

**GENERAL CONDITIONS OF THE AGREEMENT**      (Attachment F)

Contract and Contract Documents

The Plans, Specifications, Supplemental Conditions (or Special Conditions), 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:

**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 County of Cameron, hereinafter called the "County" and \_\_\_\_\_, hereinafter called "Contractor", of which these GENERAL CONDITIONS, form a part.
- B. The term "Project Area" means the area within which is the specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this contract.
- C. The term "Engineer" means the Cameron County Engineer, Engineer in charge, serving the County with architectural or engineering services, his successor, or any other person or persons, employed by the County for the purpose of directing or having in charge the work embraced in this Contract.
- D. The term "Architect" means the architect contracted for the project by Cameron County.
- E. 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).

**ADMINISTRATION OF THE CONTRACT BY ARCHITECT AND ENGINEER**

The Engineer and Architect will provide administration of the Contract and will be the Owner's representatives (1) during construction and (2) until final payment is due. The Architect will advise and consult with the Owner and Engineer.

The Architect may appoint an employee or other person to assist him during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's representative may have allowed work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty work be

corrected with the Contract Documents and the Contractor shall correct same.

### **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 County 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.
- C. The Contractor expressly recognizes that the Architect does not owe him any duty to supervise or direct his work as to protect the Contractor from the consequences of his own acts or omissions.

### **SUBCONTRACTS**

- A. No proposed subcontractor shall be disapproved by the County except for cause.
- B. The Contractor shall be as fully responsible to the County for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work that require compliance by each subcontractor with the applicable provisions of this Contract.
- D. Nothing contained in the Contract shall create any contractual relation between any subcontractor and the County.

### **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.

### **PAYMENTS TO CONTRACTOR**

- A. 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 Architect and Engineer for their 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) five percent (5%) 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 Architect and Engineer.
2. Monthly or partial payments made by the County 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 County. Such payments shall not constitute a waiver of the right of the County 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 County in all details,

B. Final Payment

1. After final inspection and acceptance by the County and Architect 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 County 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 County deems it necessary in order to protect its interest. The County 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 County under Liquidated Damages, shall be deducted from the final payment due the contractor.

C. Payments Subject to Submission of Certificates

Each payment to the Contractor by the County shall be made subject to submission by the Contractor of all written certifications required of him and his subcontractors.

**D. Withholding Payments**

The County may withhold from any payment due the Contractor whatever is deemed necessary to protect the County, 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 County and will not require the County 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 County elects to do so. The failure or refusal of the County 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.

**CHANGES IN THE WORK**

- A. The County 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.
- 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 County 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 County 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 twenty-five percent (25%).
- 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.
6. The signatures of authorized representatives of Contractor and County.

### **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 County, 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 Architect and the Engineer and work shall not proceed except at the Contractors risk, until written instructions have been received by him from the Engineer.
- D. If, on the basis of the available evidence, the County determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed.

### **EXTRA WORK**

The term "EXTRA WORK" as used in the agreement shall be understood to mean and include all work that may be required by the Engineer or County to be done by the Contractor to accomplish any change, alteration or addition to the work shown upon the plans, or reasonably implied by the specifications, and not covered by the Contractor's proposal. It is agreed that the Contractor shall perform all Extra Work under the direction of the Engineer when presented with a written Work Order signed by the Engineer; Subject, however, to the right of the Contractor to require a written confirmation of such Extra Work Order by the County. It is also agreed that the compensation to be paid the Contractor for performing said Extra Work shall be determined by one or more of the following methods:

Method (a): By agreed unit prices;

Method (b): By agreed lump sum;

Method (c): If neither Method (a) nor Method (b) can be agreed the "actual field cost" of the work plus ten (10) percent.

