

STATE OF TEXAS
COUNTY OF BEXAR
OWNER OF SAN ANTONIO

DESIGN-BUILD CONTRACT
ARCHITECTURAL/ENGINEERING AND CONSTRUCTION SERVICES
FOR [REDACTED] PROJECT NO. [REDACTED]

This **DESIGN-BUILD CONTRACT** (hereafter referred to as “Contract”) is made and entered into by and between Owner of San Antonio, a Texas municipal corporation (hereafter referred to as “Owner” or “Owner”) and [REDACTED], a [REDACTED] corporation, with its principal place of business at [REDACTED] (hereafter referred to as “Design-Builder”).

This Contract for the design and construction of a project identified as: [REDACTED] to be located at [REDACTED] in the City of San Antonio, County of Bexar, Texas (hereafter referred to as “the Project”) is being executed by the Owner pursuant to Owner Charter, Ordinances, and Resolutions of Owner Council, and by Design-Builder for architectural and/or engineering and construction services hereinafter set forth in connection with the above designated Project for Owner of San Antonio.

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ARTICLE I. DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

- 1.1 **Architect of Record** means FIRM NAME, the representative of Design-Builder who is registered as an Architect pursuant to Texas Occupations Code Ann., Chapter 1051, which will provide professional architectural services, have direct responsibility for the design and supervision of the architectural work associated with the Project and will perform certain contract administration responsibilities, as set forth in the Contract.
- 1.2 **“Certificate of Substantial Completion”** means the document issued by Design-Builder with Owner’s consent at the stage in the progress of the work when the work or designated portion of the work is sufficiently complete in accordance with the Contract so that Owner can occupy or use the work for its intended use.
- 1.3 **“City”** and **“Owner”** mean the City of San Antonio, Texas, as provided for in Article 2.1.1 of Owner’s Design-Build General Conditions.
- 1.4 **“Claim”** is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Contract terms, the 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 Owner and Design-Builder arising out of or relating to the Contract.
- 1.5 **“Compensation”** means amounts paid by Owner to Design-Builder for completed services under this Contract.
- 1.6 **“Construction Documents”** or **“Design Documents”** means all the design documents provided by Design-Builder and approved by Owner pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work and the rendering of the Project fully operational, and shall include, without limitation, signed and sealed detailed plans, drawings, specifications, manuals, and related materials prepared by the Architect of Record.
- 1.7 **“Construction Work”** shall mean whatever is done by or required of Design-Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation:
 - 1.7.1 construction of the whole and all parts of the Project in full and strict conformity with this Contract;

- 1.7.2 the provision, furnishing and prompt payment of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;
 - 1.7.3 the procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;
 - 1.7.4 the creation and submission to Owner of detailed as-built drawings depicting all as-built construction;
 - 1.7.5 the furnishing of any required surety bonds and insurance as required by the Contract;
 - 1.7.6 the furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design-Builder; and
 - 1.7.7 the furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 7 below.
- 1.8 **"Cost of the Construction Work"** shall mean costs necessarily incurred in the performance of the Construction Work during the Construction Phase, and paid or payable by Design-Builder, and not included in the Management Fee, as set forth herein. Cost of the Construction Work is further defined in **Article 8.7** herein.
- 1.9 **"Contract Drawings and Specifications"** means the Design Documents.
- 1.10 **"Design-Builder"** means the legal entity that executes this Contract to provide design and construction services for the [REDACTED] Project, its officers, partners, employees, agents and representatives, and all Sub-Consultants and/or Subcontractors, if any, and all other persons or entities for which Design-Builder legally is responsible.
- 1.11 **"Design Criteria Consultant"** or **"Owner's Consultant"** means Owner's independent Architect/Engineering consultant which prepared the Programming Documents and will provide peer review services.
- 1.12 **"Design Services"** means any and all architectural, engineering and design services required to be performed by Design-Builder pursuant to the Contract and all labor, materials, supervision, equipment, computers, documents and all other things necessary for the performance of such services.

- 1.13 **"Director"** means the Director of City's Capital Improvements Management Services Department or the designated Project Manager identified by the Notice to Proceed.
- 1.14 **Engineering Representative** means FIRM NAME, the representative of Design-Builder who is registered as an Engineer, pursuant to the Tex. Occupations Code Ann., Chapter 1001, who will be responsible for compliance with:
- a) the engineering design requirements of the Project; and
 - b) all other applicable requirements of Chapter 1001, Occupations Code.
- 1.15 **"Final Compensation"** means the final amounts paid by Owner to Design-Builder for completed design services under this Contract.
- 1.16 **"Final Completion"** means, as stated herein and as an addition to **Article 9** of Owner's General Conditions for Design/Build Contracts, the completion of all Design Services and all Construction Work required by, and in strict compliance with, the Contract, including Design-Builder's provision to Owner of all documents and things required to be provided by the Contract.
- 1.17 **"Final Payment"** means the final amounts paid by Owner to Design-Builder for completed Construction Work under the construction contract.
- 1.18 **"Fixed Price"** means the approved Fixed Price Proposal and shall include the cost of the construction work and all other construction-related costs and shall be the maximum price for which all Construction Work necessary to deliver the Project, as required by Owner, within the construction schedule and the Project Budget.
- 1.19 **"Fixed Price Proposal"** means Design-Builder's proposed maximum price, which shall include the cost of the construction work and shall be the proposed maximum price for which all Construction Work necessary to deliver the Project, as required by Owner within the construction schedule and the Project Budget, and shall be subject to Owner's approval.
- 1.20 **"Guaranteed Maximum Price" or "GMP"** means the guaranteed maximum price for which all Construction Work will be completed within the construction schedule and the Project Budget.
- 1.21 **"Owner Designated Representative (ODR)"** means the person designated by Owner to act for Owner.
- 1.22 **"Owner's Project Criteria"** means all program elements, drawings, standards, schedules, reports, surveys, specifications and systems and product descriptions which are dated by Design Criteria Consultant and approved by Owner and used to prepare the Fixed Price Proposal or GMP, as applicable, and Construction Documents.

- 1.23 **“Programming Documents”** means all design development documents, schedules, reports, surveys, specifications and systems and product descriptions, which are dated by Design Professional and approved by Owner, used to prepare a Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable.
- 1.24 **“Project”** means services to be provided by Design-Builder pursuant to this Contract for the design and construction of the [REDACTED] to be located at [REDACTED] in San Antonio, Texas as further set out in the Scope of Services attached hereto, labeled as **Exhibit H** and made a part of this Contract.
- 1.25 **“Schedule of Values”** means the values allocated to materials and various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require.
- 1.26 **“Sub-Consultant”** means [REDACTED]
- 1.27 **“Subcontractor”** means an entity which has a direct contract with Design-Builder to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors also shall include those furnishing specially fabricated equipment and materials for the Project.
- 1.28 **“Substantial Completion”** is, as stated herein and as an addition to **Article 9.7** of Owner’s General Conditions for Design/Build Contracts, that stage in the progression of the Construction Work, as approved by Owner in writing, when the Project sufficiently is complete in accordance with the Contract that Owner may enjoy beneficial use or occupancy of the entire Project and may utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by Owner of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. Owner reserves the right to occupy and use any part, phase or system of the Project when such part, phase or system substantially is completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.
- 1.29 **“Supplier”** means an entity manufacturer, fabricator, Supplier, distributor, material man or vendor having a direct contract with Design-Builder, or with any subcontractor, to furnish or provide materials or equipment to be incorporated in the construction phase for the performance of the Construction Work.

ARTICLE II REGULATORY GUIDELINES, REQUIREMENTS AND STANDARDS

- 2.1 **Generally.** Design-Builder shall perform all Design Services described in, contemplated by, inferable from or necessary to achieve the objectives stated in the Programming Documents and the Contract, including all Design Services necessary for the Project to be properly constructed by Design-Builder and used, operated and maintained by Owner in accordance with all applicable guidelines, requirements and standards. The Design Services shall be performed within the time provided by the Design Schedule for the performance of Design-Builder's Design Services as provided in **Section 6.8** of this Contract.
- 2.2 The Design-Builder shall be responsible for registering the Project with the Department of Licensing & Regulation, Architectural Barriers, and obtaining all reviews, inspections and approvals of Construction Documents required for compliance with all state and federal handicapped and Americans with Disabilities Act (hereafter referred to as "ADA") requirements. Design-Builder also shall be responsible for ensuring that all facilities constructed in accordance with the Construction Documents created under this Contract comply with all state and federal handicapped and ADA requirements.
- 2.3 Design-Builder guarantees that the Project will be executed and constructed in strict compliance with Owner-approved Construction Documents. Design-Builder further agrees to keep Owner informed about the progress and quality of the portion of the Work completed, and to endeavor to guard Owner against defects in the Work.
- 2.4 **Owner's Review of Design Services.** Subject to **Section 10.1.7** herein, Design-Builder shall submit all documents produced as part of the Design Services to Owner for review and approval in accordance with the terms of the Contract. However, any review or approval by Owner shall not relieve Design-Builder of or otherwise diminish its obligations under the Contract. Owner may direct Design-Builder to make changes to any Construction Documents to conform the documents to Owner's objectives. Any changes by Design-Builder ordered Owner shall not relieve Design-Builder of its obligations under this Contract unless, and only to the extent that, Design-Builder notifies Owner in writing, within five (5) days after receipt of Owner's directive to make changes, concerning any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements or other adverse impact that may result from the directed changes. Failure of Design-Builder to submit its notice within the five (5) day period constitutes a waiver by Design-Builder of any claim for an adjustment to the Design Schedule or the Contract Time.

- 2.5 **Preparation of Site Information.** Design-Builder shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines. **Owner expressly does not warrant any information provided by it to Design-Builder, in connection with preparation of the above-mentioned information;** Design-Builder, however, reasonably may rely on information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors, and omissions that a reasonable, prudent professional architect or engineer should or would detect and inquire about.
- 2.6 **Retention of Geotechnical Consultants.** In preparing the Construction Documents, Owner separately shall retain an experienced qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. Design-Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of the geotechnical consultant. Nothing in this paragraph, however, prevents Design-Builder from retaining its own geotechnical consultant to review design work, raise issues for mutual discussion, and obtain further information in connection with the geotechnical nature of the Project. **Owner expressly does not warrant any geotechnical information provided by it to Design-Builder for use in connection with preparation of the Construction Documents;** Design-Builder, however, reasonably may rely on geotechnical information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors, and omissions that a reasonable, prudent professional architect or engineer should or would detect and inquire about.
- 2.7 **Quality of Design Services.** Design-Builder shall be responsible for the professional quality, completeness, accuracy and coordination of Construction Documents. Design-Builder shall provide Design Services that shall result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology. Design-Builder shall provide for all quality control reviews required by sound professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project.

- 2.8 **Compliance with Laws and Regulatory Requirements.** In providing Design Services, Design-Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design-Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project including, without limitation, environmental standards, fire and safety regulations and requirements and compliance with all other applicable standards and codes.
- 2.9 The Design-Builder warrants that Services provided by Design-Builder and all of its Sub-Consultants and Subcontractors under this Contract will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession or trade currently practicing under similar circumstances in Bexar County, Texas.
- 2.10 **Duty to Correct Errors.** Design-Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Construction Documents.
- 2.11 Design-Builder acknowledges and agrees that the Architect of Record shall be responsible for all material aspects of the practice of architecture and shall have direct supervision of the architectural work associated with the Project. The Architect of Record shall have responsibility for compliance with the requirements of the Texas Occupations Code Ann., Chapter 1051.
- 2.12 The Design-Builder shall be represented by a registered professional Architect/Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project including, but not limited to, scope meetings, review meetings, pre-construction meetings and other meetings as required by Owner.
- 2.13 Design-Builder acknowledges and agrees that the Engineering Representative shall be responsible for compliance with the engineering design requirements and shall have direct supervision of the engineering work associated with the Project. The Architect of Record shall have responsibility for compliance with the architectural requirements of the Texas Occupations Code Ann., Chapter 1001.
- 2.14 Design-Builder certifies that each individual or business entity which is an Engineer or Architect chosen to be a member of the Deigns-Build team was selected only on the basis of demonstrated competence and qualifications.
- 2.15 Acceptance of the final Construction Documents by Owner shall not constitute nor be deemed a release of the responsibility and liability of Design-Builder, its employees, associates, agents, Sub-Consultants or Subcontractors for the accuracy and competency of their designs, drawings, specifications or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by Owner for any defect in the designs, working drawings, specifications or other documents and Work prepared by said Design-Builder, its employees, Sub-Consultants, Subcontractors and agents.

- 2.16 The Design-Builder warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Design-Builder to solicit or secure this Contract and that it has not, for the purpose of soliciting or securing this Contract, paid or agreed to pay any company or person a commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For breach of this warranty, Owner shall have the right to terminate this Contract under the provisions of **ARTICLE XII** herein.

ARTICLE III PRELIMINARY CONSULTATION AND PROJECT ANALYSIS

- 3.1 **Determining the Project Objectives.** Prior to the preparation of the Construction Documents, as required by **Article IV** herein, Design-Builder first shall consult in detail with Owner and carefully shall analyze any information furnished by Owner concerning requirements of the Project including, but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations and objectives, as well as the Design Scope Specification. Should the goals of the Project subsequently change, either Design-Builder or Owner may request a review of the anticipated Services, with an appropriate adjustment in compensation.
- 3.2 **Report On Project Requirements And Objectives.** Based on its study and analysis, and no later than ten (10) days after the effective date of the Contract, Design-Builder shall prepare and submit to Owner a written report detailing Design-Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational or other problems which may result from said requirements. The written report of Design-Builder also shall include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design-Builder shall review such report with Owner and shall implement such changes as Owner may require as provided in Paragraph 2.2 of this Contract.
- 3.3 **Schedule of Design Services.** Design-Builder shall, within ten (10) calendar days after execution of the Contract and prior to Owner's issuance of a written Notice to Proceed, submit for Owner's approval the Design Schedule for the performance of Design-Builder's Design Services, which shall include allowance for reasonable time required for Owner's review of submissions and for approvals of authorities having jurisdiction over the Project. This Schedule shall, upon approval by Owner, be considered incorporated and made a part of this Contract, attached hereto and labeled as **Exhibit "F" Design-Builder's Design Schedule**. The Design Schedule, when approved by Owner, shall not, except for good cause, be exceeded by Design-Builder. Should Design-Builder at any time during the course of performing the Contract, have reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall immediately notify Owner in writing, stating the reason for the delay, the party responsible for the delay (if any) and the steps being taken to remedy or minimize the impact of the delay. **Failure of Design-Builder to submit such notification shall constitute a waiver by Design-Builder of any claim Design-Builder may have for an adjustment to the Contract Price, the Design Schedule or the Contract Time.** All

extensions of time shall be governed by **Article VIII** of Owner's General Conditions for Design/Build Contracts. Subject to the provisions of **Section 8.2** of said General Conditions, Owner shall review and approve, where appropriate, the Design Schedule or any portion thereof.

