

GENERAL CONDITIONS

TDRA GENERAL CONTRACT CONDITIONS FOR CONSTRUCTION CONTRACT

1. Contract and Contract Documents

(a) The project to be constructed pursuant to this contract will be financed with assistance from the Texas Community Development Program (TCDP) and is subject to all applicable Federal, State, and local laws and regulations.

(b) The Plans, Specifications and Addenda shall form part of this contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth.

2. Definitions

Whenever used in any of the contract Documents, the following meanings shall be given to the terms here in defined:

(a) The term "Contract" means the Contract executed between the City of Kingsville, Texas, hereinafter called the Locality _____ and hereinafter called Contractor, of which these GENERAL CONDITIONS, form a part.

(b) The term "Project Area" means the area within which are the specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this contract.

(c) The term "Engineer" means LNV, Engineer in charge, serving the Locality with architectural or engineering services, his successor, or any other person or persons, employed by the Locality for the purpose of directing or having in charge the work embraced in this Contract.

(d) The term "Contract Documents" means and shall include the following: Executed Contract, Addenda (if any), Invitation for Bids, Instructions to Bidders, Signed Copy of Bid, General Conditions, Special Conditions, Technical Specifications, and Drawings (as listed in the Schedule of Drawings).

3. Supervision by Contractor

(a) Except where the Contractor is an individual and gives his personal supervision to the work, the Contractor shall provide a competent superintendent, satisfactory to the Local Public Agency and the Engineer, on the work at all times during working hours with full authority to act for him. The Contractor shall also provide an adequate staff for the proper coordination and expediting of his work.

(b) The Contractor shall lay out his own work and he shall be responsible for all work executed by him under the Contract. He shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

4. Subcontracts

(a) The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until he has verified the subcontractor(s) as eligible to participate in federally funded contracts.

(b) No proposed subcontractor shall be disapproved by the Owner except for cause.

(c) The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractor(s) and of persons either directly or indirectly employed by them.

(d) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work and required compliance by each subcontractor with the applicable provisions of the Contract.

(e) Nothing contained in the Contract shall create any contractual relation between any subcontractor and the Locality.

5. Fitting and Coordination of Work

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material suppliers engaged upon this Contract.

(a) Payments to Contractor

(b) Partial Payments

1. The Contractor shall prepare his requisition for partial payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for his approval. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) ten percent (10%) of the total amount, to be retained until final payment and (2) the amount of all previous payments. The total value of work completed to date shall be based on the estimated quantities of work completed and, on the unit, prices contained in the agreement. The value of materials properly stored on the site shall be based upon the estimated quantities of such

materials and the invoice prices. Copies of all invoices shall be available for inspection of the Engineer.

2. Monthly or partial payments made by the Locality to the Contractor are moneys advanced for the purpose of assisting the contractor to expedite the work of construction. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Locality. Such payments shall not constitute a waiver of the right of the Locality to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the Locality in all details.

(c) Final Payment

1. After final inspection and acceptance by the Locality of all work under the Contract, the Contractor shall prepare his requisition for final payment which shall be based upon the careful inspection of each item of work at the applicable unit prices stipulated in the Agreement. The total amount of the final payment due the Contractor under this contract shall be the amount computed as described above less all previous payments.

2. The Locality, before paying the final estimate, shall require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the Contractor, if the Locality deems it necessary in order to protect its interest. The Locality may, if it deems such action advisable, make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments made shall in no way impair the obligations of any surety or sureties furnished under this Contract.

3. Any amount due the Locality under Liquidated Damages, shall be deducted from the final payment due the contractor.

(d) Payments Subject to Submission of Certificates

Each payment to the Contractor from the Locality is subject to submission of all written certifications required of the Contractor and his subcontractors.

(e) Withholding Payments

The Locality may withhold from any payment due the Contractor whatever is deemed necessary to protect the Locality, and if so elects, may also withhold any

amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them.

The foregoing provisions shall be construed solely for the benefit of the Locality and will not require the Locality to determine or adjust any claims or disputes between the Contractor and his subcontractors or material dealers, or to withhold any moneys for their protection unless the Locality elects to do so. The failure or refusal of the Locality to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.

