DOWNTOWN DISTRICT'S RIGHT TO CLEANUP .....	35
 <b>ARTICLE 7 - CHANGES IN THE WORK .....</b>		<b>35</b>
7.1	CHANGES .....	35
7.2	CHANGE ORDERS .....	36
7.3	WORK CHANGE DIRECTIVES .....	36
7.4	ADJUSTMENTS IN CONTRACT PRICE .....	37
7.5	MINOR CHANGES IN THE WORK .....	38
 <b>ARTICLE 8 - TIME .....</b>		<b>38</b>
8.1	DEFINITIONS .....	38
8.1.1	Contract Time .....	38
8.1.2	Day .....	39
8.1.3	Effective Date of the Agreement .....	39
8.1.4	Date of Commencement of the Work .....	39
8.1.5	Legal Holiday .....	39
8.1.6	Date of Substantial Completion .....	39

8.2	PROGRESS AND COMPLETION .....	39
8.3	DELAYS AND EXTENSIONS OF TIME .....	40
<b>ARTICLE 9</b>	<b>- PAYMENTS AND COMPLETION .....</b>	<b>41</b>
9.1	DEFINITIONS .....	41
9.1.1	Application for Payment .....	41
9.1.2	Contract Price .....	42
9.1.3	Stipulated Price .....	42
9.1.4	Unit Price .....	42
9.1.5	Extra Unit Price .....	42
9.1.6	Major Unit Price Work .....	42
9.2	UNIT PRICE WORK .....	42
9.3	ESTIMATES FOR PAYMENT, UNIT PRICE WORK .....	43
9.4	SCHEDULE OF VALUES, STIPULATED PRICE WORK .....	43
9.5	APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK .....	44
9.6	COMPUTATION OF APPLICATIONS FOR PAYMENT .....	44
9.7	DECISIONS TO WITHHOLD PAYMENT .....	45
9.8	PROGRESS PAYMENTS .....	45
9.9	SUBSTANTIAL COMPLETION .....	46
9.10	PARTIAL OCCUPANCY OR USE .....	47
9.11	FINAL COMPLETION AND FINAL PAYMENT .....	48
9.12	LIQUIDATED DAMAGES AND BONUSES .....	50
<b>ARTICLE 10</b>	<b>- SAFETY PRECAUTIONS .....</b>	<b>50</b>
10.1	SAFETY PROGRAMS .....	50
10.2	HAZARDOUS SUBSTANCE .....	51
10.3	SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY .....	51
10.4	EMERGENCIES .....	52
<b>ARTICLE 11</b>	<b>- INSURANCE AND BONDS .....</b>	<b>52</b>
11.1	GENERAL INSURANCE REQUIREMENTS .....	52
11.2	INSURANCE TO BE PROVIDED BY CONTRACTOR .....	53
11.3	PROOF OF INSURANCE .....	56
11.4	PERFORMANCE AND PAYMENT BONDS .....	56
11.5	MAINTENANCE BONDS .....	56
11.6	SURETY .....	57
11.7	DELIVERY OF BOND .....	58
<b>ARTICLE 12</b>	<b>- UNCOVERING AND CORRECTION OF WORK .....</b>	<b>58</b>
12.1	UNCOVERING OF WORK .....	58
12.2	CORRECTION OF WORK .....	58
12.3	ACCEPTANCE OF NONCONFORMING WORK .....	59
<b>ARTICLE 13</b>	<b>- MISCELLANEOUS PROVISIONS .....</b>	<b>59</b>
13.1	GOVERNING LAW .....	59
13.2	SUCCESSORS AND ASSIGNS .....	59
13.3	WRITTEN NOTICE .....	60
13.4	RIGHTS AND REMEDIES .....	60
13.5	TESTS AND INSPECTIONS .....	60
13.6	INTEREST .....	61
<b>ARTICLE 14</b>	<b>- TERMINATION OR SUSPENSION OF THE CONTRACT .....</b>	<b>61</b>
14.1	TERMINATION BY THE DOWNTOWN DISTRICT FOR CAUSE .....	61
14.2	TERMINATION BY THE DOWNTOWN DISTRICT FOR CONVENIENCE .....	62
14.3	SUSPENSION BY THE DOWNTOWN DISTRICT FOR CONVENIENCE .....	63
14.4	TERMINATION BY THE CONTRACTOR .....	64





## ARTICLE 1 - GENERAL PROVISIONS

## 1.1 BASIC DEFINITIONS

- 1.1.1 **Agreement:** The written and signed Form of Agreement Between Houston Downtown Management District ("Downtown District" or "Owner") and Contractor, Document 00510, covering the Work to be performed; other Contract Documents are identified and attached to the Agreement and are made a part thereof.
- 1.1.2 **Approve, approved:** The acceptance or ratification of an action or condition by the Director, provided in writing if required.
- 1.1.3 **Bonds:** Performance Bond, Payment Bond, and other instruments of surety.
- 1.1.4 **Conditions of the Contract:** The General Conditions and Supplementary Conditions constitute that part of the Contract Documents which defines the rights, responsibilities, and relationships of the entities involved in performance of the Contract. Participants in the Contract, whose roles are identified in the Conditions of the Contract, include:
- 1.1.4.1 Owner: As defined in Article 2;
- 1.1.4.2 Contractor and Superintendent: As defined in Article 3;
- 1.1.4.3 Director, Project Manager, and Inspector: As defined in Article 4;
- 1.1.4.4 Architect/Engineer/Designer: As defined in Article 4; and
- 1.1.4.5 Subcontractor and Supplier: As defined in Article 5.
- 1.1.5 **Contract:** The Contract Documents form the Contract for Work. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind
- 1.1.5.1 between Director (or Architect/Engineer/Designer when applicable) and Contractor,
- 1.1.5.2 between Downtown District and a Subcontractor, or
- 1.1.5.3 between any persons or entities other than the Downtown District and Contractor.
- 1.1.6 **Contract Documents:** The Agreement between Downtown District and Contractor, the portions of the Contractor's Bid attached to the Agreement, and any post-Bid documentation submitted prior to execution when attached to the Agreement; the Bonds, the Conditions of the Contract, the Drawings and Specifications prepared by or approved by the Director, appropriate addenda, th

e Notice to Proceed, and other documents as they are specifically enumerated in the Agreement, plus Modifications.

- 1.1.7 **Drawings:** The graphic and pictorial portions of the Contract Documents, which define the character and scope of the Work.
- 1.1.8 **Furnish:** Supply, pay for, and deliver to the Project Site, ready for unloading, unpacking, assembly, and installation.
- 1.1.9 **General Conditions:** Document 00700, current edition, the standard document published by the Downtown District, a part of the Conditions of the Contract.
- 1.1.10 **General Requirements:** The sections of Division 1 of the Specifications which specify administrative and procedural requirements and temporary facilities required for the Project.
- 1.1.11 **Install:** Means unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, cleaning, protecting, and similar operations.
- 1.1.12 **Modification:** A modification to the Contract Documents, issued after the Effective Date of the Agreement, is a Change Order, a Work Change Directive, or a written order for a Minor Change in the Work issued by the Director or Project Manager.
- 1.1.13 **Notice of Intent to Award:** The written notice by Director or Project Manager to the apparent successful bidder stating that upon compliance by the bidder with the conditions enumerated in the notice, Downtown District will sign and award the Contract.
- 1.1.14 **Notice to Proceed:** The written notice by Director or Project Manager to the Contractor fixing the date on which the Contract Time will commence and on which Contractor shall start to perform the Contractor's on-site obligations under the Contract Documents.
- 1.1.15 **Product:** Means materials, equipment, or systems incorporated into the Project.
- 1.1.16 **Project:** The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Downtown District, the City or by separate contractors.
- 1.1.17 **Project Manual:** The volume assembled for the Work, which includes the Bidding Requirements, sample forms, Conditions of the Contract, and Specifications.
- 1.1.18 **Provide:** To furnish all necessary labor, materials, equipment, accessories, transportation, and services as necessary to complete the installation and install the referenced materials and accessories and make ready for the intended use.
- 1.1.19 **Right-of-way:** Land on which the Work is to be performed and easements for access thereto, and other land which is designated for use by the Contractor.

- 1.1.20 **Specifications:** The portion of the Contract Documents, Divisions 1 through 16, consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.1.21 **Supplementary Conditions:** The part of the Conditions of the Contract, which amends or supplements the General Conditions.
- 1.1.22 **Surety:** The entity that is bound by the Performance Bond, Payment Bond, Maintenance Bond, and Surface Correction Bond, and that is responsible for completion of the Contract, including the correction period, and for payment of debts incurred in fulfilling the Contract. Surety shall include any co-surety or reinsurer, as applicable.
- 1.1.23 **Work:** The entire completed construction shown, mentioned, or reasonably inferable by the Contract Documents as being necessary to produce the intended results, including all labor, materials, equipment, and services provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Omitted portions are specifically marked "Not In Contract," "NIC," "By Others (including specific names of others)," "By Owner," "Future," or "Existing."
- 1.1.24 **City of Houston (or "City"):** The municipal corporation, a Texas home rule city, ultimately to whom title for all improvements shall be conveyed.
- 1.1.25 **Downtown Redevelopment Authority (or "Authority"):** A public non-profit local government corporation created pursuant to Chapter 431, Texas Transportation Code located principally within Houston, Texas.
- 1.1.26 **City of Houston Tax Increment Reinvestment Zone Number Three (or "TIRZ"):** A tax increment reinvestment zone created by the City of Houston, Texas pursuant to Chapter 311 of the Texas Tax Code, as amended, is hereinafter called the TIRZ.
- 1.1.27 **METRO:** The Texas State Legislature authorized the creation of local transit authorities in 1973. In 1978, Houston area voters created METRO and approved a one-cent sales tax to support its operations. METRO opened in January 1979. The City of Houston and major portions of unincorporated Harris County are included in the service area, as are 14 smaller cities referred to as the Multi-Cities.
- 1.1.28 **Not-In-Contract:** Work not included in this Contract.
- 1.1.29 **TxDOT:** The Texas Department of Transportation.
- 1.2 EXECUTION, CORRELATION AND INTENT
- 1.2.1 The Agreement shall be signed by the Downtown District and Contractor as provided in the Contract Documents.
- 1.2.2 Execution of the Contract by the Contractor is conclusive that the Contractor has carefully examined the Contract Documents, visited the site of the Work, become familiar with local

conditions under which the Work is to be performed, and fully informed itself as to conditions and matters which can affect the Work or costs thereof. The Contractor further affirms that it has correlated personal observations with requirements of the Contract Documents.

- 1.2.2.1 Drawings, Specifications, and Modifications have been read and carefully considered by the Contractor, who understands the same and agrees to their sufficiency for the Work to be done. It is expressly agreed that under no circumstances, conditions, or situations shall this Contract be more strongly construed against the Downtown District than against the Contractor and his Surety. Any ambiguity or uncertainty in the Drawings, Specifications, and any Modifications shall be interpreted and construed by the Director, and his decision shall be final and binding upon all parties.
- 1.2.2.2 A geotechnical report is available for review at the office of the Downtown District, and will be conveyed to Contractor. The soils report and log of borings is available for Contractor's information only. The report is not a warranty of subsurface conditions, nor is it a part of the Contract Documents. The Contractor is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered. The Architect/Engineer disclaims any responsibility for the accuracy, true location and extent of the surface and subsurface investigations that have been prepared by others. The Architect/Engineer further disclaim responsibility for interpretation of that data by the Contractor, i.e. projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water.
- 1.2.3 The intent of the Contract Documents is for the Contractor to include all items necessary for the proper execution and completion of the Work. What is required by one of the Contract Documents shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the desired results.
- 1.2.4 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a governmental authority, whether specific or implied, shall mean the latest edition in effect as of the date of receipt of bids, except as may be otherwise specifically stated.
- 1.2.5 No provision of any referenced standard, specification, or manual shall be effective to change the duties and responsibilities of the Downtown District, Director, Contractor, or Architect/-Engineer or their consultants, employees, or representatives from those set forth in the Contract Documents, nor shall it be effective to assign to Architect/Engineer or its

consultants, employees, or representatives any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibilities contrary to provisions of the Contract Documents.

1.2.6 The organization of Specifications into divisions, sections, and articles and arrangement of Drawings shall not control Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade except that in some material specification sections a single source responsibility for multiple sections may be indicated. It shall be the Contractor's option of assuming this responsibility or assigning those sections to one selected Subcontractor.

1.2.7 Specifications are written in imperative and streamlined form. This imperative language is directed to the Contractor unless specifically noted otherwise. When written in the streamlined form, the words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

1.2.8 Abbreviations and technical terms not defined in the Contract Documents shall have the meanings commonly attributed to them by the particular construction industry trade involved.

### 1.3 CONFLICTS, ERRORS, OR DISCREPANCIES

1.3.1 Should Contractor find conflict, error or discrepancy in the Contract Documents, Contractor shall report to Director or Project Manager in writing at once, and shall obtain a written interpretation or clarification from Director or Project Manager before proceeding with the Work affected thereby; however Contractor shall not be liable to Downtown District or to Architect/Engineer for failure to report any conflict, error, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or should reasonably have known thereof.

### 1.4 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

1.4.1 Drawings, Specifications, and other documents prepared by the Downtown District or by Architect/Engineer are instruments of service through which the Work to be executed by Contractor is described. Contractor may retain one Contract record set.

1.4.2 Neither Contractor nor any Subcontractor, nor material or equipment supplier shall own or claim a copyright to the Contract Documents or any part of them.

1.4.3 Contract Documents prepared by the Downtown District or by Architect/Engineer, and copies furnished to Contractor, are for use solely with respect to this Project. They shall not be used by Contractor, Subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Director, and Architect/Engineer when applicable.

1.4.4 Contractor, Subcontractors and material and equipment suppliers are granted a limited license to use and reproduce applicable

portions of Contract Documents appropriate to and for use in execution of their work under the Contract.

## 1.5 INTERPRETATION

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5.2 The Drawings and Specifications are correlative and have equal authority and priority. Should they disagree in themselves, or with each other, base the bids on the most expensive combination of quantity and quality of work indicated. The Director will clarify the Contract Documents in the event of the above mentioned disagreements on the basis of the following:

1.5.2.1 Figures take precedence over scale measurements.

1.5.2.2 Large scale details take precedence over smaller scale details.

1.5.2.3 Civil engineering drawings take precedence over architectural drawings from face of curb to face of curb (in the roadway); architectural drawings take precedence over civil engineering drawings from face of curb to the right of way (sidewalk areas).

1.5.2.4 Specifically titled Drawings and sections of the Specifications take precedence over indication of the item in a collateral way.

1.5.2.5 Existing conditions take precedence over Drawings and Specifications for dimensions.

1.5.3 Referenced standards, building codes, manufacturer's instructions, and guarantees that are made a part of the requirements shall apply in full, except for the following portions:

1.5.3.1 Less stringent requirements than those given in the Contract Documents. Requirements of public authorities apply as minimum requirements only. They do not supersede more stringent requirements given elsewhere in the Contract Documents.

1.5.3.2 Exclusions, limitations or waivers that are inconsistent with the Contract Documents.

## ARTICLE 2 - THE OWNER

### 2.1 DEFINITION

2.1.1 **Houston Downtown Management District:** A municipal management district and political subdivision of the State of Texas organized under Chapter 3801 of the Texas Special District Local Laws Code, is hereinafter called the "Downtown District" or "District" and is the collective Owner for the project.

## 2.2 LIMITATIONS OF DOWNTOWN DISTRICT OFFICERS AND EMPLOYEES

2.2.1 No officer or employee of the Downtown District is empowered to authorize the Contractor to perform any act contrary to the terms of this Contract or the laws and ordinances of the City of Houston.

## 2.3 INFORMATION AND SERVICES REQUIRED OF THE DOWNTOWN DISTRICT

2.3.1 The Downtown District will process an application for building permit prior to Notice to Proceed for purchase by the Contractor, if a building permit is required.

2.3.2 Unless otherwise provided in the Contract Documents, Downtown District will furnish to Contractor one reproducible set of Contract Documents. Additional copies will be furnished on Contractor's request at the cost of reproduction.

2.3.3 When necessary for performance of the Work, the Downtown District will provide surveys describing physical characteristics, legal limitations, legal description of the Project site, and horizontal and vertical control adequate to locate the Project.

2.3.4 Information or services, which the Downtown District is required to provide under the Contract Documents, will be provided by the Downtown District with reasonable promptness to avoid delay in orderly progress of the Work.

2.3.5 The foregoing are in addition to other duties and responsibilities of the Downtown District enumerated herein and especially those in respect to Article 6 and Article 9.

## 2.4 AVAILABILITY OF LAND

2.4.1 Downtown District shall furnish, as indicated in the Contract Documents, the land on which the Work is to be performed, rights-of-way and easements for access thereto, and such other land which is designated in the Contract Documents for the use of the Contractor. Downtown District will obtain and pay for easements for permanent structures and for permanent changes in existing facilities unless otherwise provided in the Contract Documents.

## 2.5 DOWNTOWN DISTRICT'S RIGHT TO STOP WORK

2.5.1 If the Contractor fails to correct Work which is not in accordance with requirements of the Contract Documents, as required in Subparagraph 12.1.2, Paragraph 12.2, or persistently fails to carry out Work in accordance with Contract Documents, the Downtown District, by written order signed by the Director, may order the Contractor to stop the Work or any portion thereof until the cause for such order has been eliminated. However, the right of the Downtown District to stop the Work shall not give rise to a duty on the part of the Downtown District to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Paragraph 6.2.



## 2.6 DOWNTOWN DISTRICT'S RIGHT TO CARRY OUT WORK

- 2.6.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails, within a seven-day period after receipt of written notice from the Director or Project Manager, to commence and continue correction of such default or neglect with diligence and promptness, the Downtown District may, after that seven-day period give the Contractor a second written notice signed by the Director or Project Manager to correct such deficiencies within a second seven-day period. If the Contractor, within the second seven-day period after receipt of the second notice, fails to commence and continue to correct any deficiencies, the Downtown District may correct such deficiencies without prejudice to other remedies the Downtown District may have, including right of termination under Paragraph 14.1.
- 2.6.2 In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for Architect/Engineer/Designer's additional services and expenses made necessary by such default, neglect, or failure. Such action by the Downtown District and amounts charged to the Contractor are both subject to prior approval of the Director. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Downtown District.
- 2.6.3 Notwithstanding the Downtown District's right to carry out the Work, maintenance and protection of the Work remain the Contractor's responsibility, as provided for in the Performance Bond and as provided in Paragraphs 10.1 and 10.3.

## ARTICLE 3 - THE CONTRACTOR

### 3.1 DEFINITION

- 3.1.1 **Contractor:** The person, firm, or corporation identified as such in the Agreement, and is referred to throughout the Contract Documents as if singular in number. The term Contractor means the Contractor or its authorized representative.
- 3.1.2 The Contractor shall maintain an office or agent located in Houston, Texas during the period of construction; which location's street address or post office address shall be filed with the Downtown District.
- 3.1.3 The Contractor shall not let or transfer this Contract without the consent of the Downtown District.
- 3.1.4 Contractor and Contractor's employees shall not give or lend money or anything of value to an officer or employee of the Downtown District or the City of Houston; should this provision be violated, the Director may terminate the Contract.

### 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- 3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the

Downtown District pursuant to Paragraph 2.3 and shall report at once to the Director or Project Manager any discovered errors, inconsistencies, or omissions.

- 3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such conditions and other information known to the Contractor with the Contract Documents before commencing activities. Discrepancies, inconsistencies, or omissions discovered during this process shall be immediately reported to the Director or Project Manager for resolution.
- 3.2.3 The Contractor shall make a reasonable attempt to understand the Contract Documents before requesting interpretation from the Director or Project Manager.
- 3.2.4 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.16.
- 3.2.5 The Contractor shall verify compliance of the Work with Contract Documents before requesting observation by the Project Manager.
- 3.2.6 The Contractor shall give the Director or Project Manager 48-hour written notice before commencing work or renewing work where work has been stopped. Contractor shall also give the same notice to authorized inspectors, superintendents, or those in charge of gas or water pipes, or railroads, affected by construction operations.

### 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.1 The Contractor shall supervise, direct, and inspect the Work competently and efficiently, devoting such attention and applying such skills and expertise as necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible and have control over the construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all work under the Contract.
- 3.3.2 Regardless of inspections by the Downtown District or the City, the Contractor is responsible for performing and completing the Work in accordance with the Contract Documents. Neither the Downtown District nor the City have liability or responsibility to the Contractor or Surety for work performed by the Contractor which is not in accordance with Contract Documents, even if this work was performed in the presence of representatives of the Downtown District or the City at the Project site, regardless of whether discovered during construction or after acceptance of the Work.
- 3.3.3 It shall be the responsibility of the Contractor to provide for the safety of workers and the public. Contractor shall also provide for traffic convenience within public rights-of-way and to adjacent private property. Construction traffic shall stay out of existing residential neighborhoods and existing streets shall be kept clean.

3.3.4 The Project Manager shall approve the proposed access roads, which shall be used for the movement of personnel and equipment. The initial access roads shall be subject to change by the Project Manager, occasioned by the progress of the Work or unforeseen conditions.

### 3.4 SUPERINTENDENT

3.4.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work at all times. The superintendent shall have the authority and responsibility to act for the Contractor and to represent the Contractor. Communications given to the superintendent shall be as binding as if given to the Contractor.

3.4.2 The Contractor, after Notice of Intent to Award, and prior to beginning field operations, shall furnish to the Director or Project Manager, in writing, the name and qualifications of the person proposed by the Contractor to be the superintendent. The Contractor shall not assign or substitute any person as superintendent to whom the Director or Project Manager makes reasonable objection in writing.

### 3.5 LABOR, MATERIALS, AND EQUIPMENT

3.5.1 For building and facility projects, the Contractor shall perform with its own forces at the site, work equivalent to at least 15 percent of the total amount of the Contract Price. For utility, street and bridge projects, the Contractor shall perform with its own forces at the site, work equivalent to at least 30 percent of the Contract Price. If during the progress of the Work the Contractor requests a reduction in such percentages and the Director or Project Manager determines that it would be in the best interest of the Downtown District, the percentage of the work to be performed by the Contractor's forces may be reduced with the written consent of the Director or Project Manager.

3.5.2 Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain strict discipline and good order at the site. The Downtown District may, by written notice, require the Contractor to remove from the work any employee of the Contractor or its Subcontractors at any tier, whom the Downtown District reasonably deems incompetent, careless, or otherwise objectionable.

3.5.3 Contractor shall comply with City Code of Ordinances, Chapter 15, Article II relating to equal opportunity employment, and take affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age.

3.5.3.1 *See Supplementary Conditions.*

3.5.3.2 *See Supplementary Conditions.*

## 3.5.4 DRUG DETECTION AND DETERRENCE

3.5.4.1 It is the goal of the Downtown District and a requirement in its agreement with the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol through enforcement of the following conditions. It is the policy of the City that the manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractors while on City premises is prohibited. By executing this Contract, Contractor represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 (Mayor's Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, Revised (Executive Order). City Council Motion No. 92-1971 (Mayor's Policy) is on file in the office of the City Secretary. Copies of Executive Order No. 1-31, Revised may be obtained in the Room 766-B, City of Houston Offices located at 611 Walker Street, Houston, Texas 77002.

3.5.4.2 *See Supplementary Conditions.*

3.5.4.3 *See Supplementary Conditions.*

3.5.4.4 *See Supplementary Conditions.*

3.5.4.5 *See Supplementary Conditions.*

3.5.4.6 *See Supplementary Conditions.*

3.5.5 Unless otherwise provided in the Contract Documents, Contractor shall furnish and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

3.5.6 Materials and equipment shall be of specified quality and new, except as otherwise provided in the Contract Documents. If required by Director or Project Manager, Contractor shall furnish satisfactory evidence, including reports of required tests, as to the kind and quality of materials and equipment.

3.5.7 Materials and equipment along the line of work shall be stored along the right-of-way in such a manner to cause the least inconvenience to property owners, tenants, and the general public, and shall not block access to, or be closer than, three feet to any fire hydrant. Trees, lawns, walks, drives, streets and other improvements shall be protected from damage by the Work, by materials, earth, debris, water or otherwise. If private or public property is damaged by the Contractor, it

shall be restored to original condition or better by the Contractor.

3.5.7.1 The Contractor shall obtain Director's or Project Manager's approval for storage areas to be used for materials or equipment, for which payment has been requested under the provisions of Subparagraph 9.7.1.3. Access to such storage areas, for inspection purposes, shall be provided to designated Downtown District representatives. Materials once paid for by the Downtown District become property of the Downtown District and may not be removed from the place of storage, except to the work site, without the Director's written permission. Contractor's all-risk insurance shall cover all perils including loss or damage to materials during storage, loading, unloading, and transit to the job site.

3.5.8 Work shall be performed in a thorough, workmanlike manner, notwithstanding any omission from the Specifications or the Drawings. Work not in accordance with the Contract Documents shall be made to conform thereto. Material not in conformance with Contract Documents will be rejected by the Director or Project Manager and shall be promptly removed from the site at the Contractor's expense.

### 3.6 PREVAILING WAGE RATES

3.6.1 Contractor shall comply with governing statutes providing for labor classification of wage scales, as stipulated in Document 00812 - Wage Scale for Engineering Construction, for each craft or type of laborer, worker, or mechanic.

3.6.2 Each week the Contractor shall submit to the Director or Project Manager, certified copies of payrolls showing classification and wages paid by the Contractor and all Subcontractors for each employee working on the Project for any day included in the Contract.

### 3.7 LABOR CONDITIONS

3.7.1 In the event of labor disputes affecting the Contractor or Contractor's employees, the Contractor shall utilize all possible means to resolve the dispute in order that the Project not be delayed to any extent. These means shall include seeking injunctive relief and filing unfair labor practice charges and any other action available to the Contractor.

3.7.2 When Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of the Work, the Contractor shall immediately notify the Director or Project Manager in writing. No Claims will be accepted for costs incurred as a result of jurisdictional or labor disputes.

### 3.8 PRODUCT OPTIONS AND SUBSTITUTIONS

3.8.1 For products specified by reference standards or by description only, Contractor may provide any product meeting those standards

or description. If a specific color or sample is required by the Contract Documents, then the Contractor must select a product that offers that color or sample.

- 3.8.2 For products specified by naming one or more manufacturers, with provision for substitutions (or equal), Contractor may submit a request for substitution for any manufacturer not named.
- 3.8.3 Substitutions will be considered only within the first 15 percent of Contract Time or the first 30 days after Date of Notice to Proceed, whichever is less.
- 3.8.4 Contractor shall document each request for substitution with complete data substantiating compliance of proposed substitution with Contract Documents.
- 3.8.5 A request for substitution constitutes a representation that the Contractor:
  - 3.8.5.1 has investigated the proposed product and determined that it meets or exceeds the quality level of the specified product;
  - 3.8.5.2 shall provide the same warranty for the substitution as for the specified product;
  - 3.8.5.3 shall coordinate installation of the proposed substitution and will make changes to other Work which may be required for the Work to be complete, with no additional cost to the Downtown District;
  - 3.8.5.4 confirms that cost data is complete and includes all related costs under the Contract Documents, and;
  - 3.8.5.5 waives Claim for additional cost or time extension which may subsequently become apparent.
  - 3.8.5.6 shall provide review or redesign services by a licensed Architect/Engineer and shall obtain re-approval and permits from authorities.
- 3.8.6 Substitutions will not be considered when they are indicated or implied on shop drawing or product data submittals without separate written request, nor will they be considered when acceptance will require revision to the Contract Documents.
- 3.8.7 The Director or Project Manager has authority to reject any request for substitution.

### 3.9 CASH ALLOWANCES

- 3.9.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents for:
  - 3.9.1.1 services, utility relocations, permits, or other such capital costs;
  - 3.9.1.2 materials and equipment.

Items covered by an allowance shall be supplied for such amounts and by such persons or entities as the Downtown District may direct, but the Contractor shall not be required to directly employ persons or entities against which the Contractor makes reasonable objection; however, the Downtown District may require the engagement of a specific subcontractor for the purpose of designing, fabricating, and installing public art.

3.9.2 Unless otherwise stated in the Contract Documents:

- 3.9.2.1 materials and equipment under an allowance shall be selected promptly by the Downtown District within the time limits for processing submittals;
- 3.9.2.2 allowances shall cover the cost to the Contractor of services completed or materials and equipment delivered at the site and all required non-exempt taxes, less applicable trade discounts;
- 3.9.2.3 Contractor's costs for administering services and for unloading and handling products at the site; labor, installation costs, overhead, profit and other expenses contemplated for the allowance shall be included in the Contract Price and not in the allowance;
- 3.9.2.4 whenever costs are more than or less than the allowance, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall be the difference between actual costs and the amount of the allowance stated in the Contract Documents.

3.10 WARRANTY

- 3.10.1 The Contractor warrants to the Downtown District and the City that materials and equipment furnished under the Contract will be free of defects in title, of good quality, and new unless otherwise required or permitted by the Contract Documents. The Contractor further warrants that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with requirements of the Contract Documents.
  - 3.10.1.1 The Contractor further warrants that the Work will be free of concentrations of polychlorinated biphenyl (PCB), and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation. Excepted from this warranty, are those hazardous substances specified for use under this Contract.
- 3.10.2 Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered non-conforming Work. The Contractor's warranty excludes remedy for damage or defect caused by abuse by person or persons other than those for whom the Contractor is responsible, modifications performed by someone other than the Contractor, improper or insufficient maintenance by the Downtown District or the City, improper operation, or normal wear and tear under normal usage,

and excludes a claim that hazardous material was incorporated into the Work if that material was specified in the Contract Documents. If required by the Director or Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- 3.10.3 In the event of a defect in a specified product, either during construction or the warranty period, the Contractor shall take appropriate measures with the manufacturer of the product to assure correction or replacement of the defective product with minimum delay.
- 3.10.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment shall pass to the Downtown District upon payment to the Contractor of that Application for Payment and that the Work, materials, and equipment shall be free and clear of all liens, claims, security interests or encumbrances. No Work, materials or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained or an encumbrance is attached by the seller, the Contractor, or other party.

### 3.11 TAXES

- 3.11.1 The Downtown District is exempt from Texas sales and use taxes pursuant to Texas Tax Code 151.309 as a special district of the State of Texas. Downtown District shall provide Contractor with a completed Texas Sales and Use Tax Exemption Certification as evidence of the applicability of such exemption and, accordingly, Contractor shall not collect Texas sales and use taxes from Downtown District with respect to this Contract. Contractor and subcontractors to Contractor shall issue a Texas Sales and Use Tax Exemption Certification with respect to, and shall not pay Texas sales and use taxes on, all purchases of the following items that are exempt from Texas sales and use taxes pursuant to Texas Tax Code 151.311: (i) tangible personal property that will be incorporated into Downtown District's or City's realty; (ii) tangible personal property that is necessary and essential for the performance of this Contract and is consumed entirely on the job site; and (iii) taxable services for use in the performance of this Contract that are required to be provided by this Contract. In addition, Contractor and all subcontractors to Contractor (i) shall not include any provision for Texas sales and use taxes with respect to such exempt items in any bid or contract amount, and (ii) shall pass on to Downtown District cost savings due to exempt status of such exempt items. Contractor's contracts with all subcontractors to Contractor shall include the foregoing provision regarding the exemption from Texas sales and use tax.
- 3.11.2 *Not used.*
- 3.11.3 The Downtown District is exempt from the Federal Transportation and Excise Tax. The Contractor shall comply with federal regulations governing such exemptions.



## 3.12 PERMITS, FEES, AND NOTICES

- 3.12.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all construction permits, licenses, and inspections necessary for proper execution and completion of the Work and which are legally required at the time bids are received and as may be described in the Supplementary Conditions.
- 3.12.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work, including Contractor's or Subcontractors' licenses; neither the Downtown District, the City nor its agents shall be responsible for monitoring the Contractor's compliance with this requirement.
- 3.12.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Director or Project Manager in writing, and necessary changes shall be accomplished by appropriate modification.
- 3.12.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, rules and regulations without such notice, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.
- 3.12.5 *See Supplementary Conditions.*

## 3.13 CONSTRUCTION SCHEDULES

- 3.13.1 Promptly after award of the Contract, the Contractor shall prepare and submit a construction schedule for the Work for the Director's or Project Manager's review. The schedule shall reflect the minimum time required to complete the Project, not to exceed time limits current under the Contract Documents. Contractor shall revise the schedule at appropriate intervals as required by conditions of the Work and the Project, the schedule shall be related to the entire Project to the extent required by Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- 3.13.2 The Contractor shall prepare and keep current, and submit for Director's or Project Manager's approval, a schedule of submittals which is coordinated with the construction schedule.
- 3.13.3 The Contractor shall submit to the Director or Project Manager a copy of the revised construction schedule indicating actual progress, incorporating all applicable changes, and indicating courses of action required to assure Project completion within the Contract Time. Contractor shall submit submittals at the beginning of each month unless another requirement is included in the Specifications.

