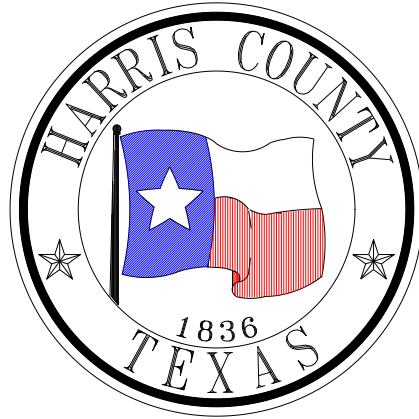


SUPPLEMENT TO SECTION 3 - INSURANCE  
HARRIS COUNTY GENERAL CONDITIONS  
FOR ROADS, BRIDGES AND RELATED WORK

**SECTION 3 – INSURANCE**

Delete this section in its entirety.

# HARRIS COUNTY



## General Conditions for Roads, Bridges and Related Work

**HARRIS COUNTY**  
**GENERAL CONDITIONS**  
**FOR ROADS, BRIDGES AND RELATED WORK**  
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END

**HARRIS COUNTY**  
**GENERAL CONDITIONS**  
**(FOR ROADS, BRIDGES AND RELATED WORK)**

**SECTION 1. DEFINITION OF TERMS**

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

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

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

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

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

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

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

**1.08 Bonds.** Instruments of security furnished by the Contractor and its surety, as required by the Contract Documents, including bid, performance, payment and special bonds.

**1.09 Change Order.** A document added after the Contract execution to revise, add to, or delete from the Work and to adjust the Contract sum or Contract time.

**1.10 Commissioners' Court.** The Commissioners' Court of Harris County, Texas.

**1.11 Contract.** The standard form, consisting of the Bid to Commissioners' Court executed by the Contractor and acceptance by the County executed by the County Judge or other named person pursuant to authority granted by Commissioners' Court, that binds the County and the Contractor covering the performance of Work or services or the furnishing of materials, supplies, or equipment as proposed. The Contract shall include the Bid, Drawings, Specifications, general and special provisions, and any and all supplements thereto.

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

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

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

**1.15 County.** Harris County, Texas, provided, however, if these General Conditions are included in the Contract Documents of a Harris County Flood Control District project, the term "County" shall mean the Harris County Flood Control District, unless the context indicates a different meaning.

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

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

**1.18 Drawings.** The Drawings, profiles, sections, working Drawings and supplemental Drawings, or exact reproductions thereof, officially approved by Harris County, which show the location, character, dimensions and details of the Work or services to be performed or the description of the materials or equipment to be furnished, which Drawings are considered as a part of the Contract supplementary to the Specifications.

**1.19 Engineer.** The County Engineer or the Engineer authorized to act for and in behalf of the County.

**1.20 Inspector.** The authorized representative of the Engineer assigned to make detailed inspections of any or all portions of the Work and materials or equipment involved in this Contract.

**1.21 Payment Bond.** A surety Bond in the amount of the Contract, solely for the protection of all claimants supplying labor and material in the prosecution of the work provided for in the Contract.

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

**1.23 Product Data.** Manufacturer's standard schematic Drawings, catalog, sheets, brochures, diagrams, schedules, performance charts, illustrations and other descriptive items.

**1.24 Project Manual.** The documents containing, but not limited to, Bidding Documents, Contract forms, all Specifications, special provisions and these General Conditions.

**1.25 Project Reports.** The project-specific reports, including but not limited to, Geotechnical Report, Storm Water Quality Management Plan (SWQMP), and Storm Water Pollution Prevention Plan (SWPPP).

**1.26 Purchasing Agent.** The Purchasing Agent of Harris County, Texas.

**1.27 Road Numbers.** Whenever any Road Number is used in these Specifications or any related documents, such Number shall be understood to be those assigned to such Roads on the Harris County Road Log in the office of the County Auditor and shall be understood to refer to such Log unless some other reference is clearly indicated.

**1.28 Sample.** A physical example furnished by the Contractor to illustrate materials,

equipment or workmanship; to establish standards by which the Work will be judged.

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

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

**1.31 Subcontractor.** An individual, firm, joint venture, partnership, corporation or other legal entity having a contract with the Contractor or with any Subcontractor for performing a part of the Work, including those who are to furnish materials or equipment fabricated to a special design.

