

site; and (3) ensure that any additional measures the Engineer or Public Works Director determine 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 this contract 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 Engineer.
- (c) The Architect, Engineer or Public Works Director 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 Architect or Engineer 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.
- (e) As property owners, the City retains the right to consent to and conduct on-site inspections pursuant to federal (including Occupational Safety and Health Administration -OSHA), state, municipal government occupational safety and health laws, and any other requirements. This includes all, but not limited to, accidents, investigations, general schedule, complaints, and follow-up safety and health inspections.

(37) Municipality'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 contract requirements or within the contract schedule and fails or refuses to correct such deficiency within seven (7) days of receipt of written notice thereof from the City of Mission, the City, 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 contract.

(38) Governing Law

The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Texas. Whenever there is no applicable state statute or decisional precedent governing the interpretation of, or disputes arising under or related to, this contract, then federal common law, including the law developed by federal boards of contract appeals, the United States Claims Court (formerly the Court of Claims), and the Comptroller General of the United States, shall govern. Venue for any action shall lie exclusively in Hidalgo County, Texas. This is the complete agreement between the parties. If any provision of the contract is found to be invalid or unenforceable, the remaining provisions shall not be impaired.

(39) Default

- (a) If the Contractor refuses or fails (i) to commence the work within the time required by this contract, (ii) to prosecute the work or any separable part with the diligence that will ensure its completion within the time specified in this contract, 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 this contract, or (vi) to complete the work within the time specified in this contract ("events of default"), the City 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 City may take over the work and complete it by contract or otherwise, and may take possession of and use any 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 City resulting from 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 City 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 City in either its public or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the City, (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 delay (unless extended by the Procurement Director), notifies the City Engineer or Procurement Director in writing of the causes of delay. The Procurement Director shall ascertain the facts and the extent of the delay. If, in the judgment of the City staff, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Procurement Director shall be final and conclusive on the parties but subject to appeal.
- (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 City.
- (d) The rights and remedies of the City in this clause are in addition to any other rights and remedies provided by law or under this contract. Time is of the essence for all delivery, performance, submittal, and completion dates in this contract.

(40) Termination of Contract

The City of Mission reserves the right to terminate the contract if, in the opinion of the City of Mission, the successful vendor's and/or contractors' performance is not acceptable, if the City is being repeatedly overcharged, improperly charged, no funds available, or if the City wishes, without cause, to discontinue this contract. Termination will be in written form allowing a 30-day notice.

(41) Termination for Convenience

The Procurement Director may, whenever the interests of the City so require, terminate this contract, in whole or in part, for the convenience of the City. The Procurement Director shall give written notice of the termination to the Contractor specifying the part of the contract 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 Procurement Director may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the City. 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 Procurement Director may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Procurement Director: (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 contract had been completed, would be required to be furnished to the City. The Contractor shall, upon direction of the Procurement Director, protect and preserve property in the possession of the Contractor in which the City has an interest. If the Procurement Director does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials.
- (c) The City shall pay the Contractor the following amounts: