



(Dallas County Hospital District)

Request for Proposals

for

Bluitt-Flowers Eye Clinic

at

Bluitt-Flowers Health Center

303 E. Overton Rd., Dallas, Texas 75216

PH&HS Project No. 17512

Issued by:

Facilities Division  
Parkland Health & Hospital System  
5000 Harry Hines Blvd  
Dallas, Texas 75235

Issue Date:

June 9, 2009

Submission Deadline:

June 30, 2009 @ 2:00 p.m. Central Time

**SECTION 00100-INFORMATION TO BIDDERS**

**PART 1 - GENERAL**

1.0 BID PACKAGE CONTENTS (in .pdf format)

- A. Information to Bidders – Section 00100
- B. Construction Drawings and Specifications dated 12-22-08

Drawings and specifications are available at :

- a. Parkland Hospital Website: <http://www.parklandhospital.com/> From the web page, select ‘ Vendors ‘ , Construction and Repair Projects, and ‘ Bluitt-Flowers Eye Clinic ‘ You will need to SAVE the documents to your computer. Please note : the files may be too large to open without first saving to your computer.

- C. Sample Parkland Construction Agreement

1.1 TIME AND PLACE FOR RECEIPT OF BIDS

- A. The District requests sealed bids, for construction services in relation to the renovation of space for the Bluitt-Flowers Eye Clinic, Project #17512, located at 303 E. Overton Rd., Dallas, Tx. 75216.
- B. Bids shall be addressed to:  
Parkland Health and Hospital System  
c/o Facilities Development Department  
Attn: Michael Ross  
5201 Harry Hines Boulevard  
Dallas, TX 75235
- C. Bids may be delivered in person at the following address:  
Parkland Health and Hospital System  
Support Services Building A  
Facilities Development Department  
5000 Harry Hines Boulevard  
Dallas, TX 75235
- D. A **Clarification Conference** will be held at the Bluit-Flowers Health Center, Forth, 303 E. Overton Rd., Dallas, TX 75216, to address any questions regarding the project, on **Fri., June 19, 2009 at 10:00 a.m.**, prevailing central time. All bidders are strongly encouraged to have a representative present at the meeting. Allow time for a “walk-thru” of the project.
- E. **Bids shall be delivered**, to the District at the address above, on or before **2:00 p.m., prevailing central time, Tues. June 30, 2009**. Facsimile copies are acceptable if received by the due date/time at 214-590-6944. Hard copies of any faxed bids shall follow within seven (7) days via hand delivery, courier, or mail. Bids shall be clearly marked “17512 – Bluitt-Flowers Eye Clinic” – Attn: Mike Ross”.
- F. The District will evaluate all bids and will provide the selected contractors with a Notice to Proceed and/or a Construction Services Agreement in the format provided with this bid package. The District intends to award all contract on or before July 07, 2009.

1.2 PROJECT ORGANIZATION AND METHOD OF BIDDING

- A. All management and other construction work for the Project which is not procured as a result of this RFP will be performed by the District’s employees. All questions regarding the project should be sent in

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writing to the Project Manager, Mike Ross, at facsimile number 214-590-6944 or by email to mdross@parknet.pmh.org.

- B. Parkland will have a full-time Superintendent assigned to the project to assist in coordinating the work for the construction categories.

1.3 GENERAL

- A. The District - The term “District” means the Dallas County Hospital District d/b/a Parkland Health & Hospital System; and the term “duly authorized representative” means any person or persons or board (other than the Contracting Officer) authorized in writing to act for the District.
- B. A Bidder is a person or entity who submits a bid.
- C. Bids over \$25,000, shall require the submission of bid security in the amount equal to 5% of the bid. Acceptable bid security shall be limited to : a one-time bid bond in a form satisfactory to the District underwritten by a company licensed to issue bid bonds in Texas; or a certified check from a bank acceptable to the District.
- D. For all bids over \$25,000, the successful bidder must be able to furnish acceptable Performance and Payment Bonds from an approved Surety Company, in an amount equal to 100 percent of the accepted bid. The cost of the bonds shall be included in the Schedule of Values as a separate line item.
- E. Bidders shall provide a Certificate of Insurance illustrating insurance coverage as outlined in the Construction Services Agreement, as requested by the District.
- F. Bids shall include all required City of Dallas building permit costs other than the basic building permit which will be obtained by the District.
- G. All workers will be required to obtain Parkland identification badges, at contractor’s expense, from the Facilities Development Department, prior to accessing the construction site. The cost of the badge is \$10.00/ea.
- H. All bids, schedules of value, and pay applications shall include Women/Minority Business Enterprise (WMBE) information for the Bidder and the subcontractors of the Bidder.
- I. All bids shall include a line item indicating the percentage charged for additional work added to the Contract and for extra costs resulting from changes in the work. The markup shall include combined overhead and profit. Overhead shall include payroll taxes and supervision.
- J. The District reserves the right to hold all bids for 90 days from date of receipt without action, to waive any formalities or to reject any or all bids, to waive irregularities, and to require statements or evidence of bidders' qualifications including financial statements. Bidder acknowledges that time is of the essence and that the District may consider in addition to the bid, the bid contract time, in evaluation and selection of the appropriate bidder.
- K. The District reserves the right to cancel the RFP at any time for any reason.
- L. Bidder may be disqualified from contract award for these and other comparable situations or conditions:
- o The District identifies actual or potential collusion between the Bidder and District employees.
  - o The District is in litigation with the Bidder or a Bidder’s associate, subcontractor, or identified to participate in this procurement.
  - o The District determines that the Bidder has defaulted or may default on previous or existing contracts.
  - o The District determines that the Bidder lacks the requisite competency as revealed by pertinent factors, including but not limited to, experience, equipment, financial statement and questionnaires.
  - o Bidder has failed, or is failing, to perform in a satisfactory manner on another contract for the District.
  - o Bidder violates the provisions of the RFP by communicating about the RFP with District personnel or consultants outside of the provisions set forth in the RFP.