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

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

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

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

In the case of a construction project, the successful Bidder or Contractor shall perform all earthwork, construct all surface courses, build all structures and incidental construction, and perform extra Work, if necessary, all in accordance with the lines, grades, typical cross-sections, details and dimensions shown on the Drawings. The Contractor shall furnish, unless otherwise provided in the special provisions or in the Contract, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Contract.

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

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

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

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



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

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

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

Unless otherwise specified, all materials shall be the best of their respective kinds and shall be in all cases fully equal to approved samples. All materials furnished shall be new and free from defects and in accordance with the Specifications applying thereto.

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

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

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

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

**2.05 Examination of Drawings, Specifications, Special Provisions and Site of Work.** When a Bid is submitted, it will be presumed that the Bidder has visited and carefully examined the site of the Work and has made a complete study of the Drawings, Specifications, these General Conditions, special provisions and the form of the Contract to be entered into. Information concerning soil boring and water elevations taken on the project site, if available, will be furnished upon request. This information is offered to the Bidder for information purposes only and the County will not be responsible for the information contained therein.

In the event the Contract covers materials, supplies or equipment, the Contractor

is presumed to fully understand the requirements of the County.

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

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

**2.08 Bid.** Blank spaces in the Bid form must be properly filled. The phraseology of the Bid form must not be changed and no additions or deletions shall be made to the items mentioned therein. Unauthorized conditions, limitations or provisions attached to a Bid will render it void. Explanations which are not intended as limitations or changes in the Bid may be attached to the Bid over the signature of the Bidder, but no alterations or qualifications are permitted. The unit prices Bid on any items shall govern.

The unit prices written in words govern over the unit prices written in figures, and errors of extension will be corrected. If the Bidder fails to Bid on any item, the County may, at its option, reject such Bid as incomplete, or it may elect to use the lowest amount Bid on such item by other Bidders for the purpose of comparing Bids and in the preparation of the Contract, and the Bidder shall be bound by the amount of such item as though contained in its Bid in the first instance.

A Bidder may withdraw its Bid before the expiration of the time during which Bids may be submitted, without prejudice to himself, by submitting a written request for its withdrawal to the Purchasing Agent. No Bid received after the time specified in the Notice to Bidders will be considered.

Bidders are invited to be present at the opening of Bids.

The County reserves the right to reject any or all Bids, or to waive technical defects.

**2.09 Addenda.** The Contractor is responsible for verifying and obtaining all Addenda related to this work. Failure to include any or all Addenda in the Bid will be considered as a basis for the rejection of a Bid.

**2.10 Form of Bid and Signature.** The Bid shall be made only on the form provided and shall be enclosed in an envelope correctly marked with the job number and description, sealed and addressed as required by the Contract Documents. The Bidder shall state in words and in figures the unit prices or the specific sums, as the case may be, for which it proposes to furnish the material, supplies or equipment or to perform the Work or services required by the Drawings and Specifications.

**2.11 Bid Security.** Each Bid must be accompanied by Bid security made payable to the County in the amount of five percent of the Bidder's maximum Bid price and in the form of a cashier's check or a Bid Bond issued by a surety meeting the requirements of Paragraph 2.20 of the General Conditions.

**2.12 Delivery of Bid.** Each Bid, together with the Bid Check or Bid Bond, must be placed in a sealed Bid envelope and so marked as to indicate its contents without being

opened. If a Bid is to be mailed, this envelope must be placed in another envelope, which must be sealed, mailed and delivered to the Purchasing Agent. Bids are received to the hour, at the designated time, and date set for the opening thereof and must be received by the Purchasing Agent's Office by that time. Mailing of Bids is solely at the Bidder's risk and no Bid received after the time specified in the Contract Documents will be considered.

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

**2.14 Award of Contract.** The Award, if made, will be made within thirty (30) (please see supplement) days after the opening of the Bids, unless otherwise noted in the Bid Documents, or agreed to by the Contractor.

**2.15 Competency of Bidders.** Each Bidder must be capable of performing the various items of Work or services or of furnishing the various items of materials, supplies, or equipment Bid upon. Each Bidder may be required to furnish a statement covering the experience on similar Work and such statements of its financial resources as may be deemed necessary.