## 3.14 DOCUMENTS AND SAMPLES AT THE SITE

- 3.14.1 The Contractor shall maintain at the site and make available to the Director and Project Manager one record copy of Drawings, Specifications, Addenda, Change Orders and other Modifications. Such documents shall be maintained in good order and marked currently to record changes and selections made during construction. In addition, Contractor shall maintain at the site approved Shop Drawings, Product Data, Samples, and similar submittals. These shall be delivered to the Director or Project Manager prior to final inspection as required in Subparagraph 9.11.3.
- 3.14.2 Contractor shall maintain all books, documents, papers, accounting records and other relevant documentation pursuant to the Project and shall make such books, documents, papers, and accounting records available to Director or Project Manager for review and audits at Director's office during the Contract term and for three years following the Date of Substantial Completion or until litigation or audits are fully resolved.
- 3.14.3 The Executive Director of the Downtown District or his or her designee shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Contractor covenants to provide to the Executive Director all documents and records that the Executive Director deems necessary to assist in determining Contractor's compliance with this Contract, with the exception of those documents made confidential by Federal or State law or regulation.

## 3.15 MANUFACTURER'S SPECIFICATIONS

- 3.15.1 The Contractor shall handle and install all materials and perform all work in the manner required by the materials manufacturer. Should the Contract Documents and manufacturer's instructions conflict, the Contractor shall report the conflict to the Director or Project Manager for resolution prior to proceeding with the Work.
- 3.15.2 References to the manufacturer's specifications, manufacturer's directions, or manufacturer's recommendations, shall refer to the referenced manufacturer's current published documents in effect as of the date of receipt of bids, or for Change Orders, as of the date of the Change Order.

## 3.16 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

- 3.16.1 **Shop Drawings:** The drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor, Subcontractor, manufacturer, supplier, or distributor, to illustrate some portion of the Work.
- 3.16.2 **Product Data:** The illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion or the Work.

- 3.16.3 **Samples:** The physical examples which illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.
- 3.16.4 Shop Drawings, Product Data, and Samples are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Director or Project Manager is subject to the limitations of Subparagraph 4.2.4.
- 3.16.5 The Contractor shall review, approve, and certify that the content of the submittals conforms to Contract Documents without exception by affixing Contractor's approval stamp and signature, and submit to the Director or Project Manager the Shop Drawings, Product Data, and Samples required by the Contract Documents. Submittals shall be transmitted with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Downtown District or of a separate contractor. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action. If, in the opinion of the Director or Project Manager, the submittals are incomplete, indicate an inadequate understanding of the Work covered by the submittal or a lack of review by the Contractor prior to submittal, the submittal may be returned unchecked to the Contractor for correction of deficiencies and subsequent resubmittal. Any delay resulting from a requirement for resubmittal due to corrections, deficiencies, incomplete information, lack of review by the Contractor, or Contractor's inadequate understanding of the Work as reflected in the shop drawing in question will be the responsibility of the Contractor and will not form the basis for a Claim for an increase in the Contract Time.
- 3.16.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, and Samples until the respective submittal has been returned with appropriate action. Such work shall be in accordance with reviewed submittals, unless the submittals are subsequently found to be defective.
- 3.16.7 By approving, certifying, and submitting Shop Drawings, Product Data, and Samples the Contractor represents, and Contractor's stamp of approval shall state, that Contractor has determined and verified materials, quantities, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract Documents.
- 3.16.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Director's or Project Manager's review of Shop Drawings, Product Data, or Samples unless the Contractor has specifically informed the Director or Project Manager in writing with specific notation of each deviation at the time of submittal, and the Director or Project Manager has given written approval of each specific deviation. The Contractor shall not be relieved of

responsibility for errors or omissions in Shop Drawings, Product Data, or Samples by the Director's or Project Manager's approval thereof.

- 3.16.9 The Contractor shall direct specific attention, in writing and on resubmitted Shop Drawings, Product Data, or Samples to revisions other than those requested by the Director or Project Manager on previous submittals.
- 3.16.10 Informational submittals upon which the Director or Project Manager is not expected to take responsive action may be identified in the Contract Documents.
- 3.16.11 When professional certification of performance criteria or materials, systems, or equipment is required by the Contract Documents, the Director or Project Manager shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 3.16.12 The Contractor shall submit Shop Drawings, Product Data, and Samples to the Director or Project Manager in time to allow a minimum of 10 days for Director's or Project Manager's review prior to the date the Contractor needs the reviewed submittals returned. On instructions of Director or Project Manager this time may be shortened for a particular job requirement. For product colors or textures to be selected by Architect/Engineer/Designer, submit all samples together to allow the Architect/Engineer/Designer to prepare a complete selection schedule.
- 3.16.13 Submit Shop Drawings, Product Data, and Samples in the forms, quantities, and procedures specified in the Specifications.
- 3.16.14 When Shop Drawings, Product Data, and Samples are required, related work performed prior to review and acceptance of such submittals shall be at the Contractor's risk and the Downtown District shall not be obligated to accept such work if such submittals are later found to be not acceptable.

### 3.17 USE OF SITE

- 3.17.1 The Contractor shall perform and confine operations at the site to those areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment.
- 3.17.2 In addition to land provided by the Downtown District under Paragraph 2.4, Contractor shall provide for all land and access thereto that may be required for use by Contractor for temporary construction facilities or for storage of materials and equipment, and shall indemnify the Downtown District and the City during such use as stated in Paragraph 3.24.

### 3.18 CULTURAL RESOURCES

- 3.18.1 The Contractor shall not remove or disturb, or cause 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 Director. The Contractor shall protect the site and material from further disturbance until a professional examination can be made or until clearance to proceed is authorized in writing by Director.

### 3.19 CUTTING AND PATCHING

3.19.1 The Contractor shall be responsible for cutting, fitting, and patching necessary to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to the work of others. The Contractor shall coordinate the Work with the work of other contractors to minimize conflicts, as provided in Article 6, Construction by Downtown District or by Separate Contractors.

3.19.2 The Contractor shall not endanger any work by cutting, digging, or other action, and shall not cut or alter the work of other contractors except with the written consent of the Director or Project Manager and the affected contractor.

### 3.20 CLEANING

3.20.1 The Contractor shall perform a daily clean-up of all dirt, debris, scrap materials and other disposable items resulting from Contractor's operations, whether on site or off site. Unless otherwise authorized, all streets, access streets, driveways, and walkways shall be kept clean and open at all times.

3.20.2 Failure of the Contractor to maintain a clean site, including access streets, will be the basis for the Director or Project Manager to issue a written notice of non-compliance with the Contract. Should that notice to correct not be complied with within 24 hours, the Director or Project Manager may authorize the necessary clean-up to be performed by others and the cost of such clean-up may be deducted from monies due the Contractor.

3.20.3 The Contractor shall legally dispose off site, all waste materials and other excess materials resulting from Contractor's operations off site.

### 3.21 SANITATION

3.21.1 The Contractor shall provide and maintain sanitary facilities at the jobsite for the use of all construction forces under the Contract. Newly constructed or existing sanitary facilities shall not be used by Contractor.

### 3.22 ACCESS TO WORK AND TO INFORMATION

3.22.1 The Contractor shall provide the Downtown District, the City, Architect/Engineer/Designer, testing agencies, and governmental agencies with jurisdictional interests, access to the Work in preparation and in progress wherever located. Contractor shall provide proper and safe conditions for such access.

3.22.2 The Contractor shall furnish to the Director or Project Manager such information as required respecting the character of the

products and the progress and manner of the Work, including information necessary to determine the cost of the Work, such as the number of employees, pay of employees, and the time employees worked on various classes of the Work.

### 3.23 ROYALTIES, PATENTS, AND TRADE SECRETS

- 3.23.1 Unless otherwise provided in the Contract Documents, the Contractor shall at its cost procure any license or permit which is required for the use of any patented invention, article, process, or means, method, or instrumentality wrought into, used in, upon, or in any way or manner connected with the construction, erection, or maintenance of the Work or any part thereof as embraced in the Contract. Contractor shall pay all fees or royalties required for any such use or license. Such fees shall, unless otherwise provided in these Contract Documents, be included in the Contract Price. Contractor and Surety shall protect and hold harmless the Downtown District, the City against any and all demands arising from the Contractor's failure to comply with this requirement.
- 3.23.2 Alleged ownership by the Contractor of trade secrets as to products used in the Work, or the preparation of any mixture for the Work, shall not be recognized by the Downtown District in the performance of the Contract. The Director or Project Manager shall at all times have the right to demand and shall be furnished information concerning materials or samples of ingredients of any materials used or proposed to be used in preparation of the concrete placed or other work to be done. Mixtures once agreed on shall not be changed in any manner without the knowledge and consent of the Director or Project Manager. Downtown District will make its best efforts to protect the confidentiality of such proprietary information.
- 3.23.3 Intellectual Property Rights and Indemnification:
- 3.23.3.1 Contractor shall not furnish or provide to Downtown District any Materials or Work that infringes on a third party's intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like). Contractor shall not disclose or provide to the Owner any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas which Contractor does not own or otherwise have the right to disclose or provide to the Downtown District.
- 3.23.3.2 Contractor represents and warrants that the Materials and the Work shall be free from third party claims of ownership and the Downtown District's and the City's right to own, use, or otherwise disclose such Materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).

- 3.23.3.3 Contractor represents and warrants to the Downtown District that all information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas disclosed or provided to Downtown District and/or the City shall be free from third party claims of ownership and that Downtown District's right to own, use, or otherwise disclose such information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- 3.23.3.4 Contractor represents and warrants that all processes or methods utilized by Contractor to provide its services to the Downtown District are free from infringement of third party intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like) and that all products provided by the Contractor to the Downtown District are free from third party claims on infringement of intellectual property rights, including allegations that the product infringes the claims of the United States process patent in violation of the Process Patents Amendment Act of 1988. Contractor shall cooperate fully and promptly with the Downtown District and/or the City with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by the Downtown District or the City in connection with Contractor's Work pursuant to the Process Patents Amendment Act of 1988. To the extent that Contractor obtains products from third parties which it intends to provide to the Downtown District, Contractor shall obtain agreements from Contractor's suppliers and subcontractors to cooperate in connection with requests for disclosure generated or received by the Downtown District and/or the City pursuant to the Process Patents Amendment Act of 1988.
- 3.23.3.5 CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD THE DOWNTOWN DISTRICT, THE AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION BROUGHT BY THIRD PARTIEES (AND ALL COSTS, EXPENSES, DAMAGES, LIABILITIES OF JUDGEMENTS SUSTAINED OR INCURRED BY OWNER IN CONNECTION THEREWITH, INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEYS FEES) ARISING OUT OF OR RELATING TO: (I) CONTRACTOR'S BREACH OF ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II) ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT

INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT DOWNTOWN DISTRICT'S AND/OR CITY'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO DOWNTOWN DISTRICT AND/OR CITY INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES USED BY CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS, EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES INCURRED BY THE DOWNTOWN DISTRICT AND/OR THE CITY, IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL APPLY EVEN IF THE THIRD PARTY ALLEGES OR ESTABLISHES THAT THE DOWNTOWN DISTRICT, THE AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND/OR THE CITY WAS PARTIALLY NEGLIGENT OR OTHERWISE AT FAULT (E.G. THAT THE DOWNTOWN DISTRICT, THE AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND/OR CITY WAS NEGLIGENT IN RETAINING CONTRACTOR'S SERVICES AND ACCEPTING MATERIALS, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS FROM CONTRACTOR, OR THAT THE DOWNTOWN DISTRICT, THE AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND/OR CITY WAS NEGLIGENT IN FAILING TO ASCERTAIN WHETHER THE MATERIALS, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS INFRINGED THE RIGHTS OF THIRD PARTIES).

### 3.24 INDEMNIFICATION

3.24.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE THE DOWNTOWN DISTRICT, THE AUTHORITY/TIRZ, CENTRAL HOUSTON, INC., AND THE CITY, THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "INDEMNIFIED PARTIES") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.24.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.24.1.1 THROUGH 3.24.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.24.1.2 THE INDEMNIFIED PARTIES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND



3.24.1.3 THE INDEMNIFIED PARTIES' AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE INDEMNIFIED PARTIES HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE DOWNTOWN DISTRICT FOR THE DOWNTOWN DISTRICT'S SOLE NEGLIGENCE, THE AUTHORITY/TIRZ'S FOR THE AUTHORITY/TIRZ'S SOLE NEGLIGENCE, CENTRAL HOUSTON, INC., FOR CENTRAL HOUSTON, INC.'S SOLE NEGLIGENCE, OR THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

3.24.2 It is the expressed intention of the parties hereto that the indemnity provided herein is an agreement by the Contractor to indemnify and protect the Indemnified Parties from the Indemnified Parties' own negligence where said negligence is an alleged or actual concurring proximate cause of any alleged third party harm.

3.24.3 The indemnity provision provided herein shall have no application to any claim or demand where bodily injury, death, or damage results only from the sole negligence of the Indemnified Parties unmixed with any fault of the Contractor.

3.24.4 Notwithstanding anything herein to the contrary, the liability of the Contractor under this indemnity provision shall not exceed \$1,000,000 per occurrence.

3.24.5 INDEMNIFICATION PROCEDURES

3.24.5.1 *Notice of Claims.* If the Downtown District or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within ten (10) days. The notice must include the following:

3.24.5.1.1 a description of the indemnification event in reasonable detail,

3.24.5.1.2 the basis on which indemnification may be due, and

3.24.5.1.3 the anticipated amount of the indemnified loss.

This notice does not stop or prevent the Indemnified Parties from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the receiving party does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

3.24.5.2 *Defense of Claims.*

3.24.5.2.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the Indemnified Parties. Contractor shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, Contractor must advise the Indemnified Parties as to whether or not it will defend the claim. If Contractor does not assume the defense, the Indemnified Parties shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.24.5.2.2 Continued Participation. If Contractor elects to defend the claim, the Indemnified Parties may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the Indemnified Parties, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Parties to comply with restrictions or limitations that adversely affect the Indemnified Parties, (ii) would require the Indemnified Parties to pay amounts that Contractor does not fund in full, (iii) would not result in the Indemnified Parties' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

## ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

## 4.1 DEFINITIONS

- 4.1.1 **Director:** The individual, designated in the Agreement, authorized to represent the Downtown District and acting directly or through the Project Manager, Inspector, or Architect/Engineer/Designer.
- 4.1.2 **Project Manager:** The authorized representative of the Director for administration of the Project. The Director may appoint more than one person to be Project Manager related to specific responsibilities described herein.
- 4.1.3 **Inspector:** The authorized representative of the Director for assistance to the Project Manager in inspection of the Work.

- 4.1.4 **Architect/Engineer/Designer:** The individual who is lawfully licensed to practice architecture or engineering, and is employed by, or under contract to, the Downtown District to provide professional services as defined in Contract Documents, under the direction of the Director and Project Manager, and in making recommendations to the Director and Project Manager. The term Architect/Engineer/Designer means the architect or engineer or his or her authorized representative. When an Architect/Engineer/Designer is not employed for administration of the Contract, the Director and Project Manager will perform the duties and responsibilities designated in the Contract Documents for the Architect/Engineer/Manager in addition to the usual duties of the Director and Project Manager.
- 4.1.5 **Underground Facilities:** Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities which exist underground for electricity, telephone, cable television, traffic control, or other communications systems; pipes conveying gases, steam, water, liquid petroleum products, sewage, storm drainage or other liquids.

#### 4.2 CONTRACT ADMINISTRATION

- 4.2.1 The Director will provide administration of the Contract as described in the Contract Documents, and will be the Downtown District's representative during construction, and from time to time during the correction period described in Subparagraph 12.2.2.
- 4.2.2 Director, or designated representative of Director, will not have control over or charge of, and will not be responsible for, supervision, construction, and safety procedures enumerated in Subparagraph 3.3.1 and Article 10. Director, or designated representative of Director, will not have control over or charge of and will not be responsible for acts or omission of the Contractor, Subcontractor, or their agents or employees, or of any other persons performing portions of the Work.
- 4.2.3 Project Manager or designated representative of the Director has the right to attend project meetings and visit the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. Neither the Project Manager nor the Inspector will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
- 4.2.4 The Project Manager or designated representative of the Director, will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
- 4.2.4.1 Review of such submittals is not conducted for the purpose of determining the accuracy and completeness

of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor.

- 4.2.4.2 The review of submittals by the Project Manager or Director's designated representative shall not relieve the Contractor of obligations under Paragraphs 3.3, 3.10, and 3.16. The review will not constitute approval of safety precautions or, unless otherwise specifically stated by the Project Manager, of any construction means, methods, techniques, sequences, or procedures. The Project Manager's review of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.2.5 The Director or Project Manager will prepare Change Orders and Work Change Directives and may authorize Minor Changes in the Work as provided in Paragraph 7.5.
- 4.2.6 Based on field observations and evaluations, the Director will process Contractor's Progress Payments, will certify the amounts due the Contractor, and will issue Certificates for Payment in such amounts.
- 4.2.7 The Director or Project Manager, assisted by the Architect/Engineer when employed, will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, and will receive and forward to the Downtown District for the Downtown District's review and records, written warranties and related documents required by the Contract and assembled by the Contractor. The Director will issue a final Certificate for Payment upon compliance with requirements of the Contract Documents.
- 4.2.8 The Director or Project Manager will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor. The Director's response to such requests will be made with reasonable promptness and within any time limits agreed upon. Interpretations and decisions of the Director will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.
- 4.2.9 The Director or Project Manager has authority to reject Work, which does not conform to Contract Documents.
- 4.2.10 Whenever the Director considers it necessary or advisable for implementation of the intent of the Contract Documents, Director has authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.3 and 13.5.4, whether or not such Work is fabricated, installed, or completed.
- 4.2.11 Neither the authority of Director or Project Manager nor a decision made in good faith to exercise or not to exercise such authority under this Article 4 shall give rise to a duty or responsibility of the Director or Project Manager to the Contractor, Subcontractors, or their agents or employees, or to other persons performing portions of the Work.

#### 4.3 COMMUNICATIONS IN CONTRACT ADMINISTRATION

4.3.1 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized by Director, Contractor communication shall be with Project Manager. Communications by and with the Architect/Engineer/Designer shall be through the Project Manager. Communication with Architect/Engineer/Designer's subconsultants shall be through the Project Manager and Architect/ Engineer/Designer. Communications with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Director or Project Manager.

#### 4.4 CLAIMS AND DISPUTES

4.4.1 **Claim:** A demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to terms of the Contract. The term Claim also includes other disputes and matters in question between the Downtown District and the Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.4.2 *Documentation by the Project Engineer.* Claims, including those alleging an error or omission by the Project Manager or Architect/Engineer, shall be referred initially to the Project Engineer for documentation and recommendation to the Director.

4.4.3 *Decision of the Director.* Claims shall be referred to the Director for action as provided in Paragraph 4.5. A presentation of a Claim and a decision by the Director, as provided in Subparagraph 4.5.4 shall be required as a condition precedent to litigation of a Claim between the Contractor and Downtown District as to all such matters arising prior to the date the final payment is due, regardless of whether such matters relate to execution and progress of the Work or the extent to which the Work has been completed.

4.4.3.1 The decision by the Director in response to a Claim shall not be a condition precedent to litigation in the event the Director has failed to render a decision under Subparagraphs 4.5.1 or 4.5.4 within agreed time limits.

4.4.4 *Time Limits on Claims.* Claims by the Contractor must be made within thirty (30) days after occurrence of the event giving rise to such Claim.

4.4.5 *Continuing Contract Performance.* Pending final solution of a Claim including mediation, unless otherwise agreed in writing, the Contractor shall proceed diligently with the performance of the Contract and the Downtown District shall continue to make payments in accordance with Contract Documents.

4.4.5.1 Pending final resolution of a Claim including mediation, and during investigation of conditions, Contractor shall be responsible for the safety and

protection of the physical properties and conditions at the site.

4.4.6 *Claims for Concealed or Unknown Conditions.*

4.4.6.1 Concealed or unknown physical conditions include utility lines, other man-made structures, storage facilities, hazardous substance, and the like but do not include conditions arising from Contractor Operations, or the failure of Contractor to properly protect and safeguard subsurface facilities. Concealed conditions also include naturally occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from ground water, rain or flood.

4.4.6.2 If conditions are encountered at the work site which are subsurface, Underground Facilities, or otherwise concealed or unknown conditions which differ materially from:

4.4.6.2.1 those indicated by Contract Documents; or

4.4.6.2.2 conditions which Contractor could have discovered through site inspection, geotechnical testing, or otherwise; then notice shall be given by the Contractor to the Director in writing before the condition is disturbed, but in no case later than 2 days after Contractor's first observation of the condition. Contractor's failure to provide notice as provided herein shall constitute waiver of claim.

4.4.6.3 The Director will promptly investigate such conditions and, if conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, Director will recommend an adjustment in the Contract Price or the Contract Time, or both, as provided in Article 7, Changes in the Work. If the Director determines that the conditions at the site are not materially different and that no change in the Contract Price or Contract Time is justified, the Director shall so notify the Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after Director has given notice of the decision. If the Downtown District and Contractor cannot agree on an adjustment to Contract Price or the Contract Time, the adjustment shall be subject to further proceedings pursuant to Paragraph 4.5.

4.4.7 *Claims for Additional Cost.* If the Contractor wishes to make Claim for an increase in the Contract Price, written notice shall be given before proceeding with work for which Contractor in

tends to submit a claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.4.

4.4.7.1 If the Contractor believes additional cost is involved for reasons including but not limited to:

4.4.7.2 a written interpretation of the Director;

4.4.7.3 an order by the Downtown District to stop the Work when the Contractor is not at fault;

4.4.7.4 failure of the Downtown District to make payment;

4.4.7.5 suspension of Work by the Downtown District;

4.4.7.6 termination of the Contract by the Downtown District, or;

4.4.7.7 other provision herein.

Claims shall be filed in accordance with the procedure established herein.

4.4.7.8 No increase in Contract Price will be allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to the Contractor caused by the failure of the Downtown District to provide information and services, availability of land, or material, if any, which is to be provided by the Downtown District under the terms of this Contract. Any such increase shall be subject to the provisions of Article 7.

4.4.7.9 In no instance will the Downtown District be deemed liable for claims for delay when the Date of Substantial Completion occurs prior to the expiration of the Contract Time.

4.4.8 *Claims for Additional Time.* If the Contractor wishes to claim an increase in the Contract Time, written notice shall be given as provided in Paragraph 8.3. In the case of continuing delay, only one Claim is necessary.

4.4.9 *Claims for Injury or Damage to Person or Property.* If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time, not exceeding 2 days after the first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or additional time due to damage or injury is to be asserted, it shall be filed as provided in Subparagraphs 4.4.7 or 4.4.8.

## 4.5 RESOLUTION OF CLAIMS AND DISPUTES

- 4.5.1 The Director will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim:
- 4.5.1.1 request additional supporting data from the claimant;
  - 4.5.1.2 submit a schedule to the parties indicating when the Director expects to take action;
  - 4.5.1.3 reject the Claim in whole or in part, stating reasons for rejection;
  - 4.5.1.4 recommend approval of the Claim by the other party, or;
  - 4.5.1.5 suggest a compromise.

The Director may also, but is not obligated to, notify the Surety of the nature and amount of the Claim.

- 4.5.2 If a Claim has been resolved, the Director will prepare or obtain appropriate documentation.
- 4.5.3 If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after receipt of the Director's preliminary response, take one or more of the following actions:
- 4.5.3.1 submit additional supporting data requested by the Director,
  - 4.5.3.2 modify the initial Claim and resubmit for review, or,
  - 4.5.3.3 notify the Director that the initial Claim stands.
- 4.5.4 The Director will render a written decision within 21 days, or a time mutually agreed upon, including any change in the Contract Price or the Contract Time or both. The Director may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy. Director's decision shall be final and binding unless Director in Director's sole discretion rules the decision subject to mediation.

## 4.6 MEDIATION

- 4.6.1 *Claims Subject to Mediation.* A Claim in excess of five percent of the Contract Price may be submitted to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association if the Executive Director or Director approves such submission. All requests to submit Claims to mediation for resolution must be made prior to either party resorting to litigation. In the event that the mediation process begins, neither party shall resort to litigation until completion of the mediation process.
- 4.6.2 *Rules and Notices for Mediation.* Mediation shall be in accordance with the Construction Industry Mediation Rules of the Am



erican Arbitration Association currently in effect, unless the parties mutually agree to other rules. Notice of demand for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association.

4.6.2.1 Contractor shall initially pay fees required by the American Arbitration Association. The Downtown District will reimburse Contractor, by Change Order, for the Downtown District's share of the proceedings, in accordance with the terms of Paragraph 7.4, plus interest at the rate of one percent per month.

4.6.3 *When Mediation May Be Demanded.* Demand for mediation of any Claim may not be made until the date on which the Executive Director or Director has rendered a final written decision on the Claim.

4.6.3.1 When a written decision of the Executive Director or Director states that the decision is final but subject to mediation, a demand for mediation of a Claim must be made within 21 days after the date on which the party making the demand receives the final written decision. Failure to demand mediation within said 21-day period shall result in the Executive Director's or Director's decision becoming final and binding on the Downtown District and the Contractor.

4.6.3.2 A demand for mediation shall be made within the time limits stated in Subparagraphs 4.6.1, 4.6.3, and 4.6.3.1 as applicable, and in no event shall it be made after the date when institution of legal proceedings based on such a claim would be barred by the applicable statute of limitations.

## ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS

### 5.1 DEFINITIONS

5.1.1 **Subcontractor:** A Subcontractor is a person or entity who has a direct or indirect contract with the Contractor or is a person or entity who has a direct or indirect contract with another Subcontractor to perform a portion of the Work at the site. The term "Subcontractor" is referred throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractor of a separate contractor.

5.1.2 **Supplier:** A Supplier is a manufacturer, distributor, material-man, or vendor having a direct agreement with the Contractor or a Subcontractor for furnishing materials, equipment, or services.

### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 After receipt of notice of intent to award, Contractor shall submit in writing to the Director or Project Manager the names of Subcontractors and Suppliers proposed for each principal portion of the Work, with a description of the work. The

Director will reply to the Contractor in writing stating whether or not the Downtown District, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Director to reply within seven days shall constitute notice of no reasonable objection.

- 5.2.2 The Contractor shall not contract with a proposed Subcontractor or Supplier to whom the Director has made reasonable and timely objection.
- 5.2.3 If the Director has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Director has no reasonable objection.
- 5.2.4 Contractor shall execute contracts with Suppliers and approved Subcontractors within 30 days after the date of the Notice to Proceed.
- 5.2.5 Contractor shall notify Director of any proposed change of a Subcontractor or Supplier previously accepted by the Downtown District.

### 5.3 CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS

- 5.3.1 The Contractor shall be fully responsible to the Downtown District, as may be required by laws and regulations, for all acts and omissions of the Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- 5.3.2 By written agreement, Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor, all the obligations and responsibilities which, the Contractor, by these Contract Documents, assumes toward the Downtown District. Said agreement shall protect and preserve the rights of the Downtown District under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, the benefits of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Downtown District.
- 5.3.3 The Contractor shall make available to each proposed Subcontractor, prior to execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.
- 5.3.4 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to the Downtown District regarding performance of all obligations by, or payment of, Subcontractors. Approval to subcontract and of any Subcontractor shall not to any degree relieve the Contractor of its obligation to perform, or have performed to the full satisfaction of the Downtown District, the Work required by this Contract.

## 5.4 M/W/S/DBE CONTRACT TERMS

5.4.1 See *Supplementary Conditions*.

5.4.2 See *Supplementary Conditions*.

## ARTICLE 6 - CONSTRUCTION BY DOWNTOWN DISTRICT OR BY SEPARATE CONTRACTORS

## 6.1 DOWNTOWN DISTRICT'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Downtown District, the Authority/TIRZ, and the City reserve the right to perform construction operations related to the Project with the Downtown District's, the Authority/TIRZ's, and/or the City's own forces, and to award separate prime contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the Contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation.

6.1.2 When separate contracts are awarded for different portions of the construction or operations at the site, the term "Contractor" in the Contract Documents in each case shall mean the entity, which executes each separate agreement.

6.1.3 Unless otherwise provided in the Contract Documents, when the Downtown District, the Authority/TIRZ, METRO, TxDOT, or the City performs construction or operations related to the Project with their own forces, they shall have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in this Article 6 and Articles 10, 11, and 12.

## 6.2 COORDINATION

6.2.1 The Downtown District shall provide for coordination of the activities of the Downtown District's, the Authority/TIRZ's, and/or the City 's own forces and of each separate contractor, including those of METRO and/or TxDOT with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors, the Downtown District, the Authority/TIRZ, METRO, TxDOT, and/or the City in reviewing the construction schedules of the Downtown District, the Authority/TIRZ, METRO, TxDOT and/or the City and their contractors when directed to do so. The Contractor shall make any revisions to the construction schedule and the Contract Price deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, the Downtown District, the Authority/TIRZ, METRO, TxDOT and/or the City, until subsequently revised.

## 6.3 MUTUAL RESPONSIBILITY

6.3.1 The Contractor shall afford to the Downtown District and to separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of

their activities and shall coordinate the construction and operations with other contractors as required by Contract Documents.

- 6.3.2 If part of the Contractor's Work depends on proper execution of construction or operations by the Downtown District, the Authority/TIRZ, METRO, TxDOT, and/ or the City or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, inspect such other work and promptly report to the Director apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution of the Work. Failure of the Contractor so to report shall constitute an acknowledgement that the Downtown District, the Authority/TIRZ's, METRO's, TxDOT's and/or the City's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to discrepancies or defects not then reasonably discoverable.
- 6.3.3 Costs caused by delays or by improperly timed activities or non-conforming construction shall be borne by the entity responsible therefor.
- 6.3.4 The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Downtown District, the Authority/TIRZ, the City or separate contractor.
- 6.3.5 A claim or dispute between the Contractor and any other contractor of the Downtown District, the Authority/TIRZ, METRO, TxDOT and/or the City working on the Project, or any subcontractor of any other contractor of the Downtown District, the Authority/TIRZ, METRO, TxDOT, and/or the City working on the Project, shall be submitted to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association upon demand by any party to the dispute or by the Downtown District or the City. An award made pursuant to an arbitration shall be binding and final upon the parties and may be filed in any court of competent jurisdiction which may enter judgment thereon.
- 6.3.6 Each separate contractor shall have the same responsibilities for cutting and patching as are described in Paragraph 3.19.

#### 6.4 DOWNTOWN DISTRICT'S RIGHT TO CLEAN UP

- 6.4.1 If a dispute arises among the Contractor, separate contractors, and the Downtown District, as to responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.20, the Downtown District may clean up and allocate the cost attributable to Contractor as the Director determines.

### ARTICLE 7 - CHANGES IN THE WORK

#### 7.1 CHANGES

7.1.1 Changes within the scope of the Work may be accomplished after execution of the Agreement without invalidating the Contract and without notice to Contractor's Surety by Change Order, Work Change Directive, or order for a Minor Change in the Work, subject to the limitations in this Article 7 and elsewhere in the Contract Documents.

7.1.1.1 Each change in the scope of work, whether by Change Order or Work Change Directive, which exceeds five percent of the Contract Price as set forth in the original Contract will require approval or ratification of the Downtown District Board of Directors.

7.1.2 A Change Order is an agreement between the Downtown District and Contractor; a Work Change Directive may or may not be agreed to by the Contractor; an order for a Minor Change in the Work may be issued by the Downtown District alone.

7.1.3 The Contractor shall proceed promptly to execute changes in the Work provided in the Change Order, Work Change Directive, or order for a Minor Change in the Work unless otherwise stated therein.

## 7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Downtown District and signed by the Director and Contractor, stating their agreement upon the following:

7.2.1.1 a change in the Work;

7.2.1.2 the amount of adjustment in the Contract Price, if any; and

7.2.1.3 the extent of the adjustment in the Contract Time, if any.