6. Changes in the Work

(a) The Locality may make changes in the scope of work required to be performed by the Contractor under the Contract without relieving or releasing the Contractor from any of his obligations under the Contract or any guarantee given by him pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise. Additionally, all such change orders must be approved by the TCDP staff prior to execution of same.

(b) Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the Locality authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.

(c) If applicable unit prices are contained in the Agreement, the Locality may order the Contractor to proceed with desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original the total amount by eighteen percent (18%) for counties or twenty-five percent (25⁰⁰) for cities.

(d) Each change order shall include in its final form:

1. A detailed description of the change in the work.
2. The Contractor's proposal (if any) or a confirmed copy thereof.
3. A definite statement as to the resulting change in the contract price and/or time.
4. The statement that all work involved in the change shall be performed in accordance

with contract requirements except as modified by the change order. 5. The procedures as outlined in this Section for a unit price contract also apply in any lump sum contract.

7. Claims for Extra Cost

- (a) If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the Locality, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.
- (b) Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.
- (c) Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall be reported at once to the Locality and work shall not proceed except at the Contractor's risk, until written instructions have been received by him from the Locality.
- (d) If, on the basis of the available evidence, the Locality determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed.

8. Termination, Delays. and Liquidated Damages

(a) Right of the Locality to Terminate Contract for Convenience

Locality may at any time and for any reason terminate Contractor's services and work at Locality's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows:

- (1) the actual cost of the work completed in conformity with this Agreement; plus,
- (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by Locality; (3) plus ten percent (10⁰ 0) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any

payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against Locality for any additional compensation or damages in the event of such termination and payment.

(b) Right of the Locality to Terminate Contract for Cause.

In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Locality may serve written notice upon the Contractor and the Surety of its intention to terminate the contract. The notices shall contain the reasons for such intention to terminate the contract, and unless such violation or delay shall cease, and satisfactory arrangement of correction be made within ten days, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Locality shall immediately serve notice thereof upon the Surety and the Contractor. The Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Locality may take over the work and complete the project by bid/contract or by force account at the expense of the Contractor and his Surety shall be liable to the Locality for any excess cost incurred. In such event the Locality may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

(c) Liquidated Damages for Delays.

If the work is not completed within the time stipulated in the applicable bid for Lump Sum or Unit Price Contract provided, the Contractor shall pay to the Locality as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of \$200.00 for each calendar day of delay, until the work is completed. The Contractor and his sureties shall be liable to the Locality for the amount thereof.

(d) Excusable Delays.

1. The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to;

2. Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;

3. Any acts of the City;

4. Causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in the performance of some other contract with the Locality, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions.

5. Provided, however, that the Contractor promptly notifies the Locality within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the Locality shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the Locality shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

9. Assignment or Novation

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the Locality; provided, however, that assignments to banks or other financial institutions may be made without the consent of the Locality. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

10. Disputes

(a) All disputes arising under this Contract or its interpretation except those disputes covered by FEDERAL LABOR STANDARDS PROVISIONS whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall, within ten (10) days of commencement of the dispute, be presented by the Contractor to the Locality for decision. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim

will be considered only for a period commencing ten (10) days prior to the receipt of the Locality.

(b) The Contractor shall submit in detail his claim and his proof thereof.

(c) If the Contractor does not agree with any decision of the Locality, he shall in no case allow the dispute to delay the work but shall notify the Locality promptly that he is proceeding with the work under protest.

11. Technical Specifications and Drawings

Anything mentioned in the Technical Specifications and not shown on the Drawings or vice versa, shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and Technical Specifications, the Drawings shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the Locality, without whose decision, said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense.

12. Shop Drawings

(a) All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Engineer in five (5) copies for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at his own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the contract time shall be granted by reason of his failure in this respect.

(b) Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.

(c) If a shop drawing is in accordance with the contract or involves only a minor adjustment in the interest of the Locality not involving a change in contract price or time; the engineer may approve the drawing. The approval shall not relieve the Contractor from his responsibility for adherence to the contract or for any error in the drawing.