**2.16 Responsible Bidder.** Criteria utilized by Harris County for determining the lowest responsible Bid includes, but is not limited to, whether the Bidder meets the County's published specifications, the Bidder's experience, skill, ability, business judgment, financial capacity, integrity, honesty; availability of the necessary facilities, equipment materials and workers; previous performance, reputation, promptness, safety record and any other factors which could reasonably be asserted as being relevant to the Bidder's successful performance.

**2.17 Disqualification for Collusion.** Any or all Bids may rejected if there is reason for believing that collusion exists among the Bidders and no party in such collusion will be considered in future Bids for the same Work.

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

**2.19 Return of Bid Checks.** Bid Checks of the three lowest Bidders may be retained by the County Clerk until after the Award and approval of the Contract, Payment Bond and Performance Bond. These shall be returned by the County Clerk immediately after the final approval of the Contract, Performance Bond and Payment Bond, upon execution of the receipt required by the County Clerk. The Bid Checks for all other Bidders shall be returned by the County Clerk at any time within seventy-two (72) hours following the opening of Bids upon execution of the receipt required by the County Clerk.

**2.20 Bonds.** The prescribed form of Performance Bond and Payment Bond are available to the Bidder and it is presumed that the Bidder is familiar with them. The Bidder to whom an Award is made shall, within ten (10) calendar days from the date of the Award, execute and deliver to the County any required Performance Bond and Payment Bond, all in the prescribed form. If the Bidder to whom the Award is made fails to furnish a required Performance Bond or Payment Bond as herein provided, the

County may rescind its award and acceptance of Contractor's bid and make an Award to the next lowest responsible Bidder who shall fulfill every stipulation embraced herein as if the first Award were made to it. If this should occur, the Bidder to whom the Award was first made shall at the option of the County, be required to pay to the County the difference between his Bid and that of the next lowest responsible Bidder up to the maximum amount provided in the Bid security for the project. A corporation to which an Award is made will be required to furnish evidence of the authority of the officers executing the Contract. The Performance Bond and the Payment Bond must be accompanied by a valid power of attorney or proper evidence as approved by the County, providing evidence that the person signing on behalf of the Surety is authorized to so act.

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

**2.21 Acceptance of Bid and Bonds.** Should the Commissioners' Court be of the opinion that a Contract should be entered into and approved, it shall authorize the County Judge or other named person as agent to execute acceptance by the County of the lowest and best Bid, and shall thereupon enter its order directing the County Engineer as agent to accept and approve on behalf of the County any required Performance and Payment Bond which may be properly presented on the prescribed form and indicate such acceptance and approval on the face of such Bond. The Contract shall not become effective or binding upon the County unless and until County Auditor's certification required by law is made.

**2.22 Purchase Order.** The Purchasing Agent shall prepare a purchase order on the form prescribed by the County Auditor, conforming to the terms of the Contract and transmit it to the Engineer who shall note thereon the date the Contractor shall begin Work, which date shall be not more than sixty (60) calendar days from the date of approval of the Contract and Bond. Execution of the purchase order by the Contractor shall constitute notice to begin Work on the date therein stated. The Purchase Order shall not be effective unless and until the County Auditor's certification as required by law is made.

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

## **SECTION 3. INSURANCE**

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

WAY INVOLVED WHETHER RELATED TO THE CONTRACT AND/OR THE CONTRACTOR'S PERFORMANCE OR NON-PERFORMANCE UNDER THE CONTRACT. THE CONTRACTOR SHALL NOT BE RELEASED FROM SAID LIABILITY UNTIL THE WORK SHALL HAVE BEEN COMPLETED AND ACCEPTED BY THE COUNTY.

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

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

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

All insurance coverage shall be written by companies holding a Certificate of Authority from the Texas State Board of Insurance, have a Best Financial rating of at least "B + " or better and being otherwise acceptable to the County. In the event that coverage is not procurable, after diligent effort has been made to do so, from among the insurers licensed to transact and actually write the type and class of insurance in the State of Texas, the County may consider "Surplus Lines Insurance" pursuant to the Texas Insurance Code Ann. Art. 1.14-2.