- 3.4 **Scheduling.** Based upon Design-Builder's recommendation that the Project schedule should be "fast tracked" for the Design Phase, Owner agrees promptly to review the proposed plan of action. The proposed schedule should include sufficient budget allowances in anticipation of currently unknown refinements of budgets that may become necessary and in order to control Project costs.
- 3.5 The Design-Build Firm shall include in any contract or team member agreement with a professional Architect and/or Engineer the following provisions:
- (a) The Architect/Engineer, whose work product and services are the subject of this Contract for professional services in connection with the Design-Build Contract for **Insert Project Name** with the City of San Antonio, Texas, agrees to INDEMNIFY AND HOLD OWNER , ITS ELECTED OFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, costs, liens, losses, expenses, fess (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or be occasioned or caused by Architect's/Engineer's negligent act, error or omission or Architect/Engineer, any agent, officer, director, representative, employee, Architect/Engineer or Sub-Architect/Sub-Engineer of Architect/Engineer or Architect/Engineer and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the services, rights or duties in connection with **Insert Project Name** under this CONTRACT. The INDEMNITY provided for in this **Section 3.5** shall not apply to any liability resulting from the negligence of Owner, its officers or employees, in instances where such negligence causes personal injury, death or property damage. In the event Architect/Engineer and Owner are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the parties under Texas law; and
- (b) The professional Architect/Engineer shall add Owner as an additional insured in all insurance policies required for **Insert Project Name** excluding professional liability coverage(s).

ARTICLE IV CONSTRUCTION DOCUMENTS

- 4.1 **Time for Preparation.** Not later than the date called for in the Design Schedule attached hereto, made a part of this Contract and labeled as **Exhibit “F”**, after Owner has authorized Design-Builder to commence with the completion of the Construction Documents, Design-Builder shall prepare Construction Documents consisting of Drawings and Specifications and submit them to the Owner for approval at _____% and _____% completion. The Construction Documents shall be based on the approved Programming Documents, any further adjustments to the facility program, the GMP or Fixed Price Proposal, as applicable, and shall be provided not later than the date called for in the design schedule.
- 4.2 **The Construction Documents.** The Construction Documents shall include all design documents, which shall describe with specificity all Owner requested elements, details, components, materials and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes. The Construction Documents shall include satisfaction of all testing, permitting, qualifications, certifications, validations and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of **Section 10.1.7** herein, Owner shall review and approve, where appropriate, the Construction Documents, or any portion thereof.
- 4.3 **Guaranteed Maximum Price/Fixed Price Proposal Includes Construction Documents.** The Guaranteed Maximum Price or Fixed Price Proposal, as applicable, as set forth in **Article VIII** herein, shall include the cost of constructing the Project in strict accordance with the requirements of the Construction Documents.
- 4.4 The Design-Builder shall submit the Design Documents to Owner, and obtain Owner’s acceptance and approval, Design-Builder shall submit two full size and two half size sets of the Design Documents and two sets of any reports. All models and documents shall also be provided in electronic format
- 4.5 Upon acceptance, review and approval of said documents, Design-Builder shall provide and submit to Owner the following:
- 4.5.1 Design-Builder shall submit three (3) sets of approved Plans and Specifications addressed to Owner’s Architect’s Office; for Owner’s Architect, Project Manager and Building Maintenance Department.
 - 4.5.2 Design-Builder shall deliver one (1) set of approved Plans and Specifications in electronic format (PDF format) to Owner’s Plans and Records Office c/o CIMS Contract Services.

- 4.5.3 The Design-Builder shall submit the Building Permit Application, signed and sealed Construction Document Drawings, Specifications, Special Inspection letter and copies of the site survey, geotechnical report, Environmental Clean Letter, and any other documents required, to Owner of San Antonio Planning and Development Services Department for the building permit. Design-Builder shall respond to questions from the Planning and Development Services Department and shall be responsible for receipt of a Building Permit. Permit fees shall be paid by Owner. Any additional review fees required due to improper submittal will be the responsibility of Design-Builder.

ARTICLE V CONSTRUCTION SERVICES

- 5.1 **General Intent.** Design-Builder shall perform all Construction Work necessary to construct the Project in accordance with this Contract and to render the Project and all its components operational and functionally and legally usable for their intended purpose.
- 5.2 The Design-Builder shall ensure that the Architect of Record and/or the Engineering Representative make periodic visits to the site to ensure that all facilities have been constructed in strict compliance with the Construction Documents and endeavor to guard Owner against defects in the work.

ARTICLE VI TIME FOR CONSTRUCTION: THE CONTRACT TIME

- 6.1 **Work Progress Schedule.** Design-Builder shall submit Design-Builder's Work Progress Schedule for the Construction Work no later than ten (10) calendar days after the effective date of the Notice to Proceed. The Work Progress Schedule must be approved by Owner and Design-Builder accepts and agrees that final completion of the Project shall be on or before **DATE**. The Work Progress Schedule shall, upon approval by Owner, be considered incorporated and made a part of this Contract, attached hereto and labeled as **Exhibit "G" Design-Builder's Work Progress Schedule**.
- 6.2 **Notice to Proceed.** After Owner has approved the Construction Documents, Owner shall issue a Notice to Proceed for the Construction Work directing Design-Builder to proceed with the Work on the specified date indicated in the Notice to Proceed (hereafter referred to as the "Commencement Date").

- 6.3 **Time for Completion.** Design-Builder shall commence Work on the Commencement Date, and the Work shall be carried out regularly and without interruption. Design-Builder shall substantially complete the Construction Work per the schedule provided for this Project, which shall become part of **Exhibit “G”** hereto, or such other date as later may be designated by Change Order (hereafter referred to as the “Scheduled Completion Date”). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the “Contract Time.” Design-Builder shall achieve Final Completion of the Construction Work no later than thirty (30) calendar days after achieving Substantial Completion..
- 6.4 **Liquidated Damages for Delay in Substantial Completion.** Design-Builder shall pay Owner the sum of TBD XXX NO/100 Dollars (\$XXXXXX.00) per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date. Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Contract. Such liquidated damages shall apply regardless of whether Design-Builder has been terminated by Owner prior to Substantial Completion, so long as Design-Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design-Builder's performance hereunder for matters other than delays in Substantial Completion. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design-Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design-Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design-Builder those funds withheld, but no longer applicable as liquidated damages.
- 6.5 **Liquidated Damages for Delay in Final Completion.** If Design-Builder fails to achieve Final Completion within thirty (30) calendar days after the date of Substantial Completion, Design-Builder shall pay Owner the sum of TBD XXXXXXXXX NO/100 Dollars (\$XXXXXX.00) per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Contract. Liquidated damages shall apply regardless of whether Design-Builder has been terminated by Owner prior to Final Completion, so long as Design-Builder’s actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design-Builder's performance hereunder for matters other than delays in Final Completion. When Owner reasonably believes that Final Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design-Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design-

Builder overcomes the delay in achieving Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design-Builder those funds withheld, but no longer applicable as liquidated damages.

- 6.6 **Time is of the Essence.** All limitations of time set forth in this Contract are material and time is of the essence of the Contract.

ARTICLE VII ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN-BUILDER

- 7.1 **Design-Builder to Perform All Work Required by the Contract.** The intent of this Contract is to require complete, correct and timely execution of the Design Services and the Construction Work. Any and all Design Services that are required, reasonably implied or reasonably inferred by the Contract or any part of it, as necessary to produce the intended result, shall be provided by Design-Builder for the Design Services Fee as provided in **Article IX** herein. In addition, any and all Construction Work that may be required, reasonably implied or reasonably inferred by the Contract or any part of it, as necessary to produce the intended result shall be provided by Design-Builder for the Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable, as provided in **Article IX** herein.
- 7.2 **Strict Compliance with the Contract Documents.** All Construction Work performed by Design-Builder shall be in strict compliance with this Contract. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with the Contract is defective.
- 7.3 **Design-Builder's Schedule of Construction.** Pursuant to **Section 1.2.4** of City's General Conditions for Design/Build Contracts, Design-Builder, within ten (10) days after the Commencement Date, shall submit to Owner its Preliminary Work Progress Schedule, Preliminary Schedule of Shop Drawing and Sample Submittals and Preliminary Schedule of Values for all of the Work, which shall constitute Design-Builder's schedule for completing the Construction Work by the Scheduled Completion Date. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path management ("CPM") schedule in a form acceptable to Owner. Per **Section 3.10** of City's General Conditions for Design/Build Contracts, the Work Progress Schedule and successive updates shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to Owner. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design-Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Contract. No claim for an increase in the GMP or Fixed Price Proposal, as applicable, shall be allowed as a result of Design-Builder basing the GMP/Fixed Price Proposal upon an early completion schedule or as a result of delays and costs attributable to completion later than the planned early completion date.

- 7.4 **Review and Approval of Submittals.** Design-Builder shall review, study, approve or take other necessary action upon all Shop Drawings, Product Data, Samples and other Submittals, to ensure that the Project will be constructed in a timely fashion in strict compliance with the Contract. No deviation from, substitution for or other modification from the Contract Documents shall be allowed by Design-Builder in a shop drawing or submittal without written approval, in the form of a Change Order, from Owner. Design-Builder shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule. Design-Builder shall use its best independent professional judgment in its review to determine compliance with the Contract Documents.
- 7.5 **Owner's Option to Review Submittals.** Owner shall, in its discretion, have the right to review and approve Submittals and if Owner so elects, Design-Builder shall not perform any portion of the Construction Work of which Owner has required submittal and review until such Submittal has been submitted to and approved by Owner. Approval by the Owner, however, shall not be evidence that Construction Work installed pursuant to the Owner's approval conforms to the requirements of the Contract nor shall such approvals relieve Design-Builder of any of its responsibilities or warranties under the Contract. If Owner elects to review Submittals, Design-Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any re-submittal, the date of any approval or rejection and the reason for any approval or rejection. Design-Builder shall have the duty carefully to review, inspect and examine any and all Submittals before submission of same to Owner. Shop Drawings and other Submittals from Design-Builder do not constitute a part of this Contract.
- 7.6 **Procurement of Operations and Maintenance Documentation.** Design-Builder shall prepare or procure and shall transmit to Owner all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.
- 7.7 **As-Built Drawings.** Design-Builder shall use 3D Modeling Software in the latest revision to prepare and provide to Owner the final as-built deliverable, which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract. The model shall follow, at minimum, the AIA E202 Protocol, level 500 and Design-Builder shall electronically attach all close-out documents to the model for delivery to Owner on a flash drive or DVD.
- 7.8 **Compliance with Labor Laws.** Per this **Section 7.8** and **Section 3.4** of the City's General Conditions for Design/Build Contracts, Design-Builder shall assume all labor responsibility for all personnel assigned to or contracted with for the performance of the Construction Work and agrees strictly to comply with all its obligations as employer, with respect to said personnel under all applicable labor laws.

- 7.9 **Testing, Inspections, and Approvals.** Owner shall be responsible for procuring the services of special inspections and material testing, as required by IBC 2009 Chapter 17, including but not limited to construction materials testing. Excepting the inspections, testing and approvals required per IBC 2009 Chapter 17, if the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work specifically to be inspected or approved to complete the Construction Work, Design-Builder shall assume full responsibility therefore, pay all costs in connection therewith and furnish to Owner the required certificates of inspection or approval.
- 7.10 **Owner's Regulations and Applicable Laws.** Design-Builder shall, during the course of the Construction Work, comply with any regulations or guidelines contained in the Contract or as mutually agreed upon in writing by the Parties. Design-Builder warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract including, without limitation, those relating to the terms and conditions of the employment of any person by Design-Builder in connection with the Construction Work to be performed under the Contract.
- 7.11 **Compliance with Construction Regulations.** Design-Builder shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design-Builder and Design-Builder fully shall indemnify and hold Owner harmless from all loss, damage and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations.
- 7.12 **Conditions to Site Access.** While on Owner's property, all Design-Builder's employees, Sub-Consultants and Subcontractors shall confine themselves to areas designated by Owner and will be subject to Owner's badge and pass requirements, if any, in effect at the site of the Construction Work.
- 7.13 **Repair of Collateral Damage.** Unless otherwise instructed by Owner, Design-Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities and pre-existing site features affected by Design-Builder's performance of the Construction Work.

**ARTICLE VIII
CONTRACT PRICE**

FIXED PRICE PROPOSAL OPTION

- 8.1 **Contract Price.** The Contract Price is the sum of the Design Services Fee and the approved Fixed Price for Construction work. The quantities of the various elements of the Work to be done and material to be furnished are determined by Design-Builder. It is expressly understood and agreed by Owner and Design-Builder that the Contract Sum, including authorized adjustments, is the total amount payable by the Owner to Design-Builder and shall cover the cost for all Work required to complete the Project in accordance with the Contract Documents, regardless of what the final measurement of quantities is measured to be.
- 8.2 **Design Services Fee.** Owner shall pay, and Design-Builder shall accept, as full and complete payment for the Design Services, an amount not to exceed **FORTY FIVE THOUSAND, TWO HUNDRED SIXTY SIX and ZERO/100 Dollars (\$45,266.00)**, payable on the basis of monthly billings as Design Services are completed and accepted by the Director.
- 8.3 The approved Fixed Price Proposal (FPP) and the Contract Documents are intended to address all items for the performance of all Construction Work required by the Contract, and the performance of all other requirements of this Contract, to include assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the Fixed Price. Design-Builder shall provide a fully functional and operational facility as intended in the approved FPP.
- 8.4 The approved Fixed Price shall consist of the Cost of the Construction Work as defined in the Contract, plus Design-Builder's Management Fee, which is the Not-to-Exceed amount of **\$XXX,XXX.00**. Owner agrees to perform its responsibilities so as to assist Design-Builder to facilitate the completion of the Construction Work. Owner represents to Design-Builder that there will be sufficient funds available to pay Design-Builder up to the approved Fixed Price of the Not-to-Exceed amount of **\$XXX,XXX.00**, as adjusted by any Change Order. **The Fixed Price, unless changed by Supplemental Agreement or Change Order, represents the absolute limit of obligation or liability that Owner ever may have, insofar as the cost for full and final completion of the Construction Work as designed and the total of all payments to Design-Builder, its Sub-consultants or its Subcontractors are concerned.** Should additional amounts be required to be expended, over and above the approved Fixed Price, to achieve completion of the Construction Work, including Project construction and payment to Design-Builder, as designed and in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of Design-Builder and its Contract Surety herein, and Owner never shall be liable for same. Design-Builder's absolute responsibility for the completion of the Project, in accordance with the Contract Documents/Plans/Specifications, within the agreed cost constraints, as well as Design-Builder's Contract to bear all costs in excess of the approved Fixed Price without recourse to Owner if such excess costs are necessary for the completion of the Construction Work,

shall be incontrovertible and undisputable, and shall take precedence over all other terms and provisions of this Contract and the Exhibits hereto, no part of which shall be deemed to alter, diminish or waive such obligations.

