

Board of Water and Sewer Commissioners  
of the  
City of Mobile, Alabama

Update of Standard Specifications  
Section 7

Legal Relations & Responsibility to Public

Updated May 2021

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## **SECTION 7**

### **LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

#### **7.01 LAWS TO BE OBSERVED:**

The Contractor shall at all times observe and comply with all federal, state, and local laws, ordinances, orders, decrees, and regulations existing or enacted subsequently to the execution of the Contract which in any manner affect the prosecution of the Work. The Contractor and his Surety shall indemnify and save harmless the Owner and all their representatives, agents, and employees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself, his employees, or his subcontractors.

#### **7.02 PERMITS, TAXES, LICENSES, LAWS AND ORDINANCES:**

The Contractor shall procure all permits, certificates, and licenses, pay all charges, royalties and fees, and give all notices necessary and incident to the due and lawful prosecution of the Work. The Contractor shall pay all applicable federal, state, and local sales, use or other category of tax that may be imposed. He shall comply with all federal, state and local laws, ordinances or rules and regulations relating to the performance of the Work.

A permit must be obtained from the MAWSS engineering department prior to any construction activity taking place within easements or rights-of-way which contain water and/or sanitary sewer mains. Application for the permit must be in the form specified. A detailed set of plans and specifications must be submitted with the application. Following a review of the plans, MAWSS will issue a permit for the construction activity. The permit may be issued subject to the modification of the plans to include provisions to safeguard the sanitary sewer system from damage during construction and to minimize the possibility of future maintenance activities.

#### **7.03 PATENTED DEVICES, MATERIALS AND PROCESSES:**

If the Contractor is required or desires to use any design, device, material, or process covered by letters, patents or copyrights, he shall arrange and provide for such use by suitable agreement with the patentee or owner, and a copy of the agreement shall be filed with the Owner. Whether or not such agreement is made or filed, the Contractor and the Surety shall indemnify and save harmless the Owner, the Engineer, and all their authorized representatives from any and all suits, costs, penalties, or claims for infringement by reason of the use of any such patented design, device, material, or process, or any trademark or copyright in connection with the Work agreed to be performed under the Contract, and shall indemnify the Owner, the Engineer and all their authorized representatives for any costs, expenses, and damages which he or they may be obligated to pay by reason of such infringement or alleged infringement at any time during the prosecution or after the completion of the Work.

#### **7.04 SANITARY PROVISIONS:**

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the rules and regulations of the State Board of Health or of other authorities having jurisdiction, and shall permit no public nuisance.

#### **7.05 PUBLIC CONVENIENCE AND SAFETY:**

No road or street shall be closed by the Contractor to the public except by written permission of the authority having jurisdiction, and except while so closed, the Contractor shall maintain traffic over, through or around the Work included in this Contract, with the maximum practical convenience, for the full 24 hours of each day of the Contract, whether or not work has ceased temporarily. The Contractor shall notify the Engineer at the earliest possible date after the Contract has been executed, and in any case before the starting of any construction that might in any way inconvenience or endanger traffic, so that the necessary arrangements may be determined.

The convenience of the general public and of residents along the road shall be provided for in a reasonably adequate and satisfactory manner. Where existing roads are not available for use as detours, unless otherwise provided in the Special Provisions, all traffic shall be permitted to pass through the Work. The Contractor shall provide and maintain at his own expense such temporary roads as may be necessary to provide convenient access to driveways, houses, buildings, or other property abutting the Work under construction, as well as temporary approaches to, and crossings of, intersecting roads.

The Contractor shall arrange his work so that no undue and prolonged blocking of business establishments will occur.

Whenever possible all materials unloaded on the job sites will be placed in an area well away from the traveling public in order to avoid hazardous conditions.

Materials and equipment stored on the roads shall be so placed and the Work at all times shall be so connected as to insure minimum danger and obstruction to the traveling public.

In order that all unnecessary delay to the traveling public may be avoided, the Contractor shall provide and station competent flagmen whose sole duties shall consist of directing and controlling the movement of public traffic either through or around the Work.

Fire hydrants shall be accessible at all times to the Fire Department. No materials or other obstruction shall be placed closer to a fire hydrant than permitted by ordinances, rules or regulations, or within 5 feet of a fire hydrant, in the absence of such ordinances, rules, or regulations. In case of city or town work, the Contractor shall give the Chief of the Fire Department, City Engineer, and other appropriate local officials at least 24 hours notice in writing before it becomes necessary to obstruct a cross street.

#### **7.06 CROSSING RAILROADS:**

No work of any character shall be commenced on the railroad right of way until the Railroad Company has been duly notified by the Contractor of the date he proposes to begin work and until an authorized representative of the Railroad Company is present, unless the Railroad Company waives such requirement.