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- Bidder offers gifts, incentives, future promises or commitments, and/or bribes to any District employee or consultant.
  - Bidder violates the District's rules for consultants/visitors.
  - Bidder fails to provide all, or part, of its proposal in accordance with the RFP.
  - Bidder is identified on the Federal Government Health and Human Services (HHS) List of Excluded Individual /Entities (LEIE); the General Services Administration (GSA) Excluded Parties List; the State of Texas Medicaid Excluded Supplier List; or the federal government terrorist list.
  - The District receives the Bidder's proposal after the deadline stated in the RFP, amendment, or addenda. Late proposals are considered non-responsive and will be returned to the Bidder unopened.
  - The Bidder releases information that it is not authorized to release.
- M. A contract based on this RFP which requires the approval of the Dallas County Hospital District Board of Managers and Dallas County Commissioners, will not be executed without the prior approval of the Dallas County Hospital District Board of Managers and Dallas County Commissioners.
- N. A contract, if awarded, shall be governed and construed in accordance with the laws of the State of Texas and venue shall be in Dallas County, Texas.
- O. The District is a State of Texas governmental entity and is not subject to any type of state or federal taxes. The District is exempt from Federal Income Tax under Section 501 (c ) (3) of the IRS code. As such, it is exempt from paying sales tax on purchases. A tax exemption certificate can be issued if requested. The District's Tax ID number is 75-600-422-1.
- P. The District is a political subdivision of the State of Texas and as such is subject to the Texas Public Information Act and no disclosure made pursuant to such law shall be a violation of any obligations of the District. Information submitted to the District in response to the RFP is subject to public disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552, unless a Bidder can demonstrate that the identified part or parts of the proposal falls within one or more of the exceptions to required public disclosure listed in the Public Information Act. If a bidder believes that certain information in the proposal is exempt from required public disclosure under the Public Information Act, the bidder must specify the information and the exception(s) that it believes apply, with specific detailed reasons. The District will disregard blanket statements regarding the confidentiality of proposals and such statements will be deemed null and void.
- Q. The District will process any request for information comprising all or part of a bidder's proposal in accordance with the procedures prescribed by the Public Information Act. Bidders should consult the Attorney General's web site ([www.oag.state.tx.us](http://www.oag.state.tx.us)) for information concerning the application of the provisions of the Public Information Act to proposals and proprietary supplier information. All inquiries must be submitted in writing addressed to: Parkland Health & Hospital System Legal Department, 5201 Harry Hines Boulevard, Dallas, Texas 75235.
- R. Bidder, by submitting a proposal, agrees to abide by the provisions of Section 202 of Executive Order 11246 regarding Equal Employment Opportunities.
- S. It is the policy of the Dallas County Hospital District to better maximize opportunities for Woman/Minority Business Enterprises (W/MBE) to participate in the District's contract activities. The District is committed to identifying, seeking out and assisting W/MBEs in becoming familiar with the District's requirements for goods, services and construction. When a contract award is made, the awardee will be required to demonstrate that good faith efforts have been and will be extended to W/MBEs to become its subcontractors and suppliers. The District, its contractors and subcontractors, shall not discriminate on the basis of race, color, religion, national origin, sex, age or physical handicap in the award and/or performance of contracts.

A Woman/Minority Business Enterprise (W/MBE) is an enterprise that is either a Woman Owned Business or a Minority-Owned Business. A Woman Owned Business is a concern that is at least 51% owned by one or more women or, in the case of publicly owned concerns, in which at least 51% of the stock is owned by one or more women; whose management of daily operations is controlled by one or more of the women who own it; and in which the woman is a U.S. citizen or resident alien.

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A Minority Owned Business is a concern that is at least 51% owned by one or more minority individuals or, in the case of publicly owned concerns, at least 51% of the stock is owned by one or more minority individuals; whose management of daily operations is controlled by one or more minority individuals who own it; and in which the minority individuals are U.S. citizens or resident aliens. Minority individuals are persons who are African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, and other minorities as interpreted by an appropriate certifying agency (such as DFW Minority Business Development Council).

**Good Faith Effort:** The following criterion has been established as a Good Faith Effort by the District for Goods and Services and Construction.

**Goods & Services:** As a good faith effort to implement this policy, the District has established a goal of 25% for W/MBE participation for goods and services. The achievement of this goal will be measured based on the availability of opportunities to contract with W/MBEs. Therefore, a purchase that provides no opportunity to contract with W/MBEs (e.g., purchase from group purchasing organizations, large capital equipment purchase, pharmaceutical purchases, etc.) will not be included in the calculation of total goods/services available for purchases.

**Construction:** As a good faith effort to implement this policy, the District has established a criterion of 30% for W/MBE participation for construction. The achievement of this goal will be measured based on the availability of opportunities to contract with W/MBE businesses.

**W/MBE Policy Compliance:** In engaging associates or subcontractors, Bidder shall make good effort to utilize Woman and Minority Business Enterprise in accordance with PHHS's policies as set forth herein, and shall document those efforts. Upon request by the District, Supplier shall provide such documentation to PHHS. Supplier will be required to demonstrate that good faith efforts have been and will be extended to W/MBEs to become secondary suppliers. PHHS, its primary suppliers and secondary suppliers, shall not discriminate on the basis of race, color, religion, national origin, sex, age, or physical handicap in the award and/ or performance of contracts.