In the event said Extra Work be performed and paid for under Method (c), then the provisions of this paragraph shall apply and the “actual field cost” is hereby defined to include the cost of all workmen, such as foremen, time keepers, mechanics and laborers, and materials, supplies, trucks, rental of machinery and equipment for the time actually employed or used on such Extra Work plus actual transportation changes necessarily incurred if the kind of equipment or machinery is not already on the job, together with the power, fuel, lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and a rateable proportion of premiums on Construction and Maintenance Bonds, Public Liability and Property Damage and Workmen’s Compensation, and all other insurance as may be required by any law or ordinance, or directed by the Engineer or County, or by them agreed. The Engineer may direct the form in which accounts of the “actual field cost” shall be kept and may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used, otherwise these matters shall be determined by the Contractor. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order.

The ten (10) percent of the “actual field cost” to be paid the Contractor shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the “actual field cost” as above defined, save that where the Contractor’s Camp or Field Office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate same, excluding staff, shall be included in the “actual field cost”.

No claim for extra work of any kind will be allowed unless ordered in writing by the Engineer. In case any orders or instructions, either oral or written, appear to the Contractor to involve extra work for which he should receive compensation, he shall make written request to the Engineer for written order authorizing Extra Work. Should a difference of opinion arise as to what does or does not constitute extra work, or as to the payment therefore, and the Engineer insists upon its performance, the Contractor shall proceed with the work after making written order and shall keep an accurate account of the “actual field cost” thereof, as provided under Method (c). The Contractor will thereby preserve the right to submit the matter for payment, as herein above described.

## **TERMINATION, DELAYS, AND LIQUIDATED DAMAGES**

### **A. Right of the County to Terminate Contract.**

In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the County 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 County 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 County 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 County for any excess cost incurred. In such event the County 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.

B. Liquidated Damages for Delays.

Refer to Supplementary Conditions, Liquidated Damages.

C. Hindrance and Delays.

No damages for delays shall be paid to the Contractor by the County, except for any unreasonable delays caused by the County.

D. Excusable Delays.

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:

- (1) 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;
- (2) Any acts of the County;
- (3) 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 County, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions.

Provided, however, that the Contractor promptly notifies the County within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the County 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 County shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

## **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 County; provided, however, that assignments to banks or other financial institutions may be made without the consent of the County. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractors 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.

## **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 Architect and Engineer for review and 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 Architect and Engineer.
- 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 Architect and Engineer, he shall in no case allow the dispute to delay the work but shall notify the Architect and Engineer promptly that he is proceeding with the work under protest.

## **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 Technical Specifications shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the Architect and Engineer, without whose decision, said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense.

## **SHOP DRAWINGS**

- A. All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Architect and the Engineer in 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. Shop drawings and samples shall be dated and marked to show the names of the Project, Architect, Contractor, Originating Subcontractor, Manufacturer or Supplier. Shop drawings shall completely identify specification section and locations at which materials or equipment are to be installed. All shop drawings are to be reviewed first by the General Contractor who shall affix his signature. 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. The Contractor shall submit and, if necessary, resubmit one (1) reproducible and four (4) copies of the shop drawings.
- D. If a shop drawing is in accordance with the contract or involves only a minor adjustment in the interest of the County 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.

## **REQUESTS FOR SUPPLEMENTARY INFORMATION**

It shall be the responsibility of the Contractor to make timely requests of the County for any additional information not already in his possession which should be furnished by the County 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.

## **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 certify in writing that no materials used in the work contain asbestos materials in them excess of amounts allowed by Local/State standards, laws, codes rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification to the Engineer.
- C. The Contractor shall furnish to the County 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.
- D. Products are generally specified by ASTM or other reference standard, and/or by manufacture's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. When only one product manufacturer is specified this is the basis of the Contract, without substitution or exception.
- E. Substitutions will not be considered if they are indicated or implied on shop drawing submissions without formal request, or for their implementation they require a substantial revision of the Contract Documents in order to accommodate their use.
- F. No request for the substitution of products in place of those specified shall be considered after the Contract has been executed.
- G. Not later than seven (7) days from the Contract Date, the Contractor shall provide a list showing the name of the manufacturers proposed to be used for each of the products identified in the General Requirements of the Specifications, and where applicable, the name of the installing subcontractor.
- H. Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.