## 7.3 WORK CHANGE DIRECTIVES

7.3.1 The Director may, by Work Change Directive, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, stating a proposed basis for adjustment, if any, in Contract Price or Contract Time, or both. The Contractor shall carry out such directive promptly.

7.3.2 A Work Change Directive cannot change the Contract Price or the Contract Time, but is evidence that the parties agree that the change ordered by the Directive will be incorporated in a subsequently issued Change Order as to its effect, if any, on the Contract Price or the Contract Time.

7.3.3 A Work Change Directive signed by the Contractor indicates the agreement of the Contractor of the terms therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Agreement on adjustments in Contract Price and Contract Time shall be promptly incorporated into a Change Order for approval.

7.3.4 A Work Change Directive shall be used in the absence of total agreement on the terms of a Change Order. Interim payments will be made in accordance with Subparagraph 9.6.1.2.

7.4 ADJUSTMENTS IN CONTRACT PRICE

7.4.1 Adjustments in Contract Price shall be based on one of the following methods:

7.4.1.1 mutual acceptance of a fixed price properly itemized and supported by sufficient substantiating data to permit evaluation;

7.4.1.2 unit prices stated in the Contract Documents or subsequently agreed upon;

7.4.1.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

7.4.1.4 as provided in Subparagraph 7.4.2.

7.4.2 If the Contractor does not respond promptly, or disagrees with the method for adjustment in the Contract Price, the method and the adjustment shall be determined by the Director or Project Manager on the basis of reasonable expenditures and savings of those performing the work attributable to the change, including, in case of an increase in the Contract Price, an allowance for labor burden and for overhead and profit in the maximum percentages stated in the Supplementary Conditions.

7.4.2.1 In such case, the Contractor shall keep and present, in such form as the Director or Project Manager may prescribe, an itemized accounting together with appropriate supporting data. Failure to submit such itemized accounting and supporting data within twenty-one (21) days of a request for such data by the Director or Project Manager shall constitute waiver of such Claim.

7.4.2.2 Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph shall be limited to the following:

7.4.2.2.1 costs of labor, including labor burden as stated in Supplementary Conditions for social security, unemployment insurance, customary and usual fringe benefits required by agreement or custom, and workers' compensation insurance; however, the maximum labor burden to be applied to the costs of labor for changes in the Work shall be 55 percent;

7.4.2.2.2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

- 7.4.2.2.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others, with prior approval of the Director;
- 7.4.2.2.4 costs of premiums for all bonds and insurance and permit fees related to the Work;
- 7.4.2.2.5 additional costs of supervision and field office personnel directly attributable to the change; and
- 7.4.2.2.6 *See Supplementary Conditions for any additional conditions.*

7.4.3 The amount of credit to be allowed by the Contractor to the Downtown District for a deletion or change, which deletion or change results in a net decrease in the Contract Price, shall be determined in accordance with Subparagraphs 7.4.1, 7.4.2, 7.4.2.1, and 7.4.2.2. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.4.4 When the Contractor agrees with the determination made by the Director concerning adjustments in the Contract Price and Contract Time, or the Downtown District and Contractor otherwise reach agreement upon the adjustments, such agreement shall be immediately recorded by preparation and execution of an appropriate Change Order.

## 7.5 MINOR CHANGES IN THE WORK

7.5.2 The Director or Project Manager will have the authority to order Minor Changes. Such changes shall be affected by written order and shall be binding on the Downtown District and Contractor. The Contractor shall carry out such written orders promptly.

7.5.3 **Minor Change:** Change in the Work not involving adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents.

## ARTICLE 8 - TIME

### 8.1 DEFINITIONS

8.1.1 **Contract Time:** Unless otherwise provided, Contract Time is the number of calendar days stated in the Agreement, including authorized adjustments, allotted in Contract Documents for Substantial Completion of the Work. Contract time includes calendar days where poor weather conditions are present. Such conditions, whether isolated in time or for extended periods, will not form the basis of a Claim for an increase in Contract Time unless the number of days exceed those provided in the *Supplementary Conditions*.

- 8.1.2 **Day:** As used in the Contract Documents, the term shall mean any calendar day of 24 hours measured from midnight to the next midnight unless otherwise specifically defined.
- 8.1.3 **Effective Date of the Agreement:** The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement was countersigned by the Executive Director of the Downtown District.
- 8.1.4 **Date of Commencement of the Work:** The date established in the Notice to Proceed. The date shall not be changed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.
- 8.1.5 **Legal Holiday:** The date established by the City Council as a Legal Holiday.
- 8.1.6 **Date of Substantial Completion:** The date certified by the Director in accordance with Subparagraph 9.10.1.
- 8.2 PROGRESS AND COMPLETION
- 8.2.1 Time limits stated in the Contract Documents are the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- 8.2.1.1 Any project milestones specified in Section 01010 - Summary of Work shall be incorporated in the Construction Schedule and shall be met as conditions of the Contract. Failure to accomplish a milestone, as determined by the Director, will be considered a material breach of the Contract.
- 8.2.2 *Computation of Time.* In computing any period of time prescribed or allowed by these General Conditions, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or Legal Holiday, in which event the period runs until the end of the next day which is not a Sunday or Legal Holiday. Sundays and Legal Holidays are considered to be calendar days and are to be included in all other time computations relative to the Contract Time.
- 8.2.3 The Contractor shall not knowingly, except by agreement or instruction of the Director in writing, commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11. The date of commencement of the Work shall not be changed by the effective date of such insurance.
- 8.2.4 The Contractor shall proceed expeditiously, and without interruption, with adequate forces and shall achieve Substantial Completion within the Contract Time.
- 8.2.5 Should progress of the Work fall behind the Construction Schedule, except for reasons stated in Subparagraph 8.3.1, Contractor shall submit a revised Construction Schedule to



Director for approval. Contractor shall take action necessary to restore progress to the revised Construction Schedule and shall work such hours, including night shifts and lawful overtime operations as necessary to achieve Substantial Completion within the Contract Time.

8.2.6 Except in connection with safety or protection of persons or Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed Monday through Saturday between the hours of 7:00 am and 7:00 pm. Performance of work between 7:00 pm and 7:00 am, and on Sunday or other Legal Holiday, shall not be permitted without consent of the Director given after 48 hour prior written notice from the Contractor. When such work is permitted, Contractor shall credit the Downtown District by Change Order for Inspector's overtime work and overtime work of on-site personnel of materials testing laboratories for work on Sundays or Legal Holidays.

8.2.6.1 The amount the Contractor shall credit the Downtown District for inspection services outside of the defined normal working hours is \$60.00 per hour per Inspector and per hour of on-site personnel of materials testing laboratories.

8.2.7 The Director by Work Change Directive may direct the Contractor to take such measures as necessary to expedite construction to achieve Substantial Completion prior to expiration of Contract Time. When the construction time is expedited solely for the convenience of the Downtown District and not due to Contractor's failure to prosecute timely completion of the Work, then the Contractor shall be entitled to an adjustment in the Contract Price equal to actual additional net costs in accordance with Article 7.

### 8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 The Contractor may request an extension of Contract Time for any delay to the performance of the Agreement that arises from causes beyond the control and without the fault or negligence of the Contractor and its Subcontractors and Suppliers. Examples of these causes are:

8.3.1.2 Acts of God or of the public enemy,

8.3.1.3 Acts of the Government in either its sovereign or contractual capacity,

8.3.1.4 Fires,

8.3.1.5 Floods,

8.3.1.6 Epidemics,

8.3.1.7 Quarantine restrictions,

8.3.1.8 Strikes,

8.3.1.9 Freight embargoes, and

- 8.3.1.10 Unusually severe weather
- 8.3.1.11 Acts or neglect by the Downtown District,
- 8.3.1.12 Acts or neglect by other contractors performing work on the Project as contemplated in Article 6.

Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of the Contractor.

- 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Subparagraph 4.4.8.
- 8.3.3 Any Claim for extending or shortening the Contract Time shall be based on written notice promptly delivered by the party making the Claim to the other party. The Claim shall accurately describe the occurrence generating the Claim, and a statement of the probable effect on progress of the Work. For Claims where Contract Documents require critical path method schedules, Contractor shall provide a revised critical path method schedule.
- 8.3.4 Claims for extension of time will be considered only when a written Claim is filed within the time limits stated in Subparagraph 4.4.4.
- 8.3.5 The notice shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event. When the parties cannot agree, Claims for adjustment in the Contract Time shall be determined by Director in accordance with Subparagraph 4.5.4.
- 8.3.6 When Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of both Downtown District and Contractor, an extension of the Contract Time in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay. In no event shall the Downtown District be liable to the Contractor, any Subcontractor, any Supplier, any other person or organization, or to any Surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of the Contractor, or (ii) delays beyond the control of both parties, including but not limited to causes enumerated in Subparagraph 8.3.1.

## ARTICLE 9 - PAYMENTS AND COMPLETION

### 9.1 DEFINITIONS

- 9.1.1 **Application for Payment:** A form submitted by Contractor on a monthly basis that documents Work completed during the month in question and the amount owed to the Contractor for that Work less previous payments and less retainage. Such form shall be approved by the Director prior to use and shall include an attachment documenting quantities installed, stored, and related unit prices.

- 9.1.2 **Contract Price:** Contract Price is that amount stated in the Agreement and, including authorized adjustments, is the total amount payable by the Downtown District to the Contractor for performance of the Work under the Contract Documents.
- 9.1.3 **Stipulated Price:** The single lump sum amount stated in the bid for completion of all Work to be performed for the entire Contract, or to be performed for a designated portion of the Contract.
- 9.1.4 **Unit Price:** The amount stated in the bid for an individual, measurable item of work, which when multiplied by the actual quantity incorporated in the Work, amounts to the full compensation for completion of the item including work incidental to it.
- 9.1.5 **Extra Unit Price:** Unit Prices for minor work which may be required for completion of the Work. Such unit prices and designated quantities are included in Document 00405 and in the Contract Price.
- 9.1.6 **Major Unit Price Work:** An individual Unit Price item, contained in the Schedule of Unit Price Work, having a value greater than five percent of the Contract Amount, or whose value becomes greater than five percent as the result of an increase in quantity, or \$100,000, whichever is less.
- 9.2 UNIT PRICE WORK
- 9.2.1 Where the Agreement provides that all or part of the Work is based on Unit Prices, initially the Contract Price will include, for all Unit Price work, an amount equal to the sum of the established Unit Prices for each separately identified item of Unit Price work times the estimated quantity of each item listed in the Agreement.
- 9.2.2 Each Unit Price shall include an amount to cover Contractor's overhead and profit for each separately identified item.
- 9.2.3 *Unit Price Quantities.* The quantities indicated in the Agreement are approximations made by the Downtown District for contracting purposes. No Claim shall be made against the Downtown District for excess or deficiency therein. Payment at the prices stated in the Agreement shall be in full for the completed Work, and will cover materials, supplies, labor, tools, machinery and all other expenditures incidental to satisfactory completion of the Work.
- 9.2.4 Director may increase or decrease quantities of Work within limitations stated in Subparagraph 7.1.1.1. Contractor will be entitled to payment for the actual quantities of items provided at the Unit Prices set forth in the Agreement.
- 9.2.4.1 Where the final quantity of Work performed by Contractor on a Major Unit Price Work item differs by more than 25 percent from the quantity of such item stated in the Agreement, then Downtown District or Contractor, upon demand, may make a Claim for a

change in Contract Price in accordance with Paragraph 4.4.

9.2.4.2 For an overrun or underrun of a Major Unit Price Work item not caused by a change (reference Article 7), either party may request an adjustment to the Unit Price for a Major Unit Price Work item, if actual quantities are in excess of 125 percent or decreased below 75 percent of the estimated quantity stated in the Agreement. The amount of the adjustment shall apply only to that portion in excess of 125 percent or decreased below 75 percent, and shall be determined in accordance with Paragraph 7.4.

### 9.3 ESTIMATES FOR PAYMENT, UNIT PRICE WORK

- 9.3.1 For work contracted on a Unit Price basis, prior to the last day of each month, the Contractor will prepare an estimate of the Work completed to the end of the month based on Unit Prices provided in the Agreement. The Director or Project Manager will review and approve the estimate prior to submittal by the Contractor of an Application for Payment.
- 9.3.2 Each estimate shall indicate the units of Work completed for each portion of the Work, multiplied by the Unit Prices listed in the Schedule of Unit Price Work, as of the end of the period covered by the estimate. For lump sum items not yet complete at the time of the estimate, Contractor shall apply a percentage completion to that item for review and approval by the Director or Project Manager.
- 9.3.3 The Project Manager will evaluate the actual final installed quantities of various classifications of Unit Price Work, and will review with Contractor the preliminary determinations of quantities of classifications established in the Agreement before rendering a decision or certifying the Application for Payment. In the case of a dispute between the Project Manager and the Contractor regarding quantities installed or stored, the disputed Application for Payment shall be submitted to the Director, who will make a decision within seven days. Director's decision will be final and binding, unless Contractor files a written notice of intent to appeal within 10 days of the date of receipt of the decision. Such Claim shall be submitted in accordance with the provisions of Paragraph 4.4.

### 9.4 SCHEDULE OF VALUES, STIPULATED PRICE WORK

- 9.4.1 For work contracted on a Stipulated Price basis, ten (10) days before the first Application for Payment, the Contractor shall submit to Director and Project Manager a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data as the Director may require to substantiate its accuracy. This schedule, as approved by the Director, shall be used as a basis for reviewing the Contractor's Applications for Payment.

## 9.5 APPLICATIONS FOR PAYMENT, STIPULATED PRICE WORK

- 9.5.1 Each month, not later than the tenth day of the month, the Contractor shall submit to the Director, on a form acceptable to the Director, an itemized Application for Payment for work completed during the previous month. The Application for Payment must be approved by the Project Manager prior to submittal to the Director. The Director will not review or process for payment any Application for Payment that is not in a form previously approved by the Director or with quantities not approved by the Project Manager.
- 9.5.2 Such application for payment shall be sworn and notarized and supported by such data substantiating the Contractor's right to payment as the Director may require, such as copies of requisitions from Subcontractors and Suppliers, and reflecting retainages as provided below.
- 9.5.3 Unless otherwise provided in Contract Documents, payments made on account of operations completed and for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Director to establish the Downtown District's title to such materials and equipment or otherwise protect the Downtown District's interests. Procedures shall include applicable insurance, storage, and transportation to the site for materials and equipment stored off the site. Contractor is responsible for maintaining materials and equipment until Substantial Completion of the Work.
- 9.5.4 Title to all Work covered by the payment passes to the Downtown District at the time of payment.

## 9.6 COMPUTATION OF APPLICATIONS FOR PAYMENT

- 9.6.1 Subject to provisions of the Contract Documents, the amount of each Application for Payment shall be compiled as follows:
- 9.6.1.1 That portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work listed either in the Schedule of Unit Prices or Schedule of Values, as applicable, less retainage of five percent.
- 9.6.1.2 Plus payment for changes in the Work which have been properly authorized by Work Change Directives in amounts estimated by the Contractor and approved by the Director or Project Manager, less retainage of five percent.
- 9.6.1.3 Plus that portion of the Contract Price, properly substantiated by certified copies of invoices and freight bills, for non-perishable materials and equipment delivered and suitably stored at the site for subsequent incorporation into the completed construction, or if approved in advance by the

Director, suitably stored off the site at a location agreed upon in writing, less 15 percent.

9.6.1.4 Less the aggregate of previous payments made by the Downtown District; and

9.6.1.5 Less amounts, if any, of which the Director has withheld or declined to certify on an Application for Payment as provided in Paragraph 9.7.

#### 9.7 DECISIONS TO WITHHOLD PAYMENT

9.7.1 The Director may withhold an Application for Payment in whole or in part to the extent reasonably necessary to protect the Downtown District, if in the Director's opinion there is reason to believe that there is:

9.7.1.1 non-conforming work not remedied;

9.7.1.2 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

9.7.1.3 damage to the Downtown District or another contractor;

9.7.1.4 reasonable evidence Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual and liquidated damages;

9.7.1.5 reasonable evidence indicating probable filing of third party claims, whether in court, in arbitration, or otherwise, or evidence that such claims have been filed;

9.7.1.6 failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment; or

9.7.1.7 Contractor's persistent failure to carry out the Work in accordance with the Contract Documents.

9.7.2 The Director may withhold an Application for Payment in whole or in part upon failure of the Contractor to submit the initial Construction Schedule or monthly schedule updates as provided in Subparagraphs 3.13.1 and 3.13.3.

9.7.3 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

#### 9.8 PROGRESS PAYMENTS

9.8.1 Downtown District will make payment within (30) thirty days after the date of receipt of Application for Payment approved by the Project Engineer and in a form previously approved by the Director.

9.8.2 The Downtown District has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may other

wise be required by law. Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. State Law requires the payment of Subcontractors and Suppliers by the Contractor within 10 days of receipt of Contractor's payment.

9.8.2.1 The Downtown District may, on request and at the discretion of the Director, furnish to any subcontractor, if practical, information regarding the percentages of completion or the amounts applied for by the Contractor, and the action taken thereon by the Downtown District on account of Work done by such subcontractor.

9.8.2.2 Contractor shall make timely payments to Subcontractors and Suppliers for the performance of this Contract. Contractor agrees to protect, defend, and indemnify the Downtown District, the Authority/TIRZ, Central Houston, Inc. and the City from any claims or liability arising out of Contractor's failure to make such payments. Disputes relating to payment of M/W/DBE Subcontractors or Suppliers shall be submitted to arbitration in the same manner as any other disputes under the M/W/DBE subcontract. Failure of the Contractor to comply with the decisions of the arbitrator may, at the sole discretion of the Downtown District, be deemed a material breach leading to termination of this Contract.

9.8.2.3 As a certification of payments to Subcontractors and Suppliers, the Contractor shall prepare and submit to the Director, Document 00651 - Certification of Payment to Subcontractors and Suppliers to be attached to each monthly Application for Payment.

9.8.3 An approved Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Downtown District or the City shall not constitute acceptance of work, which is not in accordance with the Contract Documents.

## 9.9 SUBSTANTIAL COMPLETION

9.9.1 The Date of Substantial Completion of the Work or designated portion thereof is the date certified by the Director that the construction is sufficiently complete in accordance with the Contract Documents so the Downtown District and/or the City can occupy or utilize the Work or designated portion thereof for the purpose for which it is intended.

9.9.2 When the Contractor considers that the Work, or a portion thereof is substantially complete, and the Downtown District agrees, the Contractor shall prepare and submit to the Director or Project Engineer a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct the items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete the Work in accordance with the Contract Documents.

- 9.9.3 Upon receipt of the Contractor's list, the Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Project Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for another inspection by the Director and Project Manager to determine Substantial Completion. Should any inspection fail to comply with Contractor's claim of Substantial Completion, Downtown District may recover the costs of re-inspection from Contractor.
- 9.9.4 Prior to issuance of the Certificate of Substantial Completion, Contractor shall provide a Certificate of Occupancy for new construction, or a Certificate of Compliance for remodeled Work, when applicable.
- 9.9.5 When the Work or designated portion thereof is determined to be substantially complete, the Director and Project Manager will prepare a Certificate of Substantial Completion which establishes the Date of Substantial Completion, responsibilities of the Downtown District, the City and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- 9.9.6 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Director, the Downtown District shall make payment, reflecting adjustment in retainage, if any, as follows:
- 9.9.6.1 With the consent of Surety, Downtown District may increase payment to Contractor to 98 percent of the Contract Price less accrued liquidated damages.
- 9.9.6.2 Upon assurance provided by Contractor that all amounts due under the Agreement have been paid in full and wages paid are in compliance with requirements of Contract Documents, and with consent of Surety, Downtown District may increase payment to Contractor to 99 percent of the Contract Price less accrued liquidated damages.
- 9.10 PARTIAL OCCUPANCY OR USE
- 9.10.1 The Downtown District and/or the City may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by the Contractor and Contractor's insurer and authorized by public authorities having jurisdiction over the Work. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.



- 9.10.2 Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Director and Contractor execute a Certificate of Partial Occupancy which will establish the date of partial occupancy, responsibilities of the Downtown District, the City and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance. Warranties required by the Contract Documents shall commence on the date of partial occupancy unless otherwise provided in the Certificate of Partial Occupancy.
- 9.10.3 When the Contractor considers a portion of the occupied Work subsequently complete, the Contractor shall prepare a list and submit it to the Project Engineer as provided under Subparagraph 9.9.2.
- 9.10.4 Immediately prior to such partial occupancy or use, the Project Engineer and Contractor shall jointly inspect the area to be occupied or the portion of the Work to be used in order to determine and record the condition of the Work.
- 9.10.5 Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with requirements of the Contract Documents.
- 9.10.6 If the Downtown District and Contractor cannot agree on any matter in Paragraph 9.10, the matter shall be subject to resolution pursuant to a Work Change Directive, Paragraph 7.3.
- 9.10.7 Downtown District is not obligated to accept or approve Substantial Completion of only a portion of the Work unless such request by the Contractor follows a delay in the Project of 30 days or more that is not the fault of the Contractor.
- 9.11 FINAL COMPLETION AND FINAL PAYMENT
- 9.11.1 Date of Final Completion is the date certified by the Director that, to his best information, knowledge, and belief, construction is complete in conformance with Contract Documents. This includes satisfactory completion of all items listed to be completed or corrected as a part of the Certificate of Substantial Completion and submittal and acceptance by the Downtown District of all closeout submittals required by Contract Documents.
- 9.11.2 Contractor shall review all Contract Documents and inspect the Work. Prior to Contractor notification to Director that Work is complete and ready for final inspection, Contractor shall submit an affidavit that the Work has been inspected, that Work is complete in accordance with requirements of Contract Documents. Contractor shall organize and assemble any special warranty-guarantees required by the specifications on its letterhead for submittal prior to final payment.
- 9.11.3 Within 15 days after receipt of Contractor's written notice that Work is ready for final inspection and acceptance, and on receipt of final Application for Payment for stipulated price contracts, Director and Project Manager will make such inspection. When Director or Project Manager finds the Work acceptable under the Contract Documents and the Work fully

performed, the Director or Project Manager will issue a final Certificate of Completion stating that to the best of Director's or Project Manager's knowledge, information, and belief, the Work has been completed in accordance with terms and conditions of the Contract Documents, and will process for payment a final Application for Payment.

- 9.11.4 Should Work be found not in compliance with requirements of Contract Documents, Director or Project Manager shall notify Contractor in writing of items of non-compliance. Upon correction of such non-complying items, the Downtown District shall issue a Certificate of Final Completion to Contractor as provided in Subparagraph 9.11.3.
- 9.11.5 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Director:
- 9.11.5.1 an affidavit that payrolls, invoices for materials and equipment, and other indebtedness of the Contractor connected with the Work (less amounts withheld by the Downtown District) have been paid or otherwise satisfied; and, submits waiver or release of all lien or claims for the Project;
  - 9.11.5.2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled, or materially changed, until at least 30 days written notice has been given to the Downtown District;
  - 9.11.5.3 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the correction and warranty period required by the Contract Documents;
  - 9.11.5.4 consent of Surety to final payment; and
  - 9.11.5.5 Maintenance Bond and other required bonds, and copies of Record Documents, maintenance manuals, and tests, inspections, and approvals.
  - 9.11.5.6 All special warranties-guarantees.
- 9.11.6 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, or by issuance of Change Orders affecting final completion, and the Director so confirms, the Downtown District may, upon application by the Contractor and certification by the Director, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.
- 9.11.6.1 If the remaining balance due for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, Contractor shall submit to Director the required bonds and the written consent of Surety to payment of the balance due for that portion of the Work fully completed and

accepted, prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

9.11.7 Not used.

9.11.8 Acceptance of final payment by Contractor shall constitute a waiver of Claims by the Contractor.

#### 9.12 LIQUIDATED DAMAGES AND BONUSES

9.12.1 The Contractor and the Downtown District agree that time is of the essence and that failure to complete the Work within Contract Time will cause damages to the Downtown District and that the actual damages from the harm are difficult to estimate accurately. Therefore, the Contractor and the Downtown District agree that the Contractor shall be liable for and shall pay to the Downtown District the amount stipulated in the *Supplementary Conditions* for each and every calendar day beyond the Contract Time until the Work is accepted by the Director as Substantially Complete as liquidated damages and that the amount of liquidated damages fixed therein is a reasonable forecast of just compensation for the harm to the Downtown District resulting from failure to complete the Work within Contract Time. The amount stipulated shall be paid for each and every calendar day of delay beyond the Contract Time until the Work is Substantially Complete.

9.12.2 The Contractor and the Downtown District agree that time is of the essence of this Contract and that completion of the Work prior to the expiration of the Contract Time will benefit the Downtown District and that actual benefits are difficult to estimate accurately. Therefore, the Contractor, the Surety, and the Downtown District agree that the Contractor and the Surety shall be paid by the Downtown District the amount stipulated in *Supplementary Conditions* for each and every calendar day prior to expiration of the Contract Time that the Work is accepted by the Director as Substantially Complete as a bonus and that the amount of bonus fixed therein is a reasonable forecast of just compensation for the benefit to the Downtown District resulting from completion of the Work.

### ARTICLE 10 - SAFETY PRECAUTIONS

#### 10.1 SAFETY PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit a safety program to the Director or Project Manager prior to mobilizing the Work, and shall be solely responsible for the safety, efficiency, and adequacy of the ways, means, and methods and for any damage which might result from failure or improper construction, maintenance, or operation performed by the Contractor. The Contractor shall submit a monthly safety report to the Director or Project.

## 10.2 HAZARDOUS SUBSTANCE

- 10.2.1 In the event the Contractor encounters on the site material which it is reasonable to believe may be a "hazardous substance" as defined by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation, the Contractor shall immediately stop Work in the area affected and immediately notify the Director and thereafter confirm such notice in writing.
- 10.2.2 If, in fact, the material is a "hazardous substance", the Work in the affected area shall not thereafter be resumed, except by Change Order or Work Change Directive, and then only if such Work would not violate applicable laws or regulations.
- 10.2.3 If the material is not a "hazardous substance", the Work in the affected area shall be resumed upon the issuance of a Change Order or Work Change Directive.
- 10.2.4 The Contractor shall not be required, pursuant to Article 7, to perform without consent, any Work relating to a "hazardous substance" except for those hazardous substances specified for use under this Contract.

## 10.3 SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY

- 10.3.1 The Contractor shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:
- 10.3.1.1 employees performing the Work or on site, and other persons who may be affected thereby;
- 10.3.1.2 the Work including materials and equipment to be incorporated therein, whether in storage (on or off the site), under care, custody, or control of the Contractor or Subcontractor;
- 10.3.1.3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal or replacement in the course of construction; and
- 10.3.1.4 cultural resources and the environment.
- 10.3.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons, property, or the environment.
- 10.3.2.1 Contractor shall comply with the requirements of the Underground Facility Damage Prevention and Safety Act. TEX.REV.CIV.STAT.ANN.Art.9033 (Vernon 1997).
- 10.3.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for the safety and protection of persons and property; including posting danger signs and other warnings

against hazards; promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

- 10.3.4 The Contractor shall recognize the environmental requirements of the Project. Disturbed areas shall be strictly limited to boundaries established by the Director and Project Manager. Particular attention is drawn to the avoidance of any pollution of on-site or adjacent streams, sewers, wells, or other water sources.
- 10.3.5 The Contractor shall prevent erosion of soil and excess runoff of surface or subsurface water from the site, or wind-blown dust or erosion, during the construction period.
- 10.3.6 The Contractor shall allow no burning on the site, shall perform all Work in such a manner as required to avoid atmospheric pollution by dust or other contaminants, and shall control noise.
- 10.3.7 When use or storage of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 10.3.8 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by Contract Documents) to property referred to in Subparagraphs 10.3.1.2 and 10.3.1.3, caused in whole or in part by the Contractor, Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Subparagraphs 10.3.1.2 and 10.3.1.3, except damage or loss attributable to acts or omissions of the Downtown District, the Architect/Engineer/Designer, or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.24.
- 10.3.9 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor to the Director.

#### 10.4 EMERGENCIES

- 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act at the Contractor's discretion to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 7.

### ARTICLE 11 - INSURANCE AND BONDS

#### 11.1 GENERAL INSURANCE REQUIREMENTS

- 11.1.1.1 With no intent to limit Contractor's liability under the indemnification provisions set forth above, Contractor covenants to provide and maintain in full force and effect during the term of this Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.
  - 11.1.1.2 If any of the following insurance is written as "claims made" coverage and the Downtown District and the City are required to be carried as an additional insured, then Contractor's insurance shall include a two-year extended discovery period after the last date that Contractor provides any work under this Contract.
  - 11.1.1.3 "Aggregate" amounts of coverage, for purposes of this agreement, are agreed to be the amounts of coverage available during a fixed 12-month policy period.
- 11.2 INSURANCE TO BE PROVIDED BY CONTRACTOR
- 11.2.1 *Risks and Limits of Liability.* The Contractor shall provide at a minimum the insurance coverages and limits of liability given in Table 1, Required Coverages.
    - 11.2.1.1 If the Limit of Liability for Excess Coverage is \$2,000,000 or more, the Limit of Liability for Employer's Liability may be reduced to \$500,000.
  - 11.2.2 *Form of Policies.* The insurance may be in one or more policies of insurance, the form of which is subject to reasonable approval by the Director. It is agreed, however, that nothing the Director does or fails to do with regard to the insurance policies shall relieve Contractor from its duties to provide the required coverage hereunder and Director's actions or inactions will never be construed as waiving Downtown District or City rights hereunder.
  - 11.2.3 *Issuers of Policies.* The issuer of any policy shall have a certificate of authority to transact insurance business in the State of Texas or shall have a Best's Rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States. Each insurer must be responsible and reputable and must have financial capability consistent with the risks covered. Each insurer shall be subject to approval by the Director in his or her sole discretion as to conformance with these requirements, pursuant to Subparagraph 11.2.2 above.
  - 11.2.4 *Insured Parties.* Each policy, except those for Workers' Compensation and Professional Liability, must name the Downtown District, the Authority, the TIRZ, Central Houston, Inc., the City and their officers, agents and employees as additional insured parties on the original policy and all renewals or replacements during the term of this Contract. An insured party's status as an additional insured under the Contractor's insurance does not extend to instances of sole negligence of that party unmixed with any fault of the Contractor.
  - 11.2.5 *Deductibles.* Contractor shall assume and bear any claims or losses to the extent of any deductible amounts and waives any

claim it may ever have for the same against the Downtown District, its officers, agents or employees.

- 11.2.6 *Cancellation.* Each policy must expressly state that it may not be cancelled or non-renewed unless thirty days' advance notice of cancellation is given in writing to the Director and the City by the insurance company.
- 11.2.7 *Subrogation.* Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the Downtown District, the Authority, the TIRZ, Central Houston, Inc., the City, and their officers, agents or employees.
- 11.2.8 *Endorsement of Primary Insurance.* Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder.
- 11.2.9 *Liability for Premium.* The Contractor shall be solely responsible for payment of all insurance premium requirements hereunder and the Downtown District shall not be obligated to pay any premiums.

Continued after Table 1

TABLE 1  
REQUIRED COVERAGES

(Coverage)	(Limit of Liability)
.1 Workers' Compensation:	Statutory Limits for Workers' Compensation
.2 Employer's Liability:	Bodily Injury by Accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy Limit) Bodily Injury by Disease \$1,000,000 (each employee)
.3 Commercial General Liability: Including Contractor's Protective Liability, Broad Form Property Damage, Contractual Liability, Bodily Injury, Personal Injury, and Products and Completed Operations (for a period of one year following completion of the Work under this Agreement)	Combined single limit of \$1,000,000 each occurrence, subject to general aggregate \$2,000,000; Products and Completed Operations, \$1,000,000 each occurrence, subject to general aggregate \$2,000,000
.4 Owners and Contractor's Protective Liability:	\$1,000,000 combined single limit each occurrence/\$2,000,000 aggregate
.5 All-risk Insurance	Value of stored equipment or material, listed on Certificates of Payments, but not incorporated in the Work
.6 Automobile Liability Insurance: (For automobiles furnished by the Contractor in the course of its performance under this Contract, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit each occurrence
.7 Excess Coverage:	\$1,000,000 each occurrence/combined aggregate in excess of the limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability

**\* Occurrence:** An event which occurs during the policy period, or a continuous or repeated exposure to conditions that result, during the policy period, in bodily injury, sickness, or disease, or injury to or destruction of property, excluding injuries intentionally caused by the insured. Any number of bodily injuries, deaths, cases of sickness, or disease, injuries to or destruction of property of one or more persons or organizations, including the loss of use thereof, resulting from a common cause or exposure to substantially the same general condition existing at or emanating from each location shall be deemed to result from one occurrence.