**ENDORSEMENTS**

1. The County must be named **"Specific Additional Insured"** on the commercial general liability and business automobile liability (with Contractor's insurance policy as primary).
2. All policies shall **"Waive All Rights of Subrogation"** against the County, its officers, employees and agents.
3. All policies shall provide that a thirty (30) day written notice shall be submitted to the County Engineer, to the attention of the Contract Compliance Officer, in the event of cancellation or material change. If the coverage period shown on the Contractor's current certificate ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate with the County showing that coverage has been extended.

**\*\*All certificates must contain the work description, all of the above endorsements and shall be submitted in triplicate.**

## MINIMUM REQUIREMENTS

Insurance Coverage	Limits of Liability
<p>A. Commercial General Liability (Occurrence Form) including, but not limited to, Independent Contractor's Liability, Premises and Operation, Products Liability, Completed Operations, Broad Form Property Damage, Contractual Liability, Personal Injury Liability and if applicable to the project, coverage for watercraft, blasting, collapse, explosions, blowout, cratering, underground damage, pollution and asbestos.</p>	<p>\$300,000 Each Occurrence            \$1,000,000 General Aggregate            \$1,000,000 Products/Completed Operations Aggregate            \$300,000 Personal Injury            \$50,000 Fire Damage            \$5,000 Medical Expense</p>
<p>B. Business Automobile Liability (including hired and non-owned coverages)</p>	<p>\$300,000 Combined Liability Limits, Bodily Injury and Property Damaged Combined</p>
<p>C. Builder's Risk (building construction only)</p>	<p>Coverage for all risks for physical loss or damage at one hundred percent (100%) of all value as created during construction. If the contract is for the construction of a building only, the amount of the contract shall be deemed to be the insurable value. If the contract is for the construction of a building and other facilities, or if for any other reason the cost of the building to the County is not ascertainable, the County Engineer will determine the insurable value of the building.</p>
<p><b>D. Workers' Compensation and Employer's Liability (including All States, U.S. Longshoremens, Labor Worker's Act and other endorsements, if applicable to the Project.)</b></p>	<p style="text-align: center;"><b>Statutory Limits</b></p> <p>Each Accident \$100,000            Disease-Policy Limit \$500,000            Disease-Each Employee \$100,000</p>

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

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

Duration of the work - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

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

2. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the work.
3. **The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.**
4. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
5. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - a. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - b. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
6. The contractor shall retain all required certificates of coverage for the duration of the work and for one year thereafter.
7. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
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. (This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population.)

## **REQUIRED WORKERS COMPENSATION COVERAGE**

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

**"Call the Texas Workers Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."**

9. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - b. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - c. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - d. obtain from each other person with whom it contracts, and provide to the contractor:
    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 shown on the current certificate of coverage ends during the duration of the project;
  - e. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - f. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - g. contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
10. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all



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

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

#### **SECTION 4. REGULATORY REQUIREMENTS**

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

**4.02 Relations with County Officials and Employees.** All Contractors, Subcontractors and their employees are prohibited to give or lend money, services or any other thing of value, to any official, employee or representative of the County, and should it appear that this provision has been violated, Commissioners' Court, at its option, may terminate any and all Contracts that may exist between the said Contractor and the County.

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

**4.04 Barricades Warning Lights and Signs On Projects Involving Public Roads.** Unless provided otherwise in the Contract Documents, the Contractor is solely responsible for furnishing, erecting, and maintaining suitable barricades, warning signs, flares, barriers, cones, lights, flags, signals, flagmen and other traffic control devices as are or may be necessary to adequately protect the Work and warn, advise and safeguard the traveling public over the entire length of the project, including, but not limited to, sections of the project which the Contractor closes to traffic. The Contractor's responsibility in this regard extends for the entire duration of the project, from the start of construction until acceptance by the County. All barricades, signs and other types of devices necessary for traffic control and to protect the Work shall be in accordance with the "Texas Manual on Uniform Traffic Control Devices."

**4.05 Detours On Projects Involving Public Roads.** Detours and temporary structures necessary for public travel during the prosecution of the Work will be indicated in the Drawings or provided for in the Specifications and the cost included in the Bid and Contract price.