- I. 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.
- J. The County may require the Contractor to dismiss from the work such employee or employees as the County or the Engineer may deem incompetent, or careless, or insubordinate.

### **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 County'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 County will pay all other expenses.

### **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 County. Where the requirements of the drawings and technical specifications fail to comply with such applicable ordinances or codes, the County 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.

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 County,

- B. 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.
- C. 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.

## **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 County 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 County.
- 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 owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless the County 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 County may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

## **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 County with reports concerning these matters
- D. The Contractor shall indemnify and save harmless the County 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 protection for all trenches in excess of a depth of five (5) feet, in the manner specified in the technical specifications and drawings.

### **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.

### **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 County, 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 County and all existing state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades
- B. Smoking and chewing of tobacco products is prohibited in the enclosed new construction.

### **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.

## **INSPECTION**

- A. All materials and workmanship shall be subject to inspection, examination, or test by the County, the Architect, and the Engineer at any and all times during manufacture or construction and at any and all places where such manufacture or construction occurs. The County 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 County 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 County.
- B. The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. All tests by the County 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 County 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 County, the Contractor shall uncover for inspection and recover such facilities at his own expense, when so requested by the County.
- D. Should it be considered necessary or advisable by the County 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 County 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.

## **REVIEW BY COUNTY**

The County 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 County through its authorized representatives or agents.

## **FINAL INSPECTION**

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

## **DEDUCTION FOR UNCORRECTED WORK**

If the County 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 County and subject to settlement, in case of dispute, as herein provided.

## **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 County.

- A. Compensation Insurance: The Contractor shall procure and shall maintain during the life of this contract Workers 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 Contractors Workers Compensation Insurance.

- B. Contractors Public Liability and Property Damage Insurance and Vehicle 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: See \_\_\_\_\_.
- C. Proof of Insurance: The Contractor shall furnish the County 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 ten (10) days written notice has been received by the County."

## **INDEMNITY**

Contractor shall indemnify, defend and hold harmless the Architect and Cameron County, its officials, officers, agents, and employees, from any and all liabilities, claims, demands, actions, losses, damages and costs, including all costs of defense thereof, of any nature whatsoever, for injury to or death of persons or loss or damage to property, or for any other reason (except for those resulting from the negligence of the County's or Architects' officials, officers, agents, and employees) occurring on the premises or in any manner arising out of or connected with Contractor's contractual obligations, including any claims, liabilities and actions based upon the acts or omissions of Contractor's officers, agents and employees.

## **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 County 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 County. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

## **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 County 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 there from which shall appear within a period of twelve (12) months from the date of final acceptance of the work.

### **EQUAL EMPLOYMENT OPPORTUNITY**

- A. The Contractor will not discriminate against any employee or the applicant for employment because of race, color, religion, sex, or national origin.
- B. The Contractor will cause the foregoing provision to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- C. 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.

### **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.

### **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.

### **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 County shall be consulted with regard to locations

- B. Upon completion of the improvements, or as directed by the County, 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.

### **PARTIAL USE OF SITE IMPROVEMENTS**

The County 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:

- A. The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.
- B. The Contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.
- C. The period of guarantee stipulated herein 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.

### **CONTRACT DOCUMENTS AND DRAWINGS**

The Local Public Agency will furnish the Contractor without charge six (6) copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.

### **ABANDONMENT BY CONTRACTOR**

In case the Contractor should abandon or fail to resume work within ten (10) days after written notification from the County or the Engineer, or the Contractor fails to comply with the orders of the Engineer when such orders are consistent with this contract or this Agreement or with the specifications hereto attached, then and in that case, the Surety on the bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the Contractor.