11.2.10 *See Supplementary Conditions.*

### 11.3 PROOF OF INSURANCE

11.3.1 Prior to commencing any services and at any time during the term of work under this Contract, Contractor shall furnish Director with Certificates of Insurance, along with an Affidavit from the Contractor confirming that the Certificate accurately reflects the insurance coverage that will be available during the term of the Contract. If requested in writing by the Director, the Contractor shall furnish the Downtown District and the City with certified copies of Contractor's actual insurance policies. Failure of Contractor to provide certified copies, as requested, may be deemed, in the Director's discretion, to constitute a breach of this Contract.

11.3.2 Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Contractor, continuously and without interruption, maintain in force the required insurance coverages set forth above. Failure of the Contractor to comply with this requirement shall constitute a default of Contractor allowing the Downtown District, at its option, to immediately suspend or terminate work under this Contract. Contractor agrees that the Downtown District shall never be argued to have waived or be stopped to assert its right to terminate this Contract hereunder because of any acts or omissions by the Downtown District regarding its review of insurance documents provided by Contractor, its agents, employees or assigns.

### 11.4 PERFORMANCE AND PAYMENT BONDS

11.4.1 For Projects over the value of \$25,000, Contractor shall provide surety bonds on Downtown District standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in Contract Documents pursuant to Chapter 2253 of the Government Code. Such bonds shall be in the amount of 100 percent of the Contract Price as stipulated in Contract Documents on the date of execution of the Contract, in accordance with the conditions stated on the standard Downtown District Performance and Payment Bonds, Documents 00610 and 00611. Bonds may be obtained from the Contractor's usual source and the cost thereof shall be included in the Contract Price.

### 11.5 MAINTENANCE BONDS

11.5.1 *One-Year Maintenance Bond.* Contractor shall provide a bond on Downtown District's standard form Document 00612, providing for the Contractor's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of Contract Documents during the one-year correction period required in Subparagraph 12.2.2.

11.5.2 *One-year Surface Correction Bond.* Contractor shall also provide an additional one-year bond in an amount equal to 4 percent of the Total Contract Amount on Downtown District's standard form, providing for the Contractor's correction, replacement, or restoration of any backfill or subsurface work and surface work,

not in accordance with Contract Documents within one year from the date the One-Year Maintenance Bond has expired.

#### 11.6 SURETY

- 11.6.1 A bond that is given or tendered to the Downtown District pursuant to this Contract shall be executed by a surety company that is authorized and admitted to write surety bonds in the State of Texas.
- 11.6.2 If a bond is given or tendered to the Downtown District pursuant to this Contract in an amount greater than ten percent of the surety company's capital and surplus, surety company shall provide certification that the surety company has reinsured that portion of the risk that exceeds ten percent of the surety company's capital and surplus. Such reinsurance shall be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by a reinsurer may not exceed ten percent of the reinsurer's capital and surplus. The amount of allowed capital and surplus shall be based on information received from the State Board of Insurance.
- 11.6.3 If the amount of the bond is greater than \$100,000, the surety must:
  - 11.6.3.1 also hold a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or,
  - 11.6.3.2 the surety may obtain reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.
- 11.6.4 Determination of whether the surety on the bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury will be based on information published in the Federal Register covering the date on which the bond was executed.
- 11.6.5 Each bond given or tendered to the Downtown District pursuant to this Contract shall be dated and executed and accompanied by a power of attorney stating that the attorney in fact executing such bond has the requisite authority to execute such bond. Such power of attorney and any certificate thereon shall be dated and shall be no more than 30 days old.
- 11.6.6 The surety company shall designate in its bond, power of attorney, or written notice to the Downtown District, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

11.6.7 Contractor shall furnish information to a payment bond beneficiary as required by Chapter 2253 Texas Government Code.

#### 11.7 DELIVERY OF BONDS

11.7.1 The Contractor shall deliver the required bonds to the Downtown District within the time limits stated in the Notice of Intent to Award, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall submit bonds prior to commencement of the Work.

### ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

#### 12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work, including the work of others, is covered by Contractor contrary to the Director's or Project Manager's request or to requirements of the Contract Documents, the Contractor shall uncover such work, if required in writing by the Director or Project Manager, for Downtown District's observation. The uncovered work shall be replaced without change to the Contract Price or Contract Time.

12.1.2 If a portion of the Work has been covered which the Director or Project Manager has not specifically requested to observe prior to it being covered, the Director or Project Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall be charged to the Downtown District by Change Order. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs.

#### 12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct or remove Work rejected by the Director or Project Manager or Work failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for Architect/Engineer/Designer's services and expenses made necessary thereby.

12.2.2 *One Year Correction Period.* If, within one year after the Date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.9.5, or of other applicable special warranty required by Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct the Work promptly after receipt of written notice from the Director or Project Manager to do so. The period of one year shall be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual acceptance of the Work. This obligation under this Subparagraph shall survive acceptance of the Work under the Contract and termination of the Contract.

- 12.2.3 The Contractor immediately shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Director or Project Manager.
- 12.2.4 If the Contractor does not proceed with correction of such non-conforming Work within the time fixed by written notice from the Director or Project Manager, the Downtown District may correct the non-conforming Work in accordance with Paragraph 2.6, or remove non-conforming Work and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within 10 days after written notice, the Downtown District may upon an additional 10 days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof after deducting costs and damages that would have been borne by the Contractor, including compensation for the services of the Architect/Engineer/Designer and expenses made necessary thereby. If such proceeds of the sale do not cover costs which the Contractor should have borne, the Contract Price shall be reduced by the deficiency, or the Contractor shall pay the difference to the Downtown District.
- 12.2.5 The Contractor shall bear the cost of correcting work originally installed by the the Downtown District, the Authority/TIRZ, the City, the Houston Sports Authority, METRO and/or TXDOT or by separate contractors and damaged by the Contractor's correction or removal of Contractor's Work. Article 6 describes coordination between the Contractor, the Downtown District, and separate contractors.

### 12.3 ACCEPTANCE OF NONCONFORMING WORK

- 12.3.1 If the Director prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Director may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 - MISCELLANEOUS PROVISIONS

### 13.1 GOVERNING LAW

- 13.1.1 The Contract shall be governed by the laws of the State of Texas and the charter and ordinances of the City of Houston. Venue for any cause of action shall be in Harris County, Texas.

### 13.2 SUCCESSORS AND ASSIGNS

- 13.2.1 The Downtown District and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract in whole or in part without the prior written consent of the other. If either party attempts to make such an assignment without such consent, that

party shall nevertheless remain legally responsible for all obligations under the Contract.

### 13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the Director or Contractor at the address given in the Agreement, or if sent by registered or certified mail to the last business address known to the party giving notice.

### 13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.4.2 No act or failure to act by the Downtown District, Architect/Engineer/Designer, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such act or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### 13.5 TESTS AND INSPECTIONS

13.5.1 The Contractor shall give Downtown District and Architect/Engineer/Designer timely notice of the time and place where tests and inspections are to be made and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.5.2 The Downtown District will employ and pay for the services of an independent testing laboratory to perform inspections or tests required by the Contract Documents except:

- 13.5.2.1 Inspections or tests covered by Subparagraph 13.5.3;
- 13.5.2.2 Costs incurred in connection with tests or inspections conducted pursuant to Subparagraph 12.2.1;
- 13.5.2.3 Inspections or tests otherwise specifically provided in the Contract Documents where Contractor is required to pay costs of tests; or
- 13.5.2.4 Costs for overtime for Inspector and materials testing laboratory as described in Subparagraph 8.2.6.

13.5.3 Contractor shall be responsible for and shall pay all costs in connection with any inspection or testing required in connection with Downtown District's acceptance of a supplier of materials or equipment proposed to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

13.5.4 Neither observations by Downtown District or Architect/Engineer/Designer nor inspections, tests, or approvals by others shall relieve the Contractor from Contractor's obligations to perform the Work in accordance with Contract Documents.

13.6 INTEREST

13.6.1 No interest will accrue on late payments by the Downtown District except as provided under Chapter 2251 of the Government Code.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE DOWNTOWN DISTRICT FOR CAUSE

14.1.1 The Downtown District may terminate the Contract if the Contractor:

14.1.1.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

14.1.1.2 persistently disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;

14.1.1.3 otherwise is guilty of material breach of a provision of the Contract Documents; or

14.1.1.4 otherwise is subject to termination for cause under any other contract with the Downtown District.

14.1.2 When any of the above reasons exists, the Executive Director or Director may, without prejudice to any other rights or remedies of the Downtown District, and after giving the Contractor and Surety seven days written notice, terminate employment of the Contractor and may, subject to any prior rights of the Surety:

14.1.2.1 request that Surety complete the Work; or

14.1.2.2 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; and

14.1.2.3 finish the Work by whatever reasonable method the Director may deem expedient.

14.1.3 After receipt of a notice of termination, and except as otherwise directed by the Director, the Contractor shall:

14.1.3.1 Stop Work under the Agreement on the date and to the extent specified in the notice of termination;

14.1.3.2 Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work (if any) under the Agreement which is not terminated;

- 14.1.3.3 Terminate all orders and subcontracts to the extent that they relate to the performance of Work under the Agreement which is terminated;
  - 14.1.3.4 Assign to the Downtown District, in the manner, at the times, and to the extent directed by the Director, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. The Downtown District shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
  - 14.1.3.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval of the Director;
  - 14.1.3.6 Take such action as may be necessary, or as the Director may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Contractor, and in which the Downtown District has or may acquire an interest.
  - 14.1.3.7 Secure the Project in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.
- 14.1.4 When the Downtown District terminates the Contract for one of the reasons stated in Subparagraph 14.1.1, the Contractor shall not be entitled to receive further payment until the Work is complete, subject to the provisions of Subparagraph 14.1.5.
- 14.1.5 If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under this Contract, such balance shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Downtown District. The amount to be paid to the Contractor or Downtown District, as the case may be, shall be certified by the Director, upon application, and this obligation for payment shall survive termination of the Contract.

#### 14.2 TERMINATION BY THE DOWNTOWN DISTRICT FOR CONVENIENCE

- 14.2.1 The Director may, without cause, and without prejudice to any other rights or remedies of the Downtown District, terminate employment of the Contractor in whole or part by giving the Contractor and Surety seven days written notice.
- 14.2.2 After receipt of a notice of termination, and except as otherwise directed by the Director, the Contractor shall conform to the requirements of Subparagraph 14.1.3.
- 14.2.3 After receipt of a notice of termination, the Contractor shall submit to the Downtown District its termination claim, in the form required by the Director. Such claim shall be submitted to Downtown District promptly, but in no event later than six months from the effective date of termination, unless one or

more extensions in writing are granted by the Director. If the Contractor fails to submit its termination claim within the time allowed, the Director shall determine, on the basis of available information, the amount, if any, due to the Contractor because of the termination. The Downtown District shall then pay to the Contractor the amount so determined.

- 14.2.4 If the Downtown District and Contractor fail to agree on the amount to be paid Contractor because of the termination of the Agreement or part thereof, the Director will determine, on the basis of information available to the Director, the amount due (if any) to the Contractor by reason of the termination as follows:
- 14.2.4.1 The Contract Price for all Work performed in accordance with Contract Documents up to the date of termination determined in the manner prescribed for monthly payments in Article 9, except no retainage shall be withheld by the Downtown District either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage, or in transit.
- 14.2.4.2 Reasonable termination expenses, including the costs for settling and paying claims arising out of termination of work under subcontracts and purchase orders, the reasonable cost of preservation and protection of Downtown District and/or City property after termination (if required) and the cost of Claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of the Contractor or litigation costs including attorney fees.
- No amount will be allowed for anticipated profit or central office overhead on the uncompleted Work, or any cost or lost profit for any other business of the Contractor alleged to be damaged by the termination.
- 14.2.5 Contractor shall promptly remove from the site construction equipment, tools, and temporary facilities, except such temporary facilities, which Director may wish to purchase and retain.
- 14.2.6 Contractor shall cooperate with Director during the transition period.
- 14.2.7 The Downtown District will take possession of the Work and materials delivered to the site, in storage or in transit as of the date, or dates, specified in the termination notice and will be responsible for maintenance, utilities, security, and insurance, as stated in the notice of termination.
- 14.3 SUSPENSION BY THE DOWNTOWN DISTRICT FOR CONVENIENCE
- 14.3.1 The Director may, without cause, after giving the Contractor and the Contractor's Surety notice, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Director may determine.



- 14.3.2 An adjustment shall be made in the Contract Time equivalent to the length of time of the suspension.
- 14.3.3 An adjustment shall be made for the increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption in accordance with Paragraph 7.4. No adjustment shall be made to the extent:
- 14.3.3.1 that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- 14.3.3.2 that an adjustment is made or denied under another provision of the Contract.

#### 14.4 TERMINATION BY THE CONTRACTOR

- 14.4.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor, Subcontractor, or their agents or employees, or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:
- 14.4.1.1 issuance of an order of a court or other public authority having jurisdiction;
- 14.4.1.2 an act of government, such as a declaration of national emergency, making material unavailable;
- 14.4.1.3 if repeated suspensions, delays, or interruptions by the Downtown District as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 90 days in any 365 day period, whichever is less.
- 14.4.2 If the Agreement is terminated pursuant to this provision, Contractor shall file a Claim for termination expenses in accordance with the requirements of Paragraph 14.2.

END OF DOCUMENT

Document 00800

SUPPLEMENTARY CONDITIONS

The following supplements modify the General Conditions, Document 00700, 1999 Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

**ARTICLE 1 - GENERAL PROVISIONS**

1.2 EXECUTION, CORRELATION AND INTENT

1.2.2.2 *Delete Subparagraph 1.2.2.2.*

**ARTICLE 3 - THE CONTRACTOR**

3.5 LABOR, MATERIALS, AND EQUIPMENT

3.5.3 *Insert the following subparagraphs 3.5.3.1 and 3.5.3.2.*

3.5.3.1 Contractor shall comply with City of Houston, Tex. Code of Ordinances, Ch. 15, art. V, § 15.81 et seq., City of Houston, Tex. Ordinance 95-336 (March 29, 1995) and Exec. Order No. 1-2 (June 14, 1995) relating to City-wide goals for contracting with Minority and Women Business Enterprises. If there are any conflicts between the referenced provisions of the Code of Ordinances and the Contract Documents, the Code of Ordinances shall control. Contractor shall comply with the requirements of Article 601i §4(2) Texas Civil Statutes (Vernon's 1997) which provides: "[M/WBE] subcontractors will perform all of their work of their trade with their own employees, or, if the [M/WBE] subcontractor uses an employee leasing firm for the purpose of providing salary and benefit administration, with employees who in all other respects are supervised and perform on the job as if they were employees of the [M/WBE] subcontractor." If there are any conflicts between the Contract Documents as modified by the Code of Ordinances, and this provision, this provision shall control. Provided, however, the definition of certain terms in the referenced provisions of the Code of Ordinances and Article 601i §4(2) Texas Civil Statutes (Vernon's 1997) shall pertain to those respective provisions only and are not applicable to the Contract Documents unless specifically stated otherwise.

3.5.3.2 The Contractor shall make good faith efforts to comply with City of Houston Code of Ordinances regarding Minority, Women and Disadvantaged Business Enterprises (M/W/DBE) participation goal, which is **25 percent (25%)** of the value of the Contract.

3.5.4 DRUG DETECTION AND DETERRENCE

3.5.4 *Add the following paragraphs 3.5.4.2 through 3.5.4.6.*

3.5.4.2 Executive Order No. 1-31, Revised applies to all Houston Downtown Management District (the "Downtown District") contracts for labor and/or services except the following:

.1 Contracts authorized by Emergency Purchase Orders;

- .2 Contracts in which imposition of the requirements of this Executive Order would exclude all potential bidders or proposers or would eliminate meaningful competition for the contract;
  - .3 Contracts with companies that have fewer than fifteen employees during any 20-week period during a calendar year and no safety impact positions;
  - .4 Contracts with non-profit organizations providing services at no cost or reduced cost to the public; and
  - .5 Contracts with federal, state, or local governmental entities.
- 3.5.4.3 Prior to execution of this contract, Contractor will have filed with the Downtown District (I) the Drug Policy Compliance Agreement substantially in the format set forth in Document 00635 (Attachment A to the Executive Order) (ii) a copy of its drug-free workplace policy, identified as Document 00636, (iii) a written designation of all safety impact positions, if applicable, identified as Document 00637, or (iv) if applicable (e.g., no safety impact positions), the Certification of No Safety Impact Positions, substantially in the format set forth in Document 00638 (Attachment C to the Executive Order). Contractor shall also file every 6 months during the performance of this Contract and upon the completion of this Contract, a Drug Policy Compliance Declaration in a form substantially similar to Document 00655 (Attachment B to the Executive Order). The Drug Policy Compliance Declaration shall be submitted within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Contract. The first 6-month period shall begin to run on the date Downtown District issues its Notice to Proceed hereunder or if no Notice to Proceed is issued, on the first day Contractor begins Work.
- 3.5.4.4 Contractor shall have the continuing obligation to file written designations of safety impact positions and Drug Policy Compliance Declarations at any time during the performance of this Contract that safety impact positions are added if initially no safety impact positions were designated. Contractor also shall have the continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to Contractor's employee work force.
- 3.5.4.5 Contractor shall require that its Subcontractors hereunder comply with the Mayor's Policy and the Executive Order, and Contractor shall be responsible for securing and maintaining the required documents from Subcontractors for City inspection throughout the term of this Contract. For Subcontractors, Drug policy compliance shall begin on the first day the Subcontractor begins Work.
- 3.5.4.6 The failure of Contractor to comply with the above requirements shall be a breach of this Contract entitling Downtown District to terminate in accordance with Article 14, Termination or Suspension of Contract.
- 3.12 PERMITS, FEES, AND NOTICES

*Insert the following paragraph 3.12.5:*

3.12.5 The Contractor shall obtain all permits required for the completion of the Contract.

3.23 ROYALTIES, PATENTS, AND TRADE SECRETS

3.23.5.5 *Replace sub-paragraph 3.23.5.5 with the following language:*

CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD HOUSTON DOWNTOWN MANAGEMENT DISTRICT, AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND THE CITY OF HOUSTON HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION BROUGHT BY THIRD PARTIEES (AND ALL COSTS, EXPENSES, DAMAGES, LIABILITIES OF JUDGEMENTS SUSTAINED OR INCURRED BY OWNER IN CONNECTION THEREWITH, INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEYS FEES) ARISING OUT OF OR RELATING TO: (I) CONTRACTOR'S BREACH OF ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II) ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT HOUSTON DOWNTOWN MANAGEMENT DISTRICT, AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND/OR THE CITY'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO HOUSTON DOWNTOWN MANAGEMENT DISTRICT, AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND/OR THE CITY INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES USED BY CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS, EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES INCURRED BY HOUSTON DOWNTOWN MANAGEMENT DISTRICT, AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND/OR THE CITY, IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL APPLY EVEN IF THE THIRD PARTY ALLEGES OR ESTABLISHES THAT HOUSTON DOWNTOWN MANAGEMENT DISTRICT, AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND/OR THE CITY WAS PARTIALLY NEGLIGENT OR OTHERWISE AT FAULT (E.G. THAT HOUSTON DOWNTOWN MANAGEMENT DISTRICT, AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND/OR THE CITY WAS NEGLIGENT IN RETAINING CONTRACTOR'S SERVICES AND ACCEPTING MATERIALS, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS FROM CONTRACTOR, OR THAT HOUSTON DOWNTOWN MANAGEMENT DISTRICT, AUTHORITY/TIRZ, CENTRAL HOUSTON, INC. AND/OR THE CITY WAS NEGLIGENT IN FAILING TO ASCERTAIN WHETHER THE MATERIALS, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS INFRINGED THE RIGHTS OF THIRD PARTIES).

3.24 INDEMNIFICATION

3.24.3 *Replace sub-paragraph 3.24.3 with the following language:*

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HOUSTON DOWNTOWN MANAGEMENT DISTRICT, AUTHORITY/TIRZ, CENTRAL HOUSTON, INC., AND THE CITY, THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "INDEMNIFIED PARTIES") HARMLESS

FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (a) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS (a)-(c), "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (b) THE INDEMNIFIED PARTIES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (c) THE INDEMNIFIED PARTIES' AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE INDEMNIFIED PARTIES HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY HOUSTON DOWNTOWN MANAGEMENT DISTRICT FOR HOUSTON DOWNTOWN MANAGEMENT DISTRICT'S SOLE NEGLIGENCE, AUTHORITY/TIRZ FOR THE AUTHORITY/TIRZ'S SOLE NEGLIGENCE, CENTRAL HOUSTON, INC., FOR CENTRAL HOUSTON, INC.'S SOLE NEGLIGENCE, OR THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

**ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS**

5.4 *Insert the following paragraph 5.4.*

5.4 M/W/DBE CONTRACT TERMS

5.4.1 Subcontracts with M/W/DBE Subcontractors and Suppliers shall be clearly labeled "THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT."

5.4.2 Subcontracts with M/W/DBE Subcontractors and Suppliers shall contain the following provisions:

5.4.2.1 M/W/DBE Subcontractor shall not delegate or subcontract more than 50 percent of the Work under this subcontract to any other subcontractor or supplier without the express written consent of the Director.

5.4.2.2 M/W/DBE Subcontractor shall permit representatives of the District and the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

5.4.2.3 Within seven (7) days of execution of this subcontract, Contractor and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street address, mailing address, and telephone number of such agent.

5.4.2.4 As concluded by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties to this Contract involving the construction or application of any of the terms, covenants, or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by the City of Houston Office of Business Opportunity ("OBO") served on both parties, be submitted to binding arbitration. Such arbitration shall comply with and be governed by the provisions of the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code, Ch. 171 -- "the Act"). If Contractor is a person or persons (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties. Arbitration shall be conducted according to the following procedures:

- .1 Upon the decision of the OBO or upon written notice to the OBO from either party that a dispute has arisen, the OBO shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
- .2 If the dispute is not resolved within the time specified, any party or the OBO may submit the matter to arbitration as set out above.
- .3 The parties shall select an arbitrator from a revolving list of certified arbitrators provided by the OBO. If the parties are unable to agree on an arbitrator, each party may strike one name from the list and the first name immediately following the last strike shall be the one designated to hear the dispute. Each party shall deposit with the OBO one half of the fee estimated by the arbitrator for required proceedings.
- .4 The arbitrator shall have all powers set out under the Act, and shall hear testimony, consider evidence, and render a written decision within 3 days of submission of the dispute. As part of the decision, the arbitrator shall determine which party or parties shall pay all or part of the arbitrator's fee.
- .5 The decision of the arbitrator shall be final as provided in the Act, and upon payment of the arbitrator's fees, the OBO shall return that part of the deposit of any party in excess of the amount the party was ordered to pay.

**ARTICLE 7 - CHANGES IN THE WORK**

7.4.2.2.6 *Insert the following subparagraphs 7.4.2.2.6a and 7.4.2.2.6b.*

- a. The maximum allowances for overhead and profit on increases to Contract Price due to changes in Work, shall be:

	Overhead:	Profit:
To Contractor for change in Work performed by Subcontractors:	10 percent	0 percent
To first tier Subcontractors for change in Work performed by his Subcontractors:	10 percent	0 percent
To Contractor and Subcontractors for change In Work performed by their respective firms:	10 percent	5 percent

- b. For changes in Work performed by Contractor and Subcontractors, the allowance for overhead and profit shall be applied to an amount equal to cost of all additions to Work less cost of all deletions to Work. The allowance for overhead to Contractor and first tier Subcontractors on changes in Work performed by Subcontractors shall be applied to an amount equal to the sum of all increases to Work by applicable Subcontractors.

**ARTICLE 8 - TIME**

8.1.1 CONTRACT TIME: *Add the following to paragraph 8.1.1:*

No claim for additional Contract Time shall be made by Contractor except when the cumulative number of actual rain days (as defined by days where less than four hours of work is possible due to rain) since Notice to Proceed exceeds the cumulative total of average rain days listed in the table below for the same time period. In such case, the Claim can be made for the difference between the cumulative actual rain days and cumulative average rain days. No Claim shall be made if Contractor did not have crews scheduled to be working at the site on a rain day. Where the time period in question includes portions of months, then the number of average days for the months in question will be pro rata shares of the respective numbers listed in the table:

<u>Month</u>	<u>Average Rain Days</u>
January	5
February	4
March	3
April	3
May	4
June	4
July	4
August	4
September	5
October	6
November	6
December	5

**ARTICLE 9 - PAYMENTS AND COMPLETION**

9.12 LIQUIDATED DAMAGES AND BONUSES: *Insert the following into Subparagraph 9.12.1 and 9.12.2:*

9.12.1 The amount of the liquidated damages associated with Completion of the Work as described in paragraph 9.12.1 is \$500 per calendar day.

9.12.2 There will be no bonuses for early Completion of the Work.

**ARTICLE 11 - INSURANCE AND BONDS**

11.2.10 *Insert the following Paragraph 11.2.10.*

- 11.2.10 Additional Requirements for Workers' Compensation Insurance Coverage. Contractor shall, in addition to meeting the obligations set forth in Table I, Required Coverages, maintain throughout the Term of the Contract workers' compensation coverage as required by statute and Contractor shall specifically comply with all requirements set forth in this subparagraph 11.2.10. The definitions set out below shall apply only for the purposes of this subparagraph 11.2.10.
- 11.2.10.1 Definitions:
- .1 **Certificate of coverage (Certificate):** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission (included in original definition under 28 TAC § 110.110 but excluded from this contract), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the Contractor's, Subcontractor's or Supplier's employees providing services on a Project, for the duration of the Project.
  - .2 **Duration of the Project.** 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 Downtown District.
  - .3 **Persons providing services on the Project (Subcontractor in Texas Labor Code § 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.
- 11.2.10.2 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 Project.
- 11.2.10.3 The Contractor must provide a certificate of coverage to the Downtown District prior to being awarded the Contract.
- 11.2.10.4 If the coverage period shown on the Contractor's original certificate of coverage ends during the duration of the Project, the Contractor must file a new certificate of coverage with the Downtown District and the City showing that coverage has been extended.
- 11.2.10.5 The Contractor shall obtain from each person providing services on a Project, and provide to the Downtown District:



- .1 a certificate of coverage, prior to that person beginning work on the Project, so the Downtown District will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
  - .2 no later than seven (7) 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.
- 11.2.10.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- 11.2.10.7 The Contractor shall notify the Downtown District and the City in writing by certified mail or personal delivery, within ten (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.
- 11.2.10.8 The Contractor shall post on each Project site a notice, in the text, form 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.
- 11.2.10.9 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 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;
  - .4 obtain from each other person with whom it contracts, and provide to the Contractor: (1) a certificate of coverage, prior to the other person beginning work on the Project; and (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period whom 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 Downtown District and the City in writing by certified mail or personal delivery, within ten (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
  - .7 contractually require each person with whom it contracts, to perform as required by subparagraphs 11.2.10.1-.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- 11.2.10.10 By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Downtown District 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. Contractor shall not be allowed to self-insure workers' compensation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- 11.2.10.11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Downtown District to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Downtown District.
- 11.4.1 *Strike the last sentence of sub-paragraph 11.4.1 and add the following:*
- 11.4.1 Such bonds will be assignable by the Downtown District to the City in conjunction with the assignment of this Contract by the Downtown District to the City. Bonds may be obtained from the Contractor's usual source and the cost thereof shall be included in the Contract Price.

**ARTICLE 13 - MISCELLANEOUS PROVISIONS**

- 13.2.1 *Replace sub-paragraph 13.2.1 with the following language:*
- 13.2.1 The Downtown District and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract in whole or in part without the prior written consent of the other, and if either party attempts to make such an assignment without such written consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Notwithstanding the foregoing requirement of consent to assignment, the parties acknowledge and agree that the City of Houston is a third-party beneficiary of the Contract and the Downtown District may assign the Contract, in its sole discretion, to the City, which assignment shall be binding upon Contract regardless of consent.

**SPECIFICATIONS - DIVISIONS 1 THROUGH 16**

*Throughout the specifications in Divisions 1 through 16, reference is made to certain people and entities. In these cases, the following terms shall have the following meanings, except that the provisions of the General Conditions and Supplementary Conditions with respect to authority, responsibility, and communication shall overrule provisions of Divisions 1 - 16:*

**Architect:** Means Architect/Engineer/Designer.

**City:** Means Downtown District where the term refers to the City acting as Owner.

**Project Manager:** Means Director of Construction/Construction Manager.

**Engineer:** Means Architect/Engineer/Project Engineer/Designer.

**Landscape Architect:** Means Architect/Engineer/Designer.

**Graphic Designer:** Means Graphic Designer/Designer.

**Owner:** Means Downtown District/ Executive Director/ Owner's Representative(s)/ Project Manager.

END OF DOCUMENT

Document 00812

WAGE SCALE FOR ENGINEERING CONSTRUCTION

- 1.0 In accordance with the Prevailing Wage Law on Public Works (Chapter 2258 of the Texas Government Code), the public body awarding the Contract does hereby specify the following to be the general prevailing rates in the locality in which the Work is being performed.
- 2.0 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 3.0 The wage scale for engineering construction is to be applied to all site work greater than 5 feet from an exterior wall of new building under construction or from an exterior wall of an existing building, or within the public right-of-way.
- 4.0 If Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform work under the Contract, it must submit with its bid a request to the City of Houston's Office of Business Opportunity ("OBO") to use an additional labor classification not listed in Exhibit "A" and specify the proposed new classification. OBO shall determine whether a proposed classification is already covered in Exhibit "A," and, if it is, specify which classification is appropriate. OBO's decision is conclusive. If OBO decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered by Exhibit "A." Such determination must be decided in accordance with procedures established by OBO, and in compliance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91, and 2006-168, and 2009-247 subject to City Council approval.

**EXHIBIT "A"**

**LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES FOR  
 ENGINEERING CONSTRUCTION 2020**

CLASSIFICATION	RATE	CLASSIFICATION	RATE
Asphalt Distributor Operator	\$14.06	Milling Machine Operator - Fine Grade	\$13.53
Asphalt Paving Machine Operator	\$14.32	Mixer Operator	\$10.33
Asphalt Raker	\$12.36	Motor Grader Operator- Rough	\$14.23
Asphalt. Shoveler	\$11.68	Motor Grader Operator	\$15.69
Broom or Sweeper Operator	\$12.68	Oiler	\$12.12
Bulldozer Operator	\$11.81	Painter-Structures	\$18.62
Carpenter- Rough	\$12.49	Pavement Marking Machine Operator	\$11.18
Concrete Finisher- Paving	\$13.07	Pile Driverman.	\$14.95
Concrete Finisher- Structures	\$12.98	Pipe Layer	\$12.12
Concrete Paving Curbing Machine Operator	\$11.71	Reinforcing Steel Setter – Paving	\$15.15
Concrete Paving Finishing Machine Operator	\$13.07	Reinforcing Steel Setter - Structure	\$14.39
Concrete Paving Joint Sealer Operator	\$11.00	Roller Operator, Pneumatic - Self-propelled	\$11.57
Concrete Paving. Saw Operator	\$13.99	Roller Operator, Steel Wheel, Flat Wheel/Tamping	\$11.57
Concrete Paving Spreader Operator.	\$10.44	Roller Operator, Steel Wheel, Plant Mix Pavement	\$11.92
Concrete Rubber . . .	\$9.00	Scraper Operator	\$13.47
Crane Clamshell Backhoe Derrick, Dragline, Shovel Operator	\$12.71	Servicer	\$13.97
Crusher and Screening Plant Operator	\$11.29	Sign Installer – PGM	\$8.54
<b>Electrician * 3 Journeyman 2 Apprentice Allowed</b>	\$27.11	Slip Form Machine Operator	\$11.07
Flagger	\$10.33	Spreader Box Operator	\$13.58
Form Builder/Setter- Structures	\$12.23	Structural Steel Worker	\$14.39
Form Liner- Paving and Curb	\$12.34	Tractor Operator - Crawler Type	\$13.68
Form Setter- Paving and Curb	\$12.34	Tractor Operator- Pneumatic	\$10.07
Foundation Drill Operator - Crawler Mounted	\$17.43	Transit Mixer Truck Driver	\$11.00
Foundation Drill Operator - Truck Mounted	\$15.89	Truck Driver, Lowboy-float	\$16.03
Front Loader Operator	\$13.17	Truck Driver, Single-Axle - Heavy	\$11.46
Laborer Common	\$11.02	Truck Driver, Single-Axle - Light	\$11.48
Laborer- Utility	\$11.73	Truck Driver, Tandem Axle Semi-Trailer	\$12.27
Manhole Builder	\$9.00	Work Zone Barricade Servicer	\$11.67
Mechanic	\$16.96	Welders - Receive rate prescribed for craft performing operation to which welding is incidental	
* Apprentices- must be in an approved USDOL Program and cannot exceed ratios			

END OF DOCUMENT

Section 01010

SUMMARY OF WORK

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Summary of Work, Project Manual and Construction Documents Arrangement, Work by Others, Owner Occupancy, and Contractor Use of Site and Premises.