**7.07 INGRESS AND EGRESS:**

In areas where there is access to residences, businesses, public and private buildings, and other facilities, the Contractor shall plan his work to afford access to property abutting the Work at all times except when absolutely necessary, including providing immediate backfill of pipe, shells for temporary surfacing, and adequate signing and flagmen to control and direct traffic. The Contractor shall submit his method of operation for approval before starting work on the Project. There will be no direct payment for this Work, with payment included in the bid for other items of work in the Contract.

**7.08 BARRICADES, DANGER, WARNING AND DETOUR SIGNS:**

The Contractor shall at his own expense, provide, erect, paint and maintain all necessary barricades of the material and design to meet the requirements of the State Highway Department, Public Works Department, City Engineering Department, or other officials having jurisdiction. Also, at his own expense, the Contractor shall provide suitable and sufficient red lights, torches, reflectors or other danger signals and signs, provide a sufficient number of watchmen and take all the necessary precautions for the protection of the Work and safety of the public.

The Contractor shall erect warning signs beyond the limits of the Project as required, but at least 300 feet beyond each end of the Project and at least 300 feet in advance of any place on the Project where operations interfere with the use of the road by traffic. Barricades shall be kept well painted, and suitable warning signs shall be placed thereon. All barricades and obstructions shall be illuminated at night and all lights or devices for this purpose shall be kept burning from sunset to sunrise.

**7.09 PRESERVATION AND RESTORATION OF PROPERTY, TREES, MONUMENTS, ETC:**

The Contractor shall not enter upon private property for any purpose without first obtaining permission from the Owners and the lessees. The Contractor shall be responsible for the preservation of all public and private property, monuments, signs, telephone lines, roads, highways, streets, other utilities, etc., along and adjacent to the Project; shall use every precaution necessary to prevent damage to pipes, conduits and other underground structures; and shall protect carefully from disturbance or damage all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. The Contractor must obtain all necessary information in regard to existing utilities and shall give notice in writing to the Owners or proper authorities in charge of streets, gas and water pipes, electric and other conduits, railways, poles and pole lines, manholes, catch basins, fixtures, appurtenances, and all other property that may be affected by the Contractor's operations at least 48 hours before his operations will affect such property. The Contractor shall not hinder or interfere with any person in the protection of such work, or with the operation of utilities at any time.

The Contractor shall not remove, injure, cut or destroy trees, shrubs, or plants that are to remain on the streets or those which are privately owned without proper authority.

When or where any direct or indirect damage or injury is done to public or private property by or as a result of any act, omission, neglect, or otherwise of the Contractor, he shall make good such damage or injury in an acceptable manner.

The Contractor shall examine all bridges and culverts, on or near the Work, over which he will move his materials, implements or equipment and shall take such precautions as are necessary to properly strengthen such structures to prevent damage before he uses them. The Contractor shall be responsible for any and all damages, caused by his operation to such bridges and culverts.

**7.10 RESPONSIBILITY FOR DAMAGE CLAIMS, ETC.:**

The Contractor and Surety shall save harmless the Owner and all his representatives from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of performing any work in connection with this Project, or of any neglect in safeguarding the Work, or of any delay in completing the Work or of the use of any unacceptable or defective materials, or of any other act or omission either similar or dissimilar to the above enumerated acts, by said Contractor or his agent by which any person or property is injured through the fault of the said Contractor or his agents.

The Contractor shall report to the Owner all accidents occurring on the Work within 48 hours after their occurrence. The report shall contain complete information on the accident including names, addresses of persons involved and names and addresses of witnesses.

**7.11 RIGHT-OF-WAY:**

All right-of-way easements for the Work will be provided without cost to the Contractor unless otherwise specified with ingress and egress at public roads and streets. If the Contractor desires other points of entry, he shall secure the written permission of the property owners and pay any cost relative thereto.

**7.12 INTERFERENCE OF CONTRACTORS:**

The right is reserved by the Owner to award any work not included in the Contract to another for performance during the progress of this Contract, or to perform such work with their own forces, and the Contractor for this Contract shall so cooperate and conduct his operation as to minimize the interference therewith. Where two or more Contractors are employed on related or adjacent work, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each Contractor shall be responsible to the other for any damage, injury, loss or expense which may be suffered on account of interference of operations, neglect or failure to finish the Work at the specified time, or for any other cause.

If, through acts of neglect on the part of the Contractor, any other Contractor, subcontractor or vendor shall suffer loss or damage or assert any claim on the Work, the Contractor agrees to settle with such other Contractor, subcontractor or vendor by agreement or arbitration if such other Contractor, subcontractor or vendor will so settle. If such other Contractor, subcontractor or vendor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

**7.13 CONTRACTOR'S RESPONSIBILITY FOR WORK:**

Until the final acceptance of the Work by the Owner as evidenced in writing, it shall be in the custody and under the charge and care of the Contractor and he shall take every necessary precaution against injury or

damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of the Work. The Contractor shall rebuild, repair, restore and make good at his own expense all injuries or damages to any portion of the Work occasioned by any cause before its completion and acceptance and shall bear the expenses thereof.

**7.14 CONTRACTOR'S RESPONSIBILITY FOR COMPLETION:**

The Contractor shall accept ultimate responsibility for completion and final acceptance of the overall Project including work done by subcontractors and material and equipment provided by vendors and suppliers. The Contractor shall be responsible for coordination of Project execution in order to prevent duplication of Work, omissions, and other intercontract conflicts. References to duties and responsibilities of subcontractors, vendors, suppliers, etc., within the Specifications are intended to be addressed through the general Contractor's overall responsibility.

**7.15 PERSONAL LIABILITY OF PUBLIC OFFICIALS:**

In carrying out any of the provisions of the Contract or in exercising any power or authority granted thereby, there shall be no liability upon the Engineer or his representatives, either personally or as officials of the Owner, it being understood that in such matters they act as agents and representatives of the Owner.

**7.16 NO WAIVER OF LEGAL RIGHTS:**

The Owner or the Engineer shall not be precluded or stopped by any measurement, estimate or certificate made or given by either of them before or after the completion and acceptance of the Work and payment therefore, pursuant to any measurement, estimate or certificate, from showing the true and correct amount and character of the Work performed and materials furnished by the Contractor; or from showing at any time that any such measurement, estimate or certificate is untrue or incorrectly made in any particular; or from showing at any time that the Work or materials or any part thereof, do not conform in fact to the Contract. The Engineer shall have the right to reject the whole or any part of the aforesaid work or materials should the said measurements, estimate or payment be found, or be known, to be inconsistent with the terms of the Contract, or otherwise improperly given; and the Owner shall not be precluded from demanding and recovering from the Contractor and his Surety such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Engineer, or any representative, or employee; nor any certificate by the Engineer for payment of money; nor any payment for nor acceptance of the whole or any part of the Work by the Owner, or Engineer; nor any extension of time; nor any possession taken by the Owner or its employees, shall operate as a waiver of any portion of the Contract or of any power herein reserved by the Owner or of any right to damages herein provided, nor such any breach of the Contract be held to be a waiver of any other or subsequent breach.

**7.17 USE OF CHEMICALS:**

All chemicals used during Project construction or furnished for Project operation, whether herbicide, pesticide, disinfectant, polymer, reactant or of other classification, must be clearly identified and show approval of either EPA or USDA. Use of all such chemicals and disposal of residues shall be in strict conformance with manufacturer's instructions or government regulations as applicable.

### **7.18 DUST CONTROL:**

The Contractor shall at all times provide for the control of dust within residential areas and such other areas where dust is a nuisance to the public by sprinkling with water or by other approved dust control measures. Water shall be provided by the Contractor. No direct compensation will be made for water or other dust control measures, payment for which shall be included in the price bid for other items of work except where a specific pay item is included in the Proposal.

### **7.19 SAFETY AND HEALTH REQUIREMENTS FOR CONSTRUCTION:**

The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (P.L. 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (P.L. 91-54) and any amendments or additions thereto, where excavation and trenching are required the contractor shall comply with the requirements of OSHA Excavation and Trenching Safety Regulations (29 CFR Part 1926 – Excavation, Final Rule), and any amendments or additions thereto.

The Contractor shall be familiar and comply with the Board's Safety Rules Handbook in so far as it augments the specific regulation referred to in this Section.

The Contractor alone shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide necessary protection to prevent damage, injury or loss to:

- A. All employees on the Work and other persons and organizations who may be affected thereby.
- B. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal relocation or replacement in the course of construction.

The Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury, or loss to any property referred to above in Paragraphs 2 and 3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor that the Work is acceptable.



The Contractor shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner. The Contractor shall procure the referenced safety and health regulations, shall keep them on file at the job site, and shall require all supervisory personnel to become familiar with them.

**7.20 BRACING:**

In the event that the Contractor or his Surety deems it necessary, desirable, or for other reasons to open sheet or close sheet the trenches, the sheeting shall be accomplished in such a manner that the pipe will be protected at all times. Such sheeting shall remain in place until the backfill is carried to a point at least 2 feet above the top of the pipe. The Contractor shall exercise every precaution in removing the sheeting in order to avoid damaging the pipe. Should there be evidence that the removal of sheeting would damage the pipe, the sheeting shall be left in place. The top of sheeting left in place shall be at least 12 inches below the finished ground. There will be no payment for this item.

**7.21 WETLANDS:**

The Contractor shall have a thorough knowledge of all wetland regulations and shall be able to determine if wetland areas are encountered during construction. If construction is determined to be in a wetland area or adjacent to a wetland area, the Contractor shall comply with all wetland regulations.

**END OF SECTION**