13. Requests for Supplementary Information

It shall be the responsibility of the Contractor to make timely requests of the Locality for any additional information not already in his possession which should be furnished by the Locality under the terms of this Contract, and which he will require in the planning and execution of the work. Such requests may be submitted from time to time as the need approaches, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing and list the various items and the latest date by which each will be required by the Contractor. The first list shall be submitted within two weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provision of this section.

14. Materials and Workmanship

(a) Unless otherwise specifically provided for in the technical specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the technical specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.

(b) The Contractor shall furnish to the Locality for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval full information concerning all other materials or articles which he proposes to incorporate.

(c) Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.

(d) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the technical specifications shall have full force and effect as though printed therein.

(e) The Locality may require the Contractor to dismiss from the work such employee or employees as the Locality or the Engineer may deem incompetent, or careless, or insubordinate.

15. Samples, Certificates and Tests

(a) The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the Engineer, promptly after award of the contract and acceptance of the Contractor's bond.

No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.

(b) Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Engineer in making a prompt decision regarding the acceptability of the sample. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.

(c) Approval of any materials shall be general only and shall not constitute a waiver of the Locality's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.

(d) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:

1. The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
2. The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
3. The Contractor shall assume all costs of testing materials offered in substitution for those found deficient;
4. The Locality will pay all other expenses.

16. Permits and Codes

(a) The Contractor shall give all notices required by and comply with all applicable laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances, and codes including all written waivers.

Before installing any work, the Contractor shall examine the drawings and technical specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to the Locality. Where the requirements of the drawings and technical specifications fail to comply with such applicable ordinances or codes, the Locality will adjust the Contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices.

(b) Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installation is in compliance with the drawings and technical specifications), the Contractor shall remove such work without cost to the Locality.

(c) The Contractor shall at his own expense, secure and pay for all permits for street pavement, sidewalks, shed, removal of abandoned water taps, sealing of house connection drains, pavement cuts, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body or any of its agencies.

(d) The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the Improvements contained in this Contract.

(e) The Contractor will be required to make arrangements for and pay the water, electrical power, or any other utilities required during construction.

(f) During construction of this project, the Contractor shall use every means possible to control the amount of dust created by construction. Prior to the close of a day's work, the Contractor, if directed by the Locality, shall moisten the bank and surrounding area to prevent a dusty condition.

17. Care of Work

(a) The Contractor shall be responsible for all damages to person or property that occur as a result of his fault or negligence in connection with the prosecution of the work and

shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

(b) The Contractor shall provide sufficient competent watchmen, both day and night, including Saturdays, Sundays, and holidays, from the time the work is commenced until final completion and acceptance.

(c) In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the Locality is authorized to act at his discretion to prevent such threatened loss or injury, and he shall so act. He shall likewise act if instructed to do so by the Locality.

(d) The Contractor shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and he shall at his own expense completely repair any damage thereto caused by his operations.

(e) The Contractor shall shore up, brace, underpin, secure, and protect as maybe necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the improvements included in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property Locality or other party before the commencement of any work. The Contractor shall indemnify and save harmless the Locality from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Locality may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

18. Accident Prevention

(a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.

(b) The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work.

(c) The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the Locality with reports concerning these matters.

(d) The Contractor shall indemnify and save harmless the Locality from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this contract.

(e) The Contractor shall provide trench safety for all excavations more than five feet deep prior to excavation. House Bill 1569 concerning trench safety legislation are made a part of these contract documents for Contractor's reference. All OSHA Standards for trench safety must be adhered to by the Contractor.

(f) The Contractor shall at all time conduct his work in such a manner as to insure the least possible inconvenience to vehicular and pedestrian traffic. At the close of the work each day, all streets where possible in the opinion of the Owner, shall be opened to the public in order that persons living in the area may have access to their homes or businesses by the use of the streets. Barricades, warning signs, and necessary lighting shall be provided to the satisfaction of the Locality at the expense of the Contractor.

