085

GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO HEAVY/HIGHWAY CONSTRUCTION CONTRACTS

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GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO HEAVY/HIGHWAY CONSTRUCTION CONTRACTS

ARTICLE I. GENERAL PROVISIONS

1.1 **CONTRACT DEFINITIONS.** Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to both the singular and plural thereof.

1.1.1 The Contract Documents.

1.1.1.1 The formal Building Construction Services Agreement between the Owner and the Contractor consists of the integrated Contract Documents, which include these General Conditions and other supplementary conditions included by special provisions or addenda, Drawings, Specifications, addenda issued prior to the close of the solicitation period, other documents listed in the Contract and Amendments issued after execution of an Integration Agreement (if such is deemed to be necessary by the City). An Amendment is a written supplemental agreement to the Contract signed by authorized representatives of both parties; a Change Order, including Change Orders signed only by the Owner as described in Section 7.1; or a written order for a minor change in the Work issued by the Design Consultant as described in Section 7.3.

1.1.1.2 The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Contract Documents, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Contractor.

1.1.2 The Contract. The Contract Documents, as defined in Section 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Contractor by reference in this Section and Section 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

1.1.2.1 between the Design Consultant and Contractor;
1.1.2.2 between the Owner and a Subcontractor or Sub-subcontractor; or
1.1.2.3 between any persons or entities other than the Owner and Contractor.

The Design Consultant shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Design Consultant's duties.

1.1.3 The Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Contractor is responsible, to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 The Project. The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the

Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

1.1.5 The Drawings. The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.6 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

1.1.7 The Project Manual. The Project Manual is the volume or volumes which contain the bidding requirements, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

1.1.8 Alternate. An Alternate is a variation in the Work on which the Owner requires a price separate from the Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a Change Order or Amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an Alternate is accepted by the Owner, and later deleted, the Owner will be entitled to a credit in the full value of the Alternate as priced in the Contractor's Bid Proposal.

1.1.9 Base Bid. The Base Bid is the price quoted for the Work before Alternates are considered.

1.1.10 Hazardous Substance. The term Hazardous Substance is defined to include the following:

1.1.10.1 any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable;

1.1.10.2 any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

1.1.10.3 radon;

1.1.10.4 any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

1.1.10.5 any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

1.1.10.6 any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

1.1.10.7 any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas

Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

1.1.10.8 any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

1.1.11 City Council. The duly elected members of the City Council of the City of San Antonio, Texas.

1.1.12 Construction Observer/Inspector. ("COI") The authorized representative of the Director of Capital Improvements Management Services or Public Works, or City of San Antonio designee department, assigned by the Owner to observe and inspect any or all parts of the Project and the materials to be used therein. Sometimes also referred to as the Resident Inspector. Also referred to as Resident Inspector.

1.1.13 Department. The Department of Capital Improvements Management Services, City of San Antonio, Texas or other department designee of the Department of Capital Improvements Management Services.

1.1.14 Federally Assisted Contract. Any contract financed in whole or in part with federal funds

1.1.15 Field Work Directives. A written order issued by the Design Consultant or the Owner Designated Representative (ODR) which orders minor changes in the Work, but which does not involve a change in the Contract Sum or the Contract Time.

1.1.16 Major Bid Item. Any individual bid item submitted by Contractor that constitutes, at a minimum, five percent (5%) of the total Contract Sum proposed by the Contractor or, the dollar amount defined in the Special Conditions as constituting a "Major Bid Item", whichever is less; or in some instances specific bid Items which are identified and defined in other sections of the Contract Documents as constituting "Major Bid Items"

1.1.17 Notice to Proceed. (also "Work Project Authorization") A written notice given by Owner to Contractor establishing the date on which the Contract Time will commence to run, and on which Contractor may begin performance of its contractual obligations.

1.1.18 Owner Designated Representative (ODR). Person designated by Owner to Act for Owner.

1.1.19 Site. Lands or areas (as indicated in the Contract Documents) furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

1.1.20 Other Definitions. As used in the Contract Documents, the following additional terms have the following meanings:

1.1.20.1 "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

1.1.20.2 "shall" means the action of the party to which reference is being made is mandatory;

1.1.20.3 "as required" means as prescribed in the Contract Documents; and

1.1.20.4 "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.1.20.5 "Design Consultant" means the architect or engineer retained by the City as more specifically defined in Sections 4.1.1 through 4.1.3 hereof.

1.1.20.6 "Program Management Team" is comprised of the Owner, its representatives, the Design Consultant and the Program Manager (if any) for this Work.

1.2 PRELIMINARY MATTERS.

1.2.1 Delivery of Bonds. When Contractor delivers the executed Contracts to City, Contractor shall also deliver to City such bonds as Contractor may be required to furnish, including but not limited to a payment bond in the form and amount specified in the Contract Documents and a performance bond in the form amount specified in the Contract Documents.

1.2.2 Delivery of Evidence of Insurance. Prior to the commencement of any Work under this Contract, Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the Department, or its delegate department, clearly labeled with the name of the Project, which shall furnish and contain all information required by Contract Documents. The Contractor shall be prohibited from commencing the Work and the City shall have no duty to pay or perform under this Contract until such evidence of insurance shall have been delivered to the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

1.2.3 Notice to Proceed and Commencement of Contract Times. Unless otherwise stated in the Notice to Proceed, the Contract Times will commence to run on the earlier of the date work actually commenced, or seven calendar days after issuance of City's Notice to Proceed. No Work shall be done at the Site prior to issuance of the Notice to Proceed.

1.2.4 Submission of Preliminary Schedules. Within ten (10) calendar days after receipt of City's Notice to Proceed (unless otherwise specified elsewhere in the Contract Documents) Contractor shall submit to the Director of Capital Improvements Management Services or his designee the following:

1.2.4.1 As required in Specification 700

1.2.4.2 A Preliminary Schedule of Shop Drawing and Sample Submittals, which shall list each required submittal and the times for submitting, reviewing and processing such submittal; and

1.2.5 Preconstruction Conference. Before any Work at the Site is started, a conference attended by Contractor, Design Consultant and others as appropriate will be held to establish a working understanding among the parties as to the Work and discuss the Preliminary Work Progress Schedule referenced in this Article, procedures for handling Shop Drawings and other submittal, processing Applications for Payment and maintaining required records.

1.3 CONTRACT DOCUMENTS.

1.3.1 Execution of Contract Documents. The Contract Documents shall be signed by Owner and Contractor. If either the Owner or Contractor or both do not sign all of the Contract Documents, the Design Consultant shall identify such unsigned documents to both the Owner and the Contractor upon request. Execution of the Contract by the Contractor is a representation that the Contractor has been provided unrestricted access to the existing improvements and

conditions on the Project Site, that it has thoroughly investigated the visible conditions at the Site and the general local conditions affecting the Work, and that Contractor's investigation was instrumental in preparing its bid or proposal for the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum arising from conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

1.3.2 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

1.3.2.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Design Consultant, its consultants, or other consultants retained by the City for the Project that describe the Work to be executed by the Contractor (the "Construction Documents") are Instruments Of Service and shall remain the property of their authors whether the Project(s) for which they are made is executed or not. The Contractor shall be permitted to retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Design Consultant or the Design Consultant's consultants, and unless otherwise indicated the Design Consultant and the Design Consultant's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Construction Documents, except the Contractor's record set, shall be returned or suitably accounted for to the Design Consultant, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Design Consultant and the Design Consultant's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design Consultant's or Design Consultant's consultants' copyrights or other reserved rights.

1.3.2.2 All of the Contractor's non-proprietary, documentary Work product, including reports and correspondence to City prepared pursuant to this Contract, shall be the property of the City and, upon completion of this Contract, such documentary Work product shall, upon written request by the City, be promptly delivered to City in a reasonably organized form, without restriction on its future use by City on any additional Work associated with the any of the Projects. For the avoidance of doubt, documentary Work product does not include privileged communications, proprietary information and documents used to prepare Contractor's Bid Proposal.

1.3.2.3 The Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially significant Work product lost or destroyed by the Contractor shall be replaced or reproduced at the Contractor's non-reimbursable, sole cost. In addition, City shall have access during normal business hours and following reasonable notice during the time this Contract is in effect, and for four (4) years after the final completion of the Work, to all of Contractor's records and documents covering reimbursable expenses, actual base hourly rates, time cards, annual salary escalation records maintained in connection with this Contract, for purposes of auditing same at the sole cost of the City. The purpose of any such audit

shall be for the verification of such costs. The Contractor shall not be required to keep records of, or provide access to the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers. At the conclusion of any City audit, Contractor will be afforded an audit exit conference to review the results of City's audit. Nothing herein shall deny the Contractor the right to retain duplicates. Refusal by the Contractor to comply with the provisions hereof shall entitle City to withhold further payments to Contractor until compliance is obtained.

1.3.2.4 All of the Contractor's documentary Work product shall be maintained within the Contractor's San Antonio offices, unless otherwise authorized by the City. After expiration of this Contract, the Contractor's documents may be archived in the Contractor's central record storage facility.

1.3.3 Correlation and Intent.

1.3.3.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the indicated results. In cases of discrepancy between any drawing and the dimension figures written thereon, the dimension figures shall govern over scaled dimensions; Detailed Drawings and accompanying notations shall govern over general Drawings; Specifications shall govern over Drawings, subject to Section 1.3.3.6; and Special Conditions shall govern over Specifications, Drawings and these General Conditions. The most recent revision of Plans shall control over older revisions.

1.3.3.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3.3.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Where the phrases "directed by", "ordered by" or "to the satisfaction of" the Design Consultant or the City's Resident Inspector occur, it is to be understood that the directions, orders, or instructions to which they relate are those within the scope of, and authorized by the Contract Documents.

1.3.3.4 Reference to manufacturer's instructions, standard specifications, manuals or codes of any technical society, organization or association, Laws or Regulations of any governmental authority, or to any other documents, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Contractor's Bid Proposal except as may be otherwise specifically stated or where a particular issue is indicated. Municipal and utility standards shall govern except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent shall govern.

1.3.3.5 The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

1. Contract Modifications signed by Contractor and Owner.
2. Addenda, with those of later date having precedence over those of earlier date.
3. Special Conditions
4. Supplementary Conditions.
5. Building Construction Services Agreement.
6. General Conditions

7. Specifications
8. Drawings.

1.3.3.6 Relation of Specifications and Drawings.

1.3.3.6.1 Drawings and Specifications are intended to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of work indicated. In the event of the above-mentioned disagreements, the Design Consultant shall determine the resolution.