After receiving said notice of abandonment, the Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for work, may be held for use on the work by the County or the Surety on the construction bond, or another Contractor, in completion of the work; and the Contractor shall not receive any rental or credit therefor (except when used in connection with extra work, where credit shall be allowed as provided for under "Extra Work"), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

In case the Surety should fail to commence compliance with the notice for completion herein before provided for within ten (10) days after services of such notice, then the County may provide for completion of the work in either of the following elective manners:

A. The County may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said County may deem necessary to complete the work and charge the expense of such labor, material, machinery, equipment, tools and supplies to said Contractor and the expense so charged shall be deducted and paid by the County out of such money as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Agreement. In case such expense is more than the sum which would have been payable under this contract if the same had been completed by the Contractor, then the Contractor and/or his surety shall pay the amount of such excess to the County;

or

B. The County, under sealed bids, after five (5) days notice published one or more times in a newspaper having a general circulation in the County of the location of the work, may let a contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case of any increase in cost to the County under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the Contractor and the Surety shall be and remain bound theretofore. When the work shall have been substantially completed the Contractor and his Surety shall be notified and Certificates of Completion and Acceptance shall be issued as provided herein-above, a complete itemized statement of the contract accounts, certified to by the Engineer as being correct, shall then be prepared and delivered to the Contractor and his Surety, whereupon the Contractor and/or his Surety shall pay the balance due as reflected by said statement within twenty-one (21) days after the date of such Certificate of Completion.

In the event the statement of the account shows that the cost to complete the work is less than that which would have been the cost to the County had the work been completed by the Contractor under the terms of this contract and when the Contractor and/or his Surety shall pay the balance shown to be due by them to the County, then all machinery, equipment tools, materials or supplies left on the site of the work shall be turned over to the Contractor and/or his Surety. Should the cost to complete the work exceed the contract price and the Contractor and/or his Surety fail to pay the amount due the County within the time designated hereinabove, and there remains any machinery, equipment, tools, material or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and his Surety at the respective addresses designated in this contract provided, however, that actual written notice given in any manner will satisfy this condition. After mailing or otherwise giving such notice, such property shall be held at the risk of the Contractor and his Surety subject only to the duty of the County to exercise ordinary care to protect such

property. After fifteen (15) days from the date of said notice the County may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor, as the County may elect.

The County shall release any machinery, equipment, tools, materials or supplies, which remain on the work and belong to persons other than the Contractor or his Surety, to their proper Localities without notice to the Contractor.

### **ABANDONMENT BY THE COUNTY**

In case the County shall fail to comply with the terms of this contract and should fail or refuse to comply with said terms within ten (15) days after written notifications by the Contractor, the Contractor may suspend or wholly abandon the work, and may remove therefrom all machinery, tools and equipment. And thereupon the Engineer shall make an estimate of the total earned by the Contractor, which estimate shall include the value of all work actually completed by said Contractor at the prices stated in the attached proposal, the value of all partially completed work at a fair and equitable price, and the amount of all extra work performed at the prices agreed upon, or provided for by the terms of this contract, and a reasonable sum to cover the cost of any provisions made by the Contractor, to carry the whole work to completion and which cannot be utilized. The Engineer shall then make a final statement of the balance due the Contractor by deducting from the above estimate all previous payments by the County, all other sums that may have been retained by the County, under the terms of this Agreement, and shall certify same to the County who shall pay to the Contractor on or before thirty (30) days after the date of the notification by the Contractor, the balance shown by said final statement as due the Contractor under the terms of this Agreement.

### **BONDS**

It is further agreed by the parties of this contract that the Contractor shall execute a performance bond and a payment bond, each in the sum of one hundred (100%) percent, in the forms provided for this purpose, and it agreed that this contract shall not be in effect until such bonds are furnished and approved by the County.

### **RIGHTS AND REMEDIES**

Duties and obligations imposed by the Contract Documents and rights and remedies available there-under shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

No action or failure to act by the County or Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such act or failure to act constitute approval of or acquiescence in a breach there-under, except as may be specifically agreed in writing.