19. Sanitary Facilities

The Contractor shall furnish, install and maintain ample sanitary facilities for the workmen. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

20. Use of Premises

(a) The Contractor shall confine his equipment, storage of materials, and construction operations to the contract limits as shown on the drawings and as prescribed by ordinances or permits, or as may be desired by the Locality, and shall not unreasonably encumber the site or public rights of way with his materials and construction equipment.

(b) The Contractor shall comply with all reasonable instructions of the Locality and all existing state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

21. Removal of Debris, Cleaning, Etc.

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities, debris and unused materials provided for work, and put the whole site of the work and public rights of way in a neat and clean condition.

22. Inspection

(a) All materials and workmanship shall be subject to inspection, examination, or test by the Locality and Engineer at any and all times during manufacture or construction and at any and all places where such manufacture or construction occurs.

The Locality shall have the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the Locality may by contract or otherwise have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any Monies which may be due the Contractor, without prejudice to any other rights or remedies of the Locality.

(b) The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. All tests by the Locality will be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the technical specifications.

(c) The Contractor shall notify the Locality sufficiently in advance of back filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the Locality, the Contractor shall uncover for inspection and recover such facilities at his own expense, when so requested by the Locality.

(d) Should it be considered necessary or advisable by the Locality at any time before final acceptance of the entire work to make an examination of work already completed by uncovering the same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or his subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, shall be allowed the Contractor and he shall, in addition, if completion of the work of the entire Contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(e) Inspection of materials and appurtenances to be incorporated in the improvements included in this Contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the technical specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements

contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.

(f) Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the Locality or its agents shall relieve the Contractor or his sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

23. Review by Locality

The Locality and its authorized representatives and agents shall have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Locality through its authorized representatives or agents.

24. Final Inspection

When the Improvements included in this Contract are substantially completed, the Contractor shall notify the Locality in writing that the work will be ready for final inspection on a definite date which shall be stated in the notice. The Locality will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as is practicable.

25. Deduction for Uncorrected Work

If the Locality deems it not expedient to require the Contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the Contractor and the Locality and subject to settlement, in case of dispute, as herein provided.

26. Insurance

The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Locality. Each insurance carrier shall be licensed to operate in the State of Texas and listed with the Texas State Board of Insurance.

(a) Definitions: Certificate of coverage (certificate). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC81 , TWCC-82, TWCC-83, OR TWCC 84), showing statutory

workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity. Persons providing services on the project ("subcontractor" in para. 406.096) includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees.

This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food & beverage vendors, office supply deliveries, and delivery of portable toilets.

(b) The Contractor shall provide coverage, based on proper reporting 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.

(c) The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

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

(e) The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file 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.

(f) The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

(g) The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

(h) The Contractor shall post on each project site a notice, in the text, 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.

(i) The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.00(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(1) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period. If the coverage period shown on the current certificate of coverage ends during the duration of the project;

(2) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

- (3) 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
 - (4) 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.
- a. 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 selfinsured, 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.
 - b. 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.

A. Compensation Insurance:

The Contractor shall procure and shall maintain during the life of this Contract Worker's Compensation Insurance as required by the State of Texas for all of his employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance.

B. Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance:

The Contractor shall procure and shall maintain during the life of this Contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the following amounts:

Public Liability: \$100,000 for injuries to 1 person. \$300,000 for each occurrence. In addition to these requirements, the Locality requires an additional

Property Damage: \$100,000.

Automobile Property Damage:\$ 100,000.

Automobile Public Liability: \$250,000 for injuries to 1 person. \$500,000 for each occurrence.

NOTE: Automobile insurance shall cover all automobiles and trucks owned by the CONTRACTOR.

For terms covered under this Contract, City of Kingsville, 400 W. King Avenue, Kingsville, Texas 78363 and LNV, 801 Navigation, Suite 300, Corpus Christi, Texas 78408 shall be named as additional insured with respect to general liability.

Proper certificates of insurance shall be filed with the ENGINEER prior to the execution of the Contract.

c. Proof of Insurance:

The Contractor shall furnish the Locality with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by the Locality.

28. Warranty of Title

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

29. Warranty of Workmanship and Materials

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements included in this Contract by the Locality or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of twelve (12) months from the date of final acceptance of the work.

30. For contracts > \$150k Clean Air Act and the Federal Water Pollution Control Act

a) In compliance with the Clean Air Act, as amended, 42 U.S.C. Sec. 7401-767 Iq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251-1387, and the regulations of the Environmental Protection Agency with respect thereto, the Contractor agrees that:

(1) Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.

(2) He will comply with all requirements of Section 114 of the Clean Air Act, as amended.

(3) Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

b) If the Contractor encounters existing material on sites owned or controlled by the or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Locality. The Locality will be responsible for testing for and removal or disposition of hazardous materials on sites owned or controlled by the Locality. The Locality may suspend the work, wholly or in part during the testing, removal or disposition of hazardous materials on sites owned or controlled by the Locality.

31. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

a) The Contractor will not discriminate against any employee or the applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer;

recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

d) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.

f) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in

accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) 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 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

i) The goals and timetables for minority and female participation, are as follows:

Goals for Minority Participation Goals for Female Participation 41.7⁰/0 for Each Trade 6.9% in Each Trade

j) 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.

k) The Contractor shall take 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.

l) Contractors are encouraged to participate in voluntary associations which assist in fulfilling their affirmative action obligations.

m) 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.

n) 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.

o) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts.

p) 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.

32. Affirmative Action for Handicapped Workers

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, promotion, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

33. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

34. The Provision of Local Training, Employment, and Business Opportunities

a) To the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

b) The Contractor will include this clause in every subcontract for work in connection with the project.

35. Non-Segregated Facilities

The Contractor certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees any segregated facilities at any of his establishments or permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. As used in this paragraph the term "segregated facilities" means any waiting rooms, work areas, rest rooms 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.

36. Job Offices

- a) The Contractor and his subcontractors may maintain such office and storage facilities on the site as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any work to be performed on the site. The Locality shall be consulted with regard to locations.
- b) Upon completion of the improvements, or as directed by the Locality, the Contractors shall remove all such temporary structures and facilities from the site and leave the site of the work in the condition required by the Contract.

37. Partial Use of Site Improvements

- a) The Locality may give notice to the Contractor and place in use those sections of the improvements which have been completed, inspected and can be accepted as complying with the technical specifications and if in its opinion, each such section is reasonably safe, fit, and convenient for the use and accommodation for which it was intended, provided:
- b) The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.
- c) The Contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.
- d) The period of guarantee stipulated in the Section 132 hereof shall not begin to run until the date of the final acceptance of all work which the Contractor is required to construct under this Contract.

38. Contract Documents and Drawings

The Local Public Agency will furnish the Contractor without charge five (5) copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.

39. Contract Period

The work to be performed under this contract shall commence within the time stipulated by the Locality in the Notice to Proceed and shall be fully completed within the time stipulated in the Contractor's bid.

40. Liquidated Damages

Since the actual damages for any delay in completion of the work under this contract are impossible to determine, the Contractor and his Sureties shall be liable for and shall pay to the Locality the sum of Two Hundred Dollars (\$200.00) as fixed, agreed and liquidated damages for each calendar day of delay from the above stipulated time for completion.

41. Local Program Liaison

For purposes of this Agreement, the City Mayor or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Contractor. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.

42. Access to Information

a) The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas Department of Agriculture (TDA), the Locality, and the Texas State Auditor's Office, or any of their authorized representatives, shall have access to any books, documents, papers or other records of the Contractor which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts, and to close out the Locality's TxCDBG contract with TDA. b) Contractor shall include the substance of this clause in all subcontracts it awards.

43. Records Retention

a) The Contractor shall retain all required records for three years after the Locality makes its final payment and all pending matters are closed.

b) Contractor shall include the substance of this clause in all subcontracts it awards.