1.3.3.6.2 Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, that is done for the sole and express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Design Consultant.

1.3.3.7 When the work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the date of the submission of the bid shall apply.

1.3.3.8 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

1.3.4 Interpretation. In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2. OWNER

2.1 GENERAL

2.1.1 Owner Defined. The City of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County, and identified as "Owner" or as "the City" in the Contract, is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters concerning this Contract requiring the Owner's approval or authorization. ("Owner's Designated Representative" or "ODR") Whenever the term "City" or "Owner" is found in this Contract, such term shall include the City's agents, elected officials, employees, officers, directors, volunteers, and representatives, successors and assigns.

2.1.2 The Contractor acknowledges that no lien rights exist with respect to public property.

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER.

2.2.1 The City will provide and maintain the Preliminary Budget developed by the Program Management and general schedule for the Project, if any. The Preliminary Budget will include the anticipated construction cost, contingencies for changes in the Work during construction, and other costs that are the responsibility of the Owner. The general schedule will set forth the Owner's plan for milestone dates and completion of the Project.

2.2.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements,

assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations. The furnishing of these surveys and reports shall not relieve the Contractor of any of its duties under the Contract Documents or these General Conditions. Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness following actual receipt of a written request. It is incumbent upon the Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval by the Owner, as required in Section 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

2.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, five (5) complete sets of the Plans and Specifications. Additional complete sets of Plans and Specifications, if requested, will be furnished at reproduction cost to the Contractor requesting such additional sets.

2.2.5 Owner's personnel may, but are not required to be present at the construction site during progress of the Work to assist the Design Consultant in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

2.2.6 **OWNER'S RIGHT TO STOP THE WORK.** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2, "CORRECTION OF WORK," or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Paragraph 12.2.

2.2.7 **OWNER'S RIGHT TO CARRY OUT THE WORK.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such three-day period, give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor, within such three-day period after receipt of such second notice, fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Consultant's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3. CONTRACTOR

3.1 GENERAL.

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

3.1.3 The Contractor shall not be relieved of obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Consultant in the Design Consultant's administration of the Contract, or by tests, inspections or approvals required or performed by the City or persons other than the Contractor.

3.2 **REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.**

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the Site affecting it. Any error, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Design Consultant as a Request for Information in such form as the Design Consultant may require.

3.2.1.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Design Consultant, or the work installed by other contractors, is not guaranteed by the Design Consultant or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

3.2.1.2 In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

3.2.2 As between Owner and Contractor, and subject to the provisions of Section 3.2.4 below, Contractor has no responsibility for the timely delivery, completeness, accuracy and/or sufficiency of the Specifications or Drawings (or any errors, omissions, or ambiguities therein), and is not responsible for any failure of the design of the facilities or structures as reflected thereon to be suitable, sound or safe. The Contractor shall be deemed to have satisfied itself as to the design contained in and reflected by the Specifications and the Drawings. In particular, but without prejudice to the generality of the foregoing, the Contractor will review the Contract Documents to establish that:

3.2.2.1 the information is sufficiently complete to perform the Work; and

3.2.2.2 there are no obvious or patent ambiguities, inaccuracies or inconsistencies within or between the documents forming the Contract; and

3.2.2.3 the Contractor can work with the aforementioned Contract Documents so as to perform the Work and of each and every part thereof such that the Work and each and every part thereof will, jointly and severally, be in accordance with the requirements of the Contract Documents and in particular, but without limiting the generality of the foregoing, such that the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance specifications.

3.2.3 Any design errors or omissions noted by the Contractor during its review shall be reported promptly to the Design Consultant, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contact Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Design Consultant.

3.2.4 If the Contractor believes that additional cost or time in involved because of clarifications or instructions issued by the Design Consultant in response to the Contractor's Notices or Requests for Information the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Design Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or differences and knowing failed to report it to the Design Consultant.

3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.

3.3.1 The Contractor shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a reasonably prudent Contractor, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Consultant and shall not proceed with that portion of the Work without further written instructions from the Design Consultant. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portion are in proper condition to receive subsequent Work.

3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq.

3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.3.6 The Contractor shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this paragraph are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

3.4 **LABOR AND MATERIALS.**

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.1.1 **PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS.** The Provisions of Chapter 2258, Texas Government Code, are expressly made a part of this contract. In accordance therewith, the City will provide Contractor with a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this contract prior to the bidding of the Project and this schedule will become a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars ($60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any sub-contractor under him. The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Contractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The Contractor, in the execution of this Project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, Contractor agrees that he/she will abide by all applicable terms and City "General Conditions" governing wages and labor standards and practices, established by City ordinance 60110, amended by City ordinance 71312 and 2008-11-20-1045, and provisions of the Nondiscrimination Clause and the Small and/or Minority Business Advocacy Clause as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office.

3.4.2 Substitutions.

3.4.2.1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor (iii) and when in the judgment of the Owner or the Design Consultant, a substitution would be substantially in the Owner's best interests in terms of cost, time, or other considerations.

3.4.2.2 The Contractor must submit to the Design Consultant and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) and in the event of a substitution under clause (ii) of Section 3.4.2.1, an affidavit stating the (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Design Consultant. Proposals for substitutions shall be submitted in triplicate to the Design Consultant in sufficient time to allow the Design Consultant no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

3.4.2.3 In the event of substitution under clause (ii) of Section 3.4.2.1, and whether or not any such proposed substitution is accepted by the Owner or the Design Consultant, the Contractor shall reimburse the Owner for any fees charged by the Design Consultant or other consultants for evaluating each proposed substitute.

3.4.3 Except as otherwise required for safety or protection of persons or the Work or property at the Site or adjacent thereto, no Work will be allowed by Owner between the hours of 10:00 p.m. and 6:00 a.m. of the following day unless directed by the ODR or requested in writing by Contractor and approved by the Director of Capital Improvements Management Services or its Designee Department Director.

3.4.4 The Contractor shall at all times enforce strict discipline and good order among persons working on the Project, and shall not employ or continue to employ any unfit person on the project or any person not skilled in the assigned work. The Contractor shall be responsible to the Owner for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone whom the Contractor may allow to perform any Work on the Project, and their respective officers, agents, employees, and consultants whom the Contractor may allow to come on the job site with the exception of the Owner, the Design Consultant, and the Program Management Team. In addition, if the Contractor receives written notice from the Owner complaining about any Subcontractors or employees or anyone who is a hindrance to proper or timely execution of the Work, Contractor shall remedy such complaint without delay to the Project and at no additional cost to the Owner. This provision shall be included in all contracts between the Contractor and all Subcontractors of all tiers.

3.4.5 The Contractor recognizes that the Project Site is a public facility which represents the City of San Antonio, and the Contractor shall prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job Site.

3.4.6 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.7 All materials and equipment shall be as specified in the Contract Documents, and if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Design Consultant, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment.

The Contractor may make substitutions only with the consent of the Owner, after Contractor's compliance with Section 3.4.2 hereof.

3.4.8 All materials shall be shipped, stored and handled in a manner that will protect and ensure their condition at the time of incorporation in the Work. After installation, all materials shall be properly protected against damage to ensure their being in the condition required by Section 3.5.1 when the Work is Substantially Completed or Owner takes over use and occupancy, whichever is earlier.

3.4.9 The Contractor shall procure and furnish to the Owner all guarantees, warranties, spares and maintenance manuals that are called for by the Specifications or that are normally provided by a manufacturer. The maintenance manual shall include a catalog and price list for any equipment, materials, supplies, or parts used in the inspection, calibration, maintenance or repair of the equipment. Items in the catalog shall be readily available for purchase.

3.4.10 During construction of the Work and for four years after final completion, the Contractor shall retain and shall require all Subcontractors to retain for inspection and audit by the City all books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all other direct or indirect costs related to the bidding and performance of this Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the Contractor at the administrative office of the Owner. To the extent that it requests copies of such documents, the City will reimburse the Contractor and its Subcontractors for copying costs. The Contractor shall not be required to keep records of, or provide access to the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers.

3.5 **WARRANTY.**

3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by Owner's failure to promptly notify Contractor. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 The Contractor agrees to assign to the Owner, at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties; provided that such assignment shall contain a reservation of Contractor's right to also enforce the manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from subcontractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with, as between Owner and Contractor, a warranty commencement date as required by the Contract Documents.

3.5.3 A right of action by the Owner for any breach of the Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Contract, at law, or in equity regarding any defective Work.

3.5.4 The warranty provided in paragraph 3.5.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor, upon written timely demand by Owner, to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after (i) Substantial Completion of the applicable Work,

(ii) such earlier date contemplated by Section 9.9 or, (iii) in the event of a latent defect, within one (1) year after discovery thereof by Owner.

3.5.5 The Contractor shall issue in writing to the Owner, as a condition precedent to final payment, a "General Warranty" reflecting the terms and conditions of paragraphs 3.5.1 and 3.5.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

3.5.6 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to the Owner. Owner and Contractor acknowledge that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or final completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one year warranty on each phase or building which is substantially complete will expire. Contractor agrees to provide notice of the warranty expiration date to Owner and Design Consultant at least one month prior to the expiration of the one year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one year warranty period, Contractor shall accompany the Owner and Design Consultant on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by the Contract Documents, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within seven (7) days of initial notification from Owner Contractor shall prosecute the work without interruption until accepted by the Owner and the Design Consultant, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Contractor's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

3.5.7 Warranties shall become effective on a date established by the Owner and Design Consultant in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to Final Completion shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Design Consultant or the date of final completion of the Work.

3.5.8 Neither final payment nor compliance by the Contractor with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship. The Contractor warrants that the Work will conform to the requirements of the Contract Documents.