GUARANTEED MAXIMUM PRICE OPTION

- 8.1 Contract Price.** The Contract Price is the Not-to-Exceed amount of _____ (\$ _____), and will consist of the Design Services Fee and the Guaranteed Maximum Price (GMP) for Construction work, as set out herein. The quantities of the various elements of the Work to be done and material to be furnished are determined by Design-Builder. It is expressly understood and agreed by Owner and Design-Builder that the Contract Sum, including authorized adjustments, is the total amount payable by Owner to Design-Builder and shall cover the cost for all Work required to complete the Project in accordance with the Contract Documents, regardless of what the final measurement of quantities is measured to be.
- 8.2 Design Services Fee.** Owner shall pay, and Design-Builder shall accept, as full and complete payment for the Design Services, the amount Not-to-Exceed _____ (\$ _____), payable on the basis of monthly billings as Design Services are completed and accepted by Owner.
- 8.3** The GMP is intended to address all items for the performance of all Construction Work required by the Contract, and the performance of all other requirements of this Contract, to include assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the GMP. Design-Builder shall provide a fully functional and operational facility as intended in the GMP.
- 8.4** The GMP shall adopt and incorporate all of the terms and conditions of this Contract and all other documents that comprise the Contract between the Owner and Design-Builder. Any exceptions to or modifications of such terms and conditions proposed by Design-Builder in the GMP shall not be effective unless they are expressly stated and conspicuously identified in the GMP and specifically are accepted and approved by Owner.
- 8.4.1** The GMP shall consist of the Cost of the Construction Work as defined in the Contract, plus Design-Builder's **Management Fee, which is** _____ (\$ _____). Owner agrees to perform its responsibilities so as to assist Design-Builder to facilitate the completion of the Construction Work and represents to Design-Builder that there will be sufficient funds available to pay Design-Builder up to the **GMP of** _____ (\$ _____) as adjusted by any Change Order. **The GMP, unless changed by Supplemental Agreement or Change Order, represents the absolute limit of obligation or liability that Owner may ever have, insofar as the cost for full and final completion of the Construction Work and the total of all payments to Design-Builder or its Subcontractors are concerned.** Should additional amounts be required to be expended, over and above the GMP, to achieve completion of the

Construction Work, including Project construction, and payment to Design-Builder, in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of Design-Builder and its Contract Surety herein, and Owner shall never be liable for same. **Should the final Cost of the Construction Work and Design-Builder's compensation total less than the GMP, or any approved revision thereof, the difference shall inure to the benefit of Owner and no claim for all or any portion of said difference shall be valid against or payable by Owner. Owner's limitation of obligation or liability set out in this Section shall be incontrovertible and unequivocal; any term or provision of this Contract, the Exhibits, attachments or provisions incorporated by reference in or to this Contract, or of any Subcontract executed in furtherance of the anticipated Construction Work under the Contract, shall not be construed or deemed to alter or waive this absolute condition.** Likewise, Design-Builder's absolute responsibility for the completion of the Project in accordance with the Contract Documents, including the Plans and Specifications and within the agreed cost constraints, as well as Design-Builder's Contract to bear all costs in excess of the GMP without recourse to Owner, if such excess costs are necessary for the completion of the Construction Work, shall be incontrovertible and undisputable, and shall take precedence over all other terms and provisions of this Contract and the Exhibits hereto, no part of which shall be deemed to alter, diminish or waive such obligations.

8.5 (RESERVED)

FIXED PRICE PROPOSAL AND GMP

- 8.6 Management of Construction Work.** In addition to the Construction Work Design-Builder will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Management Fee described in **Section 9.1** herein is paid. The services required are not intended in any manner to diminish the overall responsibility of Design-Builder for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.
- 8.7 Cost of Construction Work.** Owner agrees to pay Design-Builder for the Cost of the Construction Work as defined herein, subject to submission by Design-Builder of all backup substantiation as may be reasonably required by Owner. Such payment shall be in addition to Design-Builder's Management Fee specified above. However, in no event shall the sum of payments for the Cost of the Construction Work, Design-Builder's Management Fee and any other Design-Builder compensation exceed the GMP or Fixed Price Proposal, as applicable, as adjusted by Change Order(s). The following items are considered to be part of the Cost of the Construction Work:

- 8.7.1 Wages paid for labor in the direct employ of Design-Builder in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by Owner and Design-Builder, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard rate of pay in the locality of the Construction Work except with prior consent of the Owner and shall include the items set forth below in this **Article VIII**. The reasonable cost of drug testing for all of Design-Builder's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Construction Work.
- 8.7.2 Salaries of Design-Builder's employees at or below the level of Project Design-Builder, when engaged on the Construction Work and stationed at the Field Office, in whatever capacity employed. Employees engaged, at shops or on the road in expediting the production or transportation of materials or equipment shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Construction Work.
- 8.7.3 Cost of reasonable and customary pension contributions, hospitalization insurance, medical insurance, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to employees of Design-Builder and included in the Cost of the Construction Work under **Section 9.3.1, Section 9.3.2, Section 9.3.24 and Section 9.3.25** herein.
- 8.7.4 Only with Owner's prior written approval, the proportion of reasonable travel and hotel expenses incurred outside of Owner of San Antonio metropolitan area by Design-Builder's officers or employees in discharge of duties directly connected with the Construction Work.
- 8.7.5 Cost of all materials, supplies and equipment incorporated in the Construction Work, including costs of transportation thereof.
- 8.7.6 Payments made by Design-Builder to Sub-Consultants and Subcontractors for Construction Work performed pursuant to a Subcontract entered into in the performance of this Contract.
- 8.7.7 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Construction Work, and cost less salvage value of such items used but not consumed which remain the property of Design-Builder.

- 8.7.8 In connection with the Construction Work and management services and only with Owner's prior written approval, rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Construction Work, whether rented from Design-Builder or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those shown in the then current Associated Equipment Distributors (AED) Manual. Provided further that, with respect to equipment and machinery rented from Design-Builder, the rental rate shall not exceed **75%** of the current AED Manual rental charges, and shall in no event cumulatively exceed the value of such equipment or machinery at the commencement of the rental period. Should rental charges reach such value, for the equipment and machinery rented from Design-Builder, the equipment and machinery thereafter shall belong to Owner, to be disposed of in accordance with **Section 11.5** herein. Design-Builder shall furnish Owner with a list, to be updated monthly, of all equipment furnished for the Project for which Owner reimburses Design-Builder as a part of the Cost of the Construction Work. Equipment and machinery rented, which becomes property of Owner pursuant to this **Section 8.7.8**, shall be delivered to Owner upon final completion and acceptance by Owner of all Construction Work under the Project.
- 8.7.9 Cost of the premiums for all bonds and insurance coverage required by this Contract, or deemed necessary by Design-Builder, in the normal pursuit of the Construction Work. Premiums for company-wide coverage will be pro-rated on the basis of value of Construction Work completed during the premium period. The cost of (or payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon Design-Builder's negligence, under any insurance furnished by Owner, or under insurance policies required by this Contract or deemed necessary by Design-Builder in the normal pursuit of the Construction Work.
- 8.7.10 Taxes, if any, related to the Work. However, as Owner qualifies for exemption under Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, Design-Builder shall alert all Sub-Consultants and Subcontractors to prevent erroneous payment of taxes covered by this exemption. Owner will provide exemption certificates to confirm this exemption upon request.
- 8.7.11 Permit fees, licenses, tests, royalties and deposits lost for causes other than Design-Builder's negligence.
- 8.7.12 Minor expenses, such as telegrams, long-distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with and for the benefit of the Construction Work.
- 8.7.13 Cost of removal of debris. Removal of debris left by other contractors hired by the Owner is not a part of this Contract.

- 8.7.14 Cost incurred due to an emergency affecting the safety of persons and property.
- 8.7.15 Other costs incurred in the performance of the Construction Work, if and to the extent approved in advance in writing by Owner.
- 8.7.16 The reasonable and actual direct cost of data processing services, as required for the Project. Such costs shall be specifically documented as having been done for the Project.
- 8.7.17 Legal costs growing out of prosecution of the Construction Work for Owner only will be reimbursable if such legal costs were incurred for the direct benefit of Owner and with prior written approval of Owner.
- 8.7.18 Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs or video tape records.
- 8.7.19 All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, blueprinting, furniture, fixtures, office equipment, etc.
- 8.7.20 Costs incurred by Design-Builder in preparing and maintaining progress schedules, budgets and reports required hereby.
- 8.7.21 The reasonable, actual direct cost of computer services, including jobsite and main office terminal, for purposes of field payroll preparation and control. Such costs specifically shall be documented as having been done for the Project.
- 8.7.22 Design-Builder shall be responsible for enforcing warranties and for obtaining correction and/or replacement of all defective Construction Work not constructed or installed in accordance with the Contract Documents. All such corrective or remedial Construction Work required by the Contract Documents shall be performed by responsible Subcontractors under the terms of their Subcontracts, without additional cost to the Owner. Costs incurred by Design-Builder to correct or remedy Construction Work performed by Design-Builder's own forces, or where the responsible Subcontractor fails to perform, shall **NOT** be a Cost of the Construction Work and shall be Design-Builder's sole responsibility, at no additional cost to Owner; provided, however, Design-Builder shall be entitled to the proceeds of any Subcontractor maintenance bond, where such Subcontractor has defaulted in this regard.

8.7.23 Salaries of Design-Builder's Project Design-Builder and Contract Design-Builder, Safety Engineer, M/WBE Coordinator, and Procurement Specialist (for coordinating, costing, scoping and purchasing of major Work items), earned after the date of approval and funding of the GMP, whether stationed at the Field Office or at the Main Office of Design-Builder, for that portion of their time spent on this Construction Work.

8.7.24 Where not otherwise included in the Cost of the Construction Work, the cost of central accounting services in connection with the Construction Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting and preparation of other reports.

8.8 Reconstruction Due to Casualty Loss. If, after a substantial loss from fire, flood or similar cause not due to the default or neglect of Design-Builder, Design-Builder is put in charge of reconstruction and shall be paid a management fee for its services proportionate to the Management Fee specified in this Contract. Any reconstruction work shall be considered part of the Scope of the Work, except that Design-Builder's Management Fee under the GMP shall be adjusted accordingly, unless otherwise reimbursed by the proceeds of insurance or through utilization of the Change Order procedure set out in this Contract.

8.9 Discounts, Refunds and Sales of Surplus Materials. All discounts, if realized, for prompt payment shall belong to Owner and shall be accounted for in the applicable GMP line item. All trade discounts, rebates, funds and all returns from sale of surplus materials and equipment likewise shall belong to Owner, and Design-Builder and Owner shall make provisions so that they can be secured, the amounts thereof to be accounted for in the applicable line item.

8.10 Costs Not Included as Part of the Construction Work and Services. The following items of cost and expense are not included as part of the Cost of the Construction Work to be paid by Owner to Design-Builder:

8.10.1 Except as specifically provided above, salaries, wages, and other compensation of Design-Builder personnel stationed at Design-Builder's principal office or offices.

8.10.2 Design-Builder's home office overhead including, but not limited to, any and all expenses associated with Design-Builder's principal office and offices other than at the Project site.

8.10.3 Design-Builder's capital costs and expenses, including interest on capital utilized in the performance of this Contract.

8.10.4 Rental cost for machinery or equipment, except as expressly provided herein.

- 8.10.5 Cost and expense incurred by Design-Builder, its Subcontractors, Sub-consultants, Suppliers or anyone directly or indirectly employed by any of the entities when such costs or expenses are the result of their negligence or failure to perform any required contractual duty.
- 8.10.6 Any and all cost or expense not specifically allowed pursuant to **Section 8.3** herein.
- 8.11 Any and all cash discounts, rebates, or refunds relating to payments made by Design-Builder shall accrue to Owner and shall be credited or paid to Owner at its election.
- 8.12 Owner may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to Owner from Design-Builder, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to Owner has been reduced to judgment by a court.

ARTICLE IX PAYMENT OF THE CONTRACT PRICE

- 9.1 **Payment Procedure.** Owner shall pay the Contract Price to Design-Builder in accordance with the procedures set forth in this **Article IX** and, for purposes of the Construction Work, the applicable provisions of **Article IX** of City's General Conditions for Design/Build Contracts to the extent they do not conflict with this **Article IX**.
- 9.2 **Internet-Based Project Management Systems.** Owner will administer its design and construction management through an Internet-Based Project Management System. In such case, Design-Builder shall conduct communication through this media and perform all Project-related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, payment requests and processing, amendments, change orders and other administrative activities. Owner shall administer the software to Design-builder to access and operate the Project Management System, provide training to Project Team Members and make the software accessible via the Internet to all Project Team Members.
- 9.3 **Draws through the Program Management System.** All draws shall be submitted through Owner's Project Management System. Prior to submittal of the first draw, Design-Builder will submit a schedule of values for payment to be approved by Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the System.

- 9.4 **Request for Payment for Design Services.** As the Design Services progress, Design-Builder shall submit monthly statements for Design Services rendered based upon a percentage of completion of the Design Services. If special services or Owner-approved reimbursable expenses are included as part of the Design Services Fee, such services shall be paid on the basis of the hourly rates or actual cost, as applicable, for those items as needed or required by Owner. Owner shall make monthly payments for Design Services in the amount shown by Design-Builder's approved monthly statements and other required documentation submitted within thirty (30) days after receipt by Owner of properly prepared and certified requests for payment for Design Services. Nothing contained in this **Section 9.4** shall require Owner to pay for any Design Services which are unsatisfactory, as determined by Owner or which are not submitted in compliance with the terms of this Contract, and payment may be withheld until the Design Services at issue are corrected or compliance is achieved. Progress payments for Design Services under this Contract shall be up to but shall not exceed 95% of the total Design Services Fee; upon final completion and acceptance of the Construction Work, the balance of the Design Services Fee will be paid, along with any final payment for the Construction Work.
- 9.5 **Request for Payment for Construction Work.** Payments for Construction Work shall be made in accordance with **Article IX** of City's General Conditions for Design/Build Contracts.
- 9.6 **Payment of the Management Fee.** In addition to the payment of the Cost of the Construction Work and related services, as set forth herein, Owner will pay Design-Builder its Management Fee monthly during performance of Construction Work, based upon the percentage of Construction Work completed in accordance with the Contract. From each scheduled Management Fee payment, Owner shall further withhold retainage in the amount of five percent (5%).
- 9.7 **Right to Audit.** Owner shall be entitled to rely upon the accuracy and completeness of the information furnished by Design-Builder in connection with any request for payment under this Contract. Owner reserves the right to audit, at Owner's election, all of Design-Builder's records and billings relating to the performance of Design Services or Construction Work under this Contract. Design-Builder agrees to retain its Project records for a minimum of four (4) years following completion of all Services under this Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute. Owner agrees that it will exercise the right to audit only at reasonable hours. Owner may review any and all of the services performed by Contractor under this Contract. Owner is granted the right to audit, at Owner's election, all of Contractor's records and billings relating to the performance of this Contract. Contractor agrees to retain such records for a minimum of four (4) years following completion of this Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute. Any payment, settlement, satisfaction or release made or provided during the course of performance of this Contract shall be subject to Owner's rights as may be disclosed by an audit under this subsection. In the event Owner determines that Design-Builder has been

paid any sums not due or earned by Design-Builder, same shall be reimbursed by Design-Builder to Owner within forty-eight (48) hours of demand by Owner.