The Contractor shall provide means of ingress and egress for residents and businesses along any closed section of the Work and shall provide property owners a means of access to a public road. No section of the Work shall be closed to traffic until so directed by the Engineer. No bridge, culvert or drainage structure shall be closed

until an adequate detour has been arranged and constructed. Suitable signs indicating "Road Closed" or "Detour" shall be erected by the Contractor. All roadway construction, including transition sections and drainage culverts across all existing streets, shall be accomplished in such a manner as to allow continuous, two lane, two way traffic to be maintained at all times on the road and crossroads. If temporary detours become necessary to maintain these requirements, they shall be constructed on 6 inches of compacted limestone base with 1-1/2 inches of HMHL asphaltic surface, unless shown otherwise in the Contract Documents, as well as any necessary drainage structures. The cost of these temporary detours shall be paid for as outlined in the Item, "Constructing Detours for Maintaining Two Way Traffic."

Where possible, construction of all drainage ditches and drainage culvert crossings shall be completed prior to main roadway construction.

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

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

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

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

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

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

**4.10 Use of Explosives.** When the use of explosives is necessary for the prosecution of the work, the Contractor shall use the utmost care not to endanger life or property. All explosives shall be stored in a secure manner and all such storage places shall be

marked clearly "Dangerous," "Explosives" and shall be in the care of competent watchmen. The Contractor shall be solely responsible for damage caused by explosives.

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

**4.12 Rest room and Field Office.** The Contractor shall provide and maintain at its own expense a rest room and an office for the exclusive use of the Engineer and staff for all projects over one hundred (100) calendar days in duration. The office will be approximately a minimum of 200 square feet in size, mounted on skids, wheels or other approved mobility with 7 feet minimum ceiling height and shall be of weather-tight construction. The inside walls of the office shall be lined with paneling or other material approved by the Engineer and the office shall have no fewer than six double-hung windows, a door with hasp for padlock and a floor covered in tile or other material approved by the Engineer, a minimum of 8 inches above the ground. The office shall have a closet at least 3 feet wide, 1-1/2 feet deep and 7 feet in height, a sloped top stand-up height table and stool, a desk, 3 chairs, and a lockable two-drawer legal size file cabinet. The Contractor shall also provide two racks for holding Drawings and an office sign 24" X 36", painted as directed by the Engineer. All exterior openings shall be screened. The rest room and field office shall be complete and ready for use on or before the first day construction begins. The rest room and field office shall be placed at a location satisfactory to the Engineer. The office shall be wired and furnished with electricity, shall be air-conditioned, heated and shall have WiFi and/or wireless internet service and contain a working telephone with a separate line and an outside bell for the exclusive use of the County.

This building and the items furnished with the building shall remain the Contractor's property and shall be removed by the Contractor at the end of the project. No direct payment will be made for the structure or the furnishings.

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

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

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

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

Each calendar day the Engineer, or its representative, shall record on forms furnished by the County the time worked, if any, by the Contractor. When requested by the Engineer, such records or reports shall be signed by the Contractor or its representative and the Contractor shall be entitled to a copy thereof. Failure of the Contractor to sign or to receive a copy shall not affect the result of the findings made in such reports. One copy of such report shall be filed daily with the County Auditor by the Engineer. Work shall begin on the date fixed in the Purchase Order (Notice to Proceed). The Work will be completed and ready for Final Payment in accordance with paragraph 6.05 of the General Conditions within 365 calendar days after the date when the Contract Time commences to run. The County will suffer financial loss if the Work is not completed within the time specified herein, plus any extension thereof allowed in accordance with paragraph 5.06 of the General Conditions. The County and the Contractor recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the County if the work is not complete on time. Accordingly, instead of requiring any such proof, the County and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the County five hundred dollars (\$<sup>500</sup>) for each day that expires after the time specified herein for completion until the Work is complete. In case full payment for the Work shall have been made, the County shall have the right to recover from the Contractor and its surety the amount of such liquidated damages as determined under this Contract.