3.6 **TAXES.** The Contractor will not include in the Contract Sum or any Modification any amount for sales, use, or similar taxes for which (1) the City is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

3.7 **PERMITS, FEES AND NOTICES.**

3.7.1 Permits. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or

negotiations concluded. Owner and Design Consultant shall assist Contractor, when necessary, in obtaining such permits and licenses.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Design Consultant and Owner in writing, and necessary changes shall be accomplished by appropriate Modification before the Word affected by such modification is performed.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Design Consultant and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.7.5 The Contractor shall also assist Owner in obtaining all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the Site. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

3.8 ALLOWANCES.

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
3.8.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance shall be included in the Contract Sum but not in the allowances;

3.8.2.3 Whenever actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect: (1) the difference between actual costs and the allowances under Section 3.8.2.1, and (2) changes in Contractor's costs under Section 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.9 SUPERINTENDENT.

3.9.1 At all times during the progress of the Work Contractor shall assign a competent resident superintendent, able to communicate fluently in English, and any necessary assistants, all satisfactory to the Director of Capital Improvements Management Services or Designee Department Director, as applicable. Any Superintendent designee shall be identified in writing to the ODR promptly after Owner issues written Notice to Proceed. The Superintendent shall represent the Contractor and all directions given to him shall be binding on the Contractor. The

designated Superintendent shall not be replaced without written notice to the ODR and approval of the Director, which approval will not be unreasonably withheld, except with good reason (including any termination or disability of the Superintendent) or under extraordinary circumstances. The Superintendent may not be employed on any other project prior to Final Completion of the Work, without the approval of the Director, which approval will not be unreasonably withheld.

3.9.2 The Contractor shall furnish a list to the Design Consultant of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Design Consultant shall provide such information to the Owner.

3.9.2.1 The Owner, upon the showing of good and reasonable cause, may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

3.9.2.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

3.9.2.3 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the City's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

3.10 CONTRACTOR'S WORK PROGRESS SCHEDULES.

3.10.1 The Work Progress Schedule and successive updates or revisions thereof are for the Contractor's use in managing the Work. The Work Progress Schedule is for the information of the Owner and to demonstrate that the Contractor has complied with requirements for planning the Work. The Owner's acceptance of a schedule and schedule updates or revisions constitutes the Owner's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.

3.10.1.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto, does not indicate any approval of the Contractor's proposed sequences and duration.

3.10.1.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute the Owner's consent to any changes, alter the terms of the Contract, waive either the Contractor's responsibility for timely completion, or waive the Owner's right to damages for the Contractor's failure to do so.

3.10.1.3 The Contractor's scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract Times.

3.10.2 Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner, as of the date of the submittal, of the accurate depiction of all progress to date and that the Contractor will follow the schedule as submitted in performing the Work.

3.10.3 Schedule Updates. The Work Progress Schedule and the Submittal Schedule shall be updated monthly, as a minimum, to reflect progress to date and current plans for completing the Work. A paper and an electronic copy of the update shall be submitted to the Design Consultant and ODR as directed. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. The anticipated date of Substantial Completion shall show all extensions of time granted through Change Order(s) as of the date of the update. The Contractor, after coordination and consultation with the Owner, may revise the Work Progress

Schedule logic only with the Owner's concurrence, which will not be unreasonably withheld, when, in the Contractor's judgment, it becomes necessary for the management of the Work. The Contractor shall identify all proposed changes to schedule logic to Owner and to the Design Consultant via an Executive Summary accompanying the updated schedule for review prior to implementation of any revisions.

3.10.3.1 Each schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Design Consultant. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project cash flow for the Project.

3.10.3.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Design Consultant is required to review submittals, shop drawings, product data, or samples.

3.10.3.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

3.10.3.4 If any updated schedule exceeds the time limits set forth in the Contract Documents for Substantial Completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in Substantial Completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Design Consultant to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Design Consultant.

3.10.3.5 Neither the Owner nor the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity duration so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

3.10.3.6 Submission of any schedule under this Contract constitutes a representation by the Contractor that as of the date of the submittal: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and duration used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining work in the sequence and time indicated.

3.10.4 Completion of Work. The Contractor is accountable for Substantially Completing the Work in the Contract Time, or as otherwise amended by Change Order.

3.10.4.1 If, in the judgment of the Owner, the Schedule update reflects that the Work is behind schedule and the rate of performance of the Work is inadequate to regain scheduled progress to insure timely Substantial Completion of the entire Work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of Work performance by: increasing working forces; increasing equipment or tools; increasing hours of work or number of shifts; expediting delivery of materials; changing, with the approval of the Owner, the schedule logic and Work sequences; or taking other action proposed if acceptable to Owner.

3.10.4.2 Within ten (10) calendar days after such notice from the Owner or the ODR, the Contractor shall notify the ODR in writing of the specific measures taken and/or planned

to increase the rate of progress. The Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project.

3.10.4.3 Should the ODR deem the plan of action inadequate, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents.

3.10.4.4 The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Substantial Completion of the Work within the Contract Time. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section, except as may be provided under the provisions of Article 4.3.11.

3.10.4.5 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

3.10.5 If reasonably required by Owner, Contractor shall also prepare and furnish Project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

3.10.6 The Contractor shall recommend to the Owner and to the Design Consultant a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the project schedule

3.10.7 This Article pertains to construction phase schedules. Additional requirements for design phase scheduling for Construction Manager-at-Risk and Design Build contracts are outlined in Division 1 Project Planning and Scheduling Specification. Refer to Special Conditions and Division 1 General Administration Specifications for additional schedule requirements.

3.11 DOCUMENTS AND SAMPLES AT THE SITE.

3.11.1 The Contractor shall maintain at the Site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Amendments, in good order and currently marked, to record field changes and selections made during construction, and <u>one</u> record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design Consultant and shall be delivered to the Design Consultant for submittal to the Owner upon completion of the Work.

3.11.2 Contractor shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Design Consultant, or their respective agents, within five (5) working days of request by Owner, Design Consultant, or their respective agents.

3.12 SHOP DRAWINGS, PRODUCE DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared and furnished by the Contractor or its agents, manufacturers, suppliers or distributors, and which illustrate and detail some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical samples of materials, equipment, or workmanship that are representative of some portion of the Work, furnished by the Contractor to Owner to assist Owner and Design Consultant in the establishment of workmanship and quality standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Design Consultant is subject to the limitations of Section 4.2.8. Informational submittals upon which the Design Consultant is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Design Consultant without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Design Consultant without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and filed construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design Consultant. The Design Consultant will review and return such submittals within ten (10) working days or within a reasonable period so as to not delay the project.

3.12.8 The Work shall be in accordance with approved submittals, except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Design Consultant in writing of such deviation at the time of submittal and (1) the Design Consultant has given written approval in the specific deviation as a minor change in the Work, or (2) a Change Order or Field Work Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Consultant's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Design Consultant on previous submittals. In the absence of such written notice, the Design Consultant's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications

by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Design Consultant will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Consultant. The Owner and the Design Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Design Consultant have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Design Consultant will review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

3.13.2 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

3.13.3 The Contractor will abide by all applicable rules and regulations of the Owner with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by the City.

3.13.4 The Contractor shall provide access to residents and businesses affected by the construction of this project to the greatest extent possible, including temporary base and asphalt.

3.13.5 The owner will have appropriate Temporary Bench Marks (TBM) and baseline (horizontal and vertical) established. As of the date of notice to proceed, it will be the Contractor's responsibility to protect, preserve and reestablish (if required) the TBM and/or baseline. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5".

The Contractor shall layout his work from established baseline and TBM indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the work. The contractor shall provide cut sheets to the City's inspector seven (7) days prior to construction of street and drainage work. The Contractor shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for SAWS Work. The Contractor shall provide cut sheets for improvements where Sewer profiles are provided for various phases of the project and cut sheets for Water profiles if applicable. The Contractor is to provide staking and preparation of cut sheets after receiving notice to proceed from COSA. The Contractor shall provide SAWS with cut sheets (7) days prior to commence of SAWS work. The Contractor shall be responsible for maintaining and preserving baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, the Contractor shall replace them at his own expense. At the end of construction of the project, the Contractor shall provide the City a grade certificate prepared by a Registered Professional Land Surveyor. This certificate should state that the infrastructure is constructed in accordance to the construction documents or as approved by the owner and Engineer of Record which is noted on the record plan set.

3.14 **CUTTING AND PATCHING**

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor, which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.14.3 Any part of the finished Work damaged during installation or prior to Substantial Completion of the Work (or such earlier date established in Section 9.9) shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced.

3.15 **CLEANING UP.**

3.15.1 During the progress of the Work, Contractor shall keep the Site and surrounding area free from accumulations of waste materials, rubbish, and other debris resulting from the Work. Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost therefore shall be charged to the Contractor

3.15.2 Prior to Substantial Completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy, by Owner. Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. Contractor shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost therefore shall be charged to the Contractor.

3.16 **ACCESS TO WORK.** The Contractor shall provide the Owner and Design Consultant access to the Work in preparation and in progress wherever located.

3.17 **PATENT FEES AND ROYALTIES.**

3.17.1 Contractor shall pay all license fees and royalties and assume all costs incident to the use of the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

3.18 INDEMNITY PROVISIONS.

Contractor covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and expenses, of every kind and character whatsoever, including without limitation by enumeration the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of Contractor and of Owner) damage to property (other than the Work itself and including property of Contractor and of Owner), but only to the extent caused by the negligent acts or omissions of, or incident to or in connection with or resulting from the negligent acts or omissions of, Contractor, its agents, servants, and employees, or its subcontractors and their agents, servants, and employees, in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract. Notwithstanding anything to the contrary included herein, in no event shall the Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

3.18.2 In addition to the above, Contractor also covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and expenses, of every kind and character whatsoever, including without limitation by enumeration the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of Contractor and of Owner) damage to property (other than the Work itself and including property of Contractor and of Owner), but only to the extent caused by the intentional or deliberate misconduct, grossly negligent, willful acts or omissions of, Contractor, its agents, servants, and employees, or its subcontractors and their agents, servants, and employees, or in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract, including but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall the Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

3.18.3 **Intellectual Property Indemnification** Contractor shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, for infringement of any United States Patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement by Contractor and its employee or its subcontractors and their agents, servants, and employees, based on any deliverable or any other materials furnished hereunder by the Contractor, and used by either City or Contractor within the scope of this agreement (unless said infringement results directly from Contractor's compliance with City's written standards or specifications). Contractor does not warrant against infringement by reason of Owner's or Design Consultant's design of articles or their use in combination with other materials or in the operation of any process. Contractor shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, unless otherwise mutually agreed upon and expressed in writing signed by the parties hereto. Contractor agrees to consult with the City Attorney during such defense or negotiations, and make good faith efforts to avoid any position adverse to the interest of the City. City will make available to Contractor any deliverables and/or works made for hire by Contractor which are necessary to the defense of Contractor against any claim of infringement for the duration of Contractor's legal defense.