- 9.8 **Condition Precedent to Final Payment.** Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design-Builder until Design-Builder fully has performed all of its obligations under the Contract and the Design Services and the Construction Work fully are complete.
- 9.9 **Owner's Review of Pay Requests.** Owner shall have the right to review all pay requests for the Design Services and the Construction Work to determine whether the quantity and quality of the Design Services and the Construction Work is as represented in the pay request and as required by the Contract.
- 9.10 **Conditions Precedent to Payment.** In addition to all other conditions precedent contained in this Contract and in City's General Conditions for Design/Build Contracts, including, but not limited to, the provisions of **Section 10.9** and **Section 13.5** herein, it shall be a condition precedent to payment of any pay request under this Contract that Design-Builder has submitted properly updated or revised schedules for the performance of its Design Services and Construction Work, as required by this Contract.
- 9.11 **Passage of Title to Construction Work.** Notwithstanding progress payments made by Owner under this Contract, title to Construction Work under this Contract does not pass to Owner until final completion of the Project, at which point title to all Construction Work is deemed to pass immediately to Owner. The risk of loss regarding completed Construction Work that is paid for by Owner prior to final completion remains with Design-Builder.
- 9.12 **Design-Builder's Use of Progress Payments.** Upon receipt of any payment from Owner, Design-Builder promptly shall pay all Sub-Consultants, Subcontractors, materialmen, laborers and Suppliers such amounts as they are entitled for the Construction Work covered by such payment. Design-Builder also shall comply with the requirements of City's General Conditions for Design/Build Contracts relating to payments to Sub-Consultants and Subcontractors.
- 9.13 **Use of Joint Checks.** If Owner becomes informed that Design-Builder has not paid a Sub-Consultant, Subcontractor, materialman, laborer or Supplier as provided herein, Owner shall have the right but not the duty to issue checks and payment then or thereafter otherwise due to Design-Builder naming Design-Builder and any such Sub-Consultant, Subcontractor, materialman, laborer or Supplier as joint payees. Such joint check procedure, if employed by Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.

9.14 **Payment Not a Waiver or Acceptance:** No payment to Design-Builder, nor any use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Construction Work not in strict compliance with the Contract, and Design-Builder expressly accepts the risk that defective Construction Work may not be detected:

- (1) during any inspection by Owner;
- (2) prior to making of any payment to Design-Builder; or
- (3) before Owner's occupancy of the Project.

9.15 **Withholding of Payment:** Owner shall have the right to refuse to make payment for Construction Work and, if necessary, may demand the return of a portion or the entire amount previously paid to Design-Builder in an amount then believed by Owner to be adequate to cover the penalties, damages and potential losses resulting or likely to result from:

- 9.15.1 the quality of a portion, or all, of Design-Builder's Construction Work not being in accordance with the requirements of this Contract;
- 9.15.2 the quantity of Design-Builder's Construction Work not being as represented in Design-Builder's pay request, or otherwise;
- 9.15.3 Design-Builder's rate of progress being such that, in Owner's opinion, Substantial Completion, Final Completion or both may inexcusably be delayed;
- 9.15.4 Design-Builder's failure to use Contract funds, previously paid to Design-Builder by Owner, to pay Design-Builder's Project-related obligations including, but not limited to, Sub-Consultants, Subcontractors, laborers and material and equipment Suppliers;
- 9.15.5 evidence that the balance of the Construction Work cannot be completed, in accordance with the Contract, for the unpaid balance of the Contract Price;
- 9.15.6 claims made, or likely to be made, against Owner or its property;
- 9.15.7 loss or damage caused by Design-Builder;
- 9.15.8 Design-Builder's failure or refusal to perform any of its obligations to Owner; or
- 9.15.9 any other basis for withholding of payment specified in the General Conditions.

In the event that Owner makes written demand upon Design-Builder for amounts previously paid by Owner, as contemplated in this **Section 9.15**, Design-Builder promptly shall comply with such demand.

9.16 **Limitation on Duty to Pay.** In addition to the grounds for withholding payment, as set forth in **Section 9.15** herein, Owner and Design-Builder further agree as follows:

9.16.1 Prior to Owner's approval of the Guaranteed Maximum Price or Fixed Price Proposal, as applicable, and execution of any supplemental agreement, Design-Builder shall submit to Owner a Schedule of Values allocating the Guaranteed Maximum Price or Fixed Price Proposal, as applicable, to the various portions of the Construction Work. Such Schedule of Values shall be prepared in such form, with such detail and supported by such data as Owner may require to substantiate its accuracy. Design-Builder shall not imbalance nor artificially inflate any element of its Schedule of Values. The violation of this provision by Design-Builder shall constitute a material breach of this Contract. The Schedule of Values only shall be utilized as a basis for evaluating Design-Builder's request(s) for payment and only shall constitute such basis after it has been acknowledged in writing by Owner.

9.16.2 Each request for payment for Construction Work shall include a certification by Design-Builder of the percentage of completion, as of the date of such request for payment, of those portions of the Construction Work as identified in the Schedule of Values. Design-Builder shall furnish to Owner such documentation or other supporting data as Owner may request in order to verify the percentage of completion certified by Design-Builder.

9.16.3 Owner shall have no obligation to make payment to Design-Builder for any Design Services or Construction Work where the amount, for which such payment is requested, is in excess of the amount allocated in the Schedule of Values for Construction Work based upon the percentage of completion as of the date of the request for payment.

9.17 **Unexcused Failure to Pay.** If Owner, without cause or basis, fails to pay Design-Builder any amounts due and payable under this Contract to Design-Builder within thirty (30) days after the date established in this Contract for payment of such amounts, then the payment shall bear interest in accordance with the Texas Prompt Payment Act, as amended. Provided, however, that Owner shall not be liable for interest due on any late or delayed progress payment or final payment caused by any good faith claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the request for payment or as a precondition to payment under the Contract Documents, or due to any payment Owner has a right to withhold or not certify under the Contract Documents.

ARTICLE X
OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 10.1 In addition to payment, Owner shall undertake to perform the following:
- 10.1.1 **Provide Project Information.** Owner shall provide Design-Builder with information regarding Owner's requirements for the Project, including any desired or required design or construction schedule.
 - 10.1.2 **Review of Documents.** Owner shall review any documents submitted by Design-Builder requiring Owner's decision and shall render any required decisions pertaining thereto.
 - 10.1.3 **Provide Notice of Defects.** In the event Owner knows of any material fault or defect in the Construction Work, nonconformance with the Contract or of any errors, omissions or inconsistencies in the Construction Documents, Owner shall give prompt notice thereof in writing to Design-Builder.
 - 10.1.4 **Access to the Site and the Construction Work.** Owner shall provide Design-Builder access to the site and to the Construction Work and shall provide Design-Builder with such information, existing and reasonably available, necessary to Design-Builder's performance of the Contract as Design-Builder may request.
 - 10.1.5 **Cooperation to Secure Permits, Licenses, Approvals and Authorizations.** Owner shall cooperate with Design-Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.
 - 10.1.6 **Timely Performance.** Owner shall perform the duties set forth in this **Article X** in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design-Builder's Design Services and of the Construction Work.
 - 10.1.7 **Owner's Reviews, Inspections, Approvals, and Payments Not a Waiver.** Owner's review, inspection or approval of any Construction Work, Design Documents, Submittals or pay requests by Design-Builder solely shall be for the purpose of determining whether such Construction Work and such documents are generally consistent with Owner's construction program and requirements. No review, inspection or approval by Owner of the Construction Work or documents shall relieve Design-Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents or Contract Documents shall not relieve Design-Builder of responsibility for the strict performance of its obligations under the Contract. Payment by Owner, pursuant to the Contract, shall not constitute a waiver of any of Owner's rights under the Contract or at law and Design-Builder

expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

10.1.8 **Delay or Forbearance Not A Waiver.** Owner's agreement not to exercise any right under the Contract, Owner's delay or failure to exercise any right under the Contract or Owner requiring strict compliance with any obligation of Design-Builder under the Contract shall not be a waiver of Owner's right to exercise such right or to insist on such compliance at any other time or on any other occasion.

10.1.9 **Documents Requested By Design/Builder.** Owner shall furnish to Design-Builder, prior to the execution of this Contract, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design-Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, Owner does not represent, warrant or guarantee its accuracy or completeness, either in whole or in part. **Owner expressly does not warrant any geotechnical or site information provided by it for use in connection with preparation of the Construction Documents;** Design-Builder, however, may reasonably rely on geotechnical information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors and/or omissions that a reasonable and prudent professional Architect or Engineer should or would detect and inquire about. If Design-Builder requests it in writing, Owner also shall furnish surveys, legal limitations, utility locations (if known) and a legal description of the Project site.

10.1.10 **Approvals and Easements.** Owner shall obtain any and all easements required for construction and shall pay for necessary assessments and charges required for use and occupancy of the Construction site. Design-Builder shall render such assistance as Owner may request in obtaining such easements, certificates of occupancy, and the like.

10.1.11 **Right to Stop Construction Work.** In the event Design-Builder fails or refuses to perform the Construction Work in strict accordance with the Contract, or otherwise is in breach of this Contract in any way, Owner may, at its option, direct Design-Builder to stop the Work, in accordance with **Section 2.2.6** of City's General Conditions for Design/Build Contracts, and/or direct Design-Builder to carry out the Work in accordance with **Section 2.2.7** of City's General Conditions for Design/Build Contracts and Design-Builder warrants that it will comply with any direction given by Owner under this **Section 10.1.11**.

**ARTICLE XI
PROJECT DOCUMENTATION**

- 11.1 **Maintenance of Project-Related Records.** Design-Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the “Project Records”) for no less than four (4) years after Final Completion of the Project, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute and for any longer period of time as may be required by law or good management practice.
- 11.2 **Availability of Project-Related Records to Owner:** All Project Records which are in the possession of Design-Builder, Design-Builder's Sub-Consultants and/or Subcontractors shall be made available to Owner for inspection and copying upon Owner's request at any time. Additionally, such records shall be made available upon request by Owner to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings or other writings or things which document the Project, its design or its construction. Said records include those documents reflecting the cost of design and construction to Design-Builder.
- 11.2.1 Design-Builder must notify Owner immediately if Design-Builder receives a request for documents from a third party. Owner must be given the opportunity to assert any proprietary interest it may have.
- 11.2.2 Design-Builder must impose on its Sub-Consultants and its Subcontractors, if any, all record retention obligations of this Contract.

**ARTICLE XII
OWNERSHIP OF PROJECT DOCUMENTS AND COPYRIGHTS**

- 12.1 All work products (electronically or manually generated) including, but not limited to, cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes and other related documents prepared specifically in the performance of this Contract (hereafter collectively referred to as “Project Documents”) are to be and remain the property of the Owner and are to be delivered to the Owner before final payment is made to Design-Builder. In the event the Project Documents are altered, modified or adapted with or without the written consent of Design-Builder, Design-Builder will not unreasonably withhold the delivery of the Project Documents to Owner.

- 12.2 When applicable and required by state law, all completed documents submitted by Design-Builder, its Sub-Consultants and its Subcontractors for final approval or issuance of a permit shall bear the seal with signature and the date adjacent thereto of a Texas registered professional for all plans, Work and Deliverables prepared by them for this Contract.
- 12.3 All previously owned documents, including drawings, estimates, specifications and all other documents and data not related to this Project will remain the property of Design-Builder as instruments of service. However, Design-Builder understands and agrees that Owner shall have free access to all such information with the right to make and retain copies of previously owned Project-related drawings, estimates, specifications and all other documents and data. Any reuse of Design-Builder's previously owned documents without specific written verification or adaptation by Design-Builder will be at Owner's sole risk and without liability or legal exposure to Design-Builder.
- 12.4 Design-Builder acknowledges and agrees that, upon payment, Owner exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Contract and shall be used as Owner desires and documents. All said information, including original drawings, estimates, specifications and all other documents and data, shall be delivered to Owner at no additional cost to Owner upon request, termination or completion of this Contract without restriction on Owner's future use. However, any reuse by Owner without specific written verification or adaptation by Design-Builder will be at Owner's sole risk and without liability or legal exposure to Design-Builder.
- 12.5 Design-Builder agrees and covenants to protect any and all proprietary rights of Owner in any materials provided to Design-Builder. Such protection of proprietary rights by Design-Builder shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to Owner. Additionally, any materials provided to Design-Builder by Owner shall not be released to any third party without the written consent of Owner and shall be returned intact to Owner upon termination or completion of this Contract or if instructed to do so by Owner.
- 12.6 **DESIGN-BUILDER HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS CONTRACT TO OWNER, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS CONTRACT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY DESIGN-BUILDER. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS CONTRACT SHALL BECOME THE PROPERTY OF OWNER (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). DESIGN-BUILDER SHALL, AT ITS EXPENSE, INDEMNIFY OWNER AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST OWNER AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION**

AGAINST OWNER, INsofar AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS CONTRACT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.

- 12.7 Design-Builder may make copies of any and all documents and items for its files. Design-Builder shall have no liability for changes made to or use of the drawings, specifications and other documents made by Architects/Engineers or persons other than Design-Builder. Design-Builder appropriately shall mark all changes or modifications on all drawings, specifications and other documents made by Architect/Engineers or persons other than Design-Builder, including electronic copies.
- 12.8 Copies of documents that may be relied upon by Owner are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by Design-Builder. Files in editable electronic media format of text, data, graphics or other types, (such as DGN) that are furnished by Design-Builder to Owner only are for convenience of Owner. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by Design-Builder will be at Owner's sole risk and without liability or legal exposure to Design-Builder.
- 12.9 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Design-Builder including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Design-Builder or its Suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Design-Builder to provide the services or protect deliverables to Owner including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Design-Builder or its Suppliers.

**ARTICLE XIII
INSURANCE REQUIREMENTS**

Prior to the commencement of any work under this Project, Design-Builder shall purchase and maintain insurance, as set forth in **Article XI** of Owner's General Conditions for Design/Build Contracts, and any Supplementary General Conditions or Special Conditions, if applicable.

**ARTICLE XIV
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM**

The applicable Small Business Economic Development Advocacy (hereafter referred to as "SBEDA") Program for this Project is attached hereto, made a part of this Contract and labeled as **Exhibit "D"**.

**ARTICLE XV
DESIGNATED REPRESENTATIVES**

15.1 REPRESENTATIVES OF THE PARTIES

15.1.1 Owner's Designated Representatives.

Owner designates the individual listed below or his designee as its Architect or Engineer Representative, said individual having the authority and responsibility for avoiding and resolving disputes in project delivery, addressing project management issues and for avoiding and addressing technical disputes regarding architectural and engineering design services provided under the provisions of this Contract.

---(Name)---
---(Address)---
---(Owner, State, Zip, Phone)---

Owner designates the individual listed below as its Owner's Designated Project Management Representative (ODR), said individual having the authority and responsibility for day-to-day Project management activities as set forth in this Contract.

---(Name)---
---(Address)---
---(Owner, State, Zip, Phone)---

15.1.2 Design-Builder's Designated Representatives:

Design-Builder designates the individual listed below as its Senior Representative (hereafter referred to as "Design-Builder's Senior Designated Representative"), said individual having the authority and responsibility for avoiding and resolving disputes under the provisions of this Contract.

---(Name)---
---(Address)---
---(Owner, State, Zip, Phone)---

Design-Builder designates the individual listed below as its Representative (hereafter referred to as "Design-Builder's Representative"), said individual having the authority and responsibility for day-to-day project management activities as set forth in this Contract.

---(Name)---
---(Address)---
---(Owner, State, Zip, Phone)---

**ARTICLE XVI
MISCELLANEOUS PROVISIONS**

- 18.1 **Dispute Resolution.** All disputes against Owner that arise from this Contract or any Project shall be resolved in accordance with the procedures and limitations of Texas Local Government Code Subchapter I, Chapter 271.151et.seq., and Owner's General Conditions for Design/Build Contracts. Owner designates the Director or his Department Designee as its officer(s) for examining, negotiating and resolving claims and counterclaims. Owner hereby waives sovereign immunity only in accordance with Section 271.152 of the Local Government Code for its obligations to Design-Builder arising under this Contract.
- 18.2 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by Owner or Owner's authorized representative on reasonable notice.
- 18.3 **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, Texas Family Code, Design-Builder certifies that it is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 18.4 **Franchise Tax Certification.** If a corporation or limited liability company, Design-Builder certifies that:
1. it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code; or
 2. that the corporation or limited liability company is exempt from the payment of such taxes; or
 3. that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 18.5 **Payment of Debt or Delinquency to Owner.** It is the policy of Owner that any person or entity doing business with Owner shall, at all times, remain in financial good standing with all Owner Departments. In that regard, Design-Builder warrants that it has no outstanding obligations to any City of San Antonio Department at the time of the execution of this Contract, and hereby covenants that it timely will pay, as they come due, any and all taxes, fees, fines or any other charges assessed by any City of San Antonio Department whether imposed by statute, ordinance or contract, without regard to whether these charges are associated with this Contract or Design-Builder's operation under this Contract.

- 18.6 **Contract Documents; Merger.** The Contract Documents form the entire and integrated Contract between Owner and Design-Builder and supersede all prior negotiations, representations or agreements, either written or oral. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Design-Builder and Owner.
- 18.7 **Captions.** The captions of sections in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 18.8 **Notices.** In addition to the written Notice Provision in City's General Conditions for Design/Build Contracts, all notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when:
1. delivered in person to the designated representative of Design-Builder or Owner for whom it is intended; or
 2. sent by U. S. Mail, certified mail, return receipt requested, to the last known business address of the designated representative; or
 3. transmitted by fax machine to the last know business fax number of the designated representative.

Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. Notices of claims or disputes or other legal notices required by this Contract shall be sent to the following persons at the indicated locations. The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

If to Owner:

City of San Antonio
 Capital Improvements Management
 Services Department
 Attention: Mike Frisbie, P.E., Director
 P. O. Box 839966
 San Antonio, Texas 78283-3966

If to Design-Builder:

Name of Firm
 Attention: _____
 Address
 Owner, State, Zip code

- 18.9 **Severability.** Should any term or provision of this Contract be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Contract shall be construed as if the invalid or unenforceable term or provision had never been included.
- 18.10 **Illegal Dumping.** Design-Builder shall ensure that it and all of its Sub-Consultants, Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

18.11 **Equal Employment Opportunity and Affirmative Action.** Design-Builder shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

BY SIGNING BELOW, the Parties have bound themselves to this terms and conditions of this Contract as of the day and year first above written.

OWNER OF SAN ANTONIO, TEXAS

-----DESIGN-BUILDER NAME-----

By: _____
Sheryl Sculley, City Manager

By: _____
NAME, TITLE

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

PROGRAMMING DOCUMENTS

**PREPARED BY [REDACTED] AND DATED [REDACTED] AND PROVIDED TO
DESIGN-BUILDER AS PART OF THE RFP DATED [REDACTED]**

DRAFT

EXHIBIT B
DESIGN-BUILDER'S FEE PROPOSAL

DRAFT

EXHIBIT C
GENERAL CONDITIONS FOR CITY OF SAN ANTONIO
DESIGN/BUILD CONTRACTS

DRAFT

**GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO DESIGN/BUILD CONTRACTS**

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**GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO DESIGN-BUILD 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 **“ALTERNATE”** means a variation in the Work in which Owner requires a price separate from the Base Bid. If an Alternate is accepted by Owner, the variation will become a part of the Contract through award of the Contract and the Base Bid will be adjusted to include the amount quoted as stated in the Notice of Award to Design-Builder. If an Alternate is accepted by Owner, and later deleted, Owner will be entitled to a credit in the full value of the Alternate as priced in Design-Builder’s Bid Proposal.

1.1.2 **“AMENDMENT”** is a written modification of the Contract prepared by Owner and signed by Owner and Design-Builder, (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Work (specifically the services) or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.

1.1.3 **“BASE BID”** is the price quoted for the Work before Alternates are considered.

1.1.4 **“CHANGE ORDER”** refer to **Article VII** herein for definition.

1.1.5 **“CITY COUNCIL”** shall mean the duly elected members of the City Council of the City of San Antonio, Texas.

1.1.6 **“CONSTRUCTION OBSERVER/INSPECTOR** (hereafter referred to as “COI”) is the authorized representative of the Director of Capital Improvements Management Services (hereafter referred to as “CIMS”), or its designee department, assigned by Owner to observe and inspect any or all parts of the Project and the materials to be used therein. Also referred to herein as Resident Inspector.

1.1.7 **“CONTRACT”** means the Contract Documents which represent the entire and integrated agreement between Owner and Design-Builder and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only in writing by a Field Work Directive, Change Order or Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind between:

(1) Owner and a Sub-consultant, Subcontractor or Sub-subcontractor; or

(2) any persons or entities other than Owner and Design-Builder.

1.1.8 “**CONTRACT DOCUMENTS**” means the Construction Contract between Owner and Design-Builder, which consists of, but are not limited to, the following: the Notice of Award, an enabling City of San Antonio Ordinance, the solicitation documents and other contract-related documents, which include:

- (1) General Conditions;
- (2) Vertical and/or Horizontal specific General Conditions and Special Conditions included by special provisions or addenda;
- (3) Drawings;
- (4) Specifications;
- (5) addenda issued prior to the close of the solicitation period; and
- (6) a written order for a minor change in the Work issued by and/or Owner, as described in **Article VII** herein.

The geotechnical and subsurface reports which Owner may have provided to Design-Builder specifically are excluded from the Contract Documents.

1.1.9 “**CONTRACT TIME**” means, unless otherwise provided, the period of time, including any 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.

1.1.10 “**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, or the hours during which Design-Builder has been authorized to work by Owner.

1.1.11 “**DEPARTMENT**” means the Department of Capital Improvements Management Services (hereafter referred to as “CIMS”), City of San Antonio, Texas or Director of the Department of Capital Improvements Management Services.

1.1.12 “**DESIGN-BUILDER**” means the entity that has entered into a Design-Build Contract with Owner to complete the Work. Design-Builder, as used herein, includes other applicable entities performing work under a Contract with City.

1.1.13 “**DESIGN CONSULTANT**” unless the context clearly indicates otherwise, means an Engineer, Architect or other professional in private practice, licensed to do work

in Texas and retained for a specific project under a contractual agreement with Owner.

- 1.1.14 **“DRAWINGS”** (also referred to herein as “Plans”) are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of Work, generally including elevations, sections, details, schedules and diagrams.
- 1.1.15 **“FEDERALLY ASSISTED CONTRACT”** means any contract financed in whole or in part with federal funds.
- 1.1.16 **“FIELD WORK DIRECTIVES” OR “FORCE ACCOUNT”** is a written order signed by Owner directing a change in the Work prior to agreement or an adjustment, if any, in the Contract Sum and/or Contract, as further defined in **Section 7.3** herein.
- 1.1.17 **“HAZARDOUS SUBSTANCE”** is defined to include the following:
- (a) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;
 - (b) any polychlorinated biphenyls (“PCBs”), or PCB-containing materials, or fluids;
 - (c) radon;
 - (d) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; 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;
 - (e) 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;
 - (f) 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.;
 - (g) 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

(h) 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.

- 1.1.18 **“NOTICE TO PROCEED (HEREIN ALSO REFERRED TO AS “WORK PROJECT AUTHORIZATION” OR “NTP”)”** is a written notice given by Owner to Design-Builder establishing the date on which the Contract Time will commence to run and the date on which Design-Builder may begin performance of its contractual obligations.
- 1.1.19 **“OWNER”** Refer to **Article II** herein for definition.
- 1.1.20 **“OWNER DESIGNATED REPRESENTATIVE (ODR)”** means the person(s) designated by Owner to act for Owner.
- 1.1.21 **“PROJECT”** means the total design and construction of Work performed under the Contract Documents and may be the whole or a part of the Project and which may include construction by Owner, by a separate contractor or another Design-Builder. 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 only may be a part of the Project.
- 1.1.22 **“PROJECT MANAGEMENT TEAM”** is composed of Owner, its representatives, including Owner’s Design Consultant (if any) and Program Manager (if any) for this Work.
- 1.1.23 **“SITE”** means the land(s) or area(s) (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 Design-Builder. Means the
- 1.1.24 **“SPECIAL CONDITIONS”** are terms and conditions to an Agreement that supplement and are superior to General Conditions which grant greater authority or impose greater restrictions upon Design-Builder, beyond those granted or imposed in these General Conditions. City’s Horizontal Special Conditions are attached hereto, made a part of these General Conditions and shall be used as applicable.
- 1.1.25 **“SPECIFICATIONS”** are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.
- 1.1.26 **“SUBSTANTIAL COMPLETION”** is the date certified by Owner and , in accordance with **Section 9.8** herein, 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 intended use by Owner.

- 1.1.27 **“TEMPORARY BENCH MARKS (TBM)”** are temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.
- 1.1.28 **“THE 3D MODEL”** is the Building Information Model prepared by Design-Builder in the format designated, approved and acceptable to Owner with databases of materials, products and systems that can be used by Design-Builder to prepare schedules for cost estimating, product and materials placement schedules and evaluations of crash incidences. The 3D Model, if available, may be used as a tool, however all information taken from the Model is the responsibility of Design-Builder and not Owner.
- 1.1.29 **“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 Design-Builder, or any Sub-Consultants, Subcontractors, Sub-subcontractors, material suppliers or any other entities which Design-Builder is responsible, to fulfill the Design-Builder’s obligations. The Work may constitute the whole or a part of the Project.
- 1.1.30 **OTHER DEFINITIONS.** As used in the Contract Documents, the following additional terms have the following meanings:
- 1.1.29.1 **“provide”** means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and all other expenses necessary to complete in place and ready for operation or use;
- 1.1.29.2 **“shall”** means the mandatory action of the party of which reference is being made;
- 1.1.29.3 **“as required”** means as prescribed in the Contract Documents; and
- 1.1.29.4 **“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.

1.2 **PRELIMINARY MATTERS.** Upon the San Antonio City Council’s passing of an Ordinance authorizing the issuance of a contract, a Notice of Award Letter will be sent to Design-Builder by CIMS Contract Services, notifying Design-Builder of the award of a contract. In its Notice of

Award Letter, Design-Builder will be informed of a date certain by which Design-Builder's bond(s) and evidence of insurance shall be delivered to CIMS Contract Services.

- 1.2.1 **DELIVERY OF BONDS.** Not later than the Pre-Construction meeting and prior to the commencement of any Work on the Project, Design-Builder shall deliver a fully executed Contract to Owner, along with such bonds as Design-Builder may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in the Contract Documents and these General Conditions and a required performance bond in the form and amount specified in the Contract Documents and these General Conditions.
- 1.2.2 **DELIVERY OF EVIDENCE OF INSURANCE.** Not later than the Pre-Construction meeting, and prior to the commencement of any Work under this Contract, Design-Builder shall deliver evidence of insurance to Owner. Design-Builder 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 CIMS Contract Services Division, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Design-Builder shall be prohibited from commencing the Work and Owner shall have no duty to pay or perform under this Contract until such evidence of insurance is delivered to Owner. No officer or employee, other than Owner's Risk Manager, shall have authority to waive this requirement.
- 1.2.3 **NOTICE TO PROCEED AND COMMENCEMENT OF CONTRACT TIMES.** Unless otherwise stated on the Notice to Proceed, the Contract Time will commence to run on the date stated on the Notice to Proceed. No Work shall commence any earlier than the date stated on Notice to Proceed and no Work shall be performed by Design-Builder or any subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Design-Builder receiving a Notice to Proceed is performed at Design-Builder's risk.
- 1.2.4 **SUBMISSION OF PROJECT SCHEDULE(S).** Prior to comment of Work (unless otherwise specified elsewhere in the Contract Documents), Design-Builder shall submit to the Director of CIMS or his/her designee the Project schedule(s), as defined in **Section 3.10** herein, a minimum of fifteen (15) days prior to the Preconstruction Conference.
- 1.2.5 **PRECONSTRUCTION CONFERENCE.** Before Design-Builder commences any Work on the Project, a Preconstruction Conference attended by Owner, Design-Builder, Owner's Designated Representative and others, as appropriate, will be held to establish a working understanding among the parties as to the Work and discuss, at

a minimum: the Project Schedule(s) referenced in this **Article 1**; the procedures for handling Shop Drawings and other submittals; the processing of Applications for Payment; and Design-Builder maintaining required records. The Notice to Proceed may be issued at the Preconstruction Conference or issued by Owner at any time at Owner's discretion. The issuance of the Notice to Proceed will not unreasonably be withheld by Owner.

1.2.6 Payments for services, work, equipment and materials are contingent upon and subject to the availability and appropriation of funds and the sale of future City of San Antonio Certificates of Obligation and/or General Obligation Bonds in accordance with adopted budgets. In the event funds are not available, appropriated or encumbered to fund a Project, then, at Owner's discretion, this Agreement may be terminated immediately with no additional liability to Owner.

1.2.7 At its option, Owner may administer its design and construction management through its Internet-based management system. In such cases, Design-Builder shall conduct communication through this media and perform all Project-related functions utilizing this management system to include all correspondences, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders and other administrative activities. When such a system is employed, Owner shall administer the software, provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

1.3 **CONTRACT DOCUMENTS**

1.3.1 **EXECUTION OF CONTRACT DOCUMENTS.** Execution of the Contract by Design-Builder is a representation Design-Builder has been provided unrestricted access to the existing improvements and conditions on the Project Site, Design-Builder thoroughly has investigated the visible conditions at the Site and the general local conditions affecting the Work, and that Design-Builder's investigation was instrumental in preparing its bid or proposal submitted to Owner to perform the Work. Design-Builder shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum arising from conditions which Design-Builder discovered or, in the exercise of reasonable care, should have discovered in Design-Builder's investigation.

1.3.2 **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.** The Drawings, Specifications and other documents, including those in electronic form prepared by Owner or Owner's consultants, retained for the Project, which describe the Work to be executed by Design-Builder (collectively referred to as the "Construction Documents") are and will remain the property of Owner, whether the Project for which they are made is executed or not.

Design-Builder shall be permitted to retain one record set. Neither Design-Builder nor any Sub-consultant, Subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Owner or Owner's consultants. All copies of Construction Documents, except Design-Builder's record set, shall be returned or suitably accounted for to Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by Owner and Owner's consultants, and copies thereof furnished to Design-Builder, are for use solely with respect to this Project. The drawings, specifications or other documents are not to be used by Design-Builder or any Sub-consultant, 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-Builder, Sub-consultants, Subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Owner and the Owner'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 Owner and Owner'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.

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

1.3.2.2 Design-Builder 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 Design-Builder shall be replaced or reproduced at Design-Builder's non-reimbursable, sole cost. In addition, Owner shall have access during normal business hours, to all of Design-Builder's records and documents covering reimbursable expenses, actual base hourly rates, time cards and annual salary escalation records maintained in connection with this Contract for purposes of auditing same at the sole cost of Owner. The purpose of any such audit shall be for the verification of such costs. Design-Builder 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. Nothing herein shall deny Design-Builder the right to retain duplicates. If, during the duration of this Contract or during the four (4) years after the final completion of the Work, a dispute between any parties to this Project exists, Design-Builder shall retain all of its records for four (4) years after final resolution of all disputes related to this Project. Refusal by Design-Builder

to comply with the provisions hereof shall entitle Owner to withhold any payment(s) to Design-Builder until compliance is obtained.

1.3.2.3 All of Design-Builder's documentary Work product shall be maintained within Design-Builder's San Antonio offices, unless otherwise authorized by Owner. After expiration of this Contract, Design-Builder's documents may be archived in the Design-Builder's central record storage facility but shall remain accessible to Owner for the four (4) year period cited in **Section 1.3.22** herein.

1.3.3 **CORRELATION AND INTENT.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Design-Builder. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by Design-Builder shall be required only to the extent consistent with the Contract Documents and which reasonably is inferable from the Contract Documents as deemed necessary to produce the indicated results. In cases of discrepancy between any drawing and the dimension figures written thereon:

- (1) the dimension figures shall govern over scaled dimensions;
- (2) Detailed Drawings and accompanying notations shall govern over general Drawings;
- (3) Specifications shall govern over Drawings, subject to **Section 1.3.3.6** herein;
- (4) General Conditions and Supplemental Conditions
- (5) Special Conditions shall govern over Specifications, Drawings and General/Supplemental Conditions; and
- (6) Negotiated Special Conditions shall govern over Special Conditions.

The most recent revision of Plans shall control over older revisions.

1.3.3.1 Organization of the Specifications into divisions, sections, articles, and the arrangement of Drawings shall not control Design-Builder in dividing the Work among subcontractors or establishing the extent of Work to be performed by any trade.

1.3.3.2 Unless otherwise stated in the Contract Documents, words that 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" Owner or Owner's Resident Inspector or other specific designation 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.

1.3.3.3 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 Design-Builder's Bid Proposal, except as otherwise may be 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.

1.3.3.4 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 negotiated and signed by Owner and Design-Builder;
2. Addenda, with those of later date(s) having precedence over those with earlier date(s);
3. Special Conditions;
4. General Conditions;
5. Specifications;
6. Drawings;

1.3.3.5 Should the Drawings and Specifications be inconsistent, contract pricing shall be based on the better quality and greater quantity of work indicated. In the event of the above-mentioned inconsistency, Owner shall determine the resolution of the inconsistency.

1.3.3.6 In the Drawings and Specifications, where certain products, manufacturer's trade names or catalog numbers are given, such information is given 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 a substitution has been specifically accepted for use on this Project by Owner.

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 edition currently in place 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 II. OWNER

2.1 GENERAL

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

2.1.2 Design-Builder acknowledges that no lien rights exist with respect to public property.

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER

2.2.1 Owner will provide and maintain the Preliminary Budget and general schedule, if any for the Project. 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 Owner. The general schedule will set forth Owner’s plan for milestone dates and completion of the Project.

2.2.2 Owner shall furnish surveys, if in existence, describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Design-Builder of any of its duties under the Contract Documents or these General Conditions. Information or services required of Owner by the Contract Documents shall be furnished by Owner with reasonable promptness following actual receipt of a written request from Design-Builder. It is incumbent upon Design-Builder to identify, establish and maintain a current schedule of latest dates for submittal and approval by Owner, as required in **Section 3.10** herein, including when such information or services must be

delivered. If Owner delivers the information or services to Design-Builder as scheduled and Design-Builder is not prepared to accept or act on such information or services, then Design-Builder shall reimburse Owner for all extra costs incurred by holding, storage, retention or performance, including redeliveries by Owner in order to comply with the current schedule.

- 2.2.3 Unless otherwise provided in the Contract Documents, Design-Builder will furnished, free of charge, up to **five (5) complete sets** of the Plans and Specifications to Owner. Additional complete sets of Plans and Specifications, if requested by Owner, will be furnished to Owner at reproduction cost to Design-Builder.
- 2.2.4 Owner's personnel may, but are not required to, be present at the construction site during progress of the Work to verify Design-Builder's record of the number of workmen employed on the Work site, the workmen's occupational classification, the time each workman is engaged in the Work and the equipment used by the workmen in the performance of the Work, for purpose of verification of Design-Builder's Applications for Payment and payroll records.
- 2.2.5 Owner shall reimburse Design-Builder for the necessary project-related approvals, fees and required permits with no markup paid to Design-Builder for those costs, unless the project-related approvals, fees and required permits are stipulated in the Contract Documents as part of the Work.
- 2.2.6 **OWNER'S RIGHT TO STOP THE WORK.** If Design-Builder fails to correct Work deemed by Owner to not be in accordance with the requirements of the Contract Documents, as required by **Section 12.3** herein, fails to carry out Work in accordance with the Contract Documents or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, Owner may issue a written order to Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of the Design-Builder or any other person or entity. This right shall be in addition to, and not in restriction of, Owner's rights pursuant to **Section 12.3** herein. Owner's issuance of an order to Design-Builder to stop the Work shall not give rise to any claim by Design-Builder for additional time, cost or general conditions costs.
- 2.2.7 **OWNER'S RIGHT TO CARRY OUT THE WORK.** If Design-Builder defaults, neglects or fails to carry out the Work in accordance with the Contract Documents and fails, within a three (3) work-day period after receipt of written notice from Owner, to commence and continue correction of such default, neglect or failure with diligence and promptness, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies, neglect or failure. In such case, an appropriate Change Order may be issued deducting from payments then or thereafter due Design-Builder the reasonable cost of correcting such deficiencies, neglect or failure, including all of Owner's incurred expenses and compensation for Owner's additional services made necessary by such default, neglect or

failure. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts for the Work performed, Design-Builder shall pay the difference to Owner.

ARTICLE III. DESIGN-BUILDER

3.1 GENERAL

- 3.1.1 Design-Builder 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 “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative(s).
- 3.1.2 Design-Builder 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 Design-Builder shall not be relieved of its obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents either by any activities or duties of Owner in Owner’s administration of the Contract or by tests, inspections or approvals required or performed by Owner or any person other than the Design-Builder.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN-BUILDER

- 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, Design-Builder carefully shall:
 - (1) study and compare the various Drawings and other Contract Documents relative to that portion of the Work;
 - (2) study the information furnished by Owner;
 - (3) take field measurements of any existing conditions related to that portion of the Work: and
 - (4) observe any conditions at the Site affecting the Work.

Any error, inconsistencies or omissions discovered by Design-Builder shall be reported promptly to Owner via a Request for Information in such form as the Owner may require.

- 3.2.1.1 The exactness of existing grades, elevations, dimensions or locations given on any Drawings issued by Owner, or the work installed by Owner’s other or contractors, is not guaranteed by Owner. Design-Builder therefore shall 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 conditions or with work performed by others, Design-Builder shall verify at the site all dimensions relating to such existing or other work. Any errors due to Design-Builder's failure to so verify all such grades, elevations, dimensions or locations promptly shall be rectified by Design-Builder without any additional cost to Owner.

3.2.2 If Design-Builder believes additional cost or time is involved because of clarifications or instructions issued by Owner in response to the Design-Builder's Notices or Requests for Information, Design-Builder shall make Claims as provided in **Section 4.3.6** and **Section 4.3.7** herein. If Design-Builder fails to perform the obligations of **Section 3.2.1** and **Section 3.2.2**, Design-Builder shall pay such costs and damages to Owner as would have been avoided if Design-Builder had performed such obligations. Design-Builder shall not be liable to Owner or Owner 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 Design-Builder recognized or should have recognized such error, inconsistency, omission or differences and knowingly failed to report it to Owner, as required by this **Section 3.2.2**.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 Design-Builder shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a reasonably prudent Design-Builder, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Design-Builder solely shall be responsible for the means, methods, techniques, sequences, procedures and coordination of 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 and/or techniques, Design-Builder then shall evaluate the jobsite safety thereof and, except as stated herein below, shall fully and solely be responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If, upon its evaluation, Design-Builder determines such means, methods, techniques, sequences or procedures may not be safe, Design-Builder shall give timely written notice to Owner and Design-Builder shall not proceed with that portion of the Work without further written instructions from Owner. Sequencing and procedures shall be coordinated and agreed upon by Owner and Design-Builder.

3.3.2 Design-Builder shall be responsible to Owner for the acts and omissions of Design-Builder's agents and employees, Sub-consultants, Subcontractors and their respective agents and employees and all other persons or entities performing portions of the Work for or on behalf of Design-Builder or any of its Sub-Consultants and/or Subcontractors.

- 3.3.3 Design-Builder shall be responsible for inspection of portions of Work already performed, to determine which such portion are in proper condition to receive subsequent Work.
- 3.3.4 Design-Builder 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 the relationship of Design-Builder to Owner shall be of an independent contractor. Nothing contained herein or inferable in the Contract Documents shall be read, deemed or construed to make Design-Builder the agent, servant or employee of Owner or create any partnership, joint venture or other association between Owner and Design-Builder. 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 Design-Builder's independent contractor status, as described herein.
- 3.3.6 Design-Builder shall review its Subcontractor(s) written safety programs, procedures and precautions in connection with performance of the Work. However, Design-Builder'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 Design-Builder 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 **Section 3.4.6** are not intended to impose upon Design-Builder any additional obligations Design-Builder 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 stipulated in the Contract Documents or required, Design-Builder 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.
- 3.4.2 **PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.** The Provisions of Chapter 2258 of the Texas Government Code, and the “Wage and Labor Standard Provisions” amended in City of San Antonio Ordinance 2008-11-

20-1045, expressly are made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this contract shall be obtained by Design-Builder from the City of San Antonio's Labor Compliance Office and included in Design-Builder's Project bid package and Plans & Specifications, prior to Design-Builder bidding of the Project and such schedule shall become a part hereof. Design-Builder shall forfeit, as a penalty to Owner, sixty dollars (\$60.00) for each laborer, workman or mechanic employed for each calendar day, or portion thereof, in which such laborer, workman or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Design-Builder or any Sub-Consultant and/or Subcontractor employed on the Project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Design-Builder from its 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. Design-Builder, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Design-Builder agrees it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This Contract provision shall be included in its entirety in all Subcontractor agreement entered into by the Design-Builder or any Subcontractor employed on the project.

3.4.3 SUBSTITUTIONS

3.4.3.1 Substitutions and alternates may be rejected by Owner without explanation and shall be considered by Owner only under one or more of the following conditions:

- (a) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing;
- (b) specified products are unavailable through no fault of Design-Builder; and
- (c) when, in the judgment of Owner, a substitution substantially would be in Owner's best interests in terms of cost, time or other considerations.

3.4.3.2 Contractor shall submit to Owner:

- (a) 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;

- (b) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and to the Work, in the event the substitution is acceptable to Owner;
- (c) the adjustment, if any, in the Contract Sum;
- (d) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and
- (e) in the event of a substitution under this **Section 3.4.3**, an affidavit stating:
 - (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and requirements shown on the Drawings; and
 - (2) Design-Builder accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by Owner.

Proposals for substitutions shall be submitted to Owner in sufficient time to allow Owner no less than twenty-one (21) calendar days for review. No substitutions will be considered or allowed without Design-Builder's submittal of complete substantiating data and information as stated hereinbefore.

3.4.3.3 In the event of substitution submittal under **Section 3.4.2.1** herein, and whether or not any such proposed substitution is accepted by Owner, Design-Builder shall reimburse Owner, at Owner's reasonable discretion, for any fees charged by Owner or Owner's representatives for evaluating each proposed substitute.

3.4.3.4 Except as otherwise stipulated in the Contract Documents or 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 calendar day unless directed by Owner, the ODR or requested in writing by Design-Builder and approved by Owner.

3.4.4 Design-Builder 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. Design-Builder shall be liable for and responsible to Owner for all acts and omissions of its employees, all tiers of its Sub-Consultants and Subcontractors, material suppliers, anyone who Design-Builder may allow to perform any Work on the Project, and their respective officers, agents, employees, and any consultants Design-Builder may allow to come on the job site, with the exception of Owner, the ODR or

Owner's consultants. Owner, at any time, for any reason or for no reason, may direct Design-Builder to remove any employee, Subcontractor, Sub-Consultant, material supplier or anyone else from the Project and Design-Builder promptly shall comply with Owner's direction. In addition, if Design-Builder receives written notice from Owner complaining about any Subcontractor, Sub-consultant, employee or anyone who is a hindrance to proper or timely execution of the Work, Design-Builder shall remedy such complaint without delay to the Project and at no additional cost to Owner. This provision shall be included in all contracts between the Design-Builder and all subcontractors of all tiers.

- 3.4.5 Design-Builder recognizes and acknowledges that the Project Site is a public facility representing the City of San Antonio. As such, Design-Builder shall prohibit the possession or use of alcohol, controlled substances, tobacco and any prohibited weapons on the Project Site and shall require appropriate dress of Design-Builder's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Design-Builder, employees of Owner or any visitor to the site by employees of Design-Builder strictly is forbidden. Any employee of Design-Builder who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Design-Builder, including removal from the Project Site.
- 3.4.6 Design-Builder only shall 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 installed 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 Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. Design-Builder may make substitutions only with the consent of Owner, after Design-Builder's compliance with **Section 3.4.2** herein.
- 3.4.8 All materials shall be shipped, stored and handled in a manner which 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 they are in the condition as required by **Section 3.5.1** herein when the Work is Substantially Completed or Owner takes over use and occupancy, whichever is earlier.
- 3.4.9 Design-Builder shall procure and furnish to Owner all guarantees, warranties, spares and maintenance manuals called for by the Specifications or which normally are provided by a manufacturer. The maintenance manual shall include a catalog for any equipment, materials, supplies or parts used in the inspection, calibration, maintenance or repair of the equipment and items in the catalog shall be readily available for purchase.

3.4.10 During construction of the Work and for four (4) years after final completion, or if there is an ongoing dispute under this Contract such retention period shall extend longer until final resolution of said dispute, as defined in **Section 1.3.2.2** herein, Design-Builder shall retain and shall require all subcontractors to retain for inspection and audit by Owner 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 Owner, a legible copy or the original of any or all such records shall be produced by Design-Builder at the administrative office of Owner. To the extent that it requests copies of such documents, Owner will reimburse Design-Builder and its subcontractors for copying costs. Design-Builder 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 Design-Builder warrants to Owner materials and equipment furnished and installed under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents, and the Work will be free from defects not inherent in the quality required or permitted and 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. Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, 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 Design-Builder. If required by Owner, Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 A right of action by Owner for any breach of Design-Builder'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.

3.5.3 The warranty provided in **Section 3.5.1** herein shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Such warranty shall be interpreted to require Design-Builder, upon written timely demand by Owner, to replace defective materials and equipment and re-execute any defective Work disclosed to the Design-Builder by the Owner within a period of one (1) year after Substantial Completion of the applicable Work or, in the event of a latent defect, within one (1) year after discovery thereof by Owner.

3.5.4 All warranties shall be assignable by Owner. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

3.5.5 Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law or by manufacturer, all warranties shall be at

minimum for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to Owner. Owner and Design-Builder acknowledge that the Project may involve construction work on more than one (1) building or section of infrastructure of Owner's. Each building, section of infrastructure or approved phase of each section of infrastructure shall have its own separate and independent date of Substantial Completion or Final Completion. Design-Builder shall maintain a complete and accurate schedule of the dates of Substantial Completion and dates upon which the one (1) year warranty on each building, phase or section of infrastructure that achieved Substantial Completion will expire. Design-Builder agrees to provide notice of the warranty expiration date(s) to Owner and Owner at least one (1) month prior to the expiration of the one (1) year warranty period on each building, section of infrastructure or each phase of the section of infrastructure which has achieved Substantial Completion. Prior to termination of the one (1) year warranty period, Design-Builder shall accompany Owner and Owner on re-inspection of the building, section of infrastructure or phase of the section of infrastructure and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building, section of infrastructure or phase of the section of infrastructure observed and/or reported during the re-inspection. For extended warranties required by the Contract Documents, Owner will notify Design-Builder of deficiencies and Design-Builder shall start remedying these defects within seven (7) calendar days of initial notification from Owner. Design-Builder shall prosecute the work without interruption until accepted by Owner and Owner, even though such prosecution may extend beyond the limit of the warranty period. If Design-Builder fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date and conduct the required walk through with Owner, Design-Builder's warranty obligations described in this **Section 3.5.5** shall continue until such inspection is conducted and any deficiencies found in the inspection is corrected.

- 3.5.6 Warranties shall become effective on a date established by Owner 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 and those occurrences addressed in **Section 3.5.4** herein. 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 Owner and Owner or the date of final completion of the Work.
- 3.5.7 Neither final payment nor compliance by Design-Builder with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve Design-Builder or its sureties of liability, with respect to any warranties or responsibility for faulty materials

and workmanship. Design-Builder warrants that the Work will conform to the requirements of the Contract Documents.

3.5.8 Design-Builder agrees to assign to 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 Design-Builder's right also to enforce the manufacturer's warranties. As a condition precedent to final payment, Design-Builder shall prepare a notebook with reference tabs and submit three (3) copies of the notebook to Owner that includes a complete set of warranties from subcontractors, manufacturers or suppliers, as appropriate, and executed by and between Design-Builder and Owner, as required under this Agreement, with a specified warranty commencement date, as required by the Contract Documents. Copies of the complete set of warranties from subcontractors, manufacturers and/or suppliers, as appropriate, executed by Design-Builder as required by the Contract Documents, with and between Owner and Design-Builder. A specified warranty commencement date, as required by the Contract Documents, also shall be submitted to Owner in an electronic format (PDF) on a Compact Disc (CD).

3.5.9 When Design-Builder is constructing a building, the building shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building by external forces beyond Design-Builder's control. Design-Builder, immediately upon notification by the Owner of water penetration, shall determine the source of water penetration and perform any work necessary to make the building watertight. Design-Builder also shall repair or replace any damaged material, finishes and/or fixtures damaged as a result of any water penetration, returning the building to original condition. The costs of such determination and repair shall be borne by Design-Builder only to the extent that the leak(s) are attributable to faulty workmanship or unauthorized or defective materials.

3.6 **TAXES.** Contractor will not include in the Contract Sum or any modification thereto any amount for sales, use or similar taxes for which Owner is exempt and Owner has provided Design-Builder with a tax exemption certificate or other documentation necessary to establish Owner's exemption from such taxes.

3.7 **PERMITS, FEES AND NOTICES**

3.7.1 **PERMITS.** Unless otherwise provided in the Contract Documents or by Owner, as per **Section 2.2.2** herein, Design-Builder shall secure all permits, licenses and inspections. Owner may assist Design-Builder, when necessary, in obtaining such permits, licenses and inspections necessary for the proper execution and completion of the work. For federally funded construction projects, Owner will prepare and submit the necessary paperwork to satisfy Texas Pollutant Discharge Elimination System (hereafter referred to as "TPDES"), regulations of the Texas Commission on Environmental Quality.

- 3.7.2 Contractor shall comply with and give all notices required by law, ordinance, rule, regulations and lawful orders of public authorities applicable to performance of the Work.
- 3.7.3 It is Design-Builder's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes and rules and regulations. However, if Design-Builder observes that portions of the Contract Documents are at variance therewith, Design-Builder promptly shall notify Owner and Owner in writing and all necessary changes shall be accomplished by appropriate modification(s) before Design-Builder performs any Work affected by such modification(s).
- 3.7.4 If Design-Builder performs Work knowing Work is contrary to laws, statutes, ordinances, building codes and rules and regulations, without such notice to and approval from Owner, Design-Builder shall assume sole responsibility for performing such Work and shall bear all costs attributable to correct such Work.
- 3.7.5 Design-Builder also shall assist Owner in obtaining all permits and approvals and, at Owner's request, pay all fees and expenses, if any, associated with TPDES regulations of the Texas Commission on Environmental Quality, as well as local authorities, if applicable, which require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for a Project. Design-Builder's obligations under this **Section 3.7.5** require it to perform all necessary engineering services during the pre-construction phase to prepare proper drainage for the Project Site and any drainage alterations made by Design-Builder during the construction process, which require the issuance of a permit, shall be at Design-Builder's sole cost. It will be Design-Builder's responsibility to prepare and submit the permit approval documentation provided by the regulatory agencies prior to beginning any Work.

3.8 ALLOWANCES

- 3.8.1 Design-Builder 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 Owner may direct, but Design-Builder shall not be required to employ persons or entities to whom Design-Builder has reasonable objection.
- 3.8.2 Unless otherwise provided in the Contract Documents:
- 3.8.2.1 Allowances shall cover the cost to Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- 3.8.2.2 Design-Builder'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 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 both the difference between actual costs and the allowances under **Section 3.8.2.1** herein and all changes in Design-Builder's costs under **Section 3.8.2.2** herein.

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

3.9 SUPERINTENDENT/KEY PERSONNEL

3.9.1 At all times during the progress of the Work, Design-Builder shall assign a competent resident superintendent who is able to communicate fluently in English, along with any necessary assistant(s) who is/are satisfactory to Owner. Any superintendent designee shall be identified in writing to Owner promptly after Owner issues a written Notice to Proceed. The superintendent shall represent Design-Builder at all time and all directions given to the superintendent shall be binding on Design-Builder. The designated superintendent shall not be replaced without written notice to Owner and the approval of the Director or his/her designee, 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 Owner, which approval will not be unreasonably withheld.

3.9.2 Design-Builder shall furnish a list to Owner of all Architects, Engineers, consultants, Sub-Consultants, job-site superintendents, Subcontractors and suppliers involved in construction.

3.9.2.1 Owner, upon the showing of good and reasonable cause, may reject or require removal of any Architect, Engineer, consultant, Sub-consultant, job superintendent, employee of the Design-Builder, Subcontractor or sub-subcontractor and/or supplier involved in the Project.

3.9.2.2 Design-Builder shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Design-Builder to dismiss from the Project any employee(s) Owner, at its sole discretion, deems 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 Owner reserves the right to utilize one or more of its employees to function in the capacity of Owner's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines and verification of the storage of supplies and materials.

3.9.2.4 Design-Builder shall not change any key personnel, key Subcontractors or key Sub-consultants without the prior written consent of Owner, which consent shall not be unreasonably withheld. In the event key personnel leaves Design-Builder's employment, such key personnel's replacement shall be subject to Owner's reasonable approval.

3.10 CONTRACTOR'S PROJECT SCHEDULES

3.10.1 **PROJECT SCHEDULE METHOD.** Design-Builder shall create and maintain a Critical Path Method (hereafter referred to as "CPM") Project Schedule, showing the manner of execution of Work which Design-Builder intends to follow, in order to complete the Project within the allotted time. The Project Schedule shall employ computerized CPM for the planning, scheduling and reporting of Work, as described in this **Section 3.10**. Design-Builder shall create and maintain the Project Schedule using project management scheduling software compatible with Owner's project management scheduling software. The observance of the requirements herein is an essential part of the Work to be performed under the Contract.

3.10.2 **SCHEDULING PERSONNEL.** Unless otherwise indicated in writing by Owner, Design-Builder shall provide an individual, who shall be referred to hereafter as "Scheduler", to create and maintain the Project Schedule. Scheduler shall be proficient in CPM analysis, possess sufficient experience to be able to perform required tasks on the specified software and able to prepare and interpret reports from the software. Scheduler shall be made available for discussion or meetings when requested by Owner.

3.10.3 PROJECT SCHEDULE SUBMISSION

3.10.3.1 Unless indicated otherwise, Design-Builder shall submit Project Schedule(s) for the Work in relation to the entire Project to Owner at least fifteen (15) calendar days prior to the pre-construction conference.

3.10.3.2 All Project Schedule submittals shall be in the electronic form to include PDF plots of the schedule, a PDF plot defining the Critical Path and two week look-ahead, and include the native compatible scheduling file format. Design-Builder shall submit the schedule to Owner via electronic mail, CD-Rom or any other electronic format acceptable to Owner.

3.10.3.3 This initial schedule shall indicate the dates for starting and completing the various aspects/phases required to complete the Work, including mobilization, procurement, installation, testing, inspection and acceptance of all the Work of the Contract, including any contractually

mandated milestone dates. The Project Schedule shall not exceed the time limits set forth in the Contract Documents. Design-Builder shall organize the Project Schedule and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

3.10.3.4 The Project Schedule shall show the order in which Design-Builder proposes to carry out the Work in accordance with the final approved phasing plan, if any, and the anticipated start and completion dates of each phase of the Work. The Project Schedule shall be in the form of a time scaled work progress chart, to indicate the percentage of Work scheduled for completion at various critical milestones.

3.10.3.5 Design-Builder shall maintain a schedule of Shop Drawings and Sample Submittals and each submitted Shop Drawing and Sample Submittal shall list each required submittal and the expected time(s) for submitting, reviewing and processing such submittal.

3.10.3.6 Owner will review the Project Schedule within fifteen (15) calendar days for compliance with the specifications and notify Design-Builder of its acceptability.

3.10.4 **PROJECT SCHEDULE SEQUENCING.** The Project Schedule shall show the sequence and interdependence of activities required for complete performance of the Work. Design-Builder shall be responsible for assuring all Work sequences are logical and show a coordinated plan of Work in accordance with the sequence of work outlined in the plans. The purpose of Owner requiring the Project Schedule shall be to:

3.10.4.1 Ensure adequate planning during the execution and progress of the Work in accordance with the allowable number of calendar days and all milestones;

3.10.4.2 Assure coordination of the efforts of Design-Builder, Owner, utilities and others that may be involved in the Project and those activities are included in the Schedule highlighting coordination points with others;

3.10.4.3 Assist Design-Builder and Owner in monitoring the progress of the Work and evaluating proposed changes to the Contract; and

3.10.4.4 Assist Owner in administering the Contract time requirements.

3.10.5 **PROJECT SCHEDULE ACTIVITIES.** Design-Builder shall provide Owner a legend for all abbreviations. The activities shall be coded so that organized plots of the Project Schedule may be produced. Typical activity coding includes traffic control phase, location and work type. Design-Builder shall show an estimated production rate per working day for each Work activity. Activity durations shall

be based on production rates shown. Each activity on the Project Schedule shall include:

3.10.5.1 An activity number utilizing an alphanumeric designation system that is agreeable to Owner;

3.10.5.2 A concise description of the Work represented by the activity; and

3.10.5.3 Activity durations in whole work days, with a maximum of twenty (20) work days. Durations greater than twenty (20) work days may be used for non-construction activities (mobilization, submittal preparation, curing, etc.), and other activities mutually agreeable between Owner and Design-Builder.

3.10.6 **PROJECT SCHEDULE WORK DURATION AND RESOURCES**

3.10.6.1 The Project Schedule layout shall be grouped by Project and then by Work Breakdown Structure (hereafter referred to as “WBS”) for organizational purposes.

3.10.6.2 The original and remaining Work duration shall be displayed. The grouping band will, by default, report Work days planned. One additional level of effort activity shall be added to the schedule as a “time calculator” with a seven (7) day calendar without holidays. The calculation of days should be reflected in the appropriate duration columns.

3.10.6.3 Work shall be scheduled based upon Design-Builder’s standard five (5) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software.