44. Resolution of Program Non-Compliance and Disallowed Costs

In the event of any dispute, claim, question, or disagreement arising from or relating to this Contract, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program

requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Contract and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

45. Compliance with Davis-Bacon Act

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the of 23 applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Antikickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached as General Decision Number: TX 160120 and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the Locality for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made, or costs reasonably anticipated under Section I (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5 (a) (l) (iv) of Title 29, Code of Federal Regulations. Also, for the purpose of this clause, regular contributions made, or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period. The Contractor and its subcontractors shall not, by any means, induce any person employed in the construction, completion, or repair of public work, give up any part of the compensation to which he or she is otherwise entitled. The Locality must report all suspected or reported violations to TDA.

46. Conflicts of interest.

- a) Governing Body. No member of the governing body of the Locality and no other officer, employee, or agent of the Locality, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of TxCDBG award between TDA and the Locality, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Firm shall take appropriate steps to assure compliance.
- b) Other Local Public Officials. No other public official, who exercises any actions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the TxCDBG award between TDA and the Locality, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Contractor shall take appropriate steps to assure compliance.
- c) The Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the TxCDBG award between TDA and the Locality or this Contract. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the TxCDBG award between TDA and the Locality or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.

47. Debarment and Suspension (Executive Orders 12549 and 12689)

The Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (3 CFR Pan 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235). The term "principal" for purposes of this Contract is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

48. Procurement of Recovered Materials

The Contractor shall comply with section 6002 of the Solid Waste Act, as amended by the Resource Conservation and Recovery Act, procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest

percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000 as long as such procurement is economically feasible.

49. For Contracts that exceed \$100,000 Anti-Lobbying

Contractor shall file the required certification: The undersigned certifies, to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certain and disclose accordingly.

50. For Contracts > \$100K Overtime Requirements

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week, as the case may be.

51. Section 504 Rehabilitation Act of 1973 as amended

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination,

including discrimination in employment, under any program or activity receiving federal financial assistance.

52. Age Discrimination Act of 1975.

The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

53. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 170111 (section 3).

The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or

knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

f) Noncompliance with HUDs regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

54. Gender Neutral - Gender References

When necessary, unless the context clearly requires otherwise, any gender-specific or gender-neutral term in this Contract (for example, he, she, it, etc.) is to be read as referring to any other gender or to no gender.

55. Reporting Requirements

The Contractor shall comply with the requirements and regulations pertaining to reporting (24 CFR 85.36 (i) (7)).

56. Patent Rights

The Contractor shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (24 CFR 85.36 (i) (8)).

57. Copyrights and Rights in Data

The Contractor shall comply with the requirements and regulations pertaining to copyrights and rights in data. (24 CFR 85.36 (i) (9)).

58. Energy Efficiency

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). (24 CFR 85.36 (i) (13)).

59. Verification No Boycott Israel.

As required by Chapter 2270, Government Code, CONTRACTOR hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

60. Foreign Terrorist Organizations.

Pursuant to Chapter 2252, Texas Government Code, [Company] represents and certifies that, at the time of execution of this Agreement neither [Company], nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

MNORITY/FEMALE GOALS AND TMETABLES

The female employment goal is effective as of April 1980 and is currently 6.9⁰0. The percentages for minority participation in Texas are:

Texarkana Area:

Texarkana & Bowie Co.	19.7
Non-MSA Counties of Camp, Cass, Lamar, Morris, Red River & Titus	20.2

Tyler-Longview Area:

Longview, Gregg Co. & Harrison Co.	22.8
Tyler & Smith Co.	23.5
Non-MSA Counties of Anderson, Angelina, Cherokee, Henderson, Marion, Nacogdoches, Panola, Rusk, San Augustine, Shelby, Upshur & Wood	22.5

Beaumont-Port Arthur Area:

Beaumont, Port Arthur, Orange, Hardin Co., Jefferson Co., & Orange Co.	22.6
Non-MSA Counties of Jasper, Houston, Newton, Sabine, & Tyler	22.6

Houston Area:

Bryan, College Station & Brazos Co.	23.7
Galveston, Texas County & Galveston Co.	28.9
Houston, Brazoria Co., Fort Bend Co., Harris Co., Liberty Co., Montgomery Co. & Waller Co.	27.3
Non-MSA Counties of Austin, Burleson, Calhoun, Chambers, Colorado, DeWitt, Fayette, Goliad, Grimes, Jackson, Lavaca, Leon, Madison, Matagorda, Polk, Robertson, San Jacinto, Trinity, Victoria, Walker, Washington, & Wharton	27.4

Austin Area:

Austin, Hays Co., Travis Co., & Williamson Co.	24.1
Non-MSA Counties of Bastrop, Blanco, Burnet, Caldwell, Lee & Llano	24.2

Waco. Killeen. Temple Area:

Killeen, Temple, Bell Co. & Coryell Co.	16.4
Waco & McLennan Co.	20.7
Non-MSA Counties of Bosque, Falls, Freestone, Hamilton, Hill, Lampasas, Limestone, Milam & Mills	18.6

Dallas Fort Worth Area:

Dallas, Fort Worth, Collin Co., Dallas Co., Denton Co., Ellis Co., Hood Co., Johnson Co., Kaufman Co., Parker Co., Rockwall Co., Tarrant Co. & Wise Co.	18.2
Sherman, Denison & Grayson Co.	9.4
Non-MSA Counties of Cooke, Delta, Erath, Fannin, Franklin, Hopkins, Hunt, Jack, Montague, Navarro, Palo Pinto, Rains, Somervell, & Van Zandt	17.2

Wichita Falls Area:

Wichita Falls, Clay co. & Wichita co.	12.4
Non-MSA Counties of Archer, Baylor, Cottle, Foard, Hardeman, Wilbarger & Young	11.0

Abilene Area:

Abilene, Callaghan Co., Jones Co. & Taylor Co.	11.6
Non-MSA Counties of Brown, Coleman, Comanche, Eastland, Fisher, Haskell, Kent, Knox, Mitchell, Nolan, Scurry, Shackelford, Stephens, Stonewall & Throckmorton	10.9

San Angelo Area:

San Angelo & Tom Green Co.	19.2
Non-MSA Counties of Coke, Concho, Crockett, Irion, Kimble, McCullough, Mason, Menard, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton & Terrell	20.0

San Antonio Area:

Laredo & Webb co.	87.3
San Antonio, Bexar Co., Comal Co. & Guadalupe Co.	47.8
Non-MSA Counties of Atascosa, Bandera, Dimmit, Edwards, Frio, Gillespie, Gonzales, Jim Hogg, Karnes, Kendall, Kerr, Kinney, La Salle, McMullen, Maverick, Medina, Real, Uvalde, Val Verde, Wilson, Zapata & Zavala	49.4

Corpus Christi Area:

Corpus Christi, Nueces Co. & San Patricio Co.	41.7
Non-MSA Counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak & Refugio	44.2

Brownsville. McAllen. Harlingen Area:

Brownsville, Harlingen, San Benito & Cameron Co.	71.0
McAllen, Pharr, Edinburg & Hidalgo Co.	72.8
Non-MSA Counties of Starr & Willacy	72.9

Odessa Midland Area:

Midland & Midland Co.	19.1
Odessa & Ector Co.	15.1
Non-MSA Counties of Andrews, Crane, Glasscock, Howard, Loving, Martin, Pecos, Reeves, Upton, Ward & Winkler	18.9

El Paso Area:

El Paso & El Paso co.	57.8
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Non-MSA Counties of Brewster, Culbertson, Hudspeth, Jeff Davis & Presidio Lubbock 49.0
Area:

Lubbock & Lubbock Co. 19.6

Non-MSA Counties of Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines,
19.5 Garza, Hale, Hockley, King, Lamb, Lynn, Motley, Terry & Yoakum

Amarillo Area:

Amarillo, Potter Co. & Randall Co. 9.3 Non-MSA Counties of Armstrong, Briscoe, Carson, Castro,
Childress, Collingsworth, 11.0 Dallam, Deaf Smith,
Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree,
Oldham, Parmer, Roberts, Sherman, Swisher, & Wheeler