

Document 00800

SUPPLEMENTARY CONDITIONS

Edit this Document to include only the paragraphs needed to supplement Document 00700 - General Conditions for each project. Underscored text is applicable only to SRF projects.

The following supplements modify the General Conditions, Document 00700, 1993 Edition. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1 - GENERAL PROVISIONS:

1.1 DEFINITIONS

Use Paragraph 1.1.5 on SRF-financed projects.

1.1.5 Contracts: Insert the following as subparagraph 1.1.5.4.

.4 This Contract is expected to be funded in part by a loan from the Texas Water Development Board an agency of the State of Texas. Neither the State of Texas nor any of its departments, agencies, or employees is or will be a party to this Contract.

Use Paragraph 1.1.24 on SRF-financed projects.

1.1.24 Add the following paragraph 1.1.24.

1.1.24 TWDB: The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or other person who may be at the time acting in the capacity or authorized to perform the functions of such Administrator, or the authorized representative thereof.

1.2 EXECUTION CORRELATION AND INTENT

Use paragraph 1.2.2.1 on all projects.

1.2.2 *Insert the following subparagraph 1.2.2.1.*

1.2.2.1 Drawings, Specifications, and any Modifications have been read and carefully considered by the Contractor, who understands the same and agrees to their sufficiency for the Work to be done. It is expressly agreed that under no circumstances, conditions, or situations shall this Contract be more strongly construed against the City than against the Contractor and his Surety. Any ambiguity or uncertainty in the Drawings, Specifications, and any Modifications shall be interpreted and construed by the City Engineer and his decision shall be final and binding upon all parties.

ARTICLE 3 - THE CONTRACTOR

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

Supplement Paragraph 3.2.6 with Paragraph 3.2.6.1 on all projects.

3.2.6 *Insert the following subparagraph 3.2.6.1.*

3.2.6.1 Contractor shall comply with the notice requirements of the Underground Facility Damage Prevention and Safety Act. TEX. REV. CIV. STAT. ANN. Art. 9033 (Vernon 1997).

Supplement Paragraph 3.3 with Paragraphs 3.3.3, 3.3.4, 3.3.5, and 3.3.6 on tunneling projects when variable soil conditions could be encountered.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES: *Insert the following paragraphs 3.3.3, 3.3.4, 3.3.5 and 3.3.6.*

3.3.3 Contractor shall be responsible for selecting his means and methods of shaft and tunnel construction to ensure satisfactory completion of the Work in and through adverse ground conditions, including but not limited to the following:

1. Variable soil stratification causing mixed face tunneling conditions. Water bearing sands and silts should be expected to be encountered at any location of the project, together with clays and possible siltstone and sandstone. Any of these materials may encroach on the invert or crown of the tunneling face, or may be located outside the bore but sufficiently close to adversely affect the Work.
2. Hard, cemented siltstone and sandstone. The selected tunneling method shall allow the tunnel to be advanced through siltstone and sandstone in full or mixed face conditions without reliance on access from the surface in areas with surface restrictions or underground installations.

3. Difficult groundwater control. The mixed soil stratification could include water layers in the vicinity of the tunnel bore. Such layers may be difficult to effectively dewater or depressurize due to limited depth of possible drawdown and limited available depth of screen installation.

3.3.4 Contractor's selected means and methods for tunneling shall have sufficient operational controls to ensure that the sewer can be installed within the specified line and grade tolerances, even when the tunnel is constructed in and through adverse ground conditions as described in Subparagraph 3.3.3.

3.3.5 Contractor shall perform sufficient subsurface exploration of the ground conditions ahead of each tunnel drive to ensure that the tunneling can proceed uninterrupted and successfully to the receiving shaft when started.

3.3.6 Contractor shall have the independent responsibility to change and modify his means and methods of construction to successfully complete the work without instructions or directions by the City. The changed methods shall be submitted to the City for review, however, such review shall not constitute an implied warranty of constructibility.

3.5 LABOR, MATERIALS, AND EQUIPMENT

3.5.1 *Delete Paragraph 3.5.1 in its entirety.*

Insert Paragraphs 3.5.3.1 and 3.5.3.2 on all projects. Insert M/WBE percentage goal in Paragraph 3.5.3.2.

3.5.3 *Insert the following subparagraphs 3.5.3.1 and 3.5.3.2*

3.5.3.1 Contractor shall comply with City of Houston, Tex. Code of Ordinances, ch. 15, art. V, § 15.81 et seq., City of Houston, Tex. Ordinance 95-336 (March 29, 1995) and Exec. Order No. 1-2 (June 14, 1995) relating to City-wide goals for contracting with Minority and Women Business Enterprises. If there are any conflicts between the referenced provisions of the Code of Ordinances and the Contract Documents, the Code of Ordinances shall control. Contractor shall comply with the requirements of Article 601i §4(2) Texas Civil Statutes (Vernon's 1997) which provides: '[M/WBE] subcontractors will perform all of their work of their trade with their own employees, or, if the [M/WBE] subcontractor uses an employee leasing firm for the purpose of providing salary and benefit administration, with employees who in all other respects are supervised and perform on the job as if they were employees of the [M/WBE] subcontractor'. If there are any conflicts between the Contract Documents as modified by the Code of Ordinances, and this provision, this provision shall control. Provided, however, the definition of certain terms in the referenced provisions of the Code of Ordinances and Article 601i §4(2) Texas Civil Statutes (Vernon's 1997) shall pertain to those respective provisions only and are not applicable to the Contract Documents unless specifically stated otherwise.

3.5.3.2 When the Contract Price is greater than \$1,000,000, the Contractor shall make good faith efforts to comply with City of Houston Code of Ordinances regarding Minority and Women Business Enterprises (M/WBE) participation goal, which is ____ percent of the Contract.

Use Paragraph 3.5.4 on all projects, including Paragraphs 3.5.4.1 through 3.5.4.6.

3.5.4 Delete paragraph 3.5.4 and replace with the following.

3.5.4 DRUG DETECTION AND DETERRENCE

3.5.4.1 It is the policy of the City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that the manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractors while on City premises is prohibited. By executing this Contract, Contractor represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 (Mayor's Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, Revised (Executive Order). City Council Motion No. 92-1971 (Mayor's Policy) is on file in the office of the City Secretary. Copies of Executive Order No. 1-31, Revised may be obtained in Room 2160, City of Houston Offices located at 611 Walker Street, Houston, Texas 77002.

3.5.4.2 Executive Order No. 1-31, Revised applies to all City of Houston contracts for labor and/or services except the following:

- .1 Contracts authorized by Emergency Purchase Orders,
- .2 Contracts in which imposition of the requirements of this Executive Order would exclude all potential bidders or proposers or would eliminate meaningful competition for the contract,
- .3 Contracts with companies that have fewer than fifteen employees during any 20-week period during a calendar year and no safety impact positions,
- .4 Contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
- .5 Contracts with federal, state, or local governmental entities.

3.5.4.3 Prior to execution of this contract, Contractor will have filed with the City (I) the Drug Policy Compliance Agreement substantially in the format set forth in Document 00635 (Attachment A to the Executive Order) (ii) a copy of its drug-free workplace policy, identified as Document 00636, (iii) a written designation of all safety impact positions, if applicable, identified as Document 00637, or (iv) if applicable (e.g., no safety impact positions), the Certification of No Safety Impact Positions, substantially in the format set forth in Document 00638 (Attachment C to the Executive Order). Contractor shall also file every 6 months during the performance of this Contract and upon the completion of this Contract, a Drug Policy Compliance Declaration in a form substantially similar to Document 00655 (Attachment B to the Executive Order). The Drug Policy Compliance Declaration shall be submitted within 30 days of the expiration of each 6-month period of performance and within 30

days of completion of this Contract. The first 6-month period shall begin to run on the date City issues its Notice to Proceed hereunder or if no Notice to Proceed is issued, on the first day Contractor begins Work.

3.5.4.4 Contractor shall have the continuing obligation to file written designations of safety impact positions and Drug Policy Compliance Declarations at any time during the performance of this Contract that safety impact positions are added if initially no safety impact positions were designated. Contractor also shall have the continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to Contractor's employee work force.

3.5.4.5 Contractor shall require that its Subcontractors hereunder comply with the Mayor's Policy and the Executive Order and Contractor shall be responsible for securing and maintaining the required documents from Subcontractors for City inspection throughout the term of this Contract. For Subcontractors, Drug policy compliance shall begin on the first day the Subcontractor begins Work.

3.5.4.6 The failure of Contractor to comply with the above requirements shall be a breach of this Contract entitling City to terminate in accordance with Article 14, Termination or Suspension of Contract.

3.5.5.1 *Insert the following subparagraph 3.5.5.1.*

3.5.5.1 Contractor, Subcontractors, and Suppliers shall use Low Sulfur Diesel Fuel (500 ppm or the applicable standard set by State or Federal Law and/or rules and regulations of the Texas Natural Resource Conservation Commission, or the Environmental Protection Agency, whichever is less in sulfur content. In all diesel operating vehicles and motorized equipment utilized in performing the Work. Contractor, Subcontractors, and Suppliers shall not use a high sulfur type diesel fuel in diesel operating vehicles or motorized equipment used in performing the Work. Off-road Low Sulfur Diesel Fuel may be used in lieu of the on-road Low Sulfur Diesel Fuel). Contractor shall provide, upon request by the City Engineer, proof that Contractor, Subcontractors, and Suppliers are using Low Sulfur Diesel Fuel.

3.6 PREVAILING WAGE RATES

Supplement Paragraph 3.6.1 with Paragraph 3.6.1.1 on all projects.

3.6.1 *Insert the following subparagraph 3.6.1.1.*

3.6.1.1 The prevailing wage rates applicable to this Project are bound in the Project Manual. The applicable document may be any one or a combination of the following:

Document 00811 - Federal Wage Rate Decision
Document 00812 - Wage Scale for Engineering Construction
Document 00813 - Wage Scale for Building Construction

Supplement Paragraph 3.11 with Paragraph 3.11.4 on all projects.

3.11 TAXES: *Insert the following paragraph 3.11.4.*

3.11.4 Materials incorporated into this project are exempt from State Sales Tax according to provisions of the Texas Tax Code, Chapter 151, Subsection H.

Insert the following paragraphs 3.13.1.1 and 3.13.2.1 on all projects having street cut permits.

3.13 CONSTRUCTION SCHEDULES

3.13.1.1 *Insert the following paragraph 3.13.1.1.*

3.13.1.1 The City will procure Excavation In Public Way permits required for the Work. Contractor will provide City excavation, scheduling, and temporary surfacing information required for the permit application; based on proposed ways, means, and methods; prior to City’s issuance of Notice to Proceed.

3.13.2.1 *Insert the following paragraph 3.13.2.1.*

3.13.2.1 Contractor shall give notice to City Engineer 48 hours, Monday through Friday except Legal Holidays, before commencing an excavation in pavement for which an Excavation in Public Way permit has been obtained. Give notice, to include permit number and commencement date, by facsimile to (713) 525-8580 or to telephone number specified by City Engineer.

Supplement Paragraph 3.14 with Paragraphs 3.14.2 and 3.14.3 on all projects.

3.14 DOCUMENTS AND SAMPLES AT THE SITE: *Insert the following paragraphs 3.14.2 and 3.14.3.*

3.14.2 Contractor shall maintain all books, documents, papers, accounting records and other relevant documentation pursuant to the Project and shall make such books, documents, papers, and accounting records available to City Engineer for review and audits at City Engineer’s office during the Contract

term and for three years following the Date of Substantial Completion or until litigation or audits are fully resolved.

3.14.3 The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Contractor covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Contractor’s compliance with this Contract, with the exception of those documents made confidential by Federal or State law or regulation.

Supplement Paragraph 3.22 with Paragraph 3.22.3, 3.22.3.1, and 3.22.3.2 on SRF-financed projects.

3.22 ACCESS TO WORK AND TO INFORMATION: *Insert the following Paragraph 3.22.3.*

3.22.3 Review by Texas Water Development Board (TWDB)

3.22.3.1 The TWDB shall at all times 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 instruction and approval with respect to the Work will be given to the Contractor only by the City Engineer through authorized representatives or agents.

3.22.3.2 Any such inspection or review by the TWDB shall not subject the State of Texas to any action for damages.

Supplement Paragraph 3.24 with Paragraph 3.24.5 on SRF-financed projects.

3.24 INDEMNIFICATION: *Insert the following paragraph 3.24.5.*

3.24.5 IN THE EXECUTION OF THE CONTRACT, THE CONTRACTOR MUST COMPLY WITH ALL APPLICABLE LOCAL, STATE AND FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO LAWS CONCERNED WITH LABOR, SAFETY, MINIMUM WAGES, AND THE ENVIRONMENT. THE CONTRACTOR SHALL MAKE HIMSELF FAMILIAR WITH AND AT ALL TIMES SHALL OBSERVE AND COMPLY WITH ALL FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES AND REGULATIONS WHICH IN ANY MANNER AFFECT THE CONDUCT OF THE WORK, AND SHALL INDEMNIFY AND SAVE HARMLESS THE CITY, THE TWDB, AND THEIR REPRESENTATIVES AGAINST ANY CLAIM ARISING FROM VIOLATION OF ANY SUCH LAW, ORDINANCE OR REGULATION BY HIMSELF OR BY HIS SUBCONTRACTOR OR HIS EMPLOYEE.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

This paragraph is rarely used. Do not use this paragraph to name in-house project managers or consultants who supplement City staff. Supplement Paragraph 4.1 with the appropriate version of Paragraph 4.1.6 if a Project Manager or Construction Manager is contracted to manage the Project without City construction management. Insert name of firm selected as Project Manager or Construction Manager, as applicable.

4.1 DEFINITIONS: *Insert the following paragraph 4.1.6.*

4.1.6 *Project Manager:* _____, who has been employed by the City to oversee the design, planning, and Contract Document development for this Project.

[OR]

4.1.6 *Construction Manager:* _____, who has been employed by the City to oversee and administer the construction of this Project.

Use Paragraph 4.4.4 to revise and supplement Paragraph 4.4 on all projects.

4.4 CLAIMS AND DISPUTES: *Delete paragraph 4.4.4 in its entirety and substitute the following paragraph.*

4.4.4 *Time Limits on Claims.* Claims by the Contractor must be made within 90 days after the occurrence of the event giving rise to such Claim.

ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS

Add the following Paragraph 5.4 to all Projecst.

5.4 *Insert the following paragraph 5.4.*

5.4 M/WBE CONTRACT TERMS

5.4.1 Subcontracts with M/WBE Subcontractors and Suppliers shall be clearly labeled “THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT.”

5.4.2 Subcontracts with M/WBE Subcontractors and Suppliers shall contain the following provisions:

5.4.2.1 M/WBE Subcontractor shall not delegate or subcontract more than 50 percent of the Work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director.

5.4.2.2 M/WBE Subcontractor shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

5.4.2.3 Within 7 days of execution of this subcontract, Contractor and Subcontractor shall designate in writing to the Affirmative Action Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street address, mailing address, and telephone number of such agent.

5.4.2.4 As concluded by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties to this Contract involving the construction or application of any of the terms, covenants, or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by the Affirmative Action Director served on both parties, be submitted to binding arbitration. Such arbitration shall comply with and be governed by the provisions of the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code, Ch. 171 -- "the Act"). If Contractor is a person or persons (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties. Arbitration shall be conducted according to the following procedures:

- .1 Upon the decision of the Affirmative Action Director or upon written notice to the Affirmative Action Director from either party that a dispute has arisen, the Affirmative Action Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.
- .2 If the dispute is not resolved within the time specified, any party or the Affirmative Action Director may submit the matter to arbitration as set out above.
- .3 The parties shall select an arbitrator from a revolving list of certified arbitrators provided by the Affirmative Action Director. If the parties are unable to agree on an arbitrator, each party may strike one name from the list and the first name immediately following the last strike shall be the one designated to hear the dispute. Each party shall deposit with the Director one half of the fee estimated by the arbitrator for required proceedings.
- .4 The arbitrator shall have all powers set out under the Act, and shall hear testimony, consider evidence, and render a written decision within 3 days of submission of the dispute. As part of

the decision, the arbitrator shall determine which party or parties shall pay all or part of the arbitrator’s fee.

- .5 The decision of the arbitrator shall be final as provided in the Act, and upon payment of the arbitrator’s fees, the Affirmative Action Director shall return that part of the deposit of any party in excess of the amount the party was ordered to pay.

ARTICLE 7 - CHANGES IN THE WORK

7.4 ADJUSTMENTS IN CONTRACT PRICE

Supplement Paragraph 7.4.2.2.1 with subparagraph a. on all projects.

7.4.2.2.1 Insert the following subparagraph 7.4.2.2.1a.

- a. The maximum labor burden to be applied to the costs of labor for changes in Work shall be 55 percent.

Supplement Paragraph 7.4.2.2.6 with subparagraphs a. and b. on all projects.

7.4.2.2.6 Insert the following subparagraphs 7.4.2.2.6a and 7.4.2.2.6b.

- a. The maximum allowances for overhead and profit on increases to Contract Price due to changes in Work, shall be:

	<u>Overhead:</u>	<u>Profit:</u>
To Contractor for change in Work performed by Subcontractors:	10 percent	0 percent
To first tier Subcontractors for change in Work performed by his Subcontractors:	10 percent	0 percent
To Contractor and Subcontractors for change in Work performed by their respective firms:	10 percent	5 percent

- b. For changes in Work performed by Contractor and Subcontractors, the allowance for overhead and profit shall be applied to an amount equal to cost of all additions to Work less cost of all deletions to Work. The allowance for overhead to Contractor and first tier Subcontractors on changes in Work performed by Subcontractors shall be applied to an amount equal to the sum of all increases to Work by applicable Subcontractors.

ARTICLE 8 - TIME

8.2 PROGRESS AND COMPLETION

Supplement Paragraph 8.2.1 with Paragraph 8.2.1.1 on all projects.

8.2.1 *Insert the following subparagraph 8.2.1.1.*

8.2.1.1 Any project milestones specified in Section 01110 - Summary of Work shall be incorporated in the construction schedule and shall be met as conditions of the Contract. Failure to accomplish a milestone, as determined by the City Engineer, will be considered a material breach of the Contract.

Supplement Paragraph 8.2.6 with Paragraph 8.2.6.1 on all projects.

8.2.6 *Insert the following subparagraph 8.2.6.1.*

8.2.6.1 The amount the Contractor shall credit the City for inspection services outside of the defined normal working hours is \$50.00 per hour per inspector.

ARTICLE 9 - PAYMENTS AND COMPLETION

Use the following Paragraph 9.2 for Stipulated Price (Lump Sum) Contracts with individual Specification sections containing references to unit prices.

9.2 **UNIT PRICE WORK:** *Delete paragraph 9.2 in its entirety and substitute the following paragraph.*

9.2 References to Unit Prices in individual Specification sections are not applicable to this Contract. Include payment for portions of the Work required by these sections in the Stipulated Price for the Contract.

9.3 **ESTIMATES FOR PAYMENT, UNIT PRICE WORK:** *Change paragraph 9.3.1 to read as follows.*

Supplement Paragraph 9.3 with Paragraph 9.3.1 on all projects.

9.3.1 For work contracted on a Unit Price basis, the City Engineer will prepare an estimate of the work completed in the preceding monthly period (ending on the tenth, twentieth, or last day of the month as stated in Document 00510 - Agreement Between the City of Houston and Contractor) based on Unit Prices provided in the Agreement.

9.6 CERTIFICATES FOR PAYMENT

9.6.4 *Insert the following Subparagraph 9.6.4.*

9.6.4 Contractor shall document its use of Low Sulfur Diesel Fuel by providing invoices and receipts evidencing such use.

9.9 PROGRESS PAYMENTS

Revise and supplement Paragraph 9.9.2 by using Paragraph 9.9.2 and adding 9.9.2.2 and 9.9.2.3 on all projects.

9.9.2 *Delete Paragraph 9.9.2 in its entirety and substitute the following Paragraph 9.9.2. Add the following new paragraphs 9.9.2.2 and 9.9.2.3.*

9.9.2 The City has no obligation to pay or to facilitate the payment to a Subcontractor or Supplier, except as may otherwise be required by law. Contractor shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. State Law requires payment of Subcontractors and Suppliers by the Contractor within 10 days of receipt of Contractor's payment.

9.9.2.2 Contractor shall make timely payments to Subcontractors and Suppliers for the performance of this Contract. Contractor agrees to protect, defend, and indemnify the City from any claims or liability arising out of Contractor's failure to make such payments.

Add the following two sentences to Paragraph 9.9.2.2 to all Projects.

Disputes relating to payment of M/WBE Subcontractors or Suppliers shall be submitted to arbitration in the same manner as any other disputes under the M/WBE subcontract. Failure of the Contractor to comply with the decisions of the arbitrator may, at the sole discretion of the City, be deemed a material breach leading to termination of this Contract.

9.9.2.3 As a certification of payments to Subcontractors and Suppliers, the Contractor shall prepare and submit to the City Engineer, Document 00651 - Certification of Payment to Subcontractors and Suppliers to be attached to each monthly Estimate for Payment.

9.10 SUBSTANTIAL COMPLETION

Supplement Paragraph 9.10.1 with Paragraph 9.10.1.1 when the Project is jointly funded or funded by another entity.

9.10.1 Add the following paragraph 9.10.1.1.

9.10.1.1 Progress payments for joint projects with the [_____] are governed by receipt of funds from that entity. Refer to Document [00520] [00525] [00530] [_____], for provisions governing payments.

Use the revised Paragraphs 9.10.6.1 and 9.10.6.2 on all projects.

9.10.6. Delete paragraph 9.10.6.1 and 9.10.6.2 in their entirety and substitute the following subparagraphs 9.10.6.1 and 9.10.6.2.

9.10.6.1 With the consent of Surety, City may increase payment to Contractor to 98 percent of the Contract Price less accrued Liquidated Damages.

9.10.6.2 Upon assurance provided by Contractor that all amounts due under the Agreement have been paid in full and wages paid are in compliance with requirements of Contract Documents, and with consent of Surety, City may increase payment to Contractor to 99 percent of the Contract Price less accrued Liquidated Damages.

Supplement Paragraph 9.10.6 with Paragraph 9.10.6.3 on all SRF-financed projects.

9.10.6.3 Add the following paragraph 9.10.6.3.

9.10.6.3 No adjustment or payment of retainage and its interest earnings, if any, as provided in this Paragraph 9.10.6, will be made unless and until the TWDB has authorized such adjustment or payment.

9.12 FINAL COMPLETION AND FINAL PAYMENT

Supplement Paragraph 9.12.8 with the first alternate Paragraph 9.12.8.1 on all SRF-financed projects. Use the second alternate Paragraph when the Project is jointly funded or funded by another entity.

9.12.8 Add the following paragraph 9.12.8.1.

9.12.8.1 Final payment and release of retainage for joint projects funded through the State Revolving Fund is governed by review and authorization for release by the Texas Water Development Board.

[OR]

9.12.8.1 Final payment for joint projects with the [] is governed by receipt of fund from that entity. Refer to Document [00520] [00525] [00530] [], as bound into the Project Manual.

Supplement Paragraph 9.13 with Paragraph 9.13.2 on all projects. Change the amount of daily liquidated damages to a calculated daily cost to the City. Include calculations in project files. Use the following table as a guideline:

<u>Est. Construction Cost</u>	<u>Liquidated Damages Per Day</u>
<i>Projects less than \$2.5 M</i>	<i>\$ 800</i>
<i>Projects \$2.5 M to \$7.5 M</i>	<i>\$1200</i>
<i>Non-facility Projects greater than \$7.5 M</i>	<i>\$1500</i>
<i>Facility Projects greater than \$7.5 M</i>	<i>\$2000</i>

9.13 LIQUIDATED DAMAGES: *Insert the following paragraphs 9.13.2 and 9.13.3.*

9.13.2 The amount of liquidated damages provided in General Conditions Paragraph 9.13, payable by Contractor or Contractor's Surety for each and every calendar day of delay beyond the Contract Time until the Work is accepted by the City as substantially complete shall be \$_____ per day.

9.13.3 Contractor shall pay to the City an amount equal to \$1,200.00 per diesel operating vehicle or piece of motorized equipment per incident of high sulfur type diesel fuel usage.

ARTICLE 10 - SAFETY PRECAUTIONS

Supplement Paragraph 10.3.2 with Paragraph 10.3.2.1 on all projects.

10.3 SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY

10.3.2 Add the following Paragraph 10.3.2.1.

10.3.2.1 Contractor shall comply with the requirements of the Underground Facility Damage Prevention and Safety Act. TEX. REV. CIV. STAT. ANN. Art. 9033 (Vernon 1997).

ARTICLE 11 - INSURANCE AND BONDS

11.2 INSURANCE TO BE PROVIDED BY CONTRACTOR

Supplement Paragraph 11.2.1 with Paragraph 11.2.1.1 on all projects.

11.2.1 Risks and Limits of Liability:

11.2.1.1 Add the following paragraph 11.2.1.1.

11.2.1.1 If the Limit of Liability for Excess Coverage is \$2,000,000 or more, the Limit of Liability for Employer's Liability may be reduced to \$500,000.

Add Paragraph 11.2.1.2 Builder's Risk insurance for projects that include plant or facility work. Notify Legal Department that these options are used.

11.2.1.2 Add the following paragraph 11.2.1.2.

11.2.1.2 The Contractor shall also purchase and maintain for the duration of the Contract the following insurance given in Table 1A, Additional Required Coverages:

TABLE 1A
ADDITIONAL REQUIRED COVERAGES

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Property and Casualty Coverage: "All Causes of Loss" Builder's Risk Form for direct physical change to building or plant construction on Project site. (Including but not limited to earthquake, flood, boiler, and machinery -- including testing, damage to existing or adjoining property, time element coverage, collapse, soft costs (management,	100% of Contract price, including change orders

architecture, financial costs, pre-opening costs, etc.), transit coverage, off-site storage).

Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period unless otherwise indicated.

OR

For projects using Section 01160 - Petroleum Contamination or involving asbestos contamination, add the following paragraph 11.2.1.2 and Table 1A instead of the same paragraph and table given immediately above. Notify the Legal Department that these options are being used.

11.2.1.2 *Add the following paragraph 11.2.1.2. Revise Table 1, Required Coverages by removing items .3, and .6 and adding items .3, .6, .8, and .9 listed in Table 1A.*

11.2.1.2 The Contractor shall purchase and maintain for the duration of the Contract the insurance given in Table 1, Required Coverages, as edited, and Table 1A, Additional Required Coverages:

TABLE 1A
ADDITIONAL REQUIRED COVERAGES

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
.3 Commercial General Liability: Including Contractor’s Protective, Broad Form Property Damage, Contractual Liability, Explosion, Under- ground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (For a period of one year following completion of the Work).	Combined single limit of \$1,000,000 each occurrence, subject to general aggregate of \$2,000,000; Products and Completed Operations \$1,000,000 aggregate.
.6 Automobile Liability Insurance: For automobile furnished by the Contractor in the course of his performance under this Contract, including Owned, Non-owned, and Hired Auto coverage.	\$1,000,000 combined single limit each occurrence, with MCS-90 endorsement attached and/or pollution exclusion removed.
.8 Property and Casualty Coverage: “All Causes of Loss” Builder’s Risk Form for direct physical damage to building or plant construction on Project site. (Including but not limited to earth- quake, flood, boiler and machinery -- including testing, damage to existing or adjoining property, time element coverage, collapse, soft costs (Management, architec- ture, financial costs, pre-opening costs, etc.), transit coverage, and off-site storage).	100% of Contract Price, including change orders
.9 Contractor’s Pollution Liability: Including pollution coverage for Contractual Liability, Clean-up costs, Abatement, Transport, and Non-owned disposal sites. Including Bodily Injury Liability, Property Damage Liability, and environmental damage arising from pollution conditions caused in perform- ance of operations. Including Asbestos and Lead if part of operations.	\$1,000,000 each occurrence

Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period unless otherwise indicated.

Revise Paragraph 11.2.3 on all projects.

11.2.3 Issuers of Policies: *Remove the first sentence of the paragraph and replace with the following:*

The issuer of any policy shall have a certificate of authority to transact insurance business in the State of Texas or shall have a Best's Rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States.

Add Paragraph 11.2.10 to all projects.

11.2.10 *Insert the following Paragraph 11.2.10.*

11.2.10 *Additional Requirements for Workers' Compensation Insurance Coverage:* Contractor shall, in addition to meeting the obligations set forth in Table I, Required Coverages, maintain throughout the Term of the Contract workers' compensation coverage as required by statute and Contractor shall specifically comply with all requirements set forth in this subparagraph 11.2.10. The definitions set out below shall apply only for the purposes of this subparagraph 11.2.10.

11.2.10.1 Definitions:

- .1 Certificate of coverage (Certificate): A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission (included in original definition under 28 TAC § 110.110 but excluded from this contract), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the Contractor's, Subcontractor's or Supplier's employees providing services on a Project, for the duration of the Project.
- .2 *Duration of the Project:* includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the City.
- .3 *Persons providing services on the Project (Subcontractor in Texas Labor Code § 406.096):* includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- 11.2.10.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
- 11.2.10.3 The Contractor must provide a certificate of coverage to the City prior to being awarded the Contract.
- 11.2.10.4 If the coverage period shown on the Contractor's original certificate of coverage ends during the duration of the Project, the Contractor must file a new certificate of coverage with the City showing that coverage has been extended.
- 11.2.10.5 The Contractor shall obtain from each person providing services on a Project, and provide to the City:
- .1 a certificate of coverage, prior to that person beginning work on the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - .2 no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- 11.2.10.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- 11.2.10.7 The Contractor shall notify the City in writing by certified mail or personal delivery, within ten days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- 11.2.10.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 11.2.10.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project to:
- .1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - .2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - .3 provide to the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .4 obtain from each other person with whom it contracts, and provide to the Contractor:
 - (1) a certificate of coverage, prior to the other person beginning work on the Project;

- and (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period whom on the current certificate of coverage ends during the duration of the Project;
- .5 retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- .6 notify the City in writing by certified mail or personal delivery, within ten days after the person knew or should have known , of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .7 contractually require each person with whom it contracts, to perform as required by subparagraphs 11.2.10.1-.7, with the certificates of coverage to be provided to the person for whom they are providing services.

11.2.10.10 By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier. Contractor shall not be allowed to self-insure workers' compensation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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

Add Flood Hazard Insurance on appropriate Projects. Do not include Flood Insurance on line projects, on projects outside of the 100-year floodplain, or on projects with structures less than \$10,000 in value. To be an insurable structure, it must have a value of \$10,000 or greater.

11.2.11 *Insert the following Paragraph 11.2.11.*

11.2.11 Flood Hazard Insurance: The Contractor shall apply for flood insurance on all insurable structures built under this Contract. A copy of the completed application must be provided to the City before commencing construction on the project. The Contractor shall obtain flood hazard insurance as soon as possible and submit a copy of the policy to the City.

11.4 PERFORMANCE AND PAYMENT BONDS

Revise Paragraph 11.4.1 on all projects.

11.4.1 *Delete Paragraph 11.4.1 in its entirety and substitute the following.*

11.4.1 For Projects over the value of \$25,000, Contractor shall provide surety bonds on City of Houston standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in Contract Documents pursuant to Chapter 2253 of the Government Code. Such bonds shall be in the amount of 100 percent of the Contract Price as stipulated in Contract Documents on the date of execution of the Contract and in accordance with the conditions stated on the standard City of Houston Performance and Payment Bonds, Documents 00610 and 00611. Bonds may be obtained from the Contractor's usual source and the cost thereof shall be included in the Contract Price.

11.5 MAINTENANCE BONDS

Supplement Paragraph 11.5 with Paragraph 11.5.2 on line projects.