**Establishing a Good Faith Effort:** As part of any contract award, primary tier providers, suppliers, and contractors must identify a "good faith effort" to secure Woman/Minority Business Enterprises (W/MBE) as associates, sub-providers, sub-suppliers, and subcontractors. Documentation of your company's processes to actively pursue the fulfillment of a good faith effort may be required at any time from the point of award, through contract completion

1.4 ASBESTOS CONTROL

- A. There are no known asbestos containing materials (ACM's) within the construction site of this project.
  
- B. Parkland Hospital has adopted the Dallas County Hospital District's "Asbestos Control Program" and as a requirement of this Contract, the Contractor and his involved workers and employees must certify as to their acknowledgement of these provisions.

END OF SECTION 00100

**DALLAS COUNTY HOSPITAL DISTRICT  
Construction Services Agreement**

<b>DATE:</b>	
<b>BETWEEN:</b>	Dallas County Hospital District d/b/a Parkland Health & Hospital System 5000 Harry Hines Blvd Dallas, Texas 75235
<b>and Contractor:</b>	
Project No.:	
Project Title:	<b>Medical Records Warehouse 17494</b>
<p>This Construction Services Agreement is made by and between the Contractor identified above (“<b>Contractor</b>”) and the Dallas County Hospital District d/b/a Parkland Health &amp; Hospital System (“<b>District</b>”). This Construction Services Agreement, together with any exhibits, attachments, riders, and/or annexes attached hereto or referenced herein, and any amendments entered into from time to time, constitutes the entire agreement between the parties (collectively, this “<b>Agreement</b>”). This Agreement is made in conjunction with work which is sometimes referred to herein as the “<b>Project</b>” or the “<b>Work</b>” and is in consideration of the mutual covenants contained herein. This Agreement may be amended only by written instrument signed by both District and Contractor. This Agreement comprises the documents listed below:</p>	
Documents incorporated by reference:	<p>(a). <b>IFB Documents</b>  (b). <b>xxx Proposal dated xxxx</b></p>
Attachments:	<b>1. Construction Services Agreement General Terms and Conditions</b>
The Work shall be performed pursuant to the terms and conditions of this Agreement.	
The Project/Work shall consist of the following: <b>Furnish all supervision, labor, material, and equipment necessary to install ____.</b>	
The Contractor shall (a) commence work in the field as set forth under this Agreement <b>within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than ____.</b> The time stated for completion shall include final cleanup of the premises.	
Contractor shall be compensated for the Work <b>in a lump sum amount of \$ ____.</b>	
Contractor shall be reimbursed actual, reasonable and necessary expenses for <b>(None)</b> . Contractor shall provide reasonable documentation of expenses prior to reimbursement by District.	
If the Project/Work is changed after the execution of this Agreement, Contractor’s compensation shall be adjusted. Such adjustment shall be calculated as described herein or, if no method of adjustment is indicated, in an equitable manner to be mutually agreed in writing by District and Contractor.	
If the Contractor fails to complete the work within the time specified in the Agreement, or any extension, the Contractor shall pay to the District, as liquidated damages, the sum of <b>\$0.00</b> for each day of delay.	
Invoices for the Work done under this agreement shall be sent to: Dallas County Hospital District, Attn: Facilities Construction Department, 5201 Harry Hines Blvd, Dallas, TX 75235.	
Other: <b>None.</b>	

**DALLAS COUNTY HOSPITAL DISTRICT  
Construction Services Agreement**

This Agreement is entered into as of the day and year first written above.

**DISTRICT**

**CONTRACTOR**

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

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

Richard E. Brown  
Parkland Health & Hospital System  
SVP, Facilities Planning and Development  
Contracting Officer

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

**ATTACHMENT 1**  
**CONSTRUCTION SERVICES AGREEMENT**  
**GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS**

As used throughout these General Terms and Conditions (the “Terms and Conditions”), the following terms shall have the meaning set forth below:

(a) The term “District” means the Dallas County Hospital District d/b/a Parkland Health & Hospital System; and the term “duly authorized representative” means any person or persons or board (other than the Contracting Officer) authorized in writing to act for the District.

(b) The term “Contracting Officer” means the person executing the Agreement on behalf of the District or such person’s duly appointed successor; and the term includes, except as otherwise provided in the Agreement, the authorized representative of the Contracting Officer acting within the limits of such representative’s authority.

(c) Except as otherwise provided in the Agreement, the term “subcontracts” includes purchase orders under the Agreement.

(d) The term “Agreement” shall mean the Construction Services Agreement and all attachments thereto.

(e) The term “Contractor” shall mean the individual or entity identified as such on the first page of the Agreement.

(f) The term “work” shall mean the services to be provided by Contractor under the Agreement.

**2. SITE INVESTIGATION**

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including, but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, flooding patterns and water drainage, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminarily to and during work performance. The Contractor acknowledges that its undertaking to complete the Agreement within the Agreement schedule includes an allowance for the normal number of days in which Agreement work may be partially or totally delayed because of weather during the season and at the location the Agreement will be performed and that the Contractor shall not be entitled to excusable delays or compensation for such delays. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, access to the site, and territory surrounding the site, including all exploratory work done by the District as well as from the drawings and specifications made a part of the Agreement. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work or for proceeding to perform the work successfully without additional expense to the District.

(b) The District assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the District. Nor does the District assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of the Agreement, unless that understanding or representation is expressly stated in the Agreement.

**3. DIFFERING SITE CONDITIONS**

(a) The Contractor shall promptly, and before the conditions are disturbed or as soon thereafter as is practical, give written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in the Agreement, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily

encountered and generally recognized as inherent in work of the character provided for in the Agreement.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor’s cost of, or the time required for, performing any part of the work under the Agreement, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Agreement modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the Agreement under this clause shall be allowed unless the Contractor has given the written notice required.

**4. PERMITS AND RESPONSIBILITIES**

The Contractor shall, without additional expense to the District, be responsible for obtaining any necessary licenses and permits and for complying with any federal, state, county, and municipal laws, codes, and regulations applicable to the performance of the work, including, but not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work. The Contractor also shall be responsible for all damages to persons or property that occur as a result of the Contractor’s fault or negligence and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor also shall be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Agreement.

**5. SPECIFICATIONS AND DRAWINGS**

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. Should the drawings disagree within themselves or with the specifications or should the specifications disagree within themselves, the Contractor shall provide the better quality or greater quantity of work or materials. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary.

(b) Wherever in the specifications or upon the drawings the words “directed,” “required,” “ordered,” “designated,” “prescribed,” or words of like import are used, it shall be understood that the “direction,” “requirement,” “order,” “designation,” or “prescription,” of the Contracting Officer is intended; and similarly the words “approved,” “acceptable,” “satisfactory,” or words of like import shall mean “approved by,” or “acceptable to,” or “satisfactory to” the Contracting Officer, unless otherwise expressly stated.

(c) Where, “as shown,” “as indicated,” “as detailed,” or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Agreement unless stated otherwise.

(d) The word “furnish,” unless specifically limited in context, shall mean design, manufacture, factory testing, and delivery of the item(s) specified to the project site or other location(s) specified.

(e) The word “install,” unless specifically limited in context, shall mean unloading, unpacking, disposal of packing materials, assembly, placement, final connection, and operational testing of the item(s) at the location(s) specified such that the item(s) is (are) ready for use by the District.

(f) The word “provide” as used herein shall mean furnish and install, complete and ready for use by the District.

(g) Shop drawings means drawings submitted to the District by the Contractor, subcontractor, or supplier through the appropriate channels, or any lower tier subcontractor through the appropriate channels pursuant to a construction agreement, showing in detail (1) the proposed fabrication and assembly of elements and/or (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics,

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descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Agreement. The District may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Agreement.

(h) If the Agreement requires shop drawings, the Contractor shall coordinate all such drawings and review them for accuracy, completeness, and compliance with Agreement requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and, if not approved as submitted, shall indicate the District's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings or from responsibility for complying with the requirements of the Agreement, except with respect to variations described and approved in accordance with (i) below.

(i) If shop drawings show variations from the Agreement requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate Agreement modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(j) The Contractor shall submit to the Contracting Officer for approval a suitable number of copies as determined by the Contracting Officer (unless otherwise indicated) of all shop drawings as called for under the various headings of the specifications. One set will be returned to the Contractor.

(k) This clause shall be included in all subcontracts at any tier.

**6. OTHER CONTRACTS**

The District may undertake, or award other contracts for, additional work at or near the site of the work under the Agreement. The Contractor shall fully cooperate with the other contractors and with employees of the District and shall carefully adapt scheduling and performing the work under the Agreement to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by employees of the District.

**7. PROTECTION OF EXISTING SITE CONDITIONS**

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site which are not to be removed and which do not unreasonably interfere with the work required under the Agreement. The Contractor shall remove trees only when specifically authorized to do so and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Agreement performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of the Agreement or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

**8. OPERATIONS AND STORAGE AREAS**

(a) The Contractor shall confine all operations (including storage of materials) on District premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the District, and its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance of the work.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the District. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

**9. SUPERINTENDENCE BY CONTRACTOR**

At all times during performance of the Agreement and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

**10. VARIATION IN ESTIMATED QUANTITY**

If the quantity of a unit-priced item in the Agreement is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the Agreement price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request (in writing) an extension of time to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the Agreement. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

**11. MATERIAL AND WORKMANSHIP**

(a) All equipment, material, and articles incorporated into the work covered by the Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Agreement. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in the Agreement.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by the Agreement or by the Contracting Officer, the Contractor also shall obtain the Contracting Officer's approval of the material or articles that the Contractor contemplates incorporating into the work. When required by the specifications or when

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otherwise directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under the Agreement shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems unqualified, careless, or otherwise objectionable.

**12. SUSPENSION OF WORK**

(a) The Contracting Officer may order the Contractor in writing to suspend all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the District.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of the Contracting Officer in the administration of the Agreement, or by his failure to act within the time specified in the Agreement (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of the Agreement (excluding profit) necessarily caused by such unreasonable suspension or delay, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of the Agreement.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

**13. USE AND POSSESSION PRIOR TO COMPLETION**

(a) The District shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the District intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the Agreement. The District's possession or use shall not be deemed an acceptance of any work under the Agreement.

(b) While the District has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the District's possession or use, notwithstanding the terms Section 4. If prior possession or use by the District delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Agreement price or the time of completion, and the Agreement shall be modified in writing accordingly.

**14. INSPECTION OF CONSTRUCTION**

(a) The word "work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by the Agreement conforms to Agreement requirements. The Contractor shall maintain complete inspection records and make them available to the District. All work shall be conducted under the general direction of the Contracting Officer and is subject to inspection and testing by the District at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Agreement.

(c) Inspections and tests by the District are for the sole benefit of the District and do not:

(1) relieve the Contractor of responsibility for providing adequate quality control measures;

(2) relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) constitute or imply acceptance; or

(4) affect the continuing rights of the District after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of an inspector from the District does not relieve the Contractor from any Agreement requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The District may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The District shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Agreement.

(f) The Contractor shall, without charge, replace or correct work found by the District not to conform to Agreement requirements, whether found before or after substantial completion and whether or not fabricated, installed or completed, unless in the public interest the District consents to accept the work with an appropriate reduction in Agreement price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the District may (1) by agreement or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the District decides to examine already completed work by uncovering it, removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall pay for the examination and of satisfactory reconstruction. However, if the work is found to meet Agreement requirements, the Contracting Officer shall make an equitable adjustment for the additional work involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the Agreement, the District shall accept, as promptly as practicable after completion and inspection, all work required by the Agreement or that portion of the work the Contracting Officer determines can be accepted separately. Subject to the provisions of Section 15 hereof, acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the District's rights under any warranty or guarantee.