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

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

Contract Time includes 30 calendar days to accommodate inclement weather. If the number of inclement weather days exceeds 110% of the above mentioned number of calendar days to accommodate inclement weather, the Contractor may make a written application to the County Engineer for, and receive, an extension of the Contract Time, for such number of days that the inclement weather days exceeds 100% of the above mentioned number of calendar days to accommodate inclement weather. After receipt of such application, the County Engineer shall make a determination as to which days, if any, during the Contract Time are inclement weather days, and the County Engineer's decision shall be final. The Contractor shall be entitled to an extension of the Contract Time equal to such excess as determined by the County Engineer. The term "inclement weather day", as used herein, means a day in which weather or wet soil does not permit the performance of the work for a continuous period of not less than seven hours between the hours of 7 a.m. and 6 p.m.

**5.04 Abandonment of Work or Default of Contractor.** If the Contractor fails to begin the work within the time specified; or fails to make deliveries or to provide sufficient workmen and equipment or sufficient materials to insure the prompt completion; or performs the Contract unsuitably; or neglects or refuses to remove materials or perform anew such Work as shall have been rejected as defective or unsuitable; or discontinues the prosecution of the Work; or becomes insolvent or is declared bankrupt; or commits any act of bankruptcy or insolvency; or allows any final judgment to stand against the

Contractor unsatisfied for a period of forty-eight (48) hours or longer; or makes an assignment for the benefit of creditors; or fails to comply with any of the conditions of the Contract to such an extent that the Contract is forfeited or abandoned by the Contractor, or declared abandoned or suspended by the County; or if the Contractor for any other cause whatsoever shall not carry on the Work or perform the Contract in an acceptable manner, then and in that event, the Surety on the Contractor's Performance Bond shall have the right and privilege, within seven (7) days after the date of notice of such action from the County, to assume control of the Contract and all Work thereunder and to sublet or complete the Work in strict conformity with the provisions of said Contract. Failure of the Surety to do so within said seven (7) days will result in an immediate forfeiture of all right to thereafter assume control of the Contract and the Work thereunder, in which event the County shall have the right to take the prosecution of the Work out of the hands of the Contractor and to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and enter into an agreement for the completion of the Contract according to the terms and provisions thereof or use such other methods as in the Engineer's opinion may be required or desirable for the completion of the Contract in an acceptable manner. All costs and charges incurred by the County, together with the costs of completing the Work, shall be deducted from any money due or which may become due said Contractor. In the event the cost and expense so incurred by the County is less than the sum which would have been payable under the Contract if it had been completed by said Contractor, then the said Contractor and/or Surety shall be entitled to receive the difference. In the event such cost shall exceed the amount which would have been payable under the Contract, then the Contractor and Surety shall be liable and shall pay to the County the amount of said excess.

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

**5.06 Change Orders.** The unit prices Bid shall govern for additions to, or deductions from, the Contract. If materials or labor are required for which no unit price is Bid, the price shall be that reached by agreement by the County and the Contractor after definite evidence is furnished by the Contractor to the County that the price is the current prevailing price in the area. If the County and the Contractor cannot agree, the Engineer shall determine the price for changes.

No compensation shall be allowed under a Change Order for any person not actively engaged in the performance of the specified Work.

No extra Work shall be paid for without an approved Change Order.

If additional time is required by reason of the Change, the number of days for completion provided for in this Contract shall be adjusted at the time the Change Order is entered into, and if no adjustment is made on the Change Order form, any additional time is to be considered waived by the Contractor.

Any extension of time given shall not release the Contractor or the Surety from their Performance and Payment Bonds or from all obligations hereunder, which shall

remain in full force until the discharge of the Contract.

All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 5.06 shall not exclude recovery of damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs for delay by either party.

**5.07 Subcontracting.** Within ten days after Contract award, the Contractor is required to furnish a list of Subcontractors proposed for principal portions of the Work. After due investigation, the Engineer shall promptly notify the Contractor of any Subcontractors who are not acceptable. Failure of the Engineer to make prompt objection will constitute acceptance of the Subcontractors. Accepted Subcontractors will not be replaced by the Contractor, without approval. The Contractor will respond to any rejection of Subcontractors by submitting an acceptable substitute. No agreement to do any part of the Work will be made between the Contractor and any Subcontractor, person or organization which has been rejected by the Engineer. Similarly, the Contractor is not required to contract with any Subcontractor, person or organization to which it has reasonable objection.