11.5.2 *Insert the following paragraph 11.5.2.*

11.5.2 One-year Surface Correction Bond: Contractor shall also provide an additional one- year bond in an amount equal to 4 percent of the Total Contract Amount on City of Houston standard form, providing for the Contractor's correction, replacement, or restoration of any backfill or subsurface work and surface work, not in accordance with Contract Documents within one year from the date the One-year Maintenance Bond has expired.

Delete Paragraph 11.6 in its entirety and replace with the revised Paragraph 11.6 on all projects.

11.6 SURETY: *Delete Paragraphs 11.6.1, 11.6.1.1, 11.6.1.2, and 11.6.2 and replace with the following Paragraphs 11.6.1 through 11.6.7.*

11.6.1 A bond that is given or tendered to the City pursuant to this Contract shall be executed by a surety company that is authorized and admitted to write surety bonds in the State of Texas.

11.6.2 If a bond is given or tendered to the City pursuant to this Contract in an amount greater than ten percent of the surety company's capital and surplus, surety company shall provide certification that the surety company has reinsured that portion of the risk that exceeds ten percent of the surety company's capital and surplus. Such reinsurance shall be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by a reinsurer may not exceed ten percent of the reinsurer's capital and surplus. The amount of allowed capital and surplus shall be based on information received from the State Board of Insurance.

11.6.3 If the amount of the bond is greater than \$100,000, the surety must:

- .1 also hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or,

.2 the surety may obtain reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States secretary of the treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

11.6.4 Determination of whether the surety on the bond or the reinsurer holds a certificate of authority from the United States secretary of the treasury will be based on information published in the Federal Register covering the date on which the bond was executed.

11.6.5 Each bond given or tendered to the City pursuant to this Contract shall be dated and executed and accompanied by a power of attorney stating that the attorney in fact executing such bond has the requisite authority to execute such bond. Such power of attorney and any certificate thereon shall be dated and shall be no more than 30 days old.

11.6.6 The surety company shall designate in its bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

11.6.7 Contractor shall furnish information to a payment bond beneficiary as required by Chapter 2253 Texas Government Code.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

Add paragraph 13.6 on all projects.

13.6 INTEREST

13.6.1 *Delete Paragraph 13.6.1 in its entirety and substitute the following paragraph.*

13.6.1 No interest will accrue on late payments by the City except as provided under Chapter 2251 of the Government Code.

Add paragraphs 13.7 through 13.10 on SRF-financed projects.

13.7 *Add the following Paragraph 13.7.*

13.7 PRIVACY OF CONTRACT

13.7.1 This contract is expected to be funded in part with funds from the Texas Water Development Board. Neither the State of Texas nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to regulations contained in 31 TAC Chapter 363 in effect of the date this contract is executed.

13.8 *Add the following Paragraph 13.8.*

13.8 ARCHEOLOGICAL DISCOVERIES

13.8.1 If any archeological sites are discovered during construction, the Contractor will cease work immediately in that area and notify the City of Houston, which will, in turn, notify the TWDB and Department of Antiquities Protection at the Texas Historical Commission of the discovery. The TWDB shall then proceed in accordance with Chapter 41 Rules of Practices and Procedures under the Antiquities Code of Texas. In the interim, the City of Houston and its Contractor shall not take any action which would affect the cultural resources.

13.9 *Add the following Paragraph 13.9.*

13.9 ENDANGERED SPECIES

13.9.1 Should either threatened or endangered plant or animal species be encountered during construction, the Contractor will cease work immediately in the area of the encounter and notify the City of Houston, which will immediately implement actions in accordance with the Endangered Species Act of 1973, as amended, and applicable State statutes. These actions shall include reporting the encounter to the TWDB, the Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals of permits to enable the work to continue, or implementing other mitigative actions. In the interim, the City of Houston shall not allow the Contractor to resume construction activities in the area of the encounter.

13.10 *Add the following Paragraph 13.10.*

13.10 WILDLIFE HABITAT

13.10.1 The Contractor will attempt to perform the Work in ways to avoid destruction of trees, and in particular, those trees with trunk diameters of greater than 20 inches.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

Delete Paragraph 14.1.1 and replace with revised Paragraph 14.1.1 on all projects.

14.1 **TERMINATION BY THE CITY FOR CAUSE:** *Delete paragraph 14.1.1 in its entirety and substitute the following paragraph 14.1.1.*

- 14.1.1 The City may terminate the Contract if Contractor:
- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - .2 persistently disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;
 - .3 otherwise is guilty of material breach of a provision of the Contract Documents; or

- .4 otherwise is subject to termination for cause under any other contract with the City.
- .5 fails to utilize Low Sulfur Diesel Fuel, as provided in the Contract Documents.

END OF DOCUMENT