**15. WARRANTY OF CONSTRUCTION**

(a) In addition to any other warranties in the Agreement, the Contractor warrants, except as provided in paragraph (i) of this section, that work performed under the Agreement conforms to the Agreement requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed, by the Contractor or any subcontractor or supplier at any tier.

(b) Except for longer warranties required by the specifications, this warranty shall continue for a period of one year from the date of final acceptance of the work. If the District takes possession of any part of the work before final acceptance, this warranty for such part of the work shall continue for a period of one year from the date the District takes possession.

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(c) The Contractor shall remedy at the Contractor's expense (i) any failure to conform to the Agreement requirements or (ii) any defect in the work. In addition, the Contractor shall remedy at the Contractor's expense any damage to real or personal property owned or controlled by the District, when the damage is the result of –

- (1) the Contractor's failure to conform to Agreement requirements; or
- (2) any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this section. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the District shall have the right to replace, remove, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under the Agreement, the Contractor shall –

- (1) obtain all warranties that would be given in normal commercial practice;
- (2) require all warranties to be executed, in writing, for the benefit of the District; and
- (3) enforce all warranties for the benefit of the District, as directed by the Contracting Officer.

(h) In the event the Contractor's warranty under this section has expired, the District may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the District or for the repair of any damage that results from any defect in material or designs furnished by the District.

(j) This warranty shall not limit the District's rights with respect to latent defects, gross mistakes, or fraud.

**16. CHANGES**

(a) The Contracting Officer may, at any time, by written order designated or indicated to be a change order, make changes in the work within the general scope of the Agreement, including changes –

- (1) in the specifications (including drawings and designs);
- (2) in the method or manner of performance of the work;
- (3) in the facilities, equipment, materials, services, or site to be furnished by the District; or
- (4) directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change in the Contractor's obligations shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change order under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under the Agreement, the Contracting Officer shall make an equitable adjustment and modify the Agreement in writing. However, except for a "proposal for adjustment" (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph (b), above, shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the District is responsible, the equitable adjustment shall include the increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must submit any proposal under this clause within 30 days after (1) receipt of a written change order under paragraph (a), above, or (2) the furnishing of a written notice under paragraph (b), above, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the District. The proposal may be included in the notice under paragraph (b), above.

(f) No adjustment under this clause shall be allowed if asserted after final payment under the Agreement.

**17. TERMINATION FOR CONVENIENCE**

The Contracting Officer may terminate the Agreement, in whole or in part, with or without cause, for the convenience of the District or because of the failure of the Contractor to fulfill its Agreement obligations. The Contracting Officer shall give written notice of the termination to the Contractor specifying the part of the Agreement terminated and when termination becomes effective.

(a) The Contractor shall incur no further obligations in connection with the terminated work, and, on the date set in the notice of termination, the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Contracting Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the District. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(b) The Contracting Officer may require the Contractor to transfer title and deliver to the District in the manner and to the extent directed by the Contracting Officer: (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to the District. The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the District has an interest. If the Contracting Officer does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials.

(c) If the Agreement is terminated without cause by the District and the parties are unable to agree on the amount of a termination settlement, the District shall pay the Contractor the following amounts:

(1) For Agreement work performed before the effective date of termination, the total (without duplication of any items) of –

- (i) the cost of this work;
- (ii) the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement; and

(iii) a sum, as profit on the amount set forth in Section 17(c)(1)(i), determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Agreement had it been completed, the Contracting Officer shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

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- (2) The reasonable costs of settlement of the work terminated, including –
- (i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (ii) the termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

**18. DEFAULT**

(a) If the Contractor refuses or fails (i) to commence the work within the time required by the Agreement, (ii) to prosecute the work or any separable part with the diligence that will ensure its completion within the time specified in the Agreement, including any extension, (iii) to provide sufficient and properly skilled workmen or proper materials or equipment to complete the work in an acceptable manner and without delay, (iv) to promptly pay its subcontractors, laborers, and materialmen, (v) to perform any of its other obligations under the Agreement, or (vi) to complete the work within the time specified in the Agreement (“events of default”), the District may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work). In this event, the District may take over the work and complete it by Agreement or otherwise, and may take possession of and use any tools, materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the District resulting from any events of default, whether or not the Contractor’s right to proceed with the work is terminated. This liability includes any increased costs incurred by the District in completing the work.

(b) The Contractor’s right to proceed shall not be terminated because of delays nor the Contractor charged with damages under this clause, if –

(1) the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor (examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the District in either its public or contractual capacity, (iii) acts of another Contractor in the performance of an agreement with the District, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers); and

(2) the Contractor, within 10 days from the beginning of any permissible delay under this section (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties but subject to appeal under Section 21.

(c) If, after termination of the Contractor’s right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the District.

(d) The rights and remedies of the District in this clause are in addition to any other rights and remedies provided by law or under the Agreement. Time is of the essence for all delivery, performance, submittal, and completion dates in the Agreement.

**19. DISTRICT’S RIGHT TO CARRY OUT THE WORK**

If the Contractor fails or refuses to carry out all or any part of the work in accordance with the Agreement requirements or within the Agreement schedule and fails or refuses to correct such deficiency within seven days of receipt of written notice thereof from the District, the District, in its sole discretion and without waiving any other rights it may have, may elect to correct such

deficiencies and charge the Contractor the cost of such corrections. Nothing in this clause shall relieve the Contractor of its obligation to perform the remainder of the work in accordance with the Agreement.