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

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

No Subcontractor shall, under any circumstances, relieve the Contractor of its liabilities and obligations under this Contract should such Subcontractor fail to perform the work undertaken by it in a satisfactory manner.

**5.08 Character of Workmen and Equipment.** Any foreman or workman employed by the Contractor or by any Subcontractor who in the opinion of the Engineer or the Engineer's authorized representative does not perform their Work in a proper and skillful manner or is disrespectful, intemperate, disorderly or otherwise objectionable shall, at the written request of the Engineer, be forthwith removed from the job site by the Contractor or any Subcontractor employing such foreman or workman and shall not be employed again on any portion of the Work without the prior written consent of the Engineer. Should the Contractor fail to remove such person or persons or fail to furnish suitable and sufficient machinery, equipment or force for the proper prosecution of the Work, the Engineer may withhold all estimates which are, or may become, due, or may suspend the Work until such workmen, engaged on special Work or skilled Work, shall be replaced by persons having sufficient experience in such Work to properly and satisfactorily perform it and operate the equipment involved and shall perform the Work in the manner prescribed in these Specifications.

**5.09 Protection Against Claims of Subcontractors Laborers Materialmen and Furnishers of Machinery Equipment and Supplies.** The Contractor shall indemnify and save the County harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools and all supplies, including commissary, incurred in the furtherance of the performance of the Contract. When so desired by the County, the Contractor shall furnish satisfactory evidence that all obligations of the nature herein above designated have been paid, discharged or waived.

**5.10 Authority of Engineer.** The Work shall be done under the direct observation of

the Engineer and to the Engineer's satisfaction. The Contractor shall furnish and deliver to designated delivery points all material called for under its Contract at such times and in such quantities as may be directed by the Engineer. The Engineer shall decide any and all questions which may arise as to the quality or acceptability of materials furnished, work performed, and rate of progress of the Work, and shall decide all questions which may arise as to the interpretation of the Drawings and Specifications and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor. The Engineer's decisions under this provision shall be final and binding on both parties hereto.

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

The Contractor shall give the Engineer at least thirty-six (36) hours notice, in writing, before requiring stakes to be set on any new portion of the Work, and the Contractor shall clearly state in such notice the exact location where such stakes are needed for immediate use.

The Contractor shall give the Engineer full opportunity to inspect the Work at all stages and where there has been any Work stoppages it shall give the Engineer at least twenty-four (24) hours notice before resuming operations. Where any gas, water, or other utility installations will be affected by the Work to be carried on by the Contractor, the Contractor must provide ample notice to the owners, operators or persons in charge so that the prosecution of the Work under this Contract is not delayed.

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

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

**5.14 Reference Points.** The County shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable

Contractor to proceed with the Work. The Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without prior written approval of the County. The Contractor shall report to the Engineer whenever any reference point is lost or destroyed or requires relocations because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

**5.15 Materials and Workmanship.** The Contractor shall submit samples or specimens of the materials to be furnished or used in the Work as the Engineer may require. All materials must be of specified quality and equal to approved samples, and shall be stored so as to insure the preservation of their quality and fitness for the Work. The Engineer may, at the Engineer's discretion, make test cuts at any point to determine the character of material and workmanship, and to check dimensions.

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

**5.16 Patented Devices, Materials and Processes.** If the Contractor uses any design, material, or process covered by letters, patent or copyright, it shall provide for such use with the patentee or owner. The Contractor shall indemnify and save harmless the County from any and all claims for infringement.

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

The Inspector shall at all times have access to all parts of the shop where material under this Contract is being manufactured. Material that does not conform to the Specifications, accepted through oversight or otherwise, may be rejected at any stage of the Work. Whenever the Contractor on installation or construction is permitted or directed to do night work, or to vary the period during which the Work is carried on each day, it shall give the Engineer due notice, so that inspections may be performed. Such Work shall be done without extra compensation. The Contractor will furnish the Engineer a schedule for this night work.

Should the Engineer require it, the Contractor shall, at any time during the construction of Work contracted for, make openings to such extent through any part of said Work as the Engineer may direct, and the Contractor shall make the same good again, to the satisfaction of the Engineer.

Should the Work, in the opinion of the Engineer be found to be faulty in any respect, all such faulty Work shall be replaced by the Contractor.



