



When a City Breaches: The Anatomy of a Public Construction Contract Dispute

By Clay Dean Thomas, Trial Counsel

I. The Illusion of “Ironclad” City Contracts

Most contractors believe that when they finish a public project, payment is just a matter of paperwork. Then they meet Chapter 271 of the Texas Local Government Code — the section that quietly governs how and when you can sue a city for breach of contract.

A municipal construction contract isn’t like a private one. Cities enjoy **governmental immunity**, which protects them from most lawsuits unless the Legislature says otherwise. Chapter 271 carves out a narrow opening: if the contract is *in writing*, properly *executed by the governing body*, and involves *goods or services*, then — and only then — may the contractor bring a claim for breach.

Miss one element, and the courthouse door closes.

II. The Statutory Path: Chapter 271, Subchapter I

Under **Tex. Loc. Gov’t Code §§ 271.151–.160**, immunity is waived *only to the extent of the balance due and owed under the contract*. That means:

- **No punitive damages.**
- **No speculative profits.**
- **No tort recovery disguised as contract loss.**

You may recover what the city agreed to pay — and that’s it.

To qualify, the contract must:

1. Be **authorized** by the governing body (usually by resolution or council vote).
2. Be **signed** by someone legally empowered to bind the city.
3. Set forth **clearly defined services or deliverables**.

A handshake deal with a department head won’t do.

III. Common Flashpoints in City Construction

1. Retainage and “Final Acceptance”

Cities often withhold 5–10 percent as retainage pending inspection. Delays in “final acceptance” can turn into de facto nonpayment. Contractors must document completion and demand release under the *Prompt Payment Act*, **Tex. Gov’t Code ch. 2251**, to preserve interest penalties.

2. Change Orders and Scope Creep

Oral directives from a city engineer — “just move that drain line 10 feet” — can doom recovery if not memorialized. Courts routinely hold that **unauthorized change orders** fall outside the waiver of immunity. The lesson: no paper, no payment.

3. Termination for Convenience

Many municipal contracts allow termination “for convenience.” But cities sometimes use this clause to mask a breach. When a termination follows substantial completion or without proper notice, damages may still be recoverable for work performed and costs incurred in reliance.

4. Disputed Performance and Political Pressure

Public projects carry reputational risk. A new council or mayor can decide your project is a “failure,” triggering stop-work orders or withheld pay. Political shifts don’t erase contractual obligations — but they do complicate enforcement.

IV. Proving Breach and Damages

A successful plaintiff must show:

1. **A valid written contract under Chapter 271.**
2. **Performance or tendered performance** by the contractor.
3. **Breach** by the city (nonpayment, wrongful termination, refusal to accept work).
4. **Resulting damages** within statutory limits.

Documentation wins these cases. Keep:

- Daily logs and progress reports.
- All change-order communications.
- Certified mail receipts for pay applications and notices.
- Meeting minutes showing council authorization.

Courts view city records as public evidence; your own paper trail is your armor.

V. Tactical Pitfalls

Sovereign Immunity Reasserted

Cities will often claim immunity on any issue not squarely in the written contract — including delay damages, lost overhead, or claims “arising under” rather than “for breach of” the contract. Frame your petition carefully to fit the statutory waiver.

Notice Requirements

Most contracts require written notice of breach within a fixed period (often 30 days). Missing that deadline can nullify your claim.

Dispute-Resolution Clauses

Arbitration provisions are enforceable against cities if adopted by ordinance or resolution. But mediation prerequisites must be exhausted before filing suit.

Venue and Forum

Suits against municipalities typically lie in the county where the city is located — often its own backyard. Neutralizing home-field advantage requires tight pleading and impeccable procedural compliance.

VI. The Role of the “Trial Lawyer” in Construction Litigation

While many construction disputes end in mediation, those that don’t require aggressive discovery. Public-entity defendants thrive on delay; depositions of engineers, inspectors, and finance officers reveal what correspondence won’t.

A seasoned litigator will:

- Demand **full council-meeting transcripts** to show authorization and notice.
- Trace **payment-approval chains** through city finance departments.
- Use **Public Information Act** requests to expose internal discussions about project funding.
- Retain **construction-management experts** to counter alleged performance deficiencies.

These are courtroom-tested methods — not academic theories.

VII. A Real-World Illustration

Consider a contractor who built municipal drainage improvements. The project finished on time; the city withheld payment citing “punch-list deficiencies.” An internal audit later showed the city had exhausted the bond funds before paying the contractor.

The contractor sued under Chapter 271, proving the project met specifications. The court held the city’s immunity waived and awarded full contract balance plus interest. The key evidence?

A signed council resolution approving the contract — and certified completion documents predating the city's excuses.

VIII. Strategic Lessons for Contractors

1. **Never rely on verbal assurances.** Confirm every change in writing, even by short email.
 2. **Read the ordinance.** Ensure the person signing has actual authority under local code.
 3. **Send notices by certified mail.** The postmark often determines statutory compliance.
 4. **Demand final acceptance.** Without it, retainage lingers indefinitely.
 5. **Keep contemporaneous records.** Reconstruction after litigation rarely works.
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IX. Why These Cases Matter

Public-works contractors keep Texas running — roads, drainage, utilities, emergency facilities. When municipalities breach, it's not just a private loss; it's taxpayer waste.

Holding cities accountable enforces integrity in public contracting and deters political manipulation of project funding.

X. Final Word

A city contract isn't a handshake — it's a statute-bound instrument that rewards precision and punishes assumption.

If your company faces nonpayment, termination, or defamation over project quality, act quickly. The deadlines are short, and the paper trail determines who wins.

Because in Texas construction law, **the only thing tougher than concrete is compliance.**