**20. NO DAMAGES FOR DELAY**

Extension of time shall be the Contractor’s sole remedy for delay unless such delay shall have been caused by acts constituting intentional interference by the District with the Contractor’s performance of the work and to the extent such acts continue after Contractor’s written notice to the District of such interference. The District’s exercise of any of its rights under Section 16, regardless of the extent or number of such changes, or the District’s exercise of any of its remedies of suspension of work or requirement of correction of any defective work, shall not be considered intentional interference with the Contractor’s performance of the work.

**21. DISPUTES**

(a) Except as otherwise provided in the Agreement, any dispute concerning a question of fact or law arising under or related to the Agreement which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, on or before the 90<sup>th</sup> day from the date of receipt of such copy, the Contractor mails or otherwise furnishes a written appeal addressed to the District. The decision of the District or its duly authorized representative on such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. No action challenging such decision shall be brought more than two years from the date of the Contractor’s receipt of such decision. In connection with any appeal of the Contracting Officer’s decision, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending the final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with the Contracting Officer’s decision.

(b) If it is determined, on appeal, that the Contracting Officer’s interpretation of the Agreement, direction to the Contractor, or any other action required by the Contracting Officer’s decision was an erroneous determination of the rights and obligations of the parties under the Agreement, the Contractor’s remedy shall be the same as if such action were a change order under Section 16.

**22. ROYALTIES AND PATENTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the District harmless from loss on account thereof, except when a particular design, process, or product of a particular manufacturer is specified by the District; provided, that, if the Contractor has reason to believe that the design, process, or product specified infringes a patent, the Contractor shall be responsible for such loss unless it promptly gives such information to the Contracting Officer.

**23. FEDERAL, STATE, AND LOCAL TAXES**

The Agreement price includes all applicable federal, state, and local taxes and duties. The District is exempt from Texas state and local sales and use taxes, and any such taxes included on any invoice or voucher received by the District shall be deducted from the amount of the invoice or voucher for purposes of payment.

**24. ASSIGNMENT**

The Contractor shall not assign the whole or any part of the Agreement or any monies due or to become due hereunder without the prior written consent of the Contracting Officer.

**25. INTEREST OF PUBLIC OFFICIALS**

The Contractor represents and warrants that no employee, official, or member of the Board of Managers of the District is or will be pecuniarily interested or benefited directly or indirectly in the Agreement. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of

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entertainment, gifts, or otherwise) to any employee, official, or member of the Board of Managers of the District with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of the Agreement. For breach of any representation or warranty in this clause, the District shall have the right to annul the Agreement without liability and/or have recourse to any other remedy it may have at law.

**26. PREVAILING WAGE RATES**

All persons employed in the performance of the work under the Agreement, or any subcontracts hereunder, shall be paid not less than the general prevailing rates of per diem, holiday, and overtime wages prevailing in the locality for work of a similar character (which wages are specified in an attachment to the Agreement). Failure to comply with this provision shall subject the Contractor to the penalties prescribed in Chapter 2258 of the Texas Government Code.

**27. ADDITIONAL BOND SECURITY**

The Contractor shall promptly furnish additional security required to protect the District and persons supplying labor or materials under the Agreement if –

- (a) any surety upon any bond furnished with the Agreement becomes unacceptable to the District;
- (b) any surety fails to furnish reports on its financial condition as required by the District; or
- (c) the Agreement price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer.

**28. ORDER OF PRECEDENCE**

In the event of any inconsistency between the provisions of the Agreement, the request for proposal and/or Contractor's proposal, the inconsistency shall be resolved by giving precedence in the following order (1) the cover page of the Agreement, (2) these Terms and Conditions, (3) any other attachments to the Agreement, (4) the specifications or statement of work, (5) plans or drawings, (6) the District's request for proposal, and (7) the Contractor's proposal.

**29. GOVERNING LAW**

The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Texas. Venue for any action shall lie exclusively in Dallas County, Texas.

**30. INTEREST**

- (a) Notwithstanding any other clause of the Agreement, all amounts that become payable by the Contractor to the District under the Agreement shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be equal to the prime rate as reported in the Money Market Rates Section of the *Wall Street Journal* on the date due, plus one (1) percent, or the maximum amount permitted by law, whichever is less. In no event shall the interest charged or payable hereunder exceed that allowable under Texas law.
- (b) Amounts shall be due at the earliest of the following dates:
  - (1) the date fixed under the Agreement;
  - (2) the date of the first written demand for payment consistent with the Agreement, including any demand resulting from a default termination;
  - (3) the date the District transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt (unless a later date is set forth therein); or
  - (4) if the Agreement provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by Agreement modification.

**31. TITLE TO SUBMITTALS**

All information, drawings, or other submittals required to be furnished by the Contractor to the District under the Agreement shall become the property of the District.

**32. CONSTRUCTION SCHEDULE**

(a) Promptly after Agreement award, the Contractor shall meet with the Contracting Officer to discuss project scheduling and, at that meeting, shall submit a practicable schedule showing the order in which the Contractor proposes to perform the work and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a network analysis of suitable scale to indicate appropriately the percentage of the Contractor's work breakdown schedule which will be completed by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall update the schedule at regular intervals or as directed by the Contracting Officer and, upon doing so, immediately shall deliver a copy of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the District. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Agreement. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the terms of the Agreement.

**33. EXAMINATION OF BID DOCUMENTS**

The District shall have the right to examine and review the Contractor's original bid and estimating documents used in preparing its bid as a reference to aid in the District's evaluation of the Contractor's scheduling and construction progress. A certified copy of such documents shall be submitted to the District if requested by the Contracting Officer.

**34. LIQUIDATED DAMAGES – CONSTRUCTION**

(a) The amount of liquidated damages provided in the Agreement, if any, is neither a penalty nor a forfeiture and shall compensate the District solely for the District's inability to use the property subject to the work for its intended purpose and is not intended to, and does not, include or compensate the District for: (1) any damages, additional or extended costs, incurred by the District, for extended administration of the Agreement, or by the District's agents, consultants, or independent contractors for extended administration of the Agreement, (2) any increases in financing costs resulting from the delay in completion of the work, or (3) any additional services, relating to or arising as a result of the delay in the completion of the work. The District shall be entitled to claim against the Contractor for its actual damages any amounts not specifically included within the liquidated damages as set forth herein. Such costs shall be computed separately. Together with liquidated damages, they shall be either deducted from the Agreement price or billed to the Contractor.

(b) If the District terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with all items not covered in

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liquidated damages, as specified in paragraph (b), and any increased costs occasioned the District in completing the work.

(c) If the District does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

**35. TIME EXTENSIONS**

Notwithstanding any other provisions of the Agreement, the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The Agreement modification granting the time extension may provide that the Agreement completion date will be extended only for those specific elements so delayed and that the remaining Agreement completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

**36. INSURANCE – WORK ON DISTRICT FACILITIES**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of the Agreement at least the kinds and minimum amounts of insurance required in these Terms and Conditions or elsewhere in the Agreement.

(b) Before commencing work under the Agreement, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the District's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer.

(c) The Contractor shall insert the substance of this section, including this paragraph (c), in subcontracts under the Agreement that require work on any facility owned or operated by, or under the control of, the District and shall require subcontractors to provide and maintain the insurance required in these Terms and Conditions or elsewhere in the Agreement. At least five days before entry of each such subcontractor's personnel on the facility the Contractor shall furnish (or ensure that there has been furnished) to the Contracting Officer a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.

(d) At all times during the Agreement, Contractor shall, at its sole expense, carry the insurance coverage hereinafter described and maintain the same with an insurance company or companies satisfactory to the District and qualified to do business in the State of Texas. Further, Contractor shall require their insurance companies to provide the District with thirty (30) days written notice prior to cancellation or any material change in the policy. Contractor shall furnish, or cause to be furnished, certificates of insurance to the District, prior to or upon execution of the Agreement, evidencing the insurance coverage described above, and shall furnish such evidence of renewal to the District, during the term of the Agreement. Insurance coverage will continuously be provided as follows:

- (1) Workers' Compensation insurance as required by the laws of the State of Texas;
- (2) Comprehensive General Liability combined single limit in the amount of \$2,000,000;
- (3) General Aggregate in the amount of \$2,000,000;
- (4) Products and Completed Operations Aggregate in the amount of \$2,000,000;
- (5) Umbrella Each Occurrence/Aggregate in the amount of \$3,000,000; and
- (6) Automobile Liability in the amount of \$1,000,000 per accident.

**37. IDENTIFICATION OF DISTRICT-FURNISHED PROPERTY**

(a) The District will furnish to the Contractor the property identified on the drawings or in the specifications to be incorporated or installed into the work or

used in performing the Agreement. The listed property will be furnished f.o.b. railroad cars at the place specified in the Agreement Schedule or f.o.b. truck at the project site. The Contractor is required to accept delivery, pay any demurrage or detention charges, and unload and transport the property to the job site at its own expense. When the property is delivered, the Contractor shall verify its quantity and condition and acknowledge receipt in writing to the Contracting Officer. The Contractor also shall report in writing to the Contracting Officer (within 24 hours of delivery) any damage to or shortage of the property as received. All such property shall be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated in the Agreement.

(b) Each item of property to be furnished under this clause shall be identified on the drawings or in the specifications by quantity, item, and description.

**38. CLEANING UP**

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the District. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

**39. ACCIDENT PREVENTION**

(a) In performing the Agreement, the Contractor shall provide for protecting the lives and health of employees, patients, and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. For these purposes, the Contractor shall –

- (1) provide appropriate safety barricades, signs, and signal lights;
- (2) comply with all safety standards required by federal, state, or local law and any additional standards customarily employed in connection with the type of work being performed or the conditions at the site; and
- (3) ensure that any additional measures the Contracting Officer determines to be reasonably necessary for this purpose are taken.

(b) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under the Agreement resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Contracting Officer.

(c) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(d) The Contractor shall be responsible for its subcontractors' compliance with this clause.

**40. PUBLICITY RELEASES**

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning the Agreement or the work hereunder which the Contractor or any of its subcontractors desires to make for purposes of publication in whole or in part, shall be subject to written approval by the Contracting Officer prior to release.

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**41. EXAMINATION AND RETENTION OF RECORDS**

(a) The Contracting Officer and his or her representatives shall have the audit and inspection rights described in the applicable paragraphs (b) and (c), below.

(b) If this is a cost-reimbursement type, incentive, time and materials, labor hour, or price redeterminable Agreement, or any combination thereof, the Contractor shall maintain, and the Contracting Officer and his representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the Agreement. Such right of examination shall include inspection at all reasonable times at the Contractor's facilities, or such parts thereof, as may be engaged in or maintain records in connection with the performance of the Agreement.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of the Agreement or if the Contractor's cost of performance is relevant to any change or modification to the Agreement, the Contracting Officer and his representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such Agreement, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

(d) The materials described in (b) and (c), above, shall be made available at the office of the Contractor at all reasonable times for inspection, audit, or reproduction until the expiration of three (3) years from the date of final payment under the Agreement, except that:

(1) if the Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any final settlement; and

(2) records which relate to appeals under Section 21 or litigation, or the settlement of claims arising out of the performance of the Agreement, shall be made available until such appeals, litigation, or claims have been resolved.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts exceeding \$10,000 hereunder, altered to reflect the proper identification of the contracting parties and the Contracting Officer under the prime Agreement.

**42. WOMEN/MINORITY BUSINESS GOALS**

The Contractor agrees to make, and demonstrate to the satisfaction of the District that it has made and is making, good faith efforts to (1) identify, seek out, and assist Women/Minority Business Enterprises (W/MBE) to become its subcontractors and suppliers in the performance of the Agreement, and (2) achieve the District's goals (25% for contracts for goods and services and 30% for contracts for construction) for W/MBE participation in the performance of the Agreement in accordance with the District's W/MBE Plan. The Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, age, or physical handicap in the performance of the Agreement or the award or performance of subcontracts. Failure to comply with the provisions of this clause shall be grounds for terminating the Agreement for default.

**43. PAYMENT OF INTEREST ON CLAIMS**

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under Section 21 of these Terms and Conditions denying a claim arising under the Agreement, interest on the amount of the claim finally determined to be owed by the District, if any, shall be payable to the Contractor in accordance with Section 2251.025 of the Texas Government Code.

(b) Interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing his remedies under the Agreement or before a court of competent jurisdiction.

**44. FISCAL FUNDING**

Contractor acknowledges that the District is a political subdivision of the State of Texas. Notwithstanding anything in the Agreement to the contrary, the District shall have the right, upon failure of the governing body of the District and/or the Dallas County Commissioners Court to appropriate finances to meet the terms and obligations herein, to terminate the Agreement as of the effective date of such lack of fiscal funding.

**45. ACCESS TO BOOKS AND RECORDS**

Contractor agrees that Contractor shall perform the obligations as may be from time to time specified for subcontractors in the Social Security Act § 1861(v)(1)(I) and the regulations promulgated in implementation thereof (initially codified at 42 C.F.R. § 420.300 et seq.) and any successor regulations, including without limitation, allowing the Comptroller General of the United States ("Comptroller General"), the United States Department of Health and Human Services ("HHS"), and their duly authorized representatives access upon their request to the subcontractor's contract, books, documents, and records until the expiration of 4 years after the termination of the Agreement. If any such request for Contractor's or a related subcontractor's books, documents, and records is made, Contractor or any subcontractor related to Contractor shall immediately give notice of such request to the District and provide the District with a copy of such request, and Contractor shall consult and cooperate with the District concerning the proper response to such request. Contractor or any subcontractor related to Contractor shall provide the District with a copy of each such book, document, and record made available to the Comptroller General, HHS, and their duly authorized representatives or shall identify each such book, document, and record and grant the District access thereto for review and copying.

**46. INDEMNITY**

Contractor shall indemnify, defend, and hold harmless the District, its managers, officers, employees, agents, successors, and assigns from and against any and all claims, actions, causes of action, demands, losses, liabilities, costs, damages, and expenses (including, but not limited to, attorneys' fees and associated costs) of any nature whatsoever asserted against, resulting to, imposed upon, or incurred by the District or its managers, officers, employees, agents, successors, and assigns, directly or indirectly, by reason of, resulting from, or attributable to any breach by Contractor of any representation, duties, obligations, covenants, or agreements contained herein, and any and all negligent or wrongful acts or omissions of Contractor or any subcontractor of Contractor.

**47. STATUS OF CONTRACTOR**

It is expressly acknowledged by the parties hereto that Contractor, in performing Contractor's duties and obligations under the Agreement, is an "independent contractor" and nothing in the Agreement is intended nor shall be construed to create an employer/employee relationship, a joint venture relationship, or a lease or landlord/tenant relationship. Contractor understands and agrees that: (1) Contractor will not be treated as an employee for federal tax purposes; (2) the District will not withhold on behalf of Contractor pursuant to the Agreement any sums for income tax, unemployment insurance, social security, Medicare tax, or any other withholding pursuant to any law or requirement of any governmental body relating to Contractor or make available to Contractor any of the benefits afforded to employees of the District; (3) all of such payments, withholdings, and benefits, if any, are the sole responsibility of Contractor; and (4) Contractor will indemnify and hold the District harmless from any and all loss or liability arising with respect to such payments, withholding, and benefits, if any. In the event the Internal Revenue Service or any other governmental agency should question or challenge the independent contractor status of Contractor, the parties hereto mutually agree that both Contractor and the District shall have the right to participate in any discussion or negotiation occurring with such agency or agencies, irrespective of with whom or by whom such discussion or negotiation is initiated.

**ATTACHMENT 1**  
**CONSTRUCTION SERVICES AGREEMENT**  
**GENERAL TERMS AND CONDITIONS**

**48. NOTICES**

Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered in writing, when received by overnight courier, or when received by prepaid, certified or registered mail, return receipt requested, addressed to the other party at the address set forth on the first page of the Agreement.

**49. WAIVER OF BREACH**

The waiver by either party of a breach or violation of any provision of the Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or another provision hereof.

**50. ENFORCEMENT**

In the event either party resorts to legal action to enforce or interpret any provision of the Agreement, the prevailing party shall be entitled to recover the reasonable and necessary costs of such action so incurred, including, without limitation, reasonable attorneys' fees.

**51. ADDITIONAL ASSURANCES**

Except as may be herein specifically provided to the contrary, the provisions of the Agreement shall be self-operative and shall not require further agreement by the parties; provided, however, at the request of either party, the other party shall execute such additional instruments and take such additional acts as are reasonable and as the requesting party may deem necessary or desirable to effectuate the Agreement.

**52. SEVERABILITY**

In the event any provision of the Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall not affect the remainder of the Agreement, which shall be and remain in full force and effect, enforceable in accordance with its terms.