3.18.4 If such infringement claim or action has occurred or, in Contractor's judgment is likely to occur, City shall allow the Contractor at Contractor's option and expense, (unless such infringement results directly from Contractor's compliance with City's written standards or specifications or by reason of City's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process for which the City shall be liable) to either: (a) procure for City the right to continue using said deliverable and/or materials; (b) modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect City's intended use of the deliverable and/or materials as contemplated hereunder); (c) replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to Contractor, upon written request City shall return the deliverable and/or materials in question to Contractor and Contractor shall refund all monies paid by City with respect to such deliverable and/or materials and accept return of same. If any such cure provided for in this Section shall fail to satisfy the third-party claimant, these actions shall not relieve Contractor from its defense and indemnity obligations set forth in this Article.

3.18.5 The indemnification obligations under this Article 3.18 shall not be limited in any way by the limits of any insurance coverage or any limitation on the amount or type of damages, compensation, or benefits payable by, for, or to Contractor or any subcontractor, supplier, or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts, or other employee benefits acts.

3.18.6 Workmen Safety. The indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Design Consultant pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing there under for protection, occupational safety and health to workmen. It is agreed that the primary obligation of the Contractor is to comply with these statutes in the performance by Contractor of the Work and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

3.18.7 Other Provisions Regarding Indemnity.

3.18.7.1 The provisions of this indemnification are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

3.18.7.2 The indemnities contained herein shall survive the termination of this Contract for any reason whatsoever.

3.18.7.3 Contractor shall promptly advise the City in writing of any claim or demand against the City or Contractor, as the case may be, known to Contractor, related to or arising out of Contractor's activities under this Contract, and shall see to the investigation and defense of such claim or demand at Contractor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this Article.

3.18.7.4 Defense Counsel. City shall have the right to approve defense counsel of which approval will not be unreasonably withheld, to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Contractor fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by

advisory counsel of its own selection and at its own expense, without waiving the foregoing.

3.19 **REPRESENTATIONS AND WARRANTIES.** The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

3.19.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

3.19.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

3.19.3 that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

3.19.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

3.19.5 that its duly authorized representative has visited the Site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

3.20 **BUSINESS STANDARDS.** Contractor, in performing it's obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT.

4.1 DESIGN CONSULTANT.

4.1.1 Definition. A person registered as an Architect pursuant to Tex. Occupations Code Ann., Chapter 1051, as a landscape Architect pursuant to Texas Occupations Code, Chapter 1052, and/or a person licensed as a professional engineer pursuant to Texas Occupations Code, Chapter 1001, or a firm employed by Owner or Design-Build Contractor to provide professional Architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in the Contract. The term "Design Consultant", unless the context clearly indicates otherwise, means an engineer or other Design Consultant in private practice retained for a specific project under a contractual agreement with the City.

4.1.2 Duties, responsibilities and limitations of authority of the Design Consultant as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Design Consultant. Consent shall not be unreasonably withheld. The Owner shall, and shall cause the Design Consultant to, exercise good faith and commercially reasonable standards in the administration, control, and approval of the Work.

4.1.3 If the employment of the Design Consultant is terminated, the Owner shall employ a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant.

4.2 ROLE OF THE DESIGN CONSULTANT IN ADMINISTRATION OF THE CONTRACT.

4.2.1 The Design Consultant will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Design Consultant will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Design Consultant will advise and consult with the Owner. The Owner's instruction to the Contractor may be issued through the Design Consultant, but the Owner reserves the right to issue instructions directly to the Contractor through other designated City representatives. Contractor understands that City may modify the authority of such Design Consultant as provided in the terms of its contract relationship with the Design Consultant, and the Director shall, in such event, be vested with powers formerly exercised by such Design Consultant, provided written notice of such modification shall be immediately served on the Contractor in writing. Nothing herein shall authorize independent agreements between Contractor and such Design Consultant, nor shall the Design Consultant be deemed to have a legal relationship with the Contractor.

4.2.3 The Design Consultant will make visits to the Site at intervals appropriate to the various stages of construction to operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and the Work. However, the Design Consultant will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Consultant will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. The Design Consultant's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will generally conform to the Contract Documents.

4.2.4 The Design Consultant will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Consultant will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work

4.2.5 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communication have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Inspectors about matters arising out of or relating to the Contract. Communications by and with the Design Consultant's consultants shall be through the Design Consultant. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.6 Based on the Design Consultant's evaluations of the Contractor's Application for Payment, the Design Consultant will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.7 Except as otherwise provided in the Supplementary or Special Conditions, the Design Consultant and the Owner will have authority to reject Work that does not conform to the Contract Documents. Whenever the Design Consultant or Owner considers it necessary or advisable, the Design Consultant will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

However, neither this authority of the Design Consultant or Owner nor a decision made by either, in good faith, to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Consultant to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.8 The Design Consultant will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Consultant will perform these reviews in a timely fashion so as to not delay the Work. The Design Consultant will respond to submittals such as Shop Drawings, Product Data, and Samples pursuant to the procedures set forth in Division 1 of the Project Specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Consultant's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Consultant, or any construction means, methods, techniques, sequences or procedures. The Design Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.9 The Design Consultant will prepare Change Orders and Field Work Directives, and with concurrence of the ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which the Contractor shall carry out promptly and record on the as-built record documents.

4.2.10 The Design Consultant and the Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Design Consultant will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance by the Contractor with the requirements of the Contract Documents.

4.2.11 Upon written request of the Owner or Contractor, the Design Consultant will issue its interpretation of the requirements of the plans and specifications The Design Consultant's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required for the Design Consultant shall be furnished in compliance with this Section 4.2, then no delay will be recognized on account of any failure by the Design Consultant to furnish such interpretations except for actual substantiated delays for which the Contractor is not responsible occurring more than 15 days after written request is made for the interpretations.

4.2.12 Interpretations and decisions of the Design Consultant will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

4.2.13 The Design Consultant's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

4.3 CLAIMS AND DISPUTES.

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. Except as contemplated by Section 4.3.10, every Claim of the Contractor, whether for additional compensation, additional time, or other relief, including

but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Contractor by his signature) of the Contractor, verifying the truth and accuracy of the Claim.. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Time Limit on Claims. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the Contractor must be initiated by written notice to the Design Consultant and the Owner. Claims by the Owner must be initiated by written notice to the Contractor.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Sections 4.5.1 or 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which were not known to the Contractor and which differ materially from those indicated in the Contract Documents or the reports of investigations and tests of subsurface and latent physical conditions provided by Owner to Contractor prior to the preparation by Contractor of its Bid and referred to above or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents in the general vicinity of the Project site, then the Contractor shall notify the Owner and the Design Consultant of such conditions promptly before conditions are disturbed, and in no event less than 3 days after first observation of the conditions. The Design Consultant will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to Article 4.5.

4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided in this Section 4.3 shall be given before proceeding to execute the Work; provided that prior notice is not required for Claims relating to an emergency endangering life or property. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design Consultant, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design Consultant, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner for convenience, (6) Owner's suspension or (7) other reasonable grounds, a Claim shall be filed in accordance with this Section 4.3.

4.3.6 Claims for Additional Time.

4.3.6.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided in this Section 4.3 shall be given. The Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.6.2 The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site, as determined from climatological data set forth in Specification 700 of the Project specifications. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. Requests for an extension of time pursuant to this Section shall be submitted to the Design Consultant not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation and all details reasonably available demonstrating the nature and duration of the delays or disruptions and their effect on the critical path of the Schedule.

4.3.7 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible (including, with respect to the Owner, the acts or omissions of the Owner's separate contractors), written notice or such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) business days after the discovery of the injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.8 Change in Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.9 Claims for Consequential Damages. Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the Contractor and to claims by the Owner:

4.3.9.1 No consequential, indirect, incidental, punitive, or exemplary damages will be allowed, whether or not foreseeable, regardless of whether based on breach of contract, tort (including negligence), indemnity, strict liability, or other bases of liability.

4.3.9.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other similar analysis that is used to show total cost or other damages.

4.3.9.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.

4.3.9.4 The maximum amount of any recovery for delay, to the extent damages for delay are not otherwise disallowed by the terms of the Contract, shall be as is provided in Section 8.3.2 hereof.

4.3.9.5 No damages will be allowed for home office overhead or other home office charges or any Eichleay formula calculation, except as expressly authorized by the Contract Documents.

4.3.9.6 No profit will be allowed on any damage claim, except as expressly authorized by the Contract Documents.

4.3.10 Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Contractor asserts a claim to the Contractor that the Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to:

4.3.10.1 the requirements of Section 4.3 of these General Conditions; and

4.3.10.2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Contractor to seek and assert such claim against the Owner:

(i) the Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Contractor has agreed to be legally responsible to the Subcontractor for

pursing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Contractor in the claim submittal materials.

(ii) The Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Contractor shall inform the Owner that the Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid.

(iii) The Subcontractor making the claim to the Contractor shall certify to the Contractor and to the Owner that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Contractor in the claim submittal materials.

4.3.10.3 Any failure of the Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim.

4.3.10.4 Receipt and review of a claim by the Owner under this Section shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or law.

4.3.11 **Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part**. The Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Contractor to develop a schedule recovery plan to alter its work sequences or to otherwise accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as Owner may reasonably direct and, upon receipt, the Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Contractor to additional compensation for any acceleration shall be subject to the terms of this Section 4.3.11.

(2) In the event that the Contractor is entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Section 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time and to order Contractor to exercise its commercially reasonable efforts to achieve Substantial Completion on or before the date that would have been required but for the existence of the event giving rise to the Claim by giving written notice to the Contractor provided within fourteen (14) days after receipt of the Contractor's Claim. If the Owner denies the Contractor's claim for an extension of Contract Time under this Subparagraph 4.3.11(2), either in whole or in part, the Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date. If, after initiating good faith acceleration efforts and through no fault of the Contractor, the Contractor is unable to achieve Substantial Completion within the originally scheduled Contract Time, the Owner will not be entitled to liquidated damages.

(3) If the Owner orders the Contractor to accelerate the Work under Section 4.3.11(2) above, and the Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents for an amount of time that would have justified approval by the Owner if not for the need and right to complete the Project within the stipulated period, the Contractor may initiate a Claim for schedule recovery or acceleration costs pursuant to Section 4.3.1. Any resulting Claim for these costs properly initiated by the Contractor under Section 4.3.1 above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual recovery or acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include, but are not limited to, the premium portion of overtime pay additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, profit and field overhead, not to exceed the markups permitted by this Contract, will be allowed on the claimed costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM.** The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause 4.3.11.

4.3.12 No Waiver of Governmental Immunity. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**

4.4 RESOLUTION OF CLAIMS AND DISPUTES.

4.4.1 Recommendation of Design Consultant.

4.4.1.1 Claims by the Contractor against the Owner and Claims by the Owner against the Contractor, including those alleging an error or omission by the Design Consultant but excluding those arising under Sections 10.3 and 10.5, shall be referred initially to the Design Consultant for consideration and recommendation to the Owner. An initial recommendation by the Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the parties arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Design Consultant with no recommendation having been rendered by the Design Consultant.

4.4.1.2 The Design Consultant will review Claims and within 10 days of receipt of the Claim and take one or more of the following actions: (1) request additional supporting data from the party making the Claim; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Design Consultant is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

4.4.1.3 Following receipt of the Design Consultant's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Section 4.5.

4.4.1.4 If the Design Consultant requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall either provide a response or the requested supporting data, advise the Design Consultant when the response or supporting data will be furnished, or advise the Design Consultant that no response of supporting data will be furnished.

4.4.2 Waiver of Lien. It is understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

4.5 **ALTERNATIVE DISPUTE RESOLUTION.**

4.5.1 Continuation of Work Pending Dispute Resolution. Each party is required to continue to perform its obligations under this Contract pending final resolution of any dispute arising out of or relating to this Contract unless it would be impossible or impracticable under the circumstances.

4.5.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the parties agree that they shall first try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty days after a party delivers a written notice of such dispute, then the parties shall proceed with the alternative dispute resolution process contained herein, including mediation and/or litigation. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

4.5.3 Mediation.

4.5.3.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Contract, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

4.5.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.

4.5.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this Section 4.5 shall be deemed to have occurred.

4.5.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is a consent to suit.

ARTICLE 5. SUBCONTRACTORS

5.1 **DEFINITION.** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.2 **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.2.1 The Contractor shall, prior to entering into an agreement with such persons, notify the Director in writing of the names of all proposed first tier Subcontractors for the Work.

5.2.2 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner prior to the Notice of Award and not objected to in writing by Owner prior to the Notice of Award will be deemed acceptable to Owner. Acceptance of any Subcontractor, other person, or organization by Owner shall not constitute a waiver of any right of Owner to reject defective Work. If Owner, after due investigation, has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, the Contractor will be required to submit an acceptable substitute. The Contract Sum will be equitably adjusted, if permitted by applicable law, for any change in the price of the subcontract work resulting from such substitution. Contractor shall not be required to employ any Subcontractor, other person, or organization against whom Contractor has reasonable objection.

5.2.3 Contractor shall be fully responsible to Owner for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. Owner may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

5.2.4 The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

5.2.5 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

5.2.6 SBEDA/DBE Reporting and Auditing. During the term of the contract, the Contractor must report the actual payments to all SBEDA or DBE (as applicable) Subcontractors and Suppliers in the time intervals and format prescribed by the City of San Antonio. The City reserves the right, at any time during the term of this Contract, to request additional information, documentation or verification of payments made to such Subcontractors and Suppliers in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of canceled checks paid to SBEDA or DBE Subcontractors and Suppliers and/or confirmation inquiries directly to the SBEDA or DBE participants. Proof of payments, such as copies of canceled checks must properly identify the project name or project number to substantiate a SBEDA or DBE payment for the Project.

5.2.7 Small Business Subcontractor Substitutions. See SBEDA or DBE Requirements in Supplementary Conditions for Substitution of Subcontractors. Failure to follow such procedures is an event of default under this Contract and may be grounds for termination.

5.2.8 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, the Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, Amendment, Change Orders and other administrative activities. When such systems are employed, the Owner shall administer the software, shall provide training to Project Team Members, and shall make the software accessible via the Internet to all Project Team Members.

5.3 **SUBCONTRACTUAL RELATIONS.** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Design Consultant. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS.**

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

5.4.1.1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

5.4.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increase in cost resulting from the suspension.

ARTICLE 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS.

6.1 **OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operation related to the Project with the Owner's own forces, the Owner shall be subject to the same obligations and to have the same rights which apply to the Contractor under

the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 **MUTUAL RESPONSIBILITY.**

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends, for proper execution or results, upon the construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design Consultant apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

6.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

6.3 **OWNER'S RIGHT TO CLEAN UP.** If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Consultant will allocate the cost among those responsible.

ARTICLE 7. CHANGES IN THE WORK

7.1 **GENERAL.**

7.1.1 Changes in the Work may be accomplished after the execution of the Contract, and without invalidating the Contract, by Change Order, Field Work Directive or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Design Consultant; a Field Work Directive requires agreement by the Owner and Design Consultant and may or may not be agreed to by the Contractor; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by the Design Consultant alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly with the changed Work, unless otherwise provided in the Change Order, Field Work Directive or order for a minor change in the Work or in this Article 7.

7.2 CHANGE ORDERS.

7.2.1 A Change Order is a written modification of the Contract prepared by the Design Consultant and signed by the Owner, Contractor and Design Consultant, (and approved by the City Council, if required) which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.

Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

7.2.3 Acceptance of a Change Order by the Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the change order. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on unchanged Work.

7.3 FIELD WORK DIRECTIVES.

7.3.1 A Field Work Directive is a written order prepared by the Design Consultant, and signed by the Owner and Design Consultant, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract time, or both. The Owner may by Field Work Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with any changes to the Contract Sum and/or the Contract Time to be adjusted according to the terms of this Section 7.3.

7.3.2 A Field Work Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

7.3.3.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.3.2 unit prices stated in the Contract Documents or subsequently agreed upon;

7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

7.3.3.4 as provided in Section 7.3.6.

7.3.4 Upon receipt of a Field Work Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Consultant of the Contractor's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Field Work Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be initially determined by the Design Consultant on the basis of reasonable costs and savings attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Design Consultant may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

7.3.6.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;

7.3.6.2 costs of materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;

7.3.6.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;

7.3.6.4 Expenses incurred in accordance with Contractor's standard personnel policy for travel approved by the Owner in advance;

7.3.6.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and additional costs of supervision and field office personnel directly attributable to the change; and

7.3.6.6 Payments made by the Contractor to Subcontractors.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus the Contractor's allocated percent for profit and overhead as confirmed by the Design Consultant, subject to equitable adjustment recommended by the Design Consultant and approved by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Field Work Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Design Consultant will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree with the determination made by the Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 **MINOR CHANGES TO THE WORK.** The Design Consultant will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

7.5 TIME REQUIRED TO PROCESS CHANGE ORDERS

7.5.1 All responses by the Contractor to proposal requests from the Owner or Design Consultant shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Design Consultant a minimum of thirty (30) calendar days after receipt by the Design Consultant to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of the Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation or additional time under the Contract Documents, without reservation or further recourse.

7.5.2 All Change Orders require approval by either the City Council or, where authorized by the state law and City ordinance, by the City Manager or designee pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, the Contractor will proceed with the work under a pending Change Order only if directed in writing to do so by the Owner.

ARTICLE 8. TIME

8.1 DEFINITIONS.

8.1.1 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. When the plural ("Contract Times") is used, it refers to milestones designated in the Work Progress Schedule.

8.1.2 Commencement of Work. The date of commencement of the Work is the date established in the Contract.

8.1.3 Substantial Completion. The date of Substantial Completion is the date certified by the Design Consultant and Owner, in accordance with Section 9.8, when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so as to be operational and fit for the use intended by the Owner.

8.1.4 Day. The term "day" as used in the Contract Documents shall mean Calendar Day unless otherwise specifically defined. A Calendar Day is a day of 24 hours measured from midnight to the next midnight, unless otherwise specifically stipulated. A Working Day is a day of eleven hours as measured from seven o'clock a.m. to six o'clock p.m. on weekdays, except legal holidays.

8.2 PROGRESS AND COMPLETION.

8.2.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE CONTRACT. By executing the Contract the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement with or the instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement is established by the Contract Documents or a Notice To Proceed given by the Owner.

8.2.3 The Contractor shall proceed with the Work expeditiously using adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2.4 Nothing in sections 8.1 and 8.2 shall be construed as prohibiting the Contractor from working on Saturdays if he so desires and gives City's "COI" and City's Project Manager at least the prerequisite forty-eight (48) hours written notice of intent to perform work on Saturday so that Owner's representative may be scheduled to observe/inspect said work. Work on Sundays or holidays will not be permitted except in cases of extreme emergency and then only with the written permission of the City's Project Manager.

8.3 **DELAYS AND EXTENSIONS OF TIME.**

8.3.1 Neither the Owner nor the Contractor, except as provided for in this Section 8.3.1, shall be liable to the other party for delay to the Contractor's Work by reason of unreasonably severe weather, fire, act of God, riot, strike, or any other cause beyond the Owner's control. Should any of these factors delay the Work's critical path, as evidenced by a time impact analysis developed by Contractor and verified by the Design Consultants, the Program Manager (if any), and the ODR, Contractor shall receive an extension of the Contract Times equal to the delay if a written claim is made within five work days of the delaying event, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such delays.

8.3.2 Should the Contractor be delayed by the act, neglect or default of the Owner or the Design Consultants, and should any of these factors delay the Project's critical path, as evidenced by a time impact analysis developed by Contractor and verified by the Design Consultants, the Program Manager and the ODR, Contractor shall receive an extension of the Contract Times equal to the delay if a written claim is made within twenty one (21) days. In addition, Contractor, upon timely notice to the City and substantiation by the Design Consultants, the Program Manager (if any) and the ODR, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs incurred by the Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or Supplier to administer their Work. Compensation for the Subcontractor's and Supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to the Owner-caused event. In no event will Contractor be entitled to home office or other off-site expenses or damages.

8.3.3 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

8.3.4 This Contract does not permit the recovery of damages by the Contractor for delay, disruption or acceleration, other than those described above in Section 8.3.2 and as provided under Section 4.3.11(3). Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time or as contemplated in Section 8.3.2

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 **CONTRACT SUM.** The Contract sum is stated on the Purchase Order, including change orders. The estimated quantities of the various elements of Work to be done and material to be furnished are approximate only and are provided by Consultant and Owner as a basis for Owner comparison of proposals and award of Contract. It is expressly understood and agreed by Owner and Contractor

that the actual amounts of Work to be done and material to be furnished may differ somewhat from these estimates. The quantities of Work actually performed by Contractor will be computed on the basis of measurements taken by the Owner's representatives, and these measurements shall be final and binding on Contractor.

9.2 **PROJECT SCHEDULES.** Refer to Specification 700

9.3 **APPLICATIONS FOR PAYMENT.**

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Design Consultant an itemized Application for Payment for operations completed in accordance with the project schedule. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Design Consultant may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Field Work Directives, or by interim determination of the Design Consultant, but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by the Contractor with procedures reasonably satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest. The Contractor shall be solely responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

9.3.4 In each Application for Payment, Contractor shall certify that there are no known liens or bond claims outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work, and that releases from all Subcontractors and Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor; provided that if any of

the foregoing is not true and cannot be certified, Contractor will revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.4 **APPRPOVAL OF APPLICATION FOR PAYMENT.**

9.4.1 The Design Consultant will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner an approval of the Application for Payment, with a copy to the Contractor, for such amount as the Design Consultant determines is properly due, or notify the Contractor and Owner in writing of the Design Consultant's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

9.4.2 The issuance of an Approval of Application for Payment will constitute a representation by the Design Consultant to the Owner, based on the Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Design Consultant's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to any specific qualifications expressed by the Design Consultant. The approval on application for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the approval of an application for Payment will not be a representation that the Design Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made any examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 **DECISIONS TO WITHHOLD CERTIFICATION.**

9.5.1 The Design Consultant may withhold approval of the Application for Payment in whole or in part, to the extent reasonably necessary to protect the Owner if, in the Design Consultant's opinion, the representations to the Owner required by Section 9.4.2 cannot be made. If the Design Consultant is unable to approve payment in the amount of the Application, the Design Consultant will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Design Consultant cannot agree on a revised amount, the Design Consultant will promptly issue an approval for Payment for the amount for which the Design Consultant is able to make such representations to the Owner. The Design Consultant may also withhold approval of the Application for Payment or, because of subsequently discovered evidence, may modify the whole or a part of a Certificate for Payment to such extent as may be necessary, in the Design Consultant's opinion, to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

9.5.1.1 defective Work not remedied;

9.5.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims for which Contractor is responsible hereunder unless security acceptable to the Owner is provided by the Contractor;

9.5.1.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

9.5.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum and Contractor has failed to provide Owner adequate assurance of its continued performance within a reasonable time after demand;

9.5.1.5 damage to the Owner or another contractor;

9.5.1.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

9.5.1.7 persistent failure by the Contractor to carry out the Work in accordance with the Contract Documents.

Upon receipt of an invoice, which is approved and accepted by the owner, the Owner will pay the undisputed portions of such Application for Payment within the time frames established in the Section 9.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in subparagraph 9.5.1.

9.6 **PROGRESS PAYMENTS.**

9.6.1 During the latter part of each month as the Work progresses on all City Contracts regardless of Contract Sum, the City's Project Manager and Contractor shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Contractor acquired materials stored on the Project site, and/or within off-site storage facilities either owned or leased by the Contractor. Upon receipt of a complete and mathematically accurate Construction Estimate Certification Form from the Contractor, The City shall make payments to Contractor within thirty (30) calendar days on Contracts totaling four hundred thousand ($400,000.00) dollars or less, based upon such cost determination and at the Contract unit prices in a sum equivalent to ninety percent (90%) of each such invoice. At the time the last monthly invoice is paid by Owner, a Letter of Conditional Approval may be furnished to the Contractor. The remaining ten percent (10%) retainage shall be held by the City until the final Contract Settlement. However, where the Contract amount exceeds four hundred thousand dollars ($400,000.00), installments shall be paid to Contractor at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of Owner receipt of a complete and mathematically accurate Construction Estimate Certification Form from the Contractor, and the retainage held until final Contract Settlement shall be five percent (5%). The payments of such installments are payments toward satisfaction of the Contract Sum, and the Contractor invoices upon which such monthly payments are based, are given to Owner by Contractor only for the purposes of fixing the periodic sums to be paid in compliance with Paragraph 7.1. Owner's payment of installments shall not in any way be deemed to be a final acceptance of any part of the Work by Owner, and will not prejudice Owner in the final settlement of Contract account nor relieve the Contractor from completion of the Work as herein provided.

9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract, unless the Contractor is able to demonstrate to Owner bona fide disputes associated with the unpaid subcontractor or supplier and its work. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor to the extent necessary to protect the Owner.

9.6.3 The Design Consultant will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Design Consultant and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Design Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.

9.6.5 Payments to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4 regarding Subcontractors.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under this Contract, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

9.7 **FAILURE OF PAYMENT.**

9.7.1 If the Design Consultant does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor the amount certified by the Design Consultant within seven (7) days after the date established in the Contract Documents, then the Contractor may, upon seven additional days' written notice to the Owner and Design Consultant, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.8 **SUBSTANTIAL COMPLETION.**

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. In the event Substantial Completion is not achieved by the designated date, or as that date may be extended by Change Order(s), Owner may withhold payment of sums necessary to pay the estimated liquidated damages due Owner until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Between the Owner and the Contractor or the Owner and the Construction Manager-at-Risk.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to the Design Consultant a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Design Consultant will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Design Consultant's or Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by the Design Consultant. In such case, the Contractor shall then submit a request for another inspection by the Design Consultant or Owner to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is Substantially Complete, the Design Consultant or Owner will prepare a Certificate of Substantial Completion which shall (a) establish the date of Substantial Completion (which will be the date on which the Work met the

requirements under the Contract Documents for Substantial Completion), (b) establish responsibilities of the Owner and Contractor, as agreed to by the Owner and Contractor, for security, maintenance, heat, utilities, damage to the Work and insurance, and (c) fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.8.5 The Certificate of Substantial completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.9 PARTIAL OCCUPANCY OR USE.

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and submit a list of items to be completed or corrected prior to final payment and submit such list to the Design Consultant as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Design Consultant.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Design Consultant shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.9.4 Upon such partial occupancy or use, and upon Substantial Completion, the Owner will assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.

9.10 **FINAL COMPLETION AND FINAL PAYMENT.**

9.10.1 When all of the Work is finally completed and ready for final inspection, the Contractor shall notify the Owner and the Design Consultant thereof in writing. Thereupon, the Design Consultant and Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Design Consultant will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and that the Contractor is entitled to the remainder of the unpaid Contract Sum, less any amount withheld pursuant to this Contract. If the Design Consultant is unable to approve its final Certificate for Payment for reasons for which the Contractor is responsible and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), the reasonable cost of which may be deducted by the Owner from the Contractor's final payment.

9.10.2 The Contractor shall not be entitled to final payment unless and until redlines are accepted, and it submits to the Design Consultant all general warranties, survey certifications, and its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected

with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied or will be paid from final payment; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Design Consultant or the Owner that are either unconditional or conditional on receipt of final payment, Certificates of insurance showing continuation of required insurance coverages; such other documents as Owner may request; and consent of Surety to final payment.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by Issuance of Change Orders affecting final completion, and the Design Consultant so confirms, the Owner shall, upon application by the Contractor and certification by the Design Consultant, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Consultant prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The Owner shall make final payment of all sums due the Contractor not more than thirty (30) days after the Design Consultant's approval of a final Certificate for Payment.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payees as unsettled at the time of final Application for Payment.

9.11 **AUDIT.** Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

9.12 **ADDITIONAL INSPECTIONS.** In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Design Consultant is required to make more than one inspection for Substantial Completion, (2) the Design Consultant is required to make more than one inspection for final completion, or (3) the Work is not substantially complete within sixty days after the date established for Substantial Completion in the Contract Documents, the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Design Consultant for any additional inspections or services, provided that the Design Consultant undertook these services due to the fault or neglect of the Contractor..

ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall develop a safety program applicable to each job site and to the Work to be done, review such program with Owner in advance of beginning the Work, and enforce such program at all times. Further, Contractor shall comply with all applicable laws and regulations including but not limited to, the standards and regulations promulgated by the Secretary of labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of contractor employees. Owner shall have the right, but not the obligation, to inspect and verify Contractor's compliance with Contractor's responsibility for protecting the safety and health of Its employees and subcontractor.

10.1.2 Contractor shall notify Owner immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities, including but not limited to copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.

10.1.3 Contractor has adopted or will adopt its own policy to assure a drug and alcohol free work place while performing the Work. Contractor's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work or while on the site of the Work. Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies, as a result of a for-cause test conducted immediately following removal, that said employee was in compliance with this Contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

10.1.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether the owner thereof has a permit for a concealed weapon.

10.1.5 Both Owner and Contractor agree that these safety and health terms are of the highest importance, and that a breach or violation of any of the terms of this Section by Contractor will be a material and substantial breach of this Contract. In the event that Owner shall determine that Contractor has breached or violated the terms of this Section, then Owner shall determine, immediately upon written notice to Contractor, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until Owner shall be satisfied that the safety provisions hereof shall not be breached or violated thereafter. If Owner shall terminate the Contract as a result of such breach or violation, the Owner and Contractor shall complete their obligations hereunder to one another in accordance with Section 14.2 "Termination by Owner."

10.1.6 Nothing contained in this Section shall be interpreted as creating or altering the legal duty of Owner to Contractor or to Contractor's agents, employees, Subcontractors, or third parties, or altering the status of Contractor as an independent contractor.

10.1.7 Notwithstanding either of the above provisions or whether Owner exercises its rights set forth herein, Owner does not warrant nor represent to Contractor, Contractor's employees or agents, any subcontractors, or any other third party that Contractor's safety policy meets the requirements of any applicable law, code, rule, or regulation, nor does Owner warrant that the proper enforcement of Contractor's policy will insure that no accidents or injuries will occur. In addition, any action by Owner under these provisions in no way diminishes any of Contractor's obligations under applicable law or the contract documents.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, the Contractor shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). The Contractor shall also HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of the Contractor and of the Owner) referred to in Clauses 10.2.1.2 and 10.2.1.3 but only to the extent caused in whole or in part by the acts or omissions of Contractor, its agents, servants, and employees, or its Subcontractors and their agents, servants, and employees, or anyone directly or indirectly employed by them, or by any other person or entity for which they may be responsible under the Contract Documents, in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract, including but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall the Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Consultant.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 **EMERGENCIES.**

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall exercise its best efforts to act to prevent or minimize threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

10.4 **PUBLIC CONVENIENCE AND SAFETY.**

10.4.1 The Contractor shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

10.4.2 The Owner reserves the right to remedy any neglect on the part of the Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by or for the Owner to remedy the Contractor's neglect shall be deducted from the Contract Sum. The Contractor shall notify the City Traffic Control Department, the ODR and the Design Consultant when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be at least forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Contractor shall, when directed by the Design Consultant or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN.

10.5.1 If the Work is carried on, in, or adjacent to any street, alley or public place, the Contractor shall, at the Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Section, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever evidence is found of such damage, the Design Consultant may order the damaged portion immediately removed and replaced by the Contractor at Contractor's cost and expense. The Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen as required under this Section 10.5 shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.

10.6.1 In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Design Consultant. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

10.7.1 When existing storm sewers or drains have to be taken up or removed, the Contractor shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Contractor shall also provide for all storm sewage and drainage which will be received from these storm drains and sewers. For this purpose, the Contractor shall provide and maintain, at the Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Contractor shall, at the Contractor's own expense, construct such troughs, pipes, or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Design Consultant. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT.

10.8.1 When the Contractor desires to use the Owner's water in connection with the Work, the Contractor shall make complete and satisfactory arrangements with the San Antonio Water Service and shall be responsible for the cost of the water the Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the representatives of the San Antonio Water Service.

10.8.2 The Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner, or with any retail electric provider in the event that separately metered electrical connections are required for the Project. The Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Contractor through a retail electric provider.

10.9 USE OF FIRE HYDRANTS.

10.9.1 The Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the City.

10.10 ENVIRONMENTAL COMPLIANCE.

10.10.1 The Contractor and its Subcontractors are deemed to have made themselves familiar with and shall at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

10.10.2 In the event the Contractor encounters on the Project site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, the Contractor

shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Design Consultant and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner and written consent of the Contractor, unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, the Owner shall remediate the Hazardous Substance with a separate contractor or through a Change Order with the Contractor. If the Hazardous Substance exists in the affected area due to the fault or negligence of the Contractor or any of its Subcontractors, the Contractor shall be responsible for remediating the condition at the sole expense of the Contractor. If applicable, such remediation shall be in accordance with the Contractor's Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the Owner only if the Project critical path is affected. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Section 4.3 and Article 8.

10.10.3 The Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Contractor or any Subcontractor or Supplier. The Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Design Consultant so that they may observe the activities; provided, however, that it shall be the Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

ARTICLE 11. INSURANCE AND BONDS.

11.1 CONTRACTOR'S LIABILITY INSURANCE.

11.1.1 Without limiting any of the other obligations or liabilities of the Contractor under the Contract Documents, the Contractor shall purchase and maintain, during the term of the Contract and at the Contractor's own expense, the minimum liability insurance coverage described below with companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to the Owner. Contractor shall also require each Subcontractor performing work under the Contract, at the Subcontractor's own expense, to maintain during the term of the Contract levels of insurance that are necessary and appropriate for the Work performed, which levels of insurance comply with all applicable laws. The Subcontractor's liability insurance shall name the Contractor and the Owner as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in Section 11.1.2 which show the existence of each policy, together with copies of all policy endorsements showing the Owner as an additional insured, shall be delivered to the Design Consultant, who will in turn forward same to the Owner, before any Work is started. Contractor shall promptly furnish, upon the request of and without expense to the Owner, a copy of each policy required, including all endorsements.

11.1.1.1 Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to the Owner; Employer's Liability Insurance of not less than $100,000 for each accident, $100,000 disease for each employee and $500,000 disease policy limit.

11.1.1.2 Commercial General Liability Insurance, Including Personal Injury Liability, Independent Contractor's Liability, Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (or Subcontractor's) liability for injury to or death of the Owner's employees and third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of $500,000 per occurrence, $1,000,000 annual aggregate. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended

reporting period) for no less than 60 months following completion of the contract and acceptance of work by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Owner and the Design Consultant shall be named as additional insureds by using endorsement CG 20 26 or broader.

The general liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the project in question.

11.1.1.3 Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of $500,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.

11.1.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates required under Section 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled, nonrenewed, or materially changed until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor to the Owner with reasonable promptness in accordance with the Contractor's information and belief.

11.1.3 If any insurance company for the Contractor, which company provides insurance required under the Contract Documents, becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Contractor shall procure, immediately upon first notice of such occurrence and without cost to the Owner, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

11.2 PROPERTY INSURANCE

11.2.1 In addition to the insurance described in Sections 11.1 and 11.4, the Contractor shall obtain at its expense, and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, or renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, the Owner shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be in the name of the Contractor and naming the Owner and the Subcontractors, and Sub-Subcontractors as additional insureds as their interests may appear. The policy shall have endorsements as follows:

11.2.1.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

11.2.1.2 Loss, if any, shall be adjusted with and made payable to the Contractor or the Owner and Contractor as trustee for the insureds as their interests may appear.

11.2.1.3 The right of subrogation under the policy shall be waived as to the Design Consultant.

11.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.2.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor that it may now have or have in the future for loss or damage to Owner's property howsoever arising, including consequential losses due to fire or other hazards however caused, ..

11.2.4 The Contractor shall provide to the Design Consultant for delivery to the Owner a certificate of insurance evidencing all property insurance policies procured under this Section 11.2 and all endorsements thereto before any exposure to loss may occur.

11.2.5 If any insurance company which provides insurance for the Contractor that is required under the Contract Documents becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Contractor shall immediately cease the performance of the Work and shall procure, immediately upon first notice of such occurrence and without cost to the Owner, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

11.2.6 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall take no action without mutual written consent with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.3 PERFORMANCE BOND AND PAYMENT BONDS

11.3.1 Subject to the provisions of Section 11.3.2, the Contractor shall, with the execution and delivery of the Building Construction Services Agreement, furnish and file with the Owner in the amounts required in this Section, the surety bonds described in Sections 11.3.1.1 and 11.3.1.2 below, which surety bonds shall be in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each bond shall be signed by the Contractor, as Principal, and by an established corporate surety bonding company, as surety, meeting the requirements of Section 11.3.3 and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

11.3.1.1 Performance Bond. A good and sufficient bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

11.3.1.2 Payment Bond. A good and sufficient bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.

11.3.2 If the Contract Sum, including Owner-accepted Alternates and allowances, if any, is greater than $100,000, Performance and Payment Bonds in 100% of the Contract Sum are mandatory and shall be provided by the Contractor. If the Contract Sum is greater than $25,000 but less than or equal to $100,000, only a Payment Bond in 100% of the Contract amount is mandatory; provided, however, that the Contractor may elect to also furnish a Performance Bond in the same amount if the Contractor so chooses. If the Contract Sum is less than or equal to $25,000, the Contractor may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid to the Contractor until Final Completion of all Work by Owner. If the Contractor elects to provide Performance and Payment Bonds, the Contract Sum shall be payable to the Contractor through progress payments in accordance with these General Conditions.

11.3.3 No surety will be accepted by the Owner that is now in default or delinquent on any bonds or that is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Bexar County, Texas. Each surety shall designate an agent resident in Bexar County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.

11.3.4 The person or persons, partnership, company, firm, limited liability company, association, corporation, or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with the Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on the Owner until it has been approved as to form by the City Attorney, executed for the Owner by the City Manager, the performance and payment bonds and evidence of insurance have been furnished as required by the Contract Documents, and the fully executed Contract has been delivered to the Contractor.

11.3.5 The failure of the Contractor to execute the Contract or deliver the required bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as the Owner can assemble and deliver the Contract shall, at the Owner's option, constitute a material breach of the Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices for materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Contractor's failure to execute and furnish the bonds and to sign the Contract within ten (10) days, the filing of a bid proposal shall constitute an acceptance of this Section 11.3.5. In the event the Owner should readvertise for bids, the defaulting Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the readvertisement shall be the bid referred to in this Section.

11.4 'UMBRELLA' LIABILITY INSURANCE

11.4.1 The Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than $5,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. The Owner and Design Consultant shall be named as additional insureds using endorsement CG 20 26 or broader. No aggregate shall be

permitted for this type of coverage. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

11.5 **POLICY ENDORSEMENTS AND SPECIAL CONDITIONS**

11.5.1 Each insurance policy to be furnished by the Contractor shall address the following required provisions within the certificate of insurance, which shall be reflected in the body of the insurance contract and/or by endorsement to the policy:

11.5.1.1 That the Owner and Design Consultant shall be named as additional insureds on all liability coverages, using endorsement CG 20 26 or broader. Where the Owner employs a Construction Manager on the Project, the Contractor and Subcontractor shall include the Construction Manager on all liability insurance policies to the same extent as the Owner and Design Consultant are required to be named as additional insureds.

11.5.1.2 That each insurance policy shall require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to Owner. Contractor shall also notify Owner, within 10 days after receipt, of any notice of expiration, cancellation, nonrenewal or material change in coverage it receives from its insurer.

11.5.1.3 That the term "Owner" or "City of San Antonio" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Owner and the individual members, employees and agents thereof in their official capacities, while acting on behalf of Owner (the City of San Antonio).

11.5.1.4 That the policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The insurance coverage furnished by Contractor as required is considered to be primary insurance for purposes of the Project and the additional insureds named in the required policies.

11.5.1.5 That all provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten by contractual liability coverage sufficient to include such obligations with the applicable liability policies.

11.5.1 Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability that:

11.5.2.1 All policies must comply with the applicable requirements and special provisions of this Article.

11.5.2.2 Any policy evidenced by a certificate of insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and the Owner's decision regarding whether any policy contains such provisions, contrary to this requirement, shall be final.

11.5.2.3 All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that are otherwise acceptable to the Owner.

11.5.2 The Contractor agrees to the following special provisions:

11.5.3.1 The Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Owner, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the

policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this Article 11.

11.5.3.2 Insurance companies issuing the insurance policies and the Contractor shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Contractor.

11.5.3.3 Approval, disapproval or failure to act by the Owner regarding any insurance supplied by the Contractor (or any Subcontractors) shall not relieve the Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by the Contractor's insurance company shall likewise not exonerate or relieve the Contractor from liability.

11.5.3.4 The Owner reserves the right to review the insurance requirements of this Article 11 during the effective period of this Contract and to adjust insurance coverages and their limits when deemed necessary and prudent by Owner's Risk Management Division based upon changes in statutory law, court decisions, or the claims history of the Contractor and the Subcontractors. The Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by the Owner, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, at the Owner's cost and expense.

11.5.3.5 No special payments shall be made for any insurance policies that the Contractor and Subcontractors are required to carry. Except as provided in Section 11.5.3.4, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.

11.5.3 Any insurance policies required under this Article may be written in combination with any of the other policies, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Article be limited or circumvented by doing so.

ARTICLE 12. UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Owner's or Design Consultant's written request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner or Design Consultant, be uncovered for the Owner's or Design Consultant's inspection and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Design Consultant has not specifically requested in writing to inspect prior to its being covered, the Design Consultant may request to inspect such Work and the Contractor shall uncover it. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct Work rejected by the Owner or Design Consultant as failing to conform to the requirements of the Contract Documents, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, and all additional testing, inspections, and compensation for the Design Consultant's services and expenses made necessary thereby.

12.2.2 If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Design Consultant or the Owner to do so unless the Owner has previously given the Contractor a written acceptance or waiver of the defect or nonconformity. The Contractor's obligation to correct defective or nonconforming Work remains in effect for:

12.2.2.1 one year after the date of Substantial Completion of the Work or designated portion of the Work;

12.2.2.2 one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Section 9.9.1; or

12.2.2.3 the stipulated duration of any applicable special warranty required by the Contract Documents.

12.2.3 The one-year period described in Sections 12.2.2.1 and 12.2.2.2 shall be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.

12.2.4 The obligations of the Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Sections 12.2.2.1 and 12.2.2.2 does not limit the ability of the Owner to require the Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Design Consultant at the time the Work was performed or at the time of inspection for certification of Substantial Completion or final completion. The one year period also does not relieve the Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

12.2.5 The Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.6 If the Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Design Consultant, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Owner or the Design Consultant, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay the costs of removal and storage within ten days after written notice by the Owner or the Design Consultant, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Contractor, including compensation for the Design Consultant's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover the costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Contractor then or thereafter are not sufficient to cover the deficiency, the Contractor shall pay the difference to the Owner.

12.2.7 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.8 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.2.9 Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 **ACCEPTANCE OF NONCONFORMING WORK**

12.3.1 The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable as determined by the Owner and the Design Consultant. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13. COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 **FINAL COMPLETION OF CONTRACT.** The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Design Consultant, and final acceptance and final payment is made by the Owner.

13.2 **WARRANTY FULFILLMENT.** Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Design Consultant will make a detailed inspection of the Work and will advise the Contractor and the Contractor's Surety of the items that require correction. The Design Consultant will make a subsequent inspection and if the corrections have been properly performed, the Design Consultant will issue a letter of release on the maintenance obligations to the Contractor and the Surety. If for any reason the Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 **TERMINATION BY THE OWNER FOR CAUSE.**

13.3.1 Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Contractor, including but not limited to the following causes:

13.3.1.1 Failure or refusal of the Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

13.3.1.2 A reasonable belief that the progress of the Work being made by the Contractor is insufficient to complete the Work within the specified time.

13.3.1.3 Failure or refusal of the Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

13.3.1.4 A reasonable belief that the Contractor has abandoned the Work.

13.3.1.5 A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

13.3.1.6 Failure or refusal on the part of the Contractor to observe any material requirements of the Contract Documents or to comply with any written orders given by the Design Consultant or the Owner as provided for in the Contract Documents.

13.3.1.7 Failure or refusal of the Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Design Consultant.

13.3.1.8 A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

13.3.1.9 Repeated and flagrant violation of safe working procedures.

13.3.2 When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Section 13.3.5, the Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the Surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Contractor and the Surety or its authorized agents, assume the obligations of the Contractor for the Work or that portion of the Work which the Owner has ordered the Contractor to discontinue and may:

13.3.2.1 perform the Work with forces employed by the surety;

13.3.2.2 with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

13.3.2.3 with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work, and compensate the Owner for any other loss sustained as a result of Contractor's default.

In the event of termination for cause involving Articles 13.3.2.1 and 13.3.2.2, the Surety shall assume the Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or liquidated or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Design Consultant and attorneys fees, as a result of such termination..

13.3.3 The balance of the Contract Sum remaining at the time of the Contractor's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Section 13.3.2, exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Contractor for the purpose of the Work, and to procure other tools,

equipment, labor, and materials for the completion of the Work, and to charge to the account of the Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of the Design Consultant and attorney's fees), and liquidated or actual damages, as the case may be, incurred as a result of the termination.

13.3.4 The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Section 13.3.3, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and the other damages as provided in Section 13.3.3. In case the Owner's costs and damages are less than the sum which would have been payable under the Contract if the same had been completed by the Contractor, then the Owner may pay to the Contractor (or the Surety, in the event of a complete termination for cause) the difference, provided that the Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the same had been completed by the Contractor, then the Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for the excess amount owed. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Section, the Contractor shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

13.3.5 The right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of a termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of the termination for convenience to the Contractor. Upon the Contractor's receipt of such written notice, the Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Contractor shall then be paid by the Owner in accordance with the terms and provisions of the Contract Documents an amount not to exceed the actual labor costs incurred, the actual cost of all materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for and which can not be returned, plus applicable overhead and profit, and actual, reasonable, and documented termination costs, if any, paid by the Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience, less all amounts previously paid for the Work. No amount shall ever be due to the Contractor for lost or anticipated profits on any part of the Work not performed.

13.4 TEMPORARY SUSPENSION OF THE WORK

13.4.1 The Work or any portion of the Work may be temporarily suspended by the Owner, for a time period not to exceed ninety days, immediately upon written notice to the Contractor for any reason, including but not limited to:

13.4.1.1 the causes described in Sections 13.3.1.1 through 13.3.1.9 above;

13.4.1.2 under other provisions in the Contract Documents that require or permit temporary suspension of the Work;

13.4.1.3 situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

13.4.1.4 other unforeseen conditions or circumstances.

13.4.2 The Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Contractor arising from a temporary suspension due to a cause described in Article 13.4.1 above; provided, however, that in the case of a temporary suspension for any of the reasons described under Articles 13.4.1.2 through 13.4.1.4, where the Contractor is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Contractor under Section 4.3 of these General Conditions:

13.4.2.1 an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Design Consultant and the Owner;

13.4.2.2 an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

13.4.2.3 if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14. MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

14.1.1 This Contract shall be governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

14.1.2 This Contract is entered into subject to and controlled by the Charter and ordinances of the City of San Antonio and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

14.2.1 The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without the written consent of the Owner. If the Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Contractor, except where assignment is compelled by court order or other operation of law.

14.3 WRITTEN NOTICE.

14.3.1 Any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by facsimile transmission or by mail, postage prepaid, or by overnight delivery to an officer, management level employee,, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by

written notice in accordance with this section. Mailed notices shall be deemed received as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

14.4.1 The duties and obligations imposed on the Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

14.4.2 No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.5 INTEREST

14.5.1 The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Section 9.6.1 of these General Conditions.

14.6 INDEPENDENT MATERIALS TESTING AND INSPECTION.

14.6.1 In some circumstances, the City will retain, independent of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the Project by the City. Such consultants will be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties, and responsibilities of those independent consultants will be described in the agreements between the City and those consultants. The provision of inspection services by City shall not reduce or lessen Contractor's responsibility for the Work or its duty to establish and implement a program to monitor the quality of construction to guard the City against defects and deficiencies in the Work, required above. Contractor is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

14.6.2 In connection with the City's visual observation/inspection of the Work or materials testing contemplated herein, it is clearly understood that the Contractor is responsible for his own quality control inspection and testing services to assure Project compliance with plans, specifications and other included instruments. The Contractor shall give the City's "COI" reasonable advanced notice of the readiness of any Work for observation/inspection, and when practicable, twenty-four (24) hours notice. If any underground Work is performed without the proper prior notification to the City's "COI", it shall be uncovered for observation/inspection and properly restored at the Contractor's expense.

14.7 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

14.7.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency, such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Pursuant to the subsection above, the Contractor warrants and

certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. The Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code. Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.8 VENUE

14.8.1 This Contract is performed in Bexar County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Bexar County, Texas.

14.9 INDEPENDENT CONTRACTOR

14.9.1 In performing the Work under this Contract, the relationship between the Owner and the Contractor is that of an independent contractor. The Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Contractor an agent, servant, or employee of the Owner, or making the Contractor or any of the Contractor's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.10 NONDISCRIMINATION

14.10.1 As a condition of this Contract, the Contractor covenants that he will take all necessary actions to insure that, in connection with any Work under this Contract, the Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.11 GIFTS TO PUBLIC SERVANTS

14.11.1 The Owner may terminate this Contract immediately if the Contractor has offered, conferred, or agreed to confer any benefit on a City of San Antonio employee or official that the City of San Antonio employee or official is prohibited by law from accepting.

14.11.2 For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

14.11.3 Notwithstanding any other legal remedies, the Owner may require the Contractor to remove any employee of the Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and may obtain reimbursement for any expenditures made to the Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of San Antonio employee or official.

ARTICLE 15. RIGHT TO AUDIT CONTRACTOR'S RECORDS

15.1 The Contractor agrees that the City may review any and all of the work performed by the Contractor under this Agreement. The City is granted the right to audit, at the City's election, all of the Contractor's records and billings related to performance of this Agreement. The Contractor agrees to retain such records for a minimum of four (4) years following completion of this Agreement. Any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to the City's rights as may be disclosed by such audit.