1.02 SUMMARY OF WORK

- A. The scope of work includes all labor, materials, equipment, and necessary services required for the Tree Replacements in Downtown Houston as defined by the Project Manual and the Construction Documents, and any modifications thereto.
- B. The level of all planter beds will need to be raised to be flush with adjacent sidewalk or planter curbs; some are more severe than others and will require more work. Contractor to determine quantity of required backfill and preferred method of raising planter beds, such as salvaging existing landscaping or replacing with new. Planter beds shall be top dressed with a 2" layer of mulch.
- C. There is existing irrigation in the planter beds and shall be adjusted accordingly with the leveling of the beds. It is the Contractors' responsibility to determine if it is more cost effective to use and repair the existing irrigation system or to remove and replace it within the planter bed. Contractor can only cover the irrigation system after it has been tested, inspected and approved by the Project Manager.
- D. Provide and install irrigation dripper line systems and connect to existing lateral lines to achieve 100% coverage of planter bed. Contractor to estimate quantities and reflect costs in bid.
- E. Furnish and install Platipus Anchor System (RF2P) for each tree planted. Contractor must get approval from Project Manager to use an alternative guying or staking system.
- F. Adjust existing irrigation valves, valve boxes, lights, and electrical boxes to be flush with adjacent sidewalk elevation or planter curb. This work is incidental, and no payment will be made for it.

G. Furnish and install below quantity of new trees at the following locations:

Total Live Oaks	23
Total Trinity Mexican Sycamores	52
Total Shumard Red Oak	12
Total Allee Elm	4
Total Drake Elm	57
Total Overcup Oak	26
<b>Total Tree Quantity</b>	<b>174</b>

	<b>Quantity</b>
<b>1100 Bagby – Dallas to Lamar</b>	
East Side – N/A	0
West Side – 100 gal live oak	1
<b>1100 Smith – Dallas to Lamar</b>	
East Side – N/A	0
West Side – 100 gal live oak	1
<b>800 Milam – Walker to Rusk</b>	
East Side – N/A	0
West Side – 100 gal live oak	1
<b>900 Milam – McKinney to Walker</b>	
East Side – N/A	0
West Side – 100 gal live oak	1
<b>1200 Milam – Polk to Dallas</b>	
East Side – N/A	0
West Side – 100 gal live oak	1
<b>100 Travis – Franklin to Commerce</b>	
East Side – 100 gal red oak	1
West Side – N/A	0
<b>100 Main – Franklin to Commerce</b>	
East Side – N/A	0
West Side – 100 gal drake elm	2
<b>700 Main – Rusk to Capitol</b>	
East Side – N/A	0
West Side – 100 gal allee elm	2

**1100 Main – Dallas to Lamar**

East Side – N/A	0
West Side – 100 gal drake elm	1

**1200 Main – Polk to Dallas**

East Side – N/A	0
West Side – 100 gal drake elm	2

**1300 Main – Clay to Polk**

East Side – 100 gal drake elm	2
West Side – 100 gal drake elm	2

**1400 Main – Bell to Clay**

East Side – 100 gal drake elm	6
West Side – 100 gal drake elm	4

**1500 Main – Leeland to Bell**

East Side – 100 gal drake elm	5
West Side – 100 gal drake elm	1

**1600 Main – Pease to Leeland**

East Side – 100 gal drake elm	3
West Side – 100 gal drake elm	4

**1700 Main – Jefferson to Pease**

East Side – 100 gal drake elm	5
West Side – 100 gal drake elm	3

**1800 Main – St. Joseph Pkwy to Jefferson**

East Side – N/A	0
West Side – 100 gal drake elm	5

**100 Fannin – Franklin to Commerce**

East Side – N/A	0
West Side – 100 gal live oak	1

**900 Fannin – McKinney to Walker**

East Side – N/A	0
West Side – 100 gal live oak	1

**700 San Jacinto – Rusk to Capitol**

East Side – 100 gal live oak	4
West Side – N/A	0



**1100 San Jacinto – Dallas to Lamar**

East Side – 100 gal live oak	1
West Side – N/A	0

**300 Caroline – Preston to Congress**

East Side – N/A	0
West Side – 100 gal red oak	1

**1100 Caroline – Dallas to Lamar**

East Side – N/A	0
West Side – 100 gal live oak	1

**400 Austin – Prairie to Preston**

East Side – 100 gal red oak	2
West Side – N/A	0

**200 La Branch – Congress to Franklin**

East Side – 100 gal overcup oak	1
West Side – N/A	0

**300 La Branch – Preston to Congress**

East Side – N/A	0
West Side – 100 gal overcup oak	1

**100 Crawford – Franklin to Commerce**

East Side – N/A	0
West Side – 100 gal overcup oak	1

**900 Crawford – Walker to McKinney**

East Side – 100 gal live oak	1
West Side – N/A	0

**100 Jackson – Franklin to Commerce**

East Side – 100 gal overcup oak	2
West Side – N/A	0

**200 Jackson – Congress to Franklin**

East Side – 100 gal overcup oak	1
West Side – 100 gal overcup oak	2

**100 Chenevert – Franklin to Commerce**

East Side – 100 gal overcup oak	1
West Side – N/A	0

**200 Chenevert – Congress to Franklin**

East Side – 100 gal overcup oak 2  
West Side – N/A 0

**100 Hamilton – Franklin to Commerce**

East Side – N/A 0  
West Side – 100 gal overcup oak 4

**200 Hamilton – Congress to Franklin**

East Side – 100 gal overcup oak 2  
West Side – N/A 0

**900 Commerce – Travis to Main**

North Side – N/A 0  
South Side – 100 gal red oak 1

**1000 Commerce – Main to Fannin**

North Side – 100 gal red oak 1  
South Side – N/A 0

**1100 Commerce – Fannin to San Jacinto**

North Side - N/A 0  
South Side – 100 gal red oak 1

**1700 Commerce – Jackson to Chenevert**

North Side – N/A 0  
South Side – 100 gal overcup oak 2

**800 Franklin – Milam to Travis**

North Side – 100 gal red oak 1  
South Side – 100 gal red oak 1

**900 Franklin – Travis to Main**

North Side – 100 gal red oak 1  
South Side – N/A 0

**1100 Franklin – Fannin to San Jacinto**

North Side – 100 gal red oak 1  
South Side – N/A 0

**1300 Franklin – Caroline to Austin**

North Side – N/A 0  
South Side – 100 gal red oak 1

**1500 Franklin – La Branch to Crawford**

North Side – 100 gal overcup oak	2
South Side – 100 gal overcup oak	2

**1600 Franklin – Crawford to Jackson**

North Side – N/A	0
South Side – 100 gal overcup oak	2

**1700 Franklin – Jackson to Chenevert**

North Side – N/A	0
South Side – 100 gal overcup oak	1

**800 Preston – Milam to Travis**

North Side – N/A	0
South Side – 100 gal Mexican sycamore	1

**1000 Preston – Main to Fannin**

North Side – 100 gal Mexican sycamore	1
South Side – N/A	0

**1500 Preston - La Branch to Crawford**

North Side – N/A	0
South Side – 100 gal Mexican sycamore	1

**900 Prairie – Travis to Main**

North Side – N/A	0
South Side – 100 gal allee elm	1

**1000 Prairie – Main to Fannin**

North Side – 100 gal allee elm	1
South Side – N/A	0

**700 Walker – Louisiana to Milam**

North Side – N/A	0
South Side – 100 gal live oak	1

**400 Lamar - Bagby to Brazos**

North Side – 100 gal live oak	1
South Side – 100 gal live oak	1

**500 Lamar – Brazos to Smith**

North Side – 100 gal live oak	1
South Side – N/A	0

**500 Dallas – Brazos to Smith**

North Side – 100 gal live oak	3
South Side – N/A	0

**800 Dallas – Milam to Travis**

North Side – 100 gal drake elm	1
South Side – 100 gal drake elm	2

**900 Dallas – Travis to Main**

North Side – 100 gal drake elm	1
South Side – 100 gal drake elm	1

**1200 Dallas – San Jacinto to Caroline**

North Side – 100 gal drake elm	1
South Side – 100 gal drake elm	1

**1400 Dallas – Austin to La Branch**

North Side – N/A	0
South Side – 100 gal drake elm	1

**1500 Dallas – La Branch to Crawford**

North Side – N/A	0
South Side – 100 gal drake elm	4

**Allen Parkway – Montrose to Stanford**

North Curb – 100 gal Mexican sycamore	2
Median – 100 gal Mexican sycamore	3
South Curb – 100 gal Mexican sycamore	1

**Allen Parkway – Stanford to Taft**

North Curb – 100 gal Mexican sycamore	10
Median – 100 gal Mexican sycamore	6
South Curb – N/A	0

**Allen Parkway – Taft to Gillette**

North Curb – 100 gal Mexican sycamore	6
Median – 100 gal Mexican sycamore	2
South Curb – N/A	0

**Allen Parkway – Gillette to Park Vista**

North Curb – 100 gal Mexican sycamore	7
Median – 100 gal Mexican sycamore	4
South Curb – N/A	0

**Allen Parkway – Park Vista to Heiner**

North Curb – 100 gal Mexican sycamore	2
North Curb – 100 gal live oak	2
Median – 100 gal Mexican sycamore	4
South Curb – 100 gal Mexican sycamore	2

1.03 PROJECT MANUAL AND CONSTRUCTION DOCUMENTS ARRANGEMENT

A. The Project Manual

1. Bidding Requirements, Contract Forms, Conditions of the Contract, and Division 1 - General Requirements apply to Work covered by the Contract.
2. Technical Specifications.

B. The Construction Documents.

C. Addenda to the Contract issued during bidding.

1.04 WORK BY OTHERS

A. Separate Contracts

1. Work under separate contracts on adjacent street improvement projects may be ongoing concurrent with Work of this Contract.
2. Cooperate with the Owner and separate contractors to accommodate these requirements.

1.05 CONTRACTS

- A. Work will be executed under one prime general contract between the Owner and the successful bidder.

1.06 RELATED WORK OF OTHER CONTRACTS

- A. Contractor shall cooperate and coordinate his work with work provided under other contracts within the project site. Separate contracts may include, but not necessarily be limited to the following:

1. Projects as listed in paragraph 1.04 of this section.
2. Private Development.
3. Regulatory signage installation by City of Houston.

1.07 CONTRACTOR'S USE OF SITE AND PREMISES

- A. Coordinate use of site and premises with the Owner.
- B. Assume full responsibility for protection and safekeeping of products under this Contract stored on site.

- C. Shall limit disruption to vehicular and pedestrian traffic in public rights-of-way from 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday.
- D. Obtain and pay for use of any additional storage or work areas needed for operations.
- E. Limit use of site and premises to allow for:
  - 1. Work by separate contractors.
  - 2. Work by Owner.
  - 3. Use of site and premises by tenants and occupants of adjacent properties during construction.

1.08 SEQUENCE OF CONSTRUCTION

- A. Sequence of construction to be determined upon contract award due to current and ongoing development; implementation will be coordinated with Project Manager on the basis of level of complexity and street corridor.
- B. Work shall proceed in a manner as to minimize disruption to the public. The Contractor's Construction Schedule shall be developed such that the work proceeds to meet the scheduled completion date.
- C. Any deviations allowed by the Downtown District to these provisions shall not be interpreted as a change to these provisions and shall not establish a right by the Contractor to such deviations in other areas of the Work unless specifically stated in writing.

PART 2 - DOCUMENTS

- a. HOUSTON, TEXAS CODE OF ORDINANCES, CHAPTER 40, ARTICLE XVII: SIDEWALK AND ROADWAY OBSTRUCTIONS AND IMPAIRMENTS
- b. ROADWAY AND SIDEWALK OBSTRUCTION PERMIT APPLICATION - online at [www.houstonpermittingcenter.org](http://www.houstonpermittingcenter.org)

END OF SECTION

Section 01145

USE OF PREMISES

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Section includes general use of the site including properties inside and outside of rights-of-way, work affecting road, ramps, streets and driveways and notification to adjacent occupants.

1.02 RIGHTS-OF-WAY

- A. Confine access and operations and storage areas to rights-of-way provided by Owner as stipulated in Document 00700 - General Conditions; trespassing on abutting lands or other lands in the area is not allowed, unless access to private property is granted by right-of-entry between the property owner and Owner/Downtown District.
- B. Contractor may make arrangements, at Contractor's cost, for temporary use of private properties, in which case Contractor and Contractor's surety shall indemnify and hold harmless the City and Downtown District against claims or demands arising from such use of properties outside of rights-of-way.
- C. Obtain permits from City of Houston Parks and Recreation Department for storage of materials on esplanades and other areas within rights-of-way under that Department's jurisdiction.
- D. Restrict total length which materials may be distributed along the route of the construction at any one time to 1,000 linear feet unless otherwise approved in writing by Project Manager.
- E. The blocks in which the Contractor has ongoing construction activities and at least one block either side of those blocks shall be at a minimum swept once daily to remove all dirt, gravel or other debris that exists in the open lanes. All such material must be removed from the street and gutter either by the mechanical sweeper or by hand regardless of its origin.
- F. The Contractor shall maintain all-weather sidewalks and crosswalks routes to all entry points to public or private property along the work area. Specific conditions that shall be maintained are as follows:
  - 1. The walkway shall be easily identified by the pedestrian.
  - 2. An all-weather surface for sidewalks and crosswalks shall be built of a hard material that cannot be penetrated by small-heeled shoes or the wheel chair wheels and equal to a minimum of 2-inch thick hot-mix asphalt mechanically compacted in place with a maximum slope in any direction of two-percent (2%). If the temporary surface is an area less than fifty square feet in area, then the cross slope shall match the existing walk or street cross slope such that no transition is necessary. Compacted asphalt millings are not acceptable as an all-weather surface.

3. Sidewalks or crosswalks that must be crossed by construction equipment will be cleaned of all dirt, mud or debris carried onto the walkway by the construction activities immediately after such materials are deposited on the walkway.
  4. Maintenance shall include manual or mechanical sweeping at least once per day and more often if necessary to immediately remove gravel, dirt, water or mud when such material is deposited by the construction activity or found by the Contractor or Project Manager. The Contractor shall remove all gravel or dirt including that from non-construction vehicles using the open lanes.
  5. Washing of the walkway shall be done by the Contractor if necessary to remove mud or heavy dirt deposits after rains and shall be done immediately upon deposit or discovery.
  6. Special signage to this contract shall be provided where necessary or as directed by the Project Manager that will warn persons with disabilities of sidewalk conditions that may impede their access during construction.
- G. At least one crosswalk in the east-west direction and the north-south direction shall be open to pedestrian traffic. The crosswalk shall be a minimum width of 4-feet and be built of material as specified in subparagraph 1.02.F.2.
- H. The Contractor shall maintain separation of the public sidewalk, walkway or crosswalks from the construction zone or vehicle traffic lanes. Separation shall be by a 42" high manufactured steel pedestrian barrier. The barrier shall be painted with an automotive quality paint system and shall be kept clean of mud and dirt. The paint color, if required, will be provided by Project Manager. The contractor shall not begin the work until sufficient barriers are on-site to separate the work zone from the sidewalk.
- I. The Contractor shall have personnel on site at all times when work is underway that will immediately make adjustments, relocations or repairs to the walkways or barriers when non-compliance with provision in the Contract exists.
- 1.03 PROPERTIES OUTSIDE OF RIGHTS-OF-WAY
- A. Altering the condition of properties adjacent to and along rights-of-way will not be permitted.
  - B. Means, methods, techniques, sequences, or procedures which will result in damage to properties or improvements in the vicinity outside of rights-of-way will not be permitted.
  - C. Any damage to properties outside of rights-of-ways shall be repaired or replaced to the satisfaction of the Project Manager and at no cost to the Owner.
- 1.04 USE OF SITE
- A. Obtain approvals of governing authorities prior to impeding or closing public roads or streets. Do not close more than two consecutive intersections at one time.



- B. Notify Project Manager and City Traffic Management and Maintenance department at least 48 hours prior to closing a street or a street crossing. Permits for street closures are required in advance and are the responsibility of the Contractor.
- C. Maintain access for emergency vehicles including access to fire hydrants.
- D. Avoid obstructing drainage ditches or inlets; when obstruction is unavoidable due to requirements of the Work, provide grading and temporary drainage structures to maintain unimpeded flow.
- E. Locate and protect private lawn sprinkler systems which may exist on rights-of-ways within the site. Repair or replace damaged systems to condition equal to or better than that existing at start of Work.
- F. Perform daily clean-up of dirt outside the construction zone, and debris, scrap materials, and other disposable items. Keep streets, driveways, and sidewalks clean of dirt, debris and scrap materials. Do not leave building, roads, streets or other construction areas unclean overnight.

1.05 NOTIFICATION TO ADJACENT OCCUPANTS

- A. Notify individual occupants in areas to be effected by the Work of the proposed construction and time schedule. Notification shall be not less than 72 hours or more than 2 weeks prior to work being performed within 200 feet of the homes or businesses. Project Manager will provide a sample door hanger showing form and content to be followed.
- B. Include in notification names and telephone numbers of two company representatives for resident, property owner, property manager or tenant contact, who will be available on 24-hour call. Include precautions which will be taken to protect private property and identify potential access or utility inconvenience or disruption.
- C. Consideration shall be given to the ethnicity of the neighborhood where English is not the dominant language. Notice shall be in an understandable language.

1.06 PUBLIC, TEMPORARY, AND CONSTRUCTION ROADS AND RAMPS

- A. Construct and maintain temporary detours, ramps, and roads to provide for normal public traffic flow when use of public roads or streets is closed by necessities of the Work.
- B. Provide mats or other means to prevent overloading or damage to existing roadways from tracked equipment or large or heavy trucks or equipment.

1.07 EXCAVATION IN STREETS AND DRIVEWAYS

- A. Avoid needless hindering or inconveniencing public travel on a street or any intersecting alley or street for more than two blocks at any one time, except by permission of the Project Manager.
- B. Obtain the City Traffic Management and Maintenance Department and Project Manager's approval when the nature of the Work requires closing of an entire street. Permits required for street closure are the

Contractor's responsibility. Avoid unnecessary inconvenience to abutting property owners.

- C. Remove surplus materials and debris and open each block for public use as work in that block is complete.
- D. Acceptance of any portion of the Work will not be based on return of street to public use.
- E. Avoid obstructing driveways or entrances to private property.
- F. Provide temporary crossing or complete the excavation and backfill in one continuous operation to minimize the duration of obstruction when excavation is required across drives or entrances.
- G. Provide barricades and signs in accordance with Section VI of the State of Texas Manual on Uniform Traffic Control Devices.

1.08 TRAFFIC CONTROL

- A. Comply with traffic regulation as specified in Section 01555 - Traffic Control and Regulation.

1.09 SURFACE RESTORATION

- A. Restore site to condition existing before construction to satisfaction of Project Manager.
- B. Repair paved area per the requirements of Section 02951 - Pavement Repair and Restoration.
- C. Repair turf areas which become damaged, level with bank run sand conforming to Section 02317 - Excavation and Backfill for Utilities. Water and level newly sodded areas with adjoining turf using steel wheel rollers appropriate for sodding. Do not use spot sodding or sprigging.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

Section 01255

CHANGE ORDER PROCEDURES

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Procedures for processing Change Orders, including:
  - 1. Assignment of a responsible individual for approval and communication of changes in the Work;
  - 2. Documentation of change in Contract Price and Contract Time;
  - 3. Change procedures, using proposals and Modifications;
  - 4. Execution of Change Orders;
  - 5. Correlation of Contractor submittals.

1.02 REFERENCES

- A. Blue Book is defined as the Rental Rate Blue Book for Construction Equipment (a.k.a. Data Quest Blue Book).
- B. Rental Rate is defined as the full-unadjusted base rental rate for the appropriate item of construction equipment.

1.03 RESPONSIBLE INDIVIDUAL

- A. Provide a letter indicating the name and address of the individual authorized to execute Modifications, and who will be responsible for informing others in Contractor's employ and Subcontractors of changes to the Work. Provide this information at the pre-construction meeting.

1.04 DOCUMENTATION OF CHANGE IN CONTRACT PRICE AND CONTRACT TIME

- A. Maintain detailed records of changes in the Work. Provide full information required for identification and evaluation of proposed changes, and substantiate costs of changes in the Work.
- B. Document each proposal for change in Contract Price or Contract Time with sufficient data to allow evaluation of proposal.
- C. Include the following minimum information on proposals:
  - 1. Quantities of items in original Document 00405 - Schedule of Unit Price Work with additions, reductions, deletions, and substitutions.
  - 2. Quantities and cost of items in original Schedule of Values with additions, reductions, deletions and substitutions.
  - 3. Provide Unit Prices for new items, with supporting information, for inclusion in Schedule of Unit Price Work.

4. Justification for changes in Contract Time.
  5. Additional data upon request.
- D. For changes in the Work performed on a time-and-material basis, provide the following additional information:
1. Quantities and description of Products.
  2. Taxes, insurance and Bonds.
  3. Overhead and profit as noted in Document 00700 - General Conditions.
  4. Dates, times and by whom work was performed.
  5. Time records and certified copies of applicable payrolls.
  6. Invoices and receipts for Products, rental equipment, and subcontracts, similarly documented.
- E. For changes in the Work performed on a time-and-materials basis, rental equipment is paid as follows:
1. Actual invoice cost for duration of time required to complete extra work without markup for overhead and profit. When extra work comprises only a portion of a rental invoice where equipment would otherwise be on site, compute hourly equipment rate by dividing the actual monthly invoice by 176. One day equals eight hours and one week equals 40 hours.
  2. Do not exceed estimated operating costs given in Blue Book for items of equipment. Overhead and profit will be allowed on the operating cost.
- F. For changes in the Work performed on a time-and-materials basis using Contractor-owned equipment, use Blue Book rates as follows:
1. Contractor-owned equipment will be paid at the Blue Book Rental Rate for the duration of time required to complete extra work without markup for overhead and profit. Utilize lowest cost combination of hourly, daily, weekly or monthly rates. Use 150 percent of Rental Rate for double shifts, one extra shift per day, and 200 percent of Rental Rate for more than two shifts per day. Standby rates shall be 50 percent of the appropriate Rental Rate shown in Blue Book. No other rate adjustments apply.
  2. Do not exceed estimated operating costs given in Blue Book. Overhead and profit will be allowed on operating costs. Operating costs will not be allowed for equipment on standby.
- 1.05 CHANGE PROCEDURES
- A. Changes to Contract Price or Contract Time can only be made by issuance of a Change Order. Issuance of a Work Change Directive will be formalized into a Change Order. Changes will be in accordance with requirements of Document 00700 - General Conditions.

- B. Request clarification of Drawings, Specifications, Contract Documents or other information by submitting a Request for Information. Response by Project Manager to Requests for Information does not authorize Contractor to perform tasks outside scope of the Work. Changes must be authorized as described in this Section.

1.06 PROPOSALS AND CONTRACT MODIFICATIONS

- A. Project Manager may issue a Request for Proposal, which includes a detailed description of the proposed change with supplementary or revised Drawings and Specifications. Project Manager may also request a proposal in response to a Request for Information. Prepare and submit the proposal within seven (7) days or as specified in request.
- B. Submit requests for Contract changes to Project Manager describing proposed change and its full effect on the Work, with a statement describing reason for change and effect on Contract Price and Contract Time including full documentation.
- C. Design Consultant may review Change Orders.

1.07 WORK CHANGE DIRECTIVE

- A. Project Manager may issue a signed Work Change Directive instructing Contractor to proceed with a change in the Work. Work Change Directive will subsequently be incorporated into a Change Order.
- B. Work Change Directives will describe changes in the Work and designate the method of determining change in Contract Price or Contract Time.
- C. Proceed promptly to execute changes in the Work in accordance with the Work Change Directive.

1.08 STIPULATED PRICE CHANGE ORDER

- A. A Stipulated Price Change Order will be based on an accepted proposal.

1.09 UNIT PRICE CHANGE ORDER

- A. Where Unit Prices for affected items of the Work are included in Document 00405 - Schedule of Unit Price Work, the Change Order will be based on Unit Prices, subject to Articles 7 and 9 of Document 00700 - General Conditions.
- B. Where Unit Prices of the Work are not pre-determined in Document 00405 - Schedule of Unit Price Work, the Work Change Directive or accepted proposal will specify the Unit Prices to be used.

1.10 TIME-AND-MATERIAL CHANGE ORDER

- A. Provide itemized account and supporting data after completion of change, within time limits indicated for claims in Document 00700 - General Conditions.
- B. Project Manager will determine the change allowable in Contract Price and Contract Time as provided in Document 00700 - General Conditions.
- C. Maintain detailed records for work done on time-and-material basis as specified in Paragraph 1.04 above.

- D. Provide full information required for evaluation of changes and substantiate costs for changes in the Work.

1.11 EXECUTION OF CHANGE DOCUMENTATION

- A. Project Manager will issue Change Orders, Work Change Directives, or Minor Change in the Work for signatures of Parties as described in Document 00700 - General Conditions.

1.12 CORRELATION OF CONTRACTOR SUBMITTALS

- A. For Stipulated Price Contracts, promptly revise Schedule of Values and Application for Payment forms to record authorized Change Orders as separate line item.
- B. For Unit Price Contracts, the next monthly estimate of the Work after acceptance of a Change Order will be revised to include new items not previously included with appropriate Unit Prices.
- C. Promptly revise progress schedules to reflect change in Contract Time, and to adjust time for other items of work affected by the change, and resubmit for review.
- D. Promptly enter changes to on-site and record copies of Drawings, Specifications or Contract documents as required in Section 01785 - Project Record Documents.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

Section 01270

MEASUREMENT AND PAYMENT

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Procedures for measurement and payment plus conditions for nonconformance assessment and nonpayment for rejected products.

1.02 AUTHORITY

- A. Measurement methods delineated in Specification sections are intended to complement the criteria of this section. In the event of conflict, the requirements of the Specification section shall govern.
- B. Project Manager will take all measurements and compute quantities accordingly.
- C. Contractor shall assist by providing necessary equipment, workers, and survey personnel as required by Project Manager.

1.03 UNIT QUANTITIES SPECIFIED

- A. Quantity and measurement estimates stated in the Agreement are for contract purposes only. Quantities and measurements supplied or placed in the Work and verified by Project Manager shall determine payment as stated in Article 9 of the General Conditions.
- B. If the actual Work requires greater or lesser quantities than those quantities indicated in Document 00405 - Schedule of Unit Price Work, provide the required quantities at the unit prices contracted, except as otherwise stated in Article 9 of the General Conditions.

1.04 MEASUREMENT OF QUANTITIES

- A. Measurement by Weight: Reinforcing steel, rolled or formed steel or other metal shapes will be measured by CRSI or AISC Manual of Steel Construction weights. Welded assemblies will be measured by CRSI or AISC Manual of Steel Construction or scale weights.
- B. Measurement by Volume:
  - 1. Stockpiles: Measured by cubic dimension using mean length, width, and height or thickness.
  - 2. Excavation and Embankment Materials: Measured by cubic dimension using the average end area method.
- C. Measurement by Area: Measured by square dimension using mean length and width or radius.
- D. Linear Measurement: Measured by linear dimension, at the item centerline or mean chord.
- E. Stipulated Price Measurement: By unit designated in the agreement.

- F. Other: Items measured by weight, volume, area, or lineal means or combination, as appropriate, as a completed item or unit of the Work.

1.05 PAYMENT

- A. Payment Includes: Full compensation for all required supervision, labor, products, tools, equipment, plant, transportation, services, and incidentals; and erection, application or installation of an item of the Work; and Contractor's overhead and profit.
- B. Total compensation for required Unit Price Work shall be included in Unit Price bid in Document 00405 - Schedule of Unit Price Work. Claims for payment as Unit Price Work, but not specifically covered in the list of unit prices contained in Document 00405, will not be accepted.
- C. Interim payments for stored materials will be made only for materials to be incorporated under items covered in unit prices, unless disallowed in Supplementary Conditions.
- D. Progress payments will be based on the Project Manager's observations and evaluations of quantities incorporated in the Work multiplied by the unit price.
- E. Final payment for Work governed by unit prices will be made on the basis of the actual measurements and quantities determined by Project Manager multiplied by the unit price for Work which is incorporated in or made necessary by the Work.

1.06 NONCONFORMANCE ASSESSMENT

- A. Remove and replace the Work, or portions of the Work, not conforming to the Contract Documents.
- B. If, in the opinion of Project Manager, it is not practical to remove and replace the Work, the Project Manager will direct one of the following remedies:
  - 1. The nonconforming Work will remain as is, but the unit price will be adjusted to a lower price at the discretion of Project Manager.
  - 2. The nonconforming Work will be modified as authorized by the Project Manager, and the unit price will be adjusted to a lower price at the discretion of Project Manager, if the modified work is deemed to be less suitable than originally specified.
- C. Specification sections may modify the above remedies or may identify a specific formula or percentage price reduction.
- D. The authority of Project Manager to assess the nonconforming work and identify payment adjustment is final.

1.07 NONPAYMENT FOR REJECTED PRODUCTS

- A. Payment will not be made for any of the following:
  - 1. Products wasted or disposed of in a manner that is not acceptable to Project Manager.
  - 2. Products determined as nonconforming before or after placement.



3. Products not completely unloaded from transporting vehicle.
4. Products placed beyond the lines and levels of the required Work.
5. Products remaining on hand after completion of the Work, unless specified otherwise.
6. Loading, hauling, and disposing of rejected products.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

Section 01330

SUBMITTAL PROCEDURES

PART 1 - GENERAL

1.01 SECTION INCLUDES

A. Submittal procedures for:

1. Schedule of Values.
2. Construction Schedules.
3. Shop Drawings, Product Data, and Sampler.
4. Operations and Maintenance Data.
5. Manufacturer's Certificates.
6. Construction Photographs.
7. Project Record Documents.
8. Video Tapes.
9. Design Mixes.

1.02 SUBMITTAL PROCEDURES

A. Scheduling and Handling:

1. Schedule submittals well in advance of the need for the material or equipment for construction. Allow time to make delivery of material or equipment after submittal is approved.
2. Develop a submittal schedule that allows sufficient time for initial review, correction, resubmission and final review of all submittals. The Project Manager will review and return submittals to the Contractor as expeditiously as possible, but the amount of time required for review will vary depending on the complexity and quantity of data submitted. In no case will a submittal schedule be acceptable which allows less than thirty (30) days for initial review by the Project Manager. This time for review shall in no way be justification for delays or additional compensation to the Contractor.
3. The Project Manager's review of submittals covers only general conformity to the Drawings, Specifications, and dimensions which affect the layout. The Contractor is responsible for quantity determination. No quantities will be verified by the Project Manager. The Contractor is responsible for any errors, omissions or deviations from the Contract requirements; review of submittals in no way relieves the Contractor from his obligation to furnish required items according to the Drawings and Specifications.
4. Submit five (5) copies of documents unless otherwise specified in the following paragraphs or in the Specifications.

5. Revise and resubmit submittals as required. Identify all changes made since previous submittal.
6. The Contractor shall assume the risk for material or equipment which is fabricated or delivered prior to approval. No material or equipment shall be incorporated into the Work or included in periodic progress payments until approval has been obtained in the specified manner.

**B. Transmittal Form and Numbering:**

1. Transmit each submittal to the Project Manager with a Transmittal Form.
2. Sequentially number each transmittal form beginning with the number 1. Resubmittals shall use the original number with an alphabetic suffix (i.e., 2A for first resubmittal of Submittal 2 or 15C for third resubmittal of Submittal 15). Each submittal shall only contain one type of work, material, or equipment. Mixed submittals will not be accepted.
3. Identify variations from requirements of Contract Documents and identify product or system limitations.
4. For submittal numbering of video tapes, see paragraph 1.10 Video.

**C. Contractor's Stamp:**

1. Apply Contractor's stamp, certifying that the items have been reviewed in detail and are correct and in accordance with Contract Documents, except as noted by any requested variance.
2. As a minimum, Contractor's Stamp shall include:
  - a. Contractor's name.
  - b. Job number.
  - c. Submittal number.
  - d. Certification statement that the Contractor has reviewed the submittal and it is in compliance with the Contract Documents.
  - e. Signature line for Contractor.

**1.03 CONSTRUCTION SCHEDULES**

- A. Submit Construction Schedules as provided in Project Manual.

**1.04 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

- A. Submit shop drawings in accordance with Section 01340 - Shop Drawings, Product Data, and Samples.

**1.05 OPERATIONS AND MAINTENANCE DATA**

- A. Submit Operations and Maintenance data in accordance with Section 01782 - Operations and Maintenance Data.

1.06 MANUFACTURER'S CERTIFICATES

- A. When specified in Specification sections, submit manufacturer's certificate of compliance for review by Project Manager.
- B. Contractor's Stamp, as described in paragraph 1.02C, shall be placed on front page of the certification.
- C. Submit supporting reference data, affidavits, and certifications as appropriate.
- D. Certificates may be recent or previous test results on material or product, but must be acceptable to Project Manager.

1.07 CONSTRUCTION PHOTOGRAPHS

- A. Submit Construction Photographs in accordance with Section 01321 - Construction Photographs.

1.08 PROJECT RECORD DOCUMENTS

- A. Submit Project Record Documents in accordance with Section 01785 - Project Record Documents.

1.10 DESIGN MIXES

- A. When specified in Specifications, submit design mixes for review.
- B. Contractor's Stamp, as described in paragraph 1.02C, shall be placed on front page of each design mix.
- C. Mark each design mix to identify proportions, gradations, and additives for each class and type of design mix submitted. Include applicable test results on samples for each mix.
- D. Maintain a copy of approved design mixes at mixing plant.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

Section 01340

SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Methods, schedule, and process to be followed for shop drawings, product data and sample submittals.

1.02 REQUIREMENT

- A. Submit shop drawings, product data and samples as required by the General Conditions and as designated in the Specifications using the procedures specified in Section 01330 - Submittal Procedures and the requirements of this Section.
- B. Shop drawings, product data and samples are not considered Contract Documents.

1.03 SHOP DRAWING/SUBMITTAL SCHEDULE

- A. Submit a separate Shop Drawing/Submittal Schedule at the same time the Construction Schedule is submitted. List products, materials and equipment for which Shop Drawings and other submittals are required in the order in which they appear in the Specifications. Include product data and sample submittals in schedule.

1.04 SHOP DRAWINGS

- A. Submit Shop Drawings for review as required by the Specifications.
- B. Place Contractor's Stamp on each Shop Drawing as described in Section 01330 - Submittal Procedures.
- C. On the Shop Drawings, show accurately and distinctly, the following:
  - 1. Field and erection dimensions clearly identified as such;
  - 2. Arrangement and section views;
  - 3. Kinds of materials and finishes;
  - 4. Parts list and descriptions;
  - 5. Assembly drawings of equipment components and accessories showing their respective positions and relationships to the complete equipment package;
  - 6. Where necessary for clarity, identify details by reference to drawing sheet, detail numbers, and schedules as shown on the Contract Drawings.
- D. Make Shop Drawings to scale providing a true representation of the specific equipment or item to be furnished.

1.05 PRODUCT DATA

- A. Submit product data for review as required in Specification sections.
- B. Place Contractor's Stamp, on each data item submitted, as described in Section 01330 - Submittal Procedures.
- C. Mark each copy to identify applicable products, models, options to be used in this Project. Supplement manufacturers' standard data to provide information unique to this Project, where required by the Specifications.
- D. For products specified only by reference standard, give manufacturers, trade name, model or catalog designation and applicable reference standard.
- E. Preapproved and Prequalified Products.
  - 1. For "preapproved," "prequalified," and "approved" products named in City standard products list, provide appropriate list designation as described in Section 01630 - Product Substitution Procedures within thirty (30) days after Notice to Proceed.
  - 2. For products proposed as alternates to "approved" products, provide information required to demonstrate the proposed products meet the level of quality and performance criteria of the "approved product."

1.06 SAMPLES

- A. Submit samples for review as required by the Specifications. Have samples reviewed and signed by a registered professional.
- B. Place Contractor's Stamp on each sample or on a firmly attached sheet of paper, as described in Section 01330 - Submittal Procedures.
- C. Submit the number of samples specified in Specifications; one of which will be retained by the Project Manager.
- D. Reviewed samples which may be used in the Work are identified in Specifications.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

Section 01450

CONTRACTOR'S QUALITY CONTROL

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Quality assurance and control of installation and manufacturer's field services and reports.

1.02 QUALITY ASSURANCE/CONTROL OF INSTALLATION

- A. Monitor quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality at no additional cost to the Owner.
- B. Comply fully with manufacturers' installation instructions, including each step in sequence.
- C. Request clarification from Project Manager before proceeding should manufacturers' instructions conflict with Contract Documents.
- D. Comply with specified standards as minimum requirements for the Work except when more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- E. Perform work by persons qualified to produce the specified level of workmanship.

1.03 REFERENCES

- A. Obtain copies of standards and maintain at job site when required by individual Specification sections.

1.04 MANUFACTURERS' FIELD SERVICES AND REPORTS

- A. When specified in individual Specification sections, provide material or product suppliers' or manufacturers' technical representative to observe site conditions, conditions of surfaces and installation, quality of workmanship, start-up of equipment, operator training, test, adjust, and balance of equipment as applicable, and to initiate operation, as required. Conform to minimum time requirements for start-up operations and operator training if defined in Specification sections.
- B. As requested by the Project Manager, submit qualifications of manufacturer's representative to Project Manager fifteen (15) days in advance of required representative's services. The representative shall be subject to approval of Project Manager.
- C. Manufacturer's representative shall report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturers' written instructions.

END OF SECTION

Section 01502

MOBILIZATION

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Mobilization of construction equipment and facilities onto the site.

1.02 UNIT PRICES

- A. Measurement for mobilization is on a lump sum basis.

- B. Mobilization payments will be included in monthly payment estimates upon written application by Contractor subject to the following provisions:

1. Authorization for payment of 50 percent of the contract price for mobilization will be made upon receipt and approval by Project Manager of the following items, as applicable:
  - a. Schedule of Values.
  - b. Construction Schedule.
  - c. Pre-construction photographs.
  - d. Dewatering plan, if required.
2. Authorization for payment of the remaining 50 percent of the Contract Price for mobilization will be made upon completion of Work amounting to 5 percent of the Contract Price less the mobilization unit price.

- C. Mobilization payments will be subject to retainage amounts stipulated in the General Conditions.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION



Section 01555  
TRAFFIC CONTROL AND REGULATION

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Requirements for signs, signals, control devices, flares, lights and traffic signals, as well as construction parking control, designated haul routes and bridging of trenches and excavations.
- B. Requirement for and qualifications of flagmen.

1.02 SUBMITTALS

- A. A traffic control plan responsive to the Texas Manual on Uniform Traffic Control Devices (TMUTCD) and sealed by a Registered Professional Engineer is incorporated into the Drawings. If the Contractor proposes to implement traffic control without modification to the plan provided, he shall submit a letter confirming that decision. If the Contractor proposes to implement traffic control different than the plan provided, he shall submit a traffic control plan in conformance with the TMUTCD and sealed by a Registered Professional Engineer.
- B. For both the traffic control plan and flagmen use, submit schedules of values within thirty (30) days following the Notice to Proceed. Refer to Section 01292 - Schedule of Values.
- C. The Contractor shall provide such information and records regarding the use of qualified flagmen to verify that the Contractor's use of "peace officers" as flagmen is in compliance with the Contract Documents and Texas law, including but not limited to, Article 4413 (29bb), commonly referred to as the Private Investigators and Private Security Agencies Act, and Article 2.12, Texas Code of Criminal Procedure.
- D. The Contractor shall provide such information and records regarding the use of qualified flagmen to verify that the Contractor's use of "certified flagmen" as flagmen is in compliance with the Contract Documents and applicable City ordinance.
- E. Make submittals in accordance with Section 01330 - Submittal Procedures.

1.03 UNIT PRICES

- A. Traffic Control and Regulation. Measurement is on a lump sum basis for traffic control and regulation, including submittal of a traffic control plan if different from the plan shown on the Drawings, provision of traffic control devices, provision of equipment and personnel as necessary to protect the work and the public, and provision of flagmen as required for the Project. The amount invoiced shall be determined based on the Schedule of Values submitted for traffic control and regulation.
- B. Refer to Section 01270 - Measurement and Payment for unit price procedures.

1.04 FLAGMEN

- A. Use flagmen, qualified as described under paragraph 1.04.B, Uniformed Peace Officers, or paragraph 1.04.C, Certified Flagmen, to control, regulate, and direct the even flow or movement of vehicular or pedestrian traffic when construction operations encroach on public traffic lanes.
- B. Uniformed Peace Officer: A person who has full-time employment as a peace officer and who receives compensation as a flagman for private employment as an individual employee or independent contractor. Private employment may be either an employee-employer relationship or on an individual basis. A flagman may not be in the employ of another peace officer and may not be a reserve peace officer.
  1. A peace officer is defined as:
    - a. Sheriffs and their deputies;
    - b. Constables and deputy constables;
    - c. Marshals or police officers of an incorporated city, town, or village; or
    - d. As otherwise provided by Article 2.12, Code of Criminal Procedure, as amended.
  2. A person who has full-time employment as a peace officer is one who is actively employed in a full-time capacity as a peace officer working, on average, a minimum of 32 paid hours per week, being paid at a rate of pay not less than the prevailing minimum hourly wage rate as set by the federal Wage and Hour Act and entitled to the full benefits of participation in any retirement plan, vacation, holidays, and insurance benefits. A reserve peace officer does not qualify, under this definition, as a peace officer.
- C. Certified Flagman: A person who receives compensation as a flagman and who meets the following qualifications and requirements:
  1. Formally trained and certified in traffic control procedures through the City's Department of Public Works & Engineering's E. B. Cape Center.
  2. Required to wear a distinctive uniform, bright-colored vest, and be equipped with appropriate flagging and communication devices.
  3. English speaking, with Spanish as an advantageous, but not required, primary or secondary language.
  4. Paid as a Certified Flagman, equivalent to the hourly wage rate set for Rough Carpenter under Document 00811, Wage Scale for Engineering Construction.
  5. Required to carry proof of training/certification, such as photographic identification card issued by the training institute, to allow the Project Manager to easily determine that necessary full-time traffic control is actually provided, when and where construction work encroaches upon traffic lanes.
- D. Houston Police Department Officer: When directed by the Project Manager, the Contractor shall provide a uniformed Houston Police

Department (HPD) officer to direct traffic in intersections. This officer shall be a person who is a full-time employee as a police officer of the HPD. This officer's primary responsibility shall be to cooperate with the HPD staff to optimize peak time vehicular traffic flow. Any assistance provided to the Contractor's operation shall be the officer's secondary responsibility and the officer shall not replace any officer or flagmen associated with the Contractor's normal operation. This officer will typically be requested to work between the hours of 7:00AM and 9:00 AM and 4:00 PM and 6:00 PM, Monday through Friday. Measurement shall be by totaling the hours documented on the Daily Construction Report as hours the officer was providing the requested services. Payment shall be at the unit price bid.

PART 2 - PRODUCTS

2.01 SIGNS, SIGNALS, AND DEVICES

- A. Comply with Texas State Manual on Uniform Traffic Control Devices.
- B. Traffic Cones and Drums, Flares and Lights: As approved by local jurisdictions.

PART 3 - EXECUTION

3.01 PUBLIC ROADS

- A. Abide by laws and regulations of governing authorities when using public roads. If the Contractor's work requires that public roads be temporarily impeded or closed, approvals shall be obtained from governing authorities and permits paid for before starting any work. Coordinate activities with the Project Manager.
- B. Contractor shall maintain at all times a 10-foot-wide all-weather lane adjacent to work areas which shall be kept free of construction equipment and debris and shall be for the use of emergency vehicles, or as otherwise provided in the traffic control plan.
- C. Contractor shall not obstruct the normal flow of traffic from 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. on designated major arterials or as directed by the Project Manager.
  - 1. Contractor shall maintain local driveway access to residential and commercial properties adjacent to work areas at all times.
  - 2. Cleanliness of Surrounding Streets:
    - a. Keep streets used for entering or leaving the job area free of excavated material, debris, and any foreign material resulting from construction operations. Comply with City of Houston Ordinance No. 5705, Construction or Demolishing Privileges.
  - 3. The Contractor shall have personnel on site whenever work is underway that will make adjustments, relocations or repairs to the traffic control devices when the unacceptable condition is discovered.

3.02 PUBLIC SIDEWALKS AND CROSSWALKS

- A. The Contractor shall maintain good reasonable all-weather access to all entry points to public or private property along the work area and in crosswalks. The access routes shall be clearly delineated to the public

and to the construction staff. The surface shall be a hard non-penetrating material that has the same slip resistant characteristics when wet or dry.

- B. At no time shall the crosswalks on both sides of an intersection (the two east to west crosswalks or the two north to south crosswalks) be closed to pedestrian traffic by having ramps, portions of walkway removed or other features that do not allow a minimum of four feet of level clean walkway.
- C. When crosswalks are closed, the Contractor shall erect a sign that shall be attached to the pedestrian barricade. The sign shall be 4-feet by 4-feet square, painted on both sides with a second color text and graphics to be provided by the Owner at the Pre-construction Conference. The sign shall be placed to allow unobstructed view from the other end of the block in the line of travel of the crosswalk.
- D. The Contractor shall maintain separation of the public sidewalk, walkway or crosswalk from the construction zone or vehicle traffic lanes. Separation shall be by one of two methods.
  - 1. In area where the existing or new street or sidewalk provides an acceptable walking surface then a solid barrier equal to the flat base plate, 42" high x 8" long interlocking pipe barricade with vertical  $\frac{3}{4}$ " OD pies at 5  $\frac{1}{2}$ " O.C. vertical bars as manufactured by Diehl Manufacturing or approved equal will be used to separate one area from the other. The barricades shall be painted with an automotive quality paint system and the color will be provided.
  - 2. In an area where the sidewalk is being removed, the Contractor shall temporarily restore the walkway by the installation of all-weather asphalt walkways and Strongwall ADA Pedestrian Barricades by Plasticade or approved equal.
    - a. The temporary walkway shall be installed immediately after removal of the existing walk. The installation of the new permanent walkway shall be coordinated with any affected property owner to minimize impact to access during the time the existing walkway is being removed or the new walkway is being installed.
    - b. The temporary walkways must be no less than four-feet wide and provide a flat walking surface.
  - 3. The Contractor shall have personnel on site whenever work is underway that will make adjustments, relocations or repairs to the walkways or barriers when the unacceptable condition is discovered.

### 3.03 CONSTRUCTION PARKING CONTROL

- A. Control vehicular parking to prevent interference with public traffic and parking, access by emergency vehicles, and City's operations.
- B. Monitor parking of construction personnel's vehicles in existing facilities. Maintain vehicular access to and through parking areas.
- C. Prevent parking on or adjacent to access roads or in non-designated areas.

3.04 FLARES AND LIGHTS

- A. Provide flares and lights during hours of low visibility to delineate traffic lanes and to guide traffic.

3.05 HAUL ROUTES

- A. Utilize haul routes designated by authorities or shown on the Drawings for construction traffic.
- B. Confine construction traffic to designated haul routes.
- C. Provide traffic control at critical areas of haul routes to regulate traffic and minimize interference with public traffic.
- D. If the devices require additional weight to maintain the installed location the use of sand bags or other similar devices that are frequently damaged and contribute to the debris in the sidewalks or streets is prohibited. Additional weight shall be added by the use of solid objects that are painted to be readily visible.

3.06 TRAFFIC SIGNS AND SIGNALS

- A. Install traffic control devices at approaches to the site and on site, at crossroads, detours, parking areas, and elsewhere as needed to direct construction and affected public traffic.
- B. Install and operate traffic control signals to direct and maintain orderly flow of traffic in areas under Contractor's control and areas affected by Contractor's operations.
- C. Relocate traffic signs and signals as Work progresses to maintain effective traffic control.

3.07 BRIDGING TRENCHES AND EXCAVATIONS

- A. Whenever necessary, bridge trenches and excavation to permit an unobstructed flow of traffic.
- B. Secure bridging against displacement by using adjustable cleats, angles, bolts or other devices whenever bridge is installed:
  - 1. On an existing bus route.
  - 2. When more than five percent of daily traffic is comprised of commercial or truck traffic.
  - 3. When more than two separate plates are used for the bridge.
  - 4. When bridge is to be used for more than five consecutive days.
- C. Install bridging to operate with minimum noise.
- D. Adequately shore the trench or excavation to support bridge and traffic.
- E. Extend steel plates used for bridging a minimum of one foot beyond edges of trench or excavation. Use temporary paving materials (premix) to feather edges of plates to minimize wheel impact on secured bridging.

- F. Use steel plates of sufficient thickness to support H-20 loading, truck or lane, that produces maximum stress.

3.08 REMOVAL

- A. Remove equipment and devices when no longer required.
- B. Repair damage caused by installation.
- C. Remove post settings to a depth of 2 feet.

END OF SECTION

Section 01610  
BASIC PRODUCT REQUIREMENTS

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Requirements for transportation, delivery, handling, and storage of materials and equipment.

1.02 PRODUCTS

- A. Products: Means material, equipment, or systems forming the Work. Does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components designated for reuse.
- B. Do not reuse materials and equipment, designated to be removed, except as specified by the Contract Documents.
- C. Provide equipment and components from the fewest number of manufacturers as is practical, in order to simplify spare parts inventory and to allow for maximum interchangeability of components. For multiple components of the same size, type or application, use the same make and model of component throughout the project.

1.03 TRANSPORTATION

- A. Make arrangements for transportation, delivery, and handling of equipment and materials required for timely completion of the Work.
- B. Transport and handle products in accordance with instructions.
- C. Consign and address shipping documents to the proper party giving name of Project, street address, and City. Shipments shall be delivered to the Contractor.

1.04 DELIVERY

- A. Arrange deliveries of products to accommodate the short term site completion schedules and in ample time to facilitate inspection prior to installation. Avoid deliveries that cause lengthy storage or overburden of limited storage space.
- B. Coordinate deliveries to avoid conflict with Work and conditions at the site and to accommodate the following:
  - 1. Work of other contractors or the City.
  - 2. Limitations of storage space.
  - 3. Availability of equipment and personnel for handling products.
  - 4. City's use of premises.
- C. Have products delivered to the site in manufacturer's original, unopened, labeled containers.
- D. Immediately upon delivery, inspect shipment to assure:

1. Product complies with requirements of Contract Documents.
2. Quantities are correct.
3. Containers and packages are intact; labels are legible.
4. Products are properly protected and undamaged.

1.05 PRODUCT HANDLING

- A. Coordinate the off-loading of materials and equipment delivered to the job site. If necessary to move stored materials and equipment during construction, Contractor shall relocate materials and equipment at no additional cost to the Owner.
- B. Provide equipment and personnel necessary to handle products, including those provided by the Owner, by methods to prevent damage to products or packaging.
- C. Provide additional protection during handling as necessary to prevent breaking, scraping, marring, or otherwise damaging products or surrounding areas.
- D. Handle products by methods to prevent over bending or overstressing.
- E. Lift heavy components only at designated lifting points.
- F. Handle materials and equipment in accordance with Manufacturer's recommendations.
- G. Do not drop, roll, or skid products off delivery vehicles. Hand carry or use suitable materials handling equipment.

1.06 STORAGE OF MATERIAL

- A. Store and protect materials in accordance with manufacturer's recommendations and requirements of these Specifications.
- B. Make necessary provisions for safe storage of materials and equipment. Place loose soil materials, and materials to be incorporated into the Work to prevent damage to any part of the Work or existing facilities and to maintain free access at all times to all parts of the Work and to utility service company installations in the vicinity of the Work. Keep materials and equipment neatly and compactly stored in locations that will cause minimum inconvenience to other contractors, public travel, adjoining owners, tenants, and occupants. Arrange storage in a manner to provide easy access for inspection.
- C. Restrict storage to areas available on the construction site for storage of material and equipment as shown on Drawings or approved by the Project Manager.
- D. Provide off-site storage and protection when on-site storage is not adequate.
- E. Do not use lawns, grass plots, or other private property for storage purposes without written permission of the owner or other person in possession or control of such premises.
- F. Protect stored materials and equipment against loss or damage.



- G. Store in manufacturers' unopened containers.
- H. Materials delivered and stored along the line of the Work shall be neatly, safely, and compactly stacked along the work site in such manner as to cause the least inconvenience and damage to property owners and the general public, and shall be not closer than five (5) feet to any fire hydrant. Public and private drives and street crossings shall be kept open.
- I. Damage to lawns, sidewalks, streets or other improvements shall be repaired or replaced to the satisfaction of the Project Manager. The total length which materials may be distributed along the route of construction at any one time is 1000 lineal feet, unless otherwise approved in writing by the Project Manager.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

Section 01630  
PRODUCT SUBSTITUTION PROCEDURES

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Options for making product or process selections.
- B. Procedures for proposing equivalent construction products or processes, including preapproved, prequalified, and approved products or processes.

1.02 DEFINITIONS

- A. Product: Means materials, equipment, or systems incorporated into the Project. Product does not include machinery and equipment used for production, fabrication, conveying, and erection of the Work. Products may also include existing materials or components designated for reuse.
- B. Process: Any proprietary system or method for installing system components resulting in an integral, functioning part of the Work. For this Section, the word Product includes Processes.

1.03 SELECTION OPTIONS

- A. Preapproved Products: Construction products of certain manufacturers or suppliers designated in the Specifications as "preapproved." A list of preapproved products is maintained by the City. Preapproved products for this Project are designated as preapproved in the Specifications. Products of other manufacturers or suppliers will not be acceptable for this Project and will not be considered under the submittal process for approving alternate products.
- B. Prequalified Products: Construction products of certain manufacturers or suppliers designated in the Specifications as "prequalified." Prequalified products for this Project are designated as prequalified in the Specifications. Products of other manufacturers or suppliers will not be acceptable for this Project and will not be considered under the submittal process for approving alternate products.
- C. Approved Products: Construction products or processes of certain manufacturers or suppliers designated in the Specifications followed by the words "or approved equal." Approval of alternate products or processes not listed in the Specifications may be obtained through provisions for product options and substitutions in Document 00700 - General Conditions, and by following the submittal procedures specified in 01330 - Submittal Procedures. The procedure for approval of alternate products is not applicable to preapproved or prequalified products.
- D. Product Compatibility: To the maximum extent possible, provide products that are of the same type or function from a single manufacturer, make, or source. Where more than one choice is available as a Contractor's option, select a product which is compatible with other products already selected, specified, or in use by the City or Owner.

1.04 CONTRACTOR'S RESPONSIBILITY

- A. The Contractor's responsibility related to product options and substitutions is defined in Document 00700 - General Conditions.
- B. Furnish information the Project Manager deems necessary to judge equivalency of the alternate product.
- C. Pay for laboratory testing, as well as any other review or examination costs, needed to establish the equivalency between products in order to obtain information upon which the Project Manager can base a decision.
- D. If the Project Manager determines that an alternate product is not equal to that named in the Specifications, the Contractor shall furnish one of the specified products.

1.05 PROJECT MANAGER'S REVIEW

- A. Alternate products or processes may be used only if approved in writing by the Project Manager. The Project Manager's determination regarding acceptance of a proposed alternate product is final.
- B. Alternate products will be accepted if the product is judged by the Project Manager to be equivalent to the specified product or to offer substantial benefit to the City or Owner.
- C. The Owner retains the right to accept any product or process deemed advantageous to the Owner, and similarly, to reject any product or process deemed not beneficial to the City or Owner.

1.06 SUBSTITUTION PROCEDURE

- A. Collect and assemble technical information applicable to the proposed product to aid in determining equivalency as related to the approved product specified.
- B. Submit a written request for a construction product to be considered as an alternate product.
- C. Submit the product information after the effective date of the Agreement and within the time period allowed for substitution submittals given in Document 00700 - General Conditions. After the submittal period has expired, requests for alternate products will be considered only when a specified product becomes unavailable because of conditions beyond the Contractor's control.
- D. Submit 5 copies of each request for alternate product approval. Include the following information:
  - 1. Complete data substantiating compliance of proposed substitution with Contract Documents.
  - 2. For products:
    - a. Product identification, including manufacturer's name and address.
    - b. Manufacturer's literature with product description, performance and test data, and reference standards.
    - c. Samples, as applicable.

- d. Name and address of similar projects on which product was used and date of installation. Include the name of the Owner, Architect/Engineer/Designer, and installing contractor.
3. For construction methods:
    - a. Detailed description of proposed method.
    - b. Drawings illustrating methods.
  4. Itemized comparison of proposed substitution with product or method specified.
  5. Data relating to changes in construction schedule.
  6. Relation to separate contracts, if any.
  7. Accurate cost data on proposed substitution in comparison with product or method specified.
  8. Other information requested by the Project Manager.
- E. Approved alternate products will be subject to the same review process as the specified product would have been for shop drawings, product data, and samples.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

Section 01740

SITE RESTORATION

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Restoration of site affected by the Work in public or private property, including pavement, esplanades, sidewalks, driveways, fences, lawns and landscaping.

1.02 MEASUREMENT AND PAYMENT

A. Unit Prices.

1. Payment for restoration of Project site disturbed by utility construction operations is on a linear foot basis. Measurement will be as provided for corresponding utility in each Specification section. No separate payment made for branch pipe, valves and, other associated work for utilities. Measurement for restoration with multiple utilities within the same right-of-way will be on a linear foot basis for only one utility.
2. No separate payment made for facility or roadway projects. Include cost in the surface improvements associated with the facility or roadway construction.
3. Payment includes required site restoration within the right-of-way or easement regardless of size or type of pipe, method of construction, paved or unpaved areas or thickness and width of pavement.
4. No separate payment made for site restoration for service connections under this Section. Include cost in appropriate utility section.
5. Refer to Section 01270 - Measurement and Payment for Unit Price procedures.

- B. Stipulated Price (Lump Sum) Contracts. If Contract is Stipulated Price Contract, include payment for work under this section in total Stipulated Price.

1.03 DEFINITIONS

- A. Phase: Locations identified on the plans and listed in Section 01010 - Summary of Work under Work Sequence.
- B. Site Restoration: Replacement or reconstruction of Site Improvements located in rights-of-way, easements, public property, and private property affected or altered by the Work.
- C. Site Improvement: Includes pavement, curbs and gutters, esplanades, sidewalks, driveways, fences, lawns, irrigation systems, landscaping, and other improvements in existence at the Project site before commencement of construction operations.

1.04 SUBMITTALS

- A. Conform to requirements of Section 01330 - Submittal Procedures.
- B. Schedule of testing, service connections, abandonment, backfill, and site restoration.
- C. Sample of notices to adjacent property owners outlining their responsibility for maintenance of site improvements adjacent to the Project that are not disturbed by construction operations.

1.05 SCHEDULING

- A. Schedule testing, service connections, abandonment, backfill and site restoration immediately following completion of pipe laying work or paving within each block or line segment.
- B. Phased Construction:
  - 1. Commencement of subsequent Phase will follow scheduling of site restoration of prior Phase. Limit work to a maximum of two Phases of the project.
- C. Construction of Projects with no Phases listed in Section 01010 - Summary of Work:
  - 1. Complete site restoration prior to disturbing over 50% of total project linear feet or 2,000 linear feet, whichever is greater, of right-of-way or easement.
  - 2. Limit work to a maximum of 50% of total project linear feet or 2,000 linear feet, whichever is greater, of right-of-way and easement. Commence work in additional right-of-way or easement after completion of site restoration.

PART 2 - PRODUCTS

2.01 MATERIALS

- A. Pavement, Sidewalks and Driveways: Materials specified in Section 02951 - Pavement Repair and Resurfacing.
- B. Trees, Shrubs and Plantings: Conform to requirements of Section 02035 - Tree & Plant Protection.

PART 3 - EXECUTION

3.01 PREPARATORY WORK

- A. Provide cleanup and restoration crews to work closely behind pipe laying and roadway construction crews, and where necessary, during testing, service restoration, abandonment, backfill and surface restoration.
- B. Water Lines: Unless otherwise approved by Project Manager, comply with the following:
  - 1. Once Project Manager approves work within a Phase, immediately begin preparatory work for disinfection effort.

2. No later than three (3) days after completing disinfection preparatory work, submit to City appropriate request for disinfection.
3. If City fails to perform initial disinfection of lines in accordance with Section 02514 - Disinfection of Water Lines, within seven (7) days from submission of appropriate request, and if approved by Project Manager, pipe laying operations may continue beyond approved limits until the City responds.
4. Immediately after transfer of services, begin abandonment of old water lines and site restoration.

C. Wastewater Lines

1. Once Project Manager approves work within a Line Segment, immediately begin preparatory work for testing effort.
2. No later than three (3) days after completing preparatory work for testing, initiate testing work.
3. Immediately after transfer of service connections, begin abandonment of old wastewater lines, and site restoration.

D. Street Construction and Paving Projects

1. Once Project Manager approves work within a Line Segment or block, immediately begin preparatory work for testing effort.
2. No later than three (3) days after completing preparatory work for testing, initiate testing work.
3. Immediately after testing begin site restoration.

E. Street Construction and Paving Projects

1. Once Project Manager approves work within a block, immediately begin preparatory work for sidewalk construction, sodding and hydromulching and tree planting.
2. No later than seven (7) days after completing preparatory work, initiate construction.

3.02 CLEANING

- A. Remove debris and trash to maintain a clean and orderly site in accordance with requirements of General Conditions and Section 01576 - Waste Material Disposal.

3.03 LANDSCAPING AND FENCES

A. Trees, Shrubbery and Plants

1. Remove and replant trees, shrubs, and plants in accordance with requirements of Section 02035 - Tree & Plant Protection.

B. Fence Replacement

1. Replace removed or damaged fencing to equal or better condition than

existed prior to construction, including concrete footings and mow strips. Provide new wood posts, top and bottom railing and panels. Metal fencing material, not damaged by the Work, may be reused.

2. Remove and dispose of damaged or substandard material.

3.04 MAINTENANCE

- A. Maintain shrubs, plantings, sodded areas and seeded areas.
- B. Replace shrubs, plantings and seeded or sodded areas that fail to become established.
- C. Refer to Section 02035 - Tree & Plant Protection for maintenance requirements.

END OF SECTION



Section 01770

CLOSEOUT PROCEDURES

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Procedures to establish Date of Substantial Completion.
- B. Closeout procedures for final submittals, O&M data, warranties, spare parts and maintenance materials.
- C. Texas Department of Licensing and Regulation (TDLR) inspection for Texas Accessibility Standards (TAS) compliance.

1.02 SUBSTANTIAL COMPLETION

- A. Comply with Document 00700 - General Conditions regarding Date of Substantial Completion when Contractor considers the Work, or portion thereof designated by Project Manager, to be substantially complete.
- B. Insure the following items have been completed when included in the Work, prior to presenting a list of items to be inspected by Project Manager for issuance of a Certificate of Substantial Completion:
  - 1. Cutting, plugging, and abandoning of water, wastewater, and storm sewer lines, as required by Contract documents for each item.
  - 2. Construction of, and repairs to, pavement, driveways, sidewalks, and curbs and gutters.
  - 3. Sodding and hydromulch seeding, unless waived by Project Manager in writing.
  - 4. General clean up including pavement markings, transfer of services, successful testing and landscape.
  - 5. Additional requirements contained in Section 01010 - Summary of Work.
- C. Assist Project Manager with inspection of Contractor's list of items and complete or correct the items, including items added by Project Manager, within specified time period.
- D. Should Project Manager's inspection show failure of Contractor to comply with requirements to obtain Date of Substantial Completion, including those items in Paragraph 1.02 B. of this section, Contractor shall complete or correct the items, before requesting another inspection by Project Manager.

1.03 CLOSEOUT PROCEDURES

- A. Comply with Document 00700 - General Conditions regarding final completion and final payment when the Work is complete and ready for Project Manager's final inspection.
- B. Provide Project Record Documents in accordance with Section 01785 -

Project Record Documents.

- C. Complete or correct items on punch list, with no new items added. Address new items during warranty period.
- D. The City will occupy portions of the Work as specified in other sections.

1.04 FINAL CLEANING

- A. Execute final cleaning prior to final inspection.
- B. For facilities, clean interior and exterior glass and surfaces exposed to view; remove temporary labels, stains and foreign substances, polish transparent and glossy surfaces, vacuum carpeted and soft surfaces.
- C. Clean equipment and fixtures to sanitary condition.
- D. Clean or replace filters of operating equipment.
- E. Clean debris from roofs, gutters, down spouts, and drainage systems.
- F. Clean site; sweep paved areas, and rake clean landscaped surfaces.
- G. Remove waste and surplus materials, rubbish, and temporary construction facilities from site following final test of utilities and completion of the Work.

1.05 ADJUSTING

- A. Adjust operating equipment to ensure smooth and unhindered operation. Value of this testing and adjusting is five percent of Lump Sum Price in the Schedule of Values for item being tested.

1.06 OPERATION AND MAINTENANCE DATA

- A. Submit O&M data as noted in Section 01330 - Submittal Procedures.
- B. Five percent of lump sum amount of each piece of equipment as indicated in Schedule of Unit Price Work or Schedule of Values will be paid after the required O&M data submittals are received and approved by Project Manager.

1.07 WARRANTIES

- A. Provide one original of each warranty from Subcontractors, Suppliers, and manufacturers.
- B. Provide Table of Contents and assemble warranties in a 3-ring/D binder with durable plastic cover.
- C. Submit warranties prior to final progress payment.
- D. Warranties shall commence in accordance with the requirements in Document 00700 - General Conditions.

1.08 SPARE PARTS AND MAINTENANCE MATERIALS

- A. Provide Products, spare parts, maintenance and extra materials in quantities specified in individual Specification sections.
- B. Deliver to a location within the City limits as directed by Project Manager. Applicable items must be delivered prior to issuance of a final Certificate for Payment.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

Section 01785

PROJECT RECORD DOCUMENTS

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Maintenance and submittal of record documents and Samples.

1.02 MAINTENANCE OF DOCUMENTS AND SAMPLES

- A. Maintain one record copy of documents at the site in accordance with Document 00700 - General Conditions.
- B. Store record documents and Samples in field office, if a field office is required by the Contract, or in a secure location. Provide files, racks, and secure storage for record documents and Samples.
- C. Label each document "PROJECT RECORD" in neat, large, printed letters.
- D. Maintain record documents in a clean, dry, and legible condition. Do not use record documents for construction purposes. Do not use permit drawings to record Modifications to the Work.
- E. Keep record documents and Samples available for inspection by Project Manager.
- F. Bring record documents to progress review meetings for viewing by Project Manager and, if applicable, Design Consultant.

1.03 RECORDING

- A. Record information legibly with red ink pen on a set of blackline opaque drawings, concurrently with construction progress. Maintain an instrument on site at all times for measuring elevations accurately. Do not conceal work until required information is recorded.
- B. Contract Drawings and Shop Drawings: Mark each item to record completed Modifications, or when minor deviations exist, the actual construction including:
  - 1. Measured depths of elements of foundation in relation to finish first floor datum.
  - 2. Measured horizontal locations and elevations of underground facilities and appurtenances, referenced to permanent surface improvements.
  - 3. Elevations of underground facilities referenced to City of Houston benchmark utilized for the Work.
  - 4. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
  - 5. Dimensions and details of field changes.

6. Changes made by Modifications.
7. Details not on original Drawings.
8. References to related Shop Drawings and Modifications.

C. Annotate Shop Drawings to record changes made after review.

#### 1.04 SUBMITTALS

- A. At closeout of the Contract, deliver Project record documents to Project Manager.

#### PART 2 - PRODUCTS

Not Used

#### PART 3 - EXECUTION

Not Used

END OF SECTION

SECTION 02035

TREE & PLANT PROTECTION

PART 1 - GENERAL

1.01 SUMMARY

- A. Work included:
  - 1. Root and crown pruning.
  - 2. Protecting of existing trees (Refer also to the drawings).
  - 3. Protecting of existing utilities.
  - 4. Fencing armoring.
  - 5. Fertilizing.
  - 6. Watering.

1.02 RELATED WORK

- A. Demolition

1.03 REFERENCE STANDARDS: N.A.A.: "Pruning Standards for Shade Trees", 1979.

1.04 GENERAL PROVISIONS

- A. Trees and areas scheduled for work under this contract shall be identified in the field and indicated on plans and specifications where practical. Where this is not practical, work shall be directed in field by Project Manager.
- B. Provision for access to the site for heavy equipment will be as directed by the Project Manager. Equipment shall use prescribed access routes determined by the Project Manager and shall not be allowed in areas other than designated construction areas and designated access routes. Open grass areas which are altered or disturbed by equipment during the work shall be returned to pre-existing conditions at no additional cost to Owner.
- C. Wood and debris shall become property of Contractor and shall be removed from site within 48 hours. Debris to be transported to nearest legal dump. Cost of disposal to be paid by Contractor. No burning will be permitted.
- D. Contractor shall protect root areas and crowns of trees not designated for work under this contract from damage from operations and equipment. The Contractor shall repair such damage at no cost to owner. Provide fences or other barricades where necessary for such protection.
- E. All work under this section shall be performed under the direct supervision of a registered arborist or arboriculturist in the state of Texas.

PART 2 - PRODUCTS

2.01 TRENCHING MACHINE: Shall be small non-riding track type trencher equal to Case 300.

2.02 SHARP SAND: ASTM C-33 for fine aggregate.

- 2.03 TREE PAINT: Thompson Tree Seal, Cabot Tree Paint or approved equal.
- 2.04 ANTISEPTIC: Antiseptic shall consist of a mixture of one pound copper sulphate to one gallon of boiled linseed oil.
- 2.05 PRUNING TOOLS: Shall be of good quality and working condition, sharp, and of the approved type for arboricultural work.
- 2.06 WOOD FOR FENCES, BARRICADES AND ARMORING: Shall be construction grade Southern Yellow Pine or Douglas Fir.
  - A. Posts - Four(4")inches X four(4")inches, eight(8')feet long.
  - B. Rails - Two(2")inches X eight(8")inches, twelve(12')feet long.
  - C. Armoring - Two(2")inches X four(4")inches, five(5')feet long.
  - D. Paint above with exterior dark walnut stain.
- 2.07 INSECTICIDE: Shall be "Astro Insecticide" as manufactured by FMC Corporation, Agricultural Products Group, 1735 Market Street, Philadelphia, PA 19103 (800.321.1362) or approved equal.
- 2.08 FERTILIZER: Davey Tree Company "Arborgreen" or approved equal.
- 2.09 WATER: Suitable for irrigation.

PART 3 - EXECUTION

3.01 WORKMANSHIP

- A. Work shall be performed by personnel trained and experienced in this work and shall be done under the direction of a qualified forester or arboriculturist on Contractor's staff.
- B. Work shall be performed in conformance with recognized horticultural and arboricultural practices. Where job requirements require deviation from normal practice, obtain approval from Project Manager.

3.02 ROOT PRUNING

- A. Root pruning by trenching shall be in the areas and limits as directed by the Project Manager sixteen(16")inches deep and eight(8")inches wide.
- B. Trenching shall be performed by the approved trencher cutting any and all roots completely and cleanly. Tearing, shredding, or pulling of the roots shall not be permitted.
- C. Treat cut roots with antiseptic only, immediately after trenching.
- D. Fill trench to existing finished grade with sharp sand, compact and water thoroughly.

3.03 FENCES AND BARRICADES

- A. Fences and/or barricades shall be placed where shown on the drawings or as herein described.
- B. In general, fences and barricades are intended to alert those working on the project that equipment and machinery are not to be stored or operated in the feeder root zone. Where not shown, the fences and barricades shall be placed not closer than nine (9x) times the caliper of the tree to the tree, or at the dripline. The exact location of fences or barricades shall be determined by the Project Manager.
- C. Posts shall be installed six(6')feet on center maximum, three(3')feet deep. Rails shall be installed approximately two feet, six inches(2'-6") and five feet(5'-0") above existing finished grade. Posts shall be installed plumb and rails level, and as approved.

3.04 TREE PROTECTION

- A. All trees to be preserved on the property shall be protected against damage during construction operations by fencing as shown subject to the approval of the Project Manager. The tree protection shall be placed before any excavating or grading is begun and maintained in repair for the duration of the construction work unless otherwise directed. No material shall be stored or construction operation shall be carried on within a distance as shown on any tree to be saved or within the tree protection fencing. Tree protection shall remain until all work is completed. (Refer also to "Demolition").
- B. Any damage done to existing tree crowns or root systems shall be repaired immediately by an approved tree surgeon at the direction of the Project Manager. Roots exposed and/or damaged during demolition and/or grading operations shall be cut off cleanly inside the exposed or damaged area, the cut surfaces painted with an approved tree paint, and the topsoil and mulch placed over the exposed root area immediately. The Project Manager shall be present on the site to observe these operations.

3.05 ARMORING: In close quarters, as approved, a single tree shall be protected by strapping (not nailing) a continuous shield of wood two(2")inches X four(4")inches X five(5')feet around the trunk.

3.06 BORER PROTECTION: Immediately after tree protection is complete, apply specified insecticide at the rate prescribed by the manufacturer's instructions.

3.07 APPLICATION OF TREE FERTILIZER: Arbor Green 30-10-7 mixed and applied per product label instruction for 40 pounds of Arbor Green mixed in 100 gallons of water. Fertilizer shall be added to tank and mixed on site. Project Manager shall be notified 24 hours prior to applying fertilizer.

3.08 CONSTRUCTION EQUIPMENT

- A. Contractor shall modify construction equipment as necessary to ensure that exhaust systems do not burn or scorch tree crowns or branches. Vertical exhaust pipes shall be turned 90 degrees.



- B. Height of equipment and equipment operation heights shall be carefully monitored to ensure no damage to tree crowns or branching.

3.09 ADDITIONAL PROVISIONS

- A. No trash or warming fires shall be placed within twenty-five (25') feet of the tree canopy.
- B. No excessive pedestrian traffic shall occur within the dripline of any tree.
- C. No soil shall be spread, spoiled or otherwise disposed of under any tree within the dripline, unless otherwise designated or approved.

END OF SECTION

SECTION 02050

DEMOLITION

PART 1 - GENERAL

1.01 GENERAL DESCRIPTION OF THE WORK IN THIS SECTION

- A. Demolition work, in general, includes sidewalk and plaza pavements, and the removal and disposal of all demolished materials, within the local areas required for new foundations.

1.02 MEASUREMENT AND PAYMENT

A. Unit Price

- 1. Payment for demolition, removal and disposal is on a unit price basis for each item listed below, if applicable.

- a. Tree rootballs.

1.03 RELATED WORK OF OTHER SECTIONS

- A. Coordinate work of this Section with work of other Sections as required to properly execute the Work and as necessary to maintain satisfactory progress of the work of other Sections.

1.04 SUBMITTALS

- A. Submit for review and approval the landfill credentials and location where tree rootballs will be discarded. Landfill must be a TCEQ waste permitted site, such as those listed below:

GI-611 • Active Municipal Solid Waste Landfills in Texas

County	Permit No.	Name	Type
HARRIS	1193	WHISPERING PINES LANDFILL	1
HARRIS	1307D	ATASCOCITA RECYCLING AND DISPOSAL FACILITY	1
HARRIS	261B	MCCARTY ROAD LANDFILL	1
HARRIS	1403	CASCO HAULING AND EXCAVATION LANDFILL	4
HARRIS	1540A	GREENSHADOWS LANDFILL	4
HARRIS	1565B	FAIRBANKS LANDFILL	4
HARRIS	1586B	WCT GREENBELT LANDFILL	4
HARRIS	1599B	GREENHOUSE ROAD LANDFILL	4
HARRIS	1921A	COUGAR LANDFILL	4
HARRIS	2185	HAWTHORNE PARK LANDFILL	4
HARRIS	2240C	RALSTON ROAD LANDFILL	4
HARRIS	2304A	TALL PINES LANDFILL	4
HARRIS	2344	LONE STAR RECYCLING AND DISPOSAL LANDFILL	4

1.05 JOB CONDITIONS

- A. Selective Demolition: The contractor shall confirm, by site visit, the limits of demolition to be accomplished under this contract. Should any discrepancies arise, contact Project Manager for clarification before beginning.
- B. Explosives: The use of explosives will not be permitted.
- C. Traffic: Conduct demolition operations and removal of debris to ensure minimum interference with the public use of roads, streets, walks and other adjacent occupied or used facilities.
  - 1. Do not close or obstruct streets, walks or other occupied or used facilities without permission from authorities having jurisdiction. Provide alternate routes around closed or obstructed traffic or walkways as required by governing regulations, and the Owner.
- D. Protections: Ensure the safest passage of persons around the area of demolition. Conduct operations to prevent injury to adjacent building, structures, other facilities and persons. Protect existing property from damage during demolition.
- E. Damages: Promptly repair damages caused to adjacent facilities by demolition operations.
- F. Utility Services: Maintain existing utilities to remain, keep in service, and protect against damage during demolition operations.
  - 1. Do not interrupt existing utilities serving occupied or used facilities, except when authorized in writing by authorities having jurisdiction. Provide temporary services during interruptions to existing utilities, as acceptable to the governing authorities.
  - 2. Confirm location of existing utilities to remain with the Utility Coordination Committee; 1200 Milam, Houston, Texas 77001; Phone: (713) 223-4567.
- G. Unknown Utilities:
  - 1. If unknown and uncharted utilities are encountered during excavation, promptly notify Project Manager and wait for instructions before proceeding.
  - 2. If Project Manager ascertains that such utility line has been abandoned, properly cap line at a depth approved by the Project Manager or remove line if so desired.
  - 3. If such unknown utilities are encountered and work is continued without contacting Project Manager for instruction and damage is caused to said utilities, Contractor shall repair such damage at his own expense.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

3.01 DEMOLITION

A. Pollution Controls:

1. Use water sprinkling, temporary enclosures, and other suitable methods to limit the amount of dust and dirt rising and scattering in the air so that no visible dust accumulates.
2. Comply with governing regulations pertaining to environmental protection.
3. Do not use water when it may create hazardous or objectionable conditions such as ice, flooding, and pollution.
4. Clean adjacent structures, windows, and improvements of all dust, dirt and debris caused by demolition operations, as directed by the Project Manager or governing authorities. Return adjacent areas to condition existing prior to the start of work.

B. Site Demolition:

1. Before proceeding with demolition operations, disconnect and cap off utilities and service lines not required for new construction in accordance with requirements of governing authorities and applicable ordinances and regulations.
2. Notify respective Utility Company of any damage caused to active utilities and protect active utilities pending instructions for disposition.

C. Disposal of demolished materials:

1. General: Remove from the Project Site all debris, rubbish and other materials resulting from demolition operations.
2. Burning removed materials will not be permitted on the Project Site.

D. Removal:

1. Transport materials removed from demolition work in covered vehicles and dispose of, legally, off the Project Site at locations specifically intended to receive such materials. In no event will removed materials remain at the job site for more than 24 hours without prior approval of the Construction Manager.

END OF SECTION

SECTION 02810

SPRINKLER IRRIGATION

PART 1 - GENERAL

1.01 SUMMARY

A. Work Included:

1. Furnishing and installing irrigation system components, such as piping, sprinklers, techline emitter tubing, flush valves and boxes, and other components as indicated on drawings and specified herein.
2. Inspections and tests.

1.04 QUALITY ASSURANCE:

A. Requirements of Regulatory Agencies:

1. All work and materials shall be in full accordance with latest rules and regulations of safety orders of Division of Industrial Safety; the Uniform Plumbing Code and other applicable laws or regulations, including the City of Houston Plumbing Code.

B. Testing:

1. Preliminary review of completed installation will be made by Project Manager prior to backfilling of trenches and during hydrostatic testing.
2. Final review shall be made in conjunction with the final review of the planting components associated with the project.

- C. Installer - Installation of Irrigation System installation shall be performed under the direction of a State of Texas licensed irrigator with not less than 5 years experience in this type of work.

1.05 SUBMITTALS: (REFER ALSO TO SECTION 01330)

A. Furnish required copies of manufacturer's literature, certifications, and operating instructions for the complete list of materials, for the following items, if applicable:

1. Drip irrigation tubing.
2. Flush valves.
3. Spray heads.
4. Pipe and fittings.

B. Substitutions:

1. Specific reference to manufacturers' names and products specified in this Section are used as standards, but this implies no right to substitute other material or methods without written approval of the Project Manager.
2. Installation of any approved substitution is Contractor's responsibility. Any changes required for installation of any

approved substitution must be made to the satisfaction of Project Manager and without additional cost to Owner.

3. Approval by Project Manager of substituted equipment and/or dimensional drawings does not waive these requirements.

1.06 JOB CONDITIONS:

- A. Contractor shall acquaint himself with all site conditions. Should utilities or other work not shown on the plans be found during excavations, Contractor shall promptly notify Project Manager for instructions as to further action. Failure to do so will make Contractor liable for any and all damage thereto arising from his operations subsequent to discovery of such utilities not shown on plans.
- B. Contractor shall take necessary precautions to protect site conditions. Should damage be incurred this Contractor shall repair damage to its original condition or furnish and install equal replacement at his expense.

1.07 FINAL ACCEPTANCE: Work under this Section will be accepted by Project Manager upon satisfactory completion of all work. Upon Final Acceptance, Owner will assume responsibility for maintenance of the work. Said assumption does not relieve Contractor of obligations under Warranty.

1.08 WARRANTY:

- A. In addition to manufacturer's guarantees or warranties, all work shall be warranted for one year from the date of Final Acceptance against defects in material, equipment and workmanship by Contractor. Warranty shall also cover repair of damage to any part of the premises resulting from leaks or other defects in materials, equipment and workmanship to the satisfaction of the Owner.
- B. Contractor shall not be held responsible for failures due to neglect by Owner, vandalism, etc., during Guarantee Period. Report such conditions to Project Manager in writing.

1.09 CLEAN UP: Keep all areas of work clean, neat, and orderly at all times. Keep all paved areas clean during installation operations.

PART 2 - PRODUCTS

2.01 MATERIALS: Materials throughout the system shall be as specified and/or noted, new and in perfect condition.

2.02 PIPE:

- A. Piping on pressure side of irrigation control valves:
  1. Two and one-half inch diameter and smaller - Polyvinyl chloride (PVC) 1120-1220, Schedule 80 and shall conform to ASTM D-1785-73.
- B. Piping on non-pressure side of irrigation control valves:

1. Polyvinyl chloride (PVC) 1120-1220, SDR 21.0, Class 200, and shall conform to ASTM D 2241-73, except one-half (1/2") inch diameter shall be Class 315.
- C. Identification: All piping shall be continuously and permanently marked with the following:
1. Manufacturer's name or trademark, size, schedule, and type of pipe, working pressure at 73 degrees F. and National Sanitation Foundation (N.S.F.) approval.
- 2.03 FITTINGS:
- A. Fittings for Solvent-Welded Pipe:
1. Schedule 80, polyvinyl chloride, standard weight, as manufactured by "Sloane", "Lasco", or approved equal, to meet ASTM D-2466-73 and D-2467-73.
  2. Threaded PVC nipples - Schedule 80 PVC.
- B. Fittings for Swing Joints:
1. Supply three (3) Schedule 80 "Marlex" elbows.
  2. Threaded PVC Nipples - Schedule 80 PVC.
- 2.04 DRIP IRRIGATION EQUIPMENT:
- A. Dripperline shall be Techline, linear polyethylene tubing, housing internal pressure compensating, continuously self-flushing, integral drip emitters. The tubing shall have an outside diameter (O.D.) of 0.67 inches, and an inside diameter (I.D.) of 0.57 inches. The emitters shall have the ability to independently regulate discharge rates, with an out pressure of seven (7) to seventy (70) psi, at a constant flow of 0.92 gallons per hour (GPH). The dripperline shall have factory installed emitters 12 inches on center as manufactured by NETAFIM.
- B. Automatic line flushing valve shall be installed at the end of each independent zone. The valve shall be capable of flushing one gallon of water at the beginning of each irrigation cycle. Model TL050MFV-1 by NETAFIM.
- C. Pressure regulating valve shall be capable of regulating pressure from 15 psi to 50 psi using interchangeable, color coded regulating springs. The regulator shall have a built in indicator that shows when the proper outlet pressure has been reached. Model #PRV075HF35.
- D. Disc-filter shall be a multiple disc filter with color coded filter elements indication the mesh size of the element being used. The disc shall be constructed of chemical resistant thermoplastic for corrosion resistance. Model DF-100-140.

2.05 SPRINKLERS

A. Description: Brass or plastic housing and corrosion-resistant interior parts designed for uniform coverage over entire spray area indicated, at available water pressure shall include.

1. Flush, Surface Sprinklers: Fixed pattern, with screw-type flow adjustment.
2. Bubblers: Fixed pattern, with screw-type flow adjustment.
3. Shrubbery Sprinklers: Fixed pattern, with screw-type flow adjustment.
4. Pop-up, Spray Sprinklers: Fixed pattern, with screw-type flow adjustment and stainless-steel retraction spring.
5. Pop-up, Rotary, Spray Sprinklers: Gear drive, full-circle and adjustable part-circle types.
6. Pop-up, Rotary, Impact Sprinklers: Impact drive, full-circle and part-circle types.
7. Aboveground, Rotary, Impact Sprinklers: Impact drive, full-circle and part-circle types.

3.01 GUARANTEE: The Contractor shall warrant all materials and workmanship for one (1) year from final acceptance.

3,02 CLEAN UP: Clean up and remove all debris from the entire work area prior to Final Acceptance to satisfaction of Project Manager.

END OF SECTION



SECTION 02950

PLANTING

PART 1 - GENERAL

1.01 SUMMARY

- A. Section Includes
  - 1. Excavation of tree pits.
  - 2. Inspection tubes and sumps.
  - 3. Prepared planting soil mixes.
  - 4. Plant materials and related items.
  - 5. Finish grading of planted areas.
  - 6. Warranty and replacements.

1.02 MEASUREMENTS AND PAYMENT

- A. Measurement for Planting is as follows:

Installation of Trees complete with delivery,  
staking, excavation, backfill, mulch, etc.

EA

- B. Excavation, haul off, and imported soil for planting areas, and tree pits shall be considered incidental to the pay items above.
- C. Refer to Section 01270 - Measurement and Payment for unit price procedures.

1.03 QUALITY ASSURANCE

- A. Reference Standards:

- 1. "American Standard for Nursery Stock", 1980 Edition, American National Standards Institute, Incorporated, (A.N.S.I. Z60-1-1980).
- 2. "Standardized Plant Names", 1942 Edition, American Joint Committee on Horticultural Nomenclature.

- B. Installer: Installation of planting work shall be performed by a single firm specializing in landscape and planting work. Contractor shall be licensed by the Texas Association of Nurserymen, shall possess an agricultural certificate, shall be a licensed pest applicator, and shall have not less than 5 years of experience in this type of work.

- C. Installer's Field Supervision: Require Installer to maintain an experienced full-time supervisor on Project site when work is in progress.

- 1. Pesticide Applicator: State licensed, commercial.

- D. Source - Quality Control:

- 1. Trees shall be subject to inspection and approval by Project Manager at place of growth and upon delivery for conformity to specifications. Such approval shall not impair the right of inspection and rejection during progress of the Work. Submit written request for inspection of tree material at place of

growth to Project Manager. Written request shall state the place of growth and quantity of trees to be inspected. Project Manager reserves right to refuse inspection at this time if, in his judgment, a sufficient quantity of trees is not available for inspection.

2. Trees identified as "selected specimen" shall be approved and tagged at place of growth by Project Manager. For distant material, submit 4" x 6" photographs for pre-inspection review. Photographs shall show at least two individual trees and overall views of the nursery. The name and location of the nursery source shall be included with photos. In addition, the total quantity of trees available to select from shall be included.
3. All trees inspected at the nursery by the Project Manager shall be tagged with serialized self-locking tags.
4. Substitutions of tree materials will not be permitted unless authorized in writing by Project Manager. If proof is submitted that any tree specified is not obtainable, a proposal will be considered for use of the nearest equivalent size or variety with corresponding adjustment of Contract Price. Such proof shall be substantiated and submitted in writing to Project Manager at least 30 days prior to start of Work under this Section. These provisions shall not relieve Contractor of the responsibility of obtaining specified materials in advance if special growing conditions or other arrangements must be made in order to supply specified materials.

E. Inspections:

1. Make written request for inspection after planting operations have been completed. Such inspection is for the purpose of establishing the Maintenance and/or Warranty Period.

- F. Submit written requests for inspections to the Project Manager at least seven (7) days prior to anticipated inspection date.

1.04 SUBMITTALS

- A. Furnish required copies of manufacturers literature, samples, certifications, or laboratory analytical data for the following items, if applicable:

1. Trees and shrubs (samples and/or photographs with date stamp and scale figure).
2. Mulch (manufacturer's literature and sample).
3. Tree, shrub, and groundcover planting fertilizer (certification or laboratory analytical data).
4. Tree staking materials - 3 strap platypus (manufacturer's literature)
5. Wrapping material (manufacturer's literature and sample).
6. Tree paint (manufacturer's literature).
7. Sub-drainage material (pipe, gravel, soil separator).
8. Backfill soil mixes (manufacturer's literature and sample).
9. Root Barrier (manufacturer's literature or sample).

1.05 DELIVERY, STORAGE AND HANDLING

- A. Submit a plan for transporting tree material to the site to the Project Manager for approval. Such a plan should include:
1. Date of pick-up at nursery or place of storage.

2. Type of vehicle used for shipping.
  3. Method of protecting trees during transit.
  4. Dates in transit.
  5. Date of delivery to site.
  6. Projected date of installation.
  7. Means of storage, watering and shading used between delivery and planting.
- B. The Contractor shall follow these precautions:
1. During hot weather and when practical, transport tree materials between sunset and sunrise if transported in an open trailer or unrefrigerated box.
  2. Dug material should be maintained and watered as required at the nursery to guarantee their vitality and health until shipping.
  3. Protect all trunks, stems, branches and root balls during tree tying, wrapping and loading operations from damage.
  4. Load balls or containers onto transport vehicle and secure in a manner that protects the structural integrity of the root balls.
  5. The Contractor shall be solely responsible for the safe transportation of plants to the site and their condition upon arrival. Trees damaged, dehydrated or abused during transit and storage will be rejected.
  6. Plant materials should not be stored on concrete or left exposed to the sun.
  7. Protect the balls and water regularly until planting. If trees are left in storage over the weekend or holiday provide a means of periodically watering and inspecting root ball protection.
- C. The Project Manager may inspect any phase of this operation and may reject any tree material improperly handled during any phase of this operation.
- D. Nothing in this Section shall be interpreted as relieving the Contractor of the responsibility of providing healthy, viable trees, nor shall it have any affect upon the terms of the warranty specified herein.
- 1.06 MAINTENANCE BY THE CONTRACTOR (refer to sections 02970 if applicable)
- 1.07 FINAL ACCEPTANCE
- A. Work under this Section will be accepted by Project Manager upon satisfactory completion of all work, including maintenance, but exclusive of replacement of tree materials under the Warranty Period. Upon Final Acceptance, the Owner will assume responsibility for maintenance of the Work.
- 1.08 WARRANTY PERIOD AND REPLACEMENTS
- A. Warrant that all trees installed under this Contract will be healthy and in flourishing condition of active growth one year from date of Final Acceptance.
- B. Replace, without cost to Owner, and as soon as weather conditions permit, all dead trees and all trees not in vigorous, thriving condition, as determined by the Owner during and at the end of Warranty Period. Trees shall be free of dead or dying branches and

branch tips, and shall bear foliage of a normal density, size and color. Replacements shall closely match adjacent specimens of the same species and shall be subject to all requirements of this specification.

1.09 PROTECTION OF EXISTING PLANTS TO REMAIN

- A. Do not store materials or equipment, permit burning, or operate or park equipment under the branches of any existing plant to remain except as actually required for construction in those areas.
- B. Provide barricades, fences or other barriers as necessary at the drip line to protect existing plants to remain from damage during construction.
- C. Notify Project Manager in any case where Contractor feels grading or other construction called for by Contract Documents may damage existing plants to remain.
- D. If existing plants to remain are damaged during construction, Contractor shall replace such plants of the same species and size as those damaged at no cost to Owner. Determination of extent of damage and value of damaged plant shall rest solely with Project Manager.

1.10 JOB CONDITIONS

- A. Work Scheduling: Proceed with and complete planting work in a timely manner, working within seasonal limitations for each kind of planting work required.
- B. Planting Time
  - 1. Plant frost-tender trees only after danger of frost is past or sufficiently before frost season to allow for establishment before first frost. Do not plant in frozen ground.
- C. Utilities: Contractor shall be responsible for damage to existing utilities and structures.
- D. Security: The Owner will not assume any responsibility for security of any materials, equipment, etc. during construction of the project until project acceptance.
- E. Excavation: When conditions detrimental to plant growth are encountered, such as rubble fill, adverse drainage conditions beyond the scope of this contract, or obstructions, notify Project Manager of such conditions, immediately and before planting.
- F. Pollution Control: Control dust caused by planting operations. Dampen surfaces as necessary. Comply with pollution control regulations of governing authorities.

PART 2 - PRODUCTS

2.01 TREES

- A. Trees shall be nursery grown in accordance with good horticultural practices under climatic conditions similar to those of project for at least two years unless specifically otherwise authorized by Project Manager in writing. Unless specifically noted otherwise, all trees

shall be exceptionally heavy, symmetrical, tightly knit, so trained or favored in development and appearance as to be superior in form, number of branches, compactness and symmetry.

- B. Trees shall be sound, healthy and vigorous, well branched and densely foliated when in leaf. They shall be free of disease, insect pests, eggs, or larvae, and shall have healthy, well developed root systems. They shall be free from physical damage or adverse conditions that would prevent thriving growth.
- C. Trees shall be true to species and variety and shall conform to measurements specified except that trees larger than specified may be used if approved by Project Manager. Use of such trees shall not increase Contract price. If larger trees are approved, the ball of earth or container size shall be increased as specified under "Applicable Standards" and subject to the approval of the Project Manager.
- D. Trees shall be measured when branches are in their normal position. Height and spread dimensions specified refer to main body of tree and not branch tip to tip. Caliper measurement shall be taken at a point on the trunk 6" above natural ground line for trees up to 4" in caliper and at a point 12" above the natural ground line for trees over 4" in caliper. If a range of size is given, no tree shall be less than the minimum size and not less than 40% of the trees shall be as large as the maximum size specified. The measurements specified are the minimum size acceptable and are the measurements after pruning, where pruning is required. Trees that meet the measurements specified, but do not possess a normal balance between height and spread shall be rejected.
- E. Container stock, when specified, shall have grown in the containers in which delivered for at least 6 months, but not over two years. Samples must prove no rootbound conditions exist. No container plants that have cracked or broken balls of earth when taken from container shall be planted except upon special approval by Project Manager. Container stock shall not be pruned before delivery. Field grown trees recently transplanted into containers will not be accepted.
- F. Trees which have damaged or crooked leaders, or multiple leaders, unless specified, will be rejected. Trees with abrasions of the bark, sunscalds, disfiguring knots, or fresh cuts of limbs over 3/4" which have not completely calloused, will be rejected.
- G. Balled and Burlapped trees, when accepted, shall have a root ball size of ten times the caliper.
- H. Nursery grown B&B material shall be pruned and thinned at the place of growth immediately prior to digging as required for packaging and safe moving. Method of pruning shall be as approved in the field by the Project Manager. Do not remove self-locking tags during this pruning prior to delivery to site.
- I. Field collected or plantation grown stock shall conform to the applicable standards under reference standards.

## 2.02 COMMERCIAL FERTILIZERS

- A. Trees:

1. Davey Arborgreen. Soil injected liquid. Apply at mfg. max. recommended rates.

- B. Fertilizer for planting areas shall be a commercial all organic, all natural biological fertilizer, which includes humates, rock minerals, bio-inoculants and bio-stimulants. Fertilizer shall be granular, uniform in composition, free flowing, and suitable for application with approved equipment. Fertilizer which has been exposed to high humidity and moisture, has become caked or otherwise damaged making it unsuitable for use, will not be acceptable. Fertilizer shall be Microlife Ultimate (8-4-6) as manufactured by San Jacinto Environmental Supply, 2221 A West 34th Street, Houston, TX 77018, 713-957-0909, or approved equal. Fertilizer shall be mixed into the planting mix at the rate of 5 lbs. per cu. Yd.