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

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

**5.20 Removal and Rebuilding of Defective Work.** The Contractor shall remove and rebuild at its own expense any part of the work that has been improperly executed, even though it has been included in the monthly estimates. If the Contractor refuses or neglects to correct any defective work, it may be corrected by the County, at the Contractor's expense.

**5.21 Preservation and Restoration of Property.** The Contractor shall be responsible for the preservation of the County's property along and adjacent to the project site and shall take every precaution necessary to prevent damage to pipes, conduits and other underground structures and shall protect carefully from disturbance or damage all property markers. When or where any direct or indirect damage is done to the County's, or adjacent, property by or on account of any act, omission, neglect or misconduct in the performance of the Work or in consequence of the non-performance thereof on the part of the Contractor, the Contractor shall restore, at the Contractor's own expense, such property to a condition equal to that existing before such damage was done by repairing, rebuilding or otherwise restoring same, or the Contractor will make good such damage in an acceptable manner.

Certain trees and shrubs growing within the right-of-way shall be preserved in good condition by the Contractor at the Contractor's sole expense when designated in the Specifications or by the Engineer. The Contractor shall trim them to the extent and in the manner directed by the Engineer to remove traffic hazards.

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

**5.23 Public Utility Obstruction.** All public utilities, such as poles, pipes, conduits, etc. that must either be moved or adjusted, will either be removed from the site or shifted to

a new location on the site to make way for new construction. This Work will be performed by other parties; however, the Contractor shall cooperate with the public utility making the changes and shall use every precaution to protect their property.

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

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

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

**5.25 Substantial Completion.** When the Contractor considers the entire Work ready for its intended use he shall notify the County in writing that the entire Work is substantially complete (except for items specifically listed as incomplete) and request that the Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Parties to the Contract shall make an inspection of the Work to determine the status of completion. If the Engineer does not consider the Work substantially complete, he will notify the Contractor in writing giving the reasons therefore. If the Engineer considers the Work substantially complete, he will prepare a Certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before Final Payment. The Substantial Completion Certificate will allow a reasonable period for the Contractor to complete the punch list items. Upon satisfactory completion of all items, the Contractor may apply for Final Payment.

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

## **SECTION 6. PAYMENT**

**6.01 Partial Payments.** At the earliest possible date after the first day of each calendar month, the Engineer will make a current estimate in writing of the materials in-place complete and the amount of Work performed during the preceding calendar month or period, and the value thereof based on the Contract price contracted for as shown in the Contract. The Engineer shall include in such estimate a summary of the number of elapsed calendar days. If the time consumed is such as to entitle the County to the payment of liquidated damages, the sums due the Contractor shall be adjusted accordingly. From the total of the amounts so ascertained shall be deducted five

percent (5%) to be retained until after the completion of the entire Work to the satisfaction of the Engineer, and ninety-five percent (95%) of the amount so ascertained shall be paid to the Contractor when audited and approved by the County Auditor. No estimate other than a Final Estimate shall be made where the value of the Work performed since the last preceding payment is less than one-fourth (1/4) of the amount of the average monthly estimate to be expected as computed by dividing the amount of the Contract by the Contract Time in months.

**6.02 Invoices.** The Contractor may be required to furnish the Engineer, copies of invoices for all materials purchased for the project.

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

**6.04 Defective Work.** The Engineer will have authority to disapprove or reject Work which the Engineer believes to be defective, or that the Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed or completed.

If required by the Engineer, the Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Engineer, remove it from the site and replace it with Work that is not defective. The Contractor shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of Work of others).

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

**6.06 Auditor's Certification of Funds.** The laws governing the awarding of Contracts by the County require the approval of the County Auditor and that the County Auditor certify that funds are, or will be, available for the payment of the obligations created thereunder before such Contracts become effective. Despite any provisions in the

Specifications, the Drawings or the Contract to the contrary, no change or addition of any character in the Specifications, the Drawings or the Contract which will increase the obligations of the County, or the amount to be paid by the County shall ever be binding on the County unless and until such changes or additions have been submitted to the County Auditor and the County Auditor certifies that funds are, or will be, available for the payment of such obligation.

END OF SECTION