#### 2.03 STAKING MATERIALS

- A. Contractor shall use staking materials necessary to meet requirements of specifications, subject to approval:
  1. Tree Anchor System: 1 3-strap root ball fixing system with Plati-Mat, Model #RF2P, [info@platipus-anchors.com](mailto:info@platipus-anchors.com)
  2. Tree Staples: 4 per tree equally spaced, Model #TS42, [sales@treestapleinc.com](mailto:sales@treestapleinc.com). Tree staples may only be used if site conditions prevent the use of the platypus anchoring system and only with prior approval by the Project Manager.

#### 2.04 TREE PAINT

- A. Treekote, Cabot tree paint, or equal.

#### 2.05 WATER

- A. Furnished by Contractor. Meter as required.

#### 2.06 PRE-EMERGENCE WEED CONTROL

- A. In areas of Woody Ornamental Plants: Eptam or Eptam -5-G as manufactured by Greenlight Products Company, San Antonio, Texas 78217.

#### 2.07 MULCH

- B. Organic Mulch: Hardwood bark mulch as provided by Living Earth Technology, Houston, Texas or equal. The mulch shall be free of debris, large sticks, leaves of deciduous trees and other foreign material.

#### 2.08 INSECTICIDE

- A. Shall be "Astro Insecticide" as manufactured by FMC Corporation, Agricultural Products Group, 1735 Market Street, Philadelphia, PA 19103 (800.321.1362) or approved equal.

#### 2.09 WATERING/INSPECTION TUBES

A. Shall be ADS N-12 pipe, 4", black, as manufactured by Advanced Drainage Systems, Inc.

2.10 TOPSOIL

- A. Topsoil material that will be required for planting backfill mix shall be on-site topsoil from stockpile conforming to the requirements included within this Section.
- B. Topsoil shall be natural topsoil sandy loam, free from subsoil, of uniform quality, free from hard clods, roots, sods, stiff clay hard pan, stones larger than 1", lime, cement, ashes, slag, concrete, tar residues, tarred paper, boards, chips, sticks or any other undesirable material.
- C. Topsoil shall contain at least 3% organic matter determined by the wet combustion method (chromic acid reduction) as described in Circular #757 by the U.S. Department of Agriculture. The acidity range shall be pH 7.0 inclusive. The mechanical analysis of the soil shall be:

<u>Passing</u>	<u>Retained On</u>	<u>Percentage</u>
1" Screen		100%
1" Screen 1/4" Screen		Gravel not more than 30%
1/4" Screen #100 USS Sieve		Coarse, Medium & Fine 40 - 60%
#100 USS Sieve		Sand
		Very Fine Sand, Silt 40 - 60% and Clay

2.11 PLANTING BACK FILL MIX

- A. Material to be provided by Living Earth Technologies, Houston, Texas, or approved equal.
- B. Top Soil: Topsoil for landscape work is not available at the Site and must be furnished as specified. Topsoil shall be a sandy loam or sandy clay loam, loose friable, natural, surface soil free for subsoil, clay lumps, brush, weeds, plant roots, stumps and stones over 1-1/2 inches in any dimension, and any other extraneous or toxic matter harmful to plant growth. Organic content of topsoil shall be not less than 5 percent and not greater than 20 percent. Clay content of topsoil shall range between 5 percent and 20 percent.
- C. Sharp Sand: Clean, washed sand, fine to coarse sizes, meeting the requirements of ASTM C33.
- D. Composted Bark Mulch - CBM Contents: Bark, Leaves, Manure.1.Process: Contents are hammermilled through a 1-1/2 inch screen, blended and composted. Materials are composted aerobically with sustained temperatures to 165° F. to kill all seeds, insects and pathogenic bacteria. Hammermill provides a shredded material for excellent hold on sloped surfaces. Initial pH to be in 6.0 to 7.0 range. See soil test reports for nutrient content.
- E. Enriched Mulch: Materials are processed in the same manner as above with the addition of a greater percent of manure to provide a

nutrient-rich mulch that will feed plants with time-release nutrients as it mulches.

- F. Compost: A totally organic, aerobically composted humus containing manure, leaves, bark fines, rice hulls and other valuable organic components, materials are fully composted under sustained temperatures to 165°, has high nutrients value, excellent air porosity, water-holding capacity and drainage, high cation exchange capacity, and is free of weeds, weed seeds and insect pests, with pH averaging 6.5 to 7.0.
  - G. Enriched Topsoil: Sandy loam or clay loam as per specifications. Must be weed free and screened for 99% minus sizing. A minimum 40% compost to be blended to provide aeration, nutrients and proper mechanical friability.
  - H. Root-Stimulator: Superthrive or approved equal.
- 2.12 SUB-SURFACE DRAINAGE GRAVEL: Clean washed gravel graded three-quarter (3/4") inch to one and one half (1-1/2") inch. Crushed stone shall be rejected.
- 2.13 FILTER FABRIC: Shall be Mirafi N140 as manufactured by Nicolon Mirafi Group, 3500 Parkway Lane, Suite 500, Norcross, GA 30092 (800.234.0484).
- 2.14 ROOT BARRIER: Shall be 29" deep Root Control System model # 4407-168 or 4407-169 as manufactured by Biobarrier, 70 Old Hickory Blvd., Old Hickory, TN 37138 (800) 382-8467.

PART 3 - EXECUTION

3.01 PLANTING MEDIA

- A. Mix topsoil base, amendments and chemical additives by mechanical means. Do not mix additives with excavated material at the plant pit site.
- B. Soil and amendment bases shall be completely pulverized and free of lumps or aggregated material. Moisture content of base materials shall not be such that chemical granular or pelletized additives become dissolved before thorough mixing.
- C. Mix media in quantities of not less than 50 cubic yards or mix total quantity required if less than 100 cubic yards. The Contractor shall be responsible for continuity between batches.
- D. Deliver to the site perennial bed soil mix prepared off-site.

3.02 QUANTITIES

- A. The Contractor shall keep in storage, at his own expense, sufficient quantities of mix to repair any settling or to adjust grades throughout the warranty period.

3.03 EXCAVATION TO SUBGRADE FOR PLANTING AREAS AND VERIFICATION OF FINISHED GRADE



- A. Excavate all planting areas (pits and beds) to required depth as hereinafter specified and remove material from site.
- B. Subsoil shall not be worked when moisture content is so great that excessive compaction will occur, nor when it is so dry that clods will not break readily. Water shall be applied, if necessary, to bring soil to an optimum moisture content for tilling and planting.
- C. Excavate container grown tree pits to the following dimensions or as shown in planting details. Contractor shall pay close attention to the planting details for location, depth, and materials involved in creating sumps in planting pits. Where conflicting dimensions are shown use the larger size:

<u>Excavation for</u>	<u>Width</u>	<u>Depth</u>
Container Trees	Cont. + 24 in.	Cont. + 6 in.

- E. Rip or cultivate sub-grade in beds to a depth of three (3") inches.

3.04 DRAINAGE, DETRIMENTAL SOILS AND OBSTRUCTIONS

- A. Test drainage of plant beds and pits by filling with water twice in succession. Conditions permitting the retention of water in planting beds for more than 24 hours or percolation of less than 1" per hour shall be brought to the attention of the Owner.
- B. Notify the Project Manager in writing of all soil or drainage conditions Contractor considers detrimental to growth of plant material.
- C. If rock, hardpan, underground construction work, tree roots or other obstructions are encountered in the excavation of plant beds, alternate locations may be selected by Project Manager. Where locations cannot be changed, submit cost required to remove the obstructions to a depth of not less than 6" below the required bed depth. Proceed with work after approval.

3.05 PREPARING PLANT MATERIALS FOR PLANTING

- A. Containerized stock shall be removed carefully from containers. Do not use spade to cut containers. Do not lift or handle container plants by tops, stems, or trunks at any time.
- B. Do not bind or handle any tree with wire or rope at any time so as to damage bark or break branches. Lift and handle trees only from bottom of ball.
- C. Ball and burlap (B&B) plants shall have firm balls of earth. Plants moved with a ball will not be accepted if the ball is cracked or broken before or during planting operations. B&B material shall be dug only when dormant. Pre-dug stored B&B material shall be inspected and approved at the storage site.
- D. Spray all evergreen or deciduous plant material in full leaf immediately before digging with antidesiccant, applying an adequate film (covering completely) over trunks, branches, twigs, and foliage.

3.06 INSTALLATION OF PIT PLANTED MATERIALS

- A. Fill plant pits with soil mix to compacted depth to receive plant root ball, so top of root ball is 2" above finished grade.
- B. Install ADS N-12 pipe and gravel in tree pits per planting details as shown.
- C. Scarify the walls and bottom of all plant pits immediately prior to the placement of plant and backfill mix. The Contractor shall remove all glazing caused by an auger or mechanical hole digger.
- D. For boxed material, break vertical bands and remove top and bottom of container. Carefully lower plant into pit with backhoe or approved method and adjust elevation. Cut horizontal bands and remove sides. Prune away girdled roots and tease root hair masses. Carefully fill pit and compact by watering in to support root ball.
- E. Place plants carefully in the prepared planting pit. Do not disturb root ball or untie twine or roping until backfill settlement is complete and tree is staked, if applicable. Fill planting pit by flooding each 8" of backfill for balls greater than 24" diameter.
- F. Smooth planted areas to conform to specified grades after full settlement has occurred. Contractor shall bear final responsibility for proper surface drainage of planted areas. Any discrepancy in the drawings or specifications, obstructions on the site, or prior work done by another party, which Contractor feels precludes establishing proper drainage, shall be brought to the attention of the Project Manager in writing.
- G. Water all plants immediately again after planting.
- H. Apply pre-emergent weed control material in areas to receive mulch.
- I. Spread mulch in required areas to the compacted depth of 3".

3.07 INSTALLATION OF SURFACE GRAVEL AT TREE WELLS

- A. Where indicated, remove existing gravel and/or soil to 3" below existing ground.
- B. Apply filter fabric to cover tree well.
- C. Spread surface gravel to the depth of 3".

3.08 INSTALLATION OF BED PLANTED MATERIALS

- A. Excavate in planting mix for individual plant and install as required. Set plant plumb and brace rigidly in position until planting soil mix has been tamped solidly around the ball and roots.
- B. Water thoroughly, saturating root ball, before installing remainder of the planting soil to top of pit, eliminating all air pockets. Top of root ball shall be 2" above finished grade.

- C. Smooth planting areas to conform to specified grades after full settlement has occurred. Contractor shall bear final responsibility for proper surface drainage of planted areas.
- D. Water all plants immediately again after planting.
- E. Apply pre-emergent weed control material over entire area to receive mulch.

3.09 SURFACE DRAINAGE OF PLANTING AREAS

- A. Contractor shall bear final responsibility for proper surface drainage of planted areas. Any discrepancy in the drawings or specifications, obstructions on the site, or prior work done by another party which Contractor feels precludes establishing proper drainage, shall be brought to the attention of Project Manager in writing for correction or relief of said responsibility.

3.10 PRUNING

- C. Prune containerized plants only at time of planting and according to standard horticultural practice to preserve the natural character of the plant. Prune by removing entangled branching and by removing crotches. Avoid removing branch tips wherever possible. Pruning shall be done under supervision of the Project Manager.
- B. Remove all dead wood, suckers, and broken or badly bruised branches. Use only clean, sharp tools.
- C. Prune B&B material in addition to place of growth as may be directed by Project Manager by removing a percentage of interior branching proportional to the root loss during digging (up to 1/3).
- D. Paint cuts over 3/4" diameter with tree paint, covering all exposed, living tissue.

3.11 STAKING/STAPLING (refer to planting details for stake/staple locations)

- A. Staking/stapling of trees is to be used by the Contractor, who will be responsible for material remaining plumb and straight for all given conditions through the guarantee period. Tree support shall be done as outlined herein and on the drawings and as recommended by the manufacturer.
- B. Staking/stapling shall be completed immediately after planting. Plants shall stand plumb after staking/stapling.

3.12 BORER PREVENTION AND WRAPPING

- A. Immediately prior to installing the tree wrap material, apply specified insecticide to all trees at the rate included within the manufacturer's instructions.
- B. Wrap trunks of deciduous trees of 1 1/2" or more caliper with a spiral wrapping to height of third branch. Wrap from bottom to top and tie wrapping securely in place.

3.13 CLEAN UP

- A. Clean up all areas as required for complete and acceptable inspection

3.14 INSPECTIONS

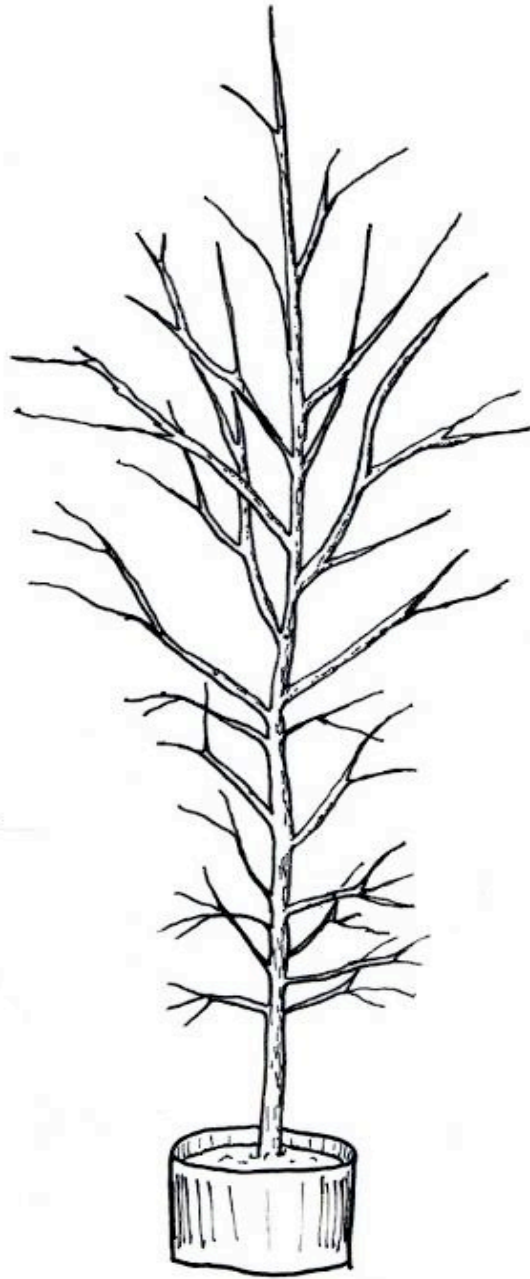
- A. Make written request for inspection after planting operations are completed.
- B. Submit requests for inspections to the Owner at least two (2) days prior to anticipated inspection date.

3.15 PLANT MAINTENANCE

- A. Maintain plantings by pruning, cultivating, watering, weeding, fertilizing, mulching, restoring planting saucers, resetting to proper grades or vertical position, and performing other operations as required to establish healthy, viable plantings. Spray or treat as required to keep trees and shrubs free of insects and disease.
- B. Fill in as necessary soil subsidence that may occur because of settling or other processes. Replace mulch materials damaged or lost in areas of subsidence.
- C. Apply treatments as required to keep plant materials, planted areas, and soils free of pests and pathogens or disease. Use practices to minimize the use of pesticides and reduce hazards.
- D. Apply pesticides and other chemical products and biological control agents in accordance with authorities having jurisdiction and manufacturer's written recommendations. Coordinate applications with Owner's operations and others in proximity to the Work. Notify Owner before each application is performed.
- E. Protect plants from damage due to landscape operations and operations of other contractors and trades. Maintain protection during installation and maintenance periods. Treat, repair, or replace damaged plantings.

END OF SECTION

# Guideline Specifications for Nursery Tree Quality



Revision 2009

## BACKGROUND

This document is a revision of a previous publication entitled *Guideline Specifications for Nursery Tree Quality*, published by the Urban Tree Foundation, which was developed by a committee of horticulture professionals from the nursery, landscape, municipal, consulting, and academic sectors. The original publication has been posted online at the Foundation's Web site (<http://www.urbantree.org/specs.asp>) since 2002 and has been used by public, private, and nonprofit groups to select and specify quality nursery trees. Recommendations for improvements to the document received in the past 5 years have been incorporated in this 2009 revision.

The following people worked on the original *Guideline Specifications for Nursery Tree Quality*:

David Burger, UC Davis Department of Plant Sciences  
Barrie Coate, Consulting Arborist, Los Gatos  
Larry Costello, UC Cooperative Extension, Half Moon Bay  
Robert Crudup, Valley Crest Tree Company, Sunol  
Jim Geiger, US Forest Service, Pacific South West Region  
Bruce Hagen, California Department of Forestry and Fire Protection, Santa Rosa, Retired  
Richard Harris, Professor Emeritus, UC Davis Department of Plant Sciences  
Brian Kempf, Urban Tree Foundation, Visalia  
Jerry Koch, City of Berkeley Division of Urban Forestry, Retired  
Bob Ludekens, L. E. Cooke Company, Visalia  
Greg McPherson, US Forest Service, PSW Research Station, Center for Urban Forest Research  
Martha Ozonoff, California ReLeaf, Davis  
Ed Perry, UC Cooperative Extension, Stanislaus County  
Markio Robert, Caltrans LDA Maintenance Division, Oakland

Illustrations by Edward F. Gilman, Professor, Environmental Horticulture Department, IFAS, University of Florida. Adaptions from *Arboriculture: Integrated Management of Landscape Trees, Shrubs and Vines*, 4th ed., by R. W. Harris, J. R. Clark, and N. P. Matheny (Prentice Hall, 2003).

Copyright © 2009 Brian Kempf



Urban Tree Foundation  
115 S. Dollner Ave.  
Visalia, Ca 93291  
[www.urbantree.org](http://www.urbantree.org)  
[brian@urbantree.org](mailto:brian@urbantree.org)

## Introduction

This document provides specifications for selecting and specifying quality nursery trees in California, with a focus on container stock. Key traits of nursery trees are identified and described to provide growers and buyers with the information they need to distinguish good-quality stock from poor-quality stock. Structural and health characteristics are described, as well as labeling, compliance with laws and regulations, and inspection of nursery stock. If a particular defect or substandard element can be corrected easily, appropriate remedies should be applied as agreed upon by both parties.

### I. GENERAL SPECIFICATIONS

**A. Proper Identification:** All trees shall be true to name as ordered or shown on planting plans and shall be labeled individually or in groups by species and cultivar (as appropriate).

**B. Compliance:** All trees shall comply with federal and state laws and regulations requiring inspection for plant disease, pests, and weeds. Inspection certificates required by law shall accompany each shipment of plants. Clearance from the local county agricultural commissioner, if required, shall be obtained before planting trees originating outside the county in which they are to be planted. Even though trees may conform to county, state, and federal laws, the buyer may impose additional requirements.

**C. Inspection:** The buyer reserves the right to reject trees that do not meet specifications as set forth in these guidelines or as adopted by the buyer. If a particular defect or substandard element can be corrected easily, appropriate remedies shall be applied. If destructive inspection of a root ball is to be done, the buyer and seller should have a prior agreement as to the time and place of inspection, number of trees to be inspected, and financial responsibility for the inspected trees.

**D. Delivery:** The buyer shall stipulate how many days prior to delivery that delivery notification is needed. Buyer shall stipulate any special considerations to the nursery prior to shipment.

### II. HEALTH AND STRUCTURE SPECIFICATIONS

These specifications apply to deciduous, broadleaf evergreen, and coniferous species. They do not apply to palms. Note that leaf characteristics will not be evident on deciduous trees during the dormant season.

#### A. Tree Health

**1. Crown:** The form and density of the crown shall be typical for a young specimen of the species or cultivar. Changes in form caused by wind, pruning practices, pests, or other factors shall not substantially alter the form for the species or cultivar.

**2. Leaves:** The size, color, and appearance of leaves shall be typical for the time of year and stage of growth of the species or cultivar. Trees shall not show signs of prolonged moisture stress as indicated by wilted, shriveled, or dead leaves.

**3. Branches:** Shoot growth (length and diameter) throughout the crown should be appropriate for the age and size of the species or cultivar. Trees shall not have dead, diseased, broken, distorted, or otherwise injured branches.

**4. Trunk:** The tree trunk shall be relatively straight, vertical, and free of wounds (except properly made pruning cuts), sunburned areas, conks (fungal fruiting bodies), wood cracks, bleeding areas, signs of boring insects, galls, cankers, girdling ties, or lesions (mechanical injury).

**5. Roots:** The root system shall be substantially free of injury from biotic (e.g., insects and pathogens) and abiotic (e.g., herbicide toxicity and salt injury) agents. Root distribution shall be uniform throughout the container substrate, and growth shall be appropriate for the species or cultivar. At time of inspection and delivery, the root ball shall be moist throughout. Roots shall not show signs of excess soil moisture conditions as indicated by stunted, discolored, distorted, or dead roots.

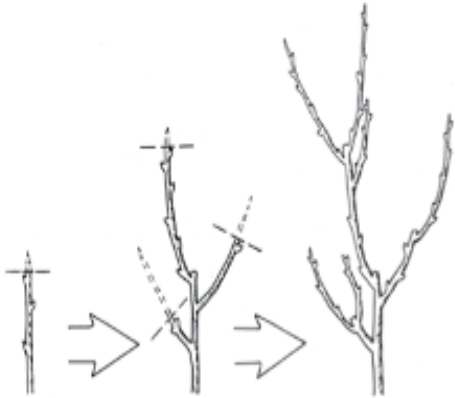
**B. Tree Crown**

Note: Crown specifications do not apply to plants that have been specifically trained in the nursery as topiary, espalier, multistem, clump, or unique selections such as contorted or weeping cultivars.

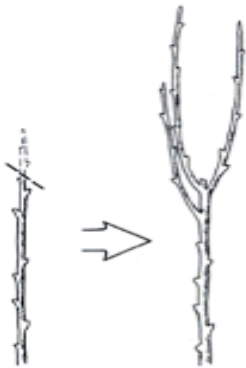
1. Trees shall have a single, relatively straight central leader. They shall be free of codominant stems and vigorous, upright branches that compete with the central leader. If the original leader has been headed, a new leader at least one-half of the diameter of the original leader shall be present.



Not topping is desirable.



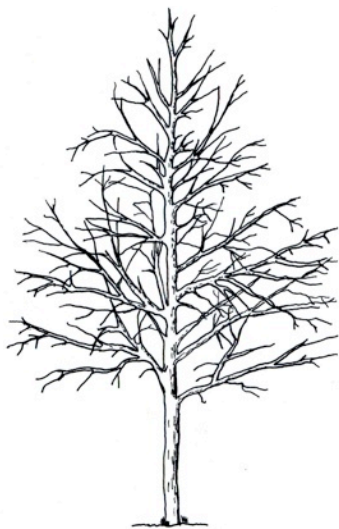
Topping and retaining a leader is desirable.



Topping without retaining a leader is not desirable.



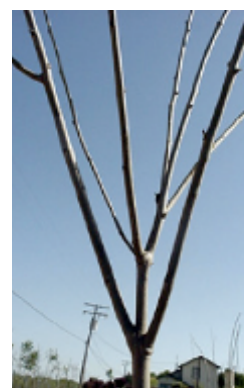
2. Main branches shall be well distributed along the central leader not clustered together. They shall form a balanced crown appropriate for the cultivar/species.



Desirable



Not Desirable



3. Branch diameter shall be no larger than two-thirds (one-half is preferred) the diameter of the central leader measured 1 inch above the branch.



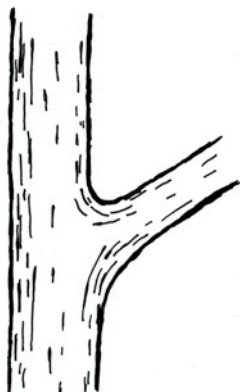
Desirable



Not Desirable



4. The attachment of the largest branches (scaffold branches) shall be free of included bark.



Desirable



Not Desirable



5. Temporary branches, unless otherwise specified, should be present along the lower trunk below the lowest main (scaffold) branch, particularly for trees less than 1 inch in caliper. These branches should be no greater than 3/8 inch diameter. Clear trunk should be no more than 40% of the total height of the tree.



Desirable



Not Desirable



**C. Trunk**

1. The trunk shall be free of wounds (except properly-made pruning cuts), sunburned areas, conks (fungal fruiting-bodies), wood cracks, bleeding areas, signs of boring insects, galls, cankers and/or lesions.

2. Trunk caliper and taper shall be sufficient so that the tree will remain vertical without a stake. Trunk caliper at 6 inches above the soil media (substrate) surface shall be within the diameter range shown for each container size below:

Container Size -----Trunk Diameter

# 5.....0.5" to 0.75"

# 15.....0.75" to 1.5"

24-inch box.....1.5" to 2.5"



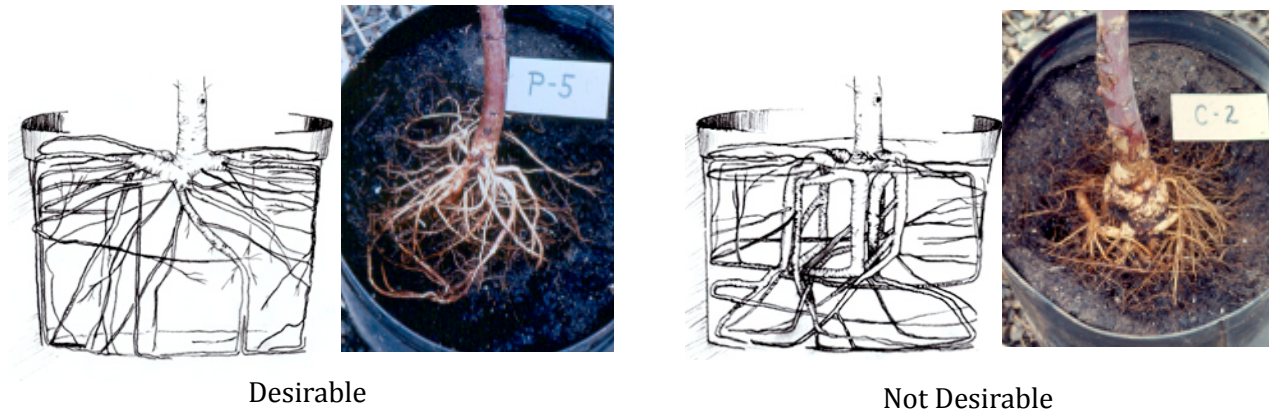
Desirable



Not Desirable

## D. Roots

1. The uppermost roots or root collar (root crown) shall be within the upper 2 inches of the soil media (substrate).
2. The root collar and the inside portion of the root ball shall be free of defects, including circling, kinked, and stem girdling roots. Soil removal near the root collar may be necessary to inspect the aforementioned root defects.



Desirable

Not Desirable

3. Roots on the periphery and bottom of the root ball shall be less than 1/4 inch in diameter (1/8 inch is preferred). The maximum acceptable root diameter on the periphery should be indicated.



Desirable



Not Desirable

4. The tree shall be well rooted in the soil media (substrate). Root distribution shall be uniform throughout the container media. Structure and growth shall be appropriate for the species/cultivar. When the container is removed, the root ball shall remain intact. When the trunk is lifted both the trunk and root system shall move as one.
5. At the time of inspection and delivery, the root ball shall be moist throughout. The crown shall show no signs of moisture stress as indicated by wilted, shriveled, or dead leaves or branch dieback. The roots shall show no signs of excess soil moisture as indicated by poor root growth, root discoloration, distortion, death, or foul odor.

## III. INSPECTION

The buyer reserves the right to reject trees that do not meet specifications as set forth in these guidelines or as adopted by the buyer. If a particular defect or substandard element or characteristic can be easily corrected, appropriate remedies are encouraged. If destructive inspection of a root ball or balls is to be done, the buyer and seller should have a prior agreement as to the time and place of inspection, minimum number of trees to be inspected or percentage of a species or cultivar, and financial responsibility for the inspected trees.

## VI. DELIVERY

The buyer should stipulate how many days prior to delivery that notification is needed.

## GLOSSARY:

**caliper.** Trunk diameter measured 6 inches from the ground; if caliper is greater than 4 inches, the caliper measurement is taken at 12 inches from the ground.

**central leader.** A continuation of the main trunk located more or less in the center of the crown, beginning at the lowest main branch (scaffold) and extending to the top of the tree. Also referred to as the **dominant leader**.

**circling roots.** One or more roots whose diameter is greater than 10% of the trunk caliper circling more than one-third of the trunk.

**clear trunk.** The portion of the trunk below the crown lacking lateral branches; this includes the portion of the trunk with shortened temporary branches that are below the main crown.

**codominant.** Two or more vigorous, upright branches or stems of relatively equal size that originate from a common point, usually where the leader was lost or removed.

**crown.** The portion of a tree beginning at the lowest main (scaffold) branch extending to the top of the tree.

**cultivar.** A named plant selection from which identical or nearly identical plants can be produced, usually by vegetative propagation or cloning.

**included bark.** Bark embedded in the union between a branch and the trunk or between two or more stems that prevents the formation of a normal branch bark ridge.

**kinked root.** A main mother root that is sharply bent.

**leader.** The dominant stem that usually develops into the main trunk.

**photosynthate.** Sugar and other carbohydrates that are produced by the foliage and stems during photosynthesis.

**root collar.** The base of a tree where the main roots and trunk meet. Also referred to as the **root flare**.

**scaffold branches.** Large main branches that form the main structure of the crown.

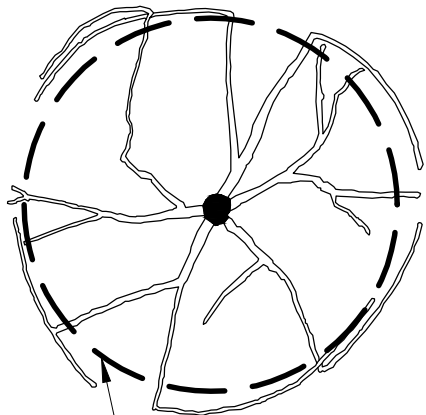
**stem-girdling root.** A circling, bent, or straight root that touches or rests on the trunk or root flare that can become a permanent root.

**temporary branch.** A small branch that is temporarily retained along the lower trunk of young trees.

**trunk.** The main stem of a tree, beginning at the root collar and ending at the lowest main scaffold branch.

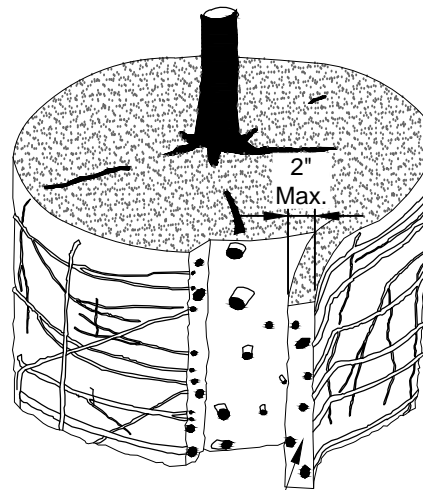
**taper.** The thickening of a trunk or branch toward its base.

**BEFORE SHAVING**



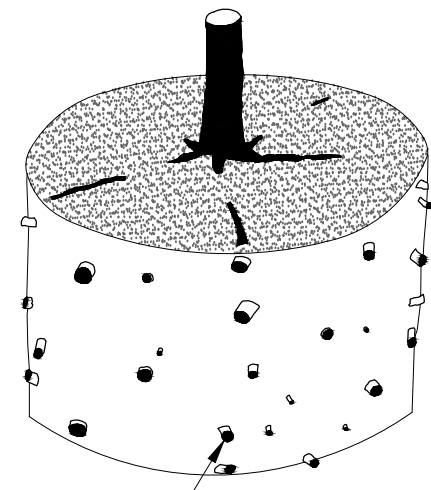
Shave root ball here to remove all roots growing on periphery.

**SHAVING PROCESS**



Shave outer periphery of the root ball a maximum of 2" thick.

**SHAVING COMPLETE**



Root tips exposed at periphery of root ball. All roots growing around periphery are removed.

Notes:

- 1- Shaving to be conducted using a sharp blade or hand saw eliminating no more than needed to remove all roots on the periphery of root ball.
- 2- Shaving can be performed just prior to planting or after placing in the hole.

URBAN TREE FOUNDATION© 2014  
OPEN SOURCE FREE TO USE



**ROOT BALL SHAVING CONTAINER DETAIL**