3.10.6.4 Assign working calendars for the days you plan to work. Designate all twelve (12) Owner holidays as non-working days (holidays). For dates beyond the current calendar year, assume Owner holidays are the same as the current calendar year.

3.10.6.5 Seasonal weather conditions shall be considered and included in the Project Schedule for all work influenced by temperature and/or precipitation. Seasonal weather conditions shall be determined by an assessment of average historical climatic conditions. Average historical weather data is available through the National Oceanic and Atmospheric Administration (hereafter referred to as “NOAA”). These effects will be simulated through the use of work calendars for each major work type (i.e., earthwork, concrete paving, structures, asphalt, drainage, etc.). Project and work calendars should be updated each month to show days actually able to work on the various work activities.

- 3.10.6.6 Only Owner-responsible delays in activities that affect milestone dates or the contract completion date, as determined by CPM analysis, will be considered for a time extension.

3.10.7 **PROJECT SCHEDULE OTHER REQUIREMENTS**

The Project Schedule shall:

- 3.10.7.1 have all Work coded and organized by WBS. An example of an acceptable WBS will be provided, upon written request, by Owner to Design-Builder;
- 3.10.7.2 reflect Duration Percent complete as the percent complete type;
- 3.10.7.3 reflect Fixed Units as the duration type;
- 3.10.7.4 include submittals with a logical tie to what each drives;
- 3.10.7.5 add proposed Change Order(s) and those Change Order(s) shall be reflected on the Schedule as proposed Change Order(s). This task will be linked to the schedule with logical ties and approved by Owner. Upon approval of a Change Order, a task will be renamed and shall identify Work performed and Change Order number and resources will be added to the task;
- 3.10.7.6 only have constraints in accordance with the plans;
- 3.10.7.7 include activity milestones for material delivery;
- 3.10.7.8 disallow default progress; and
- 3.10.7.9 include a detailed explanation in the Project narrative, if Work is performed out of sequence.

3.10.8 **PROJECT SCHEDULE JOINT REVIEW AND ACCEPTANCE**

- 3.10.8.1 The Project Schedule and successive updates or revisions thereof are for Design-Builder's use in managing the Work. The Project Schedule is for the information of Owner and to demonstrate that Design-Builder has complied with requirements for planning the Work. Owner's acceptance of a Schedule and Schedule updates or revisions constitutes Owner's agreement to coordinate its own activities with Design-Builder's activities, as shown on the schedule.
- 3.10.8.2 Within fifteen (15) calendar days of receipt of Design-Builder's proposed Project Schedule, Owner shall evaluate the Schedule for compliance with this specification and notify Design-Builder of its findings. If Owner requests a revision or justification, Design-Builder

shall provide satisfaction to Owner within seven (7) calendar days. If Design-Builder submits a Project Schedule for acceptance, based on a sequence of work not shown in the plans, then Design-Builder shall notify Owner in writing of said sequence of work, separate from the Schedule submittal.

- 3.10.8.3 Owner's review and acceptance of Design-Builder's Project Schedule only is for conformance to the requirements of the Contract Documents. Review and acceptance by Owner of Design-Builder's Project Schedule does not relieve Design-Builder of any of its responsibility for the Project Schedule, Design-Builder's ability to meet interim milestone dates (if so specified) or meeting the Contract completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of Design-Builder's Project Schedule. In the event Design-Builder fails to define any element of Work, activity or logic and Owner's review does not detect this omission or error, such omission or error, when discovered by Design-Builder or Owner, shall be corrected by Design-Builder at the next monthly schedule update and shall not affect the Project or Contract completion date.
- 3.10.8.4 Acceptance of the Project Schedule, or update and/or revision thereto, does not indicate any approval of Design-Builder's proposed sequences and duration.
- 3.10.8.5 Acceptance by Owner of the Project Schedule or updated Project Schedule which exceeds contractual time does not alleviate Design-Builder from meeting the contractual completion date.
- 3.10.8.6 Acceptance of a Project Schedule update or revision indicating early or late completion does not constitute Owner's consent to any changes, alter the terms of the Contract, waive either Design-Builder's responsibility for timely completion, or waive Owner's right to damages for Design-Builder's failure to do so.
- 3.10.8.7 Design-Builder'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.
- 3.10.8.8 Submittal of a schedule, schedule revision or schedule update constitutes Design-Builder's representation to Owner, as of the date of the submittal, if the accurate depiction of all progress to date and that Design-Builder will follow the schedule as submitted in performing the Work.

3.10.9 PROJECT SCHEDULE UPDATES AND REVISIONS

3.10.9.1 The Project Schedule shall be updated monthly, at 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 Owner as directed. The Project Schedule update shall be submitted no later than the date the pay application is submitted. Owner shall have no duty to make progress payments to Design-Builder unless Design-Builder's payment application is accompanied by the updated Project 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.

3.10.9.1 The Project Schedule update shall be submitted no later than the date the pay application is submitted.

3.10.9.2 Design-Builder shall meet with Owner each month, at a scheduled Project Schedule update meeting, to review actual progress made through the data date of the schedule update, as determined by Owner. The review of progress will include dates of activities actually started and/or completed, the percentage of Work completed, the remaining duration of each activity started and/or completed and the amount of Work to complete, with an analysis of the relationship between the remaining duration of the activity and the quantity of material to install over that given period of time with a citation of past productivity.

3.10.9.3 The monthly Schedule Update shall include a progress narrative explaining the Project's progress, identifying progress made out of sequence, defining the Critical Path, identification of any potential delays and other relevant data. A Project Schedule Narrative template will be required for the narrative. Upon request, Owner shall supply said template to Design-Builder.

3.10.9.4 Each Schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by Design-Builder and Owner. The Project Schedule layout shall be grouped first by Project then by WBS. The layout shall include the following columns:

- (1) Activity ID
- (2) Activity Description
- (3) Original Durations
- (4) Remaining Durations
- (5) Early Start and Early Finish Dates

- (6) Late Start and Late Finish Dates
- (7) Total Float
- (8) Performance Percent Complete
- (9) Display logic and target bars in the Gantt bar chart view

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

3.10.9.6 Each schedule, other than the initial schedule, shall:

- (1) indicate the activities, or portions thereof, which have been completed;
- (2) reflect the actual time for completion of such activities; and
- (3) reflect any changes to the sequence or planned duration of all activities.

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

3.10.9.8 Neither Owner nor Design-Builder shall have exclusive ownership of float time in the schedule and all float time shall inure to the benefit of the Project.

3.10.9.9 Submission of any schedule under this Contract constitutes a representation by Design-Builder that, as of the date of the submittal:

- (1) the schedule represents the sequence in which Design-Builder intends to prosecute the remaining Work;
- (2) the schedule represents the actual sequence and duration

used to prosecute the completed Work;

(3) to the best of its knowledge and belief, Design-Builder is able to complete the remaining Work in the sequence and time indicated; and

(4) that Design-Builder intends to complete the remaining work in the sequence and time indicated.

3.10.9.10 If Design-Builder desires to make major changes in the Project Schedule, Design-Builder shall notify Owner in writing and submit the proposed schedule revision. The written notification shall include the reason for the proposed revision, what the revision is composed of and how the revision was incorporated into the schedule. Major changes are hereby defined as those that may affect compliance with the contract requirements or those that change the critical path. All other changes may be accomplished through the monthly updating process without written notification.

3.10.10 COMPLETION OF WORK

3.10.10.1 Design-Builder is accountable for substantially completing the Work in the Contract Time or as otherwise amended by Change Order.

3.10.10.2 If, in the sole judgment of Owner, the Schedule update reflects Work is behind schedule and the rate of performance of Work is inadequate to regain scheduled progress to insure Design-Builder achieving any Project Milestones (including, but not limited to, Substantial Completion) in accordance with the Project Schedule, Owner may, at its sole option, give written notice to Design-Builder and direct Design-Builder, at Design-Builder's sole expense, to propose a plan to accelerate the Work so that the Work conforms to the Project Schedule and Project Milestones previously agreed upon. Design-Builder may, but is not limited to, propose:

(1) increasing Project work forces;

(2) increasing Project equipment or tools;

(3) increasing the hours of work or number of shifts per day;

- (4) expediting the delivery of Project materials;
- (5) changing, with the approval of Owner, the schedule logic and
Work sequences; or
- (6) taking some other action as Design-Builder may propose, if acceptable to Owner.

3.10.10.3 Within ten (10) calendar days after such notice from Owner, Design-Builder shall notify Owner in writing of the specific measures taken and plan to be undertaken to increase the rate of progress of Work on the Project. Design-Builder shall include an estimate as to the date of scheduled full progress recovery and an updated Project Schedule, illustrating Design-Builder's plan for achieving timely completion of the Project Milestone's and the Project's Substantial Completion.

3.10.10.4 Should Owner deem Design-Builder's plan of action inadequate to achieve the desired acceleration to bring the Work back on the Project Schedule, Owner shall have the right to order Design-Builder to take any corrective measures Owner deems necessary to expedite the progress of Work including, without limitations:

- (1) increasing work forces and hours, to include Design-Builder working additional shifts of overtime;
- (2) supplying additional manpower, equipment and facilities;
- (3) re-sequencing the Work;
- (4) expediting the fabrication and supply of materials; and/or
- (5) other similar measures Owner may direct.

Hereafter **Section 3.10.10.4 (1) – (5)** collectively are referred to as "Extraordinary Measures". Such Extraordinary Measures Owner orders shall continue until the progress of the Work complies with the Milestone required by the Contract Documents.

3.10.10.5 Owner's right to require Extraordinary Measures solely is for the purpose of ensuring Project Milestones and Substantial Completion of the Work is achieved within the Contract Time. Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by Owner under or pursuant to this **Section 3.10**, except as may be provided under the provisions of **Section 4.3.11** herein.

3.10.10.6 Owner may exercise the rights furnished under or pursuant to this **Section 3.10.5** as frequently as Owner deems necessary to ensure

Design-Builder's performance of the Work is in compliance with any milestone date or completion date set forth in the Contract Documents.

3.10.10.7 If reasonably required by Owner, Design-Builder also shall 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.

3.10.10.8 Design-Builder shall recommend to Owner a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the Project Schedule.

3.10.11 PROJECT SCHEDULE TIME IMPACT ANALYSIS

3.10.10.1 Design-Builder shall notify Owner when an impact may justify an extension of contract time or adjustment of milestone dates. Said notice shall be made in writing as soon as possible, but no later than the end of the next estimate period after the commencement of an impact or the notice for a change is given to Design-Builder. Not providing notice to Owner within twenty (20) calendar days after receipt will indicate Design-Builder's approval of the time charges as shown on that time statement. Future consideration of that statement will not be permitted and Design-Builder forfeits its right to subsequently request a time extension or time suspension unless the circumstances are such that Design-Builder could not reasonably have knowledge of the impact by the end of the next estimate period.

3.10.11.1 When changes are initiated or impacts are experienced, Design-Builder shall submit to Owner a written Time Impact Analysis describing the influence of each change or impact. A "Time Impact Analysis" is an evaluation of the effects of changes in the construction sequence, contract, plans or site conditions on Design-Builder's plan for constructing the Project, as represented by the schedule. The purpose of the Time Impact Analysis is to determine if the overall Project has been delayed and, if necessary, to provide Design-Builder and Owner a basis for making adjustments to the Contract.

3.10.11.2 A Time Impact Analysis shall consist of one or all of the steps listed below:

- (1) Establish the status of the Project before the impact using the most recent Project Schedule Update prior to the impact occurrence.
- (2) Predict the effect of the impact on the most recent Project Schedule Update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.

- (3) Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing and mitigation efforts.
- (4) Compare the status of the work prior to the impact (**#1 above**) to the prediction of the effect of the impact (**#2 above**), and to the status of the work during and after the effects of the impact are over (**#3 above**). Note that if an impact causes a lack of access to a portion of the Project, the effects of the impact may extend to include a reasonable period for remobilization.

3.10.11.3 The Time Impact Analysis shall be electronically submitted to Owner. If the Project Schedule is revised after the submittal of a Time Impact Analysis but prior to its approval, Design-Builder promptly shall indicate in writing to Owner the need for any modification to its Time Impact Analysis. One (1) copy of each Time Impact Analysis shall be submitted within fourteen (14) calendar days after the completion of an impact. Owner may require **Step #1** and **Step #2** in **Section 3.10.11.2** herein of the Time Impact Analysis be submitted at the commencement of the impact, if needed to make a decision regarding the suspension of Contract time. Approval or rejection of each Time Impact Analysis by Owner shall be made within fourteen (14) calendar days after receipt, unless subsequent meetings and negotiations are necessary.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

- 3.11.1 Design-Builder shall maintain, on the Site and for Owner, one (1) 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, along with one (1) record copy of approved Shop Drawings, Product Data, samples and similar required submittals. These record copies shall be available to Owner and shall be delivered to Owner upon completion of the Work.
- 3.11.2 Design-Builder shall maintain, at all times, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries and job meeting minutes applicable to the Project. Design-Builder shall make such reports and records available for inspection by Owner and/or its respective agents during normal business hours upon request by Owner.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 3.12.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared and furnished by Design-Builder 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 Design-Builder 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 Design-Builder to Owner to assist Owner and Owner 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 submittals is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Owner is subject to the limitations of **Section 4.2.8** herein. Informational submittals, upon which Owner 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 Owner without action.
- 3.12.5 Design-Builder shall review for compliance with the Contract Documents, approve and submit to Owner 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 Owner or of separate Design-Builders. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Design-Builder may be returned by Owner without action.
- 3.12.6 By approving and submitting Shop Drawings, product data, samples and similar submittals, Design-Builder represents that it 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 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 reviewed and approved by Owner. Owner shall review and return such submittals within ten (10) calendar 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 Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Owner's approval of Shop Drawings, product data,

samples or similar submittals unless Design-Builder specifically has informed Owner in writing of such deviation at the time of submittal and:

- (1) Owner has given written approval of 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. Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, samples or similar submittals by Design-Builder for Owner's approval.

relieved

- 3.12.9 Design-Builder shall direct specific attention, in writing or on resubmitted Shop Drawings, product Data, samples or similar submittals, to revisions other than those requested by Owner on previous submittals. In the absence of such written notice, Owner's approval of a resubmission shall not apply to such revisions.
- 3.12.10 Design-Builder shall be required to provide professional services which constitute the practice of Architecture or Engineering as required by the Contract Documents for the Work and shall provide such services in order to carry out Design-Builder's responsibilities for design and construction means, methods, techniques, sequences and procedures. Design-Builder shall not be required to provide professional services in violation of applicable law. If/When professional design services or certifications by a design professional related to systems, materials or equipment specifically are required of Design-Builder by the Contract Documents, Design-Builder shall cause such services or certifications to be provided by a properly Texas-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 Owner. Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. Pursuant to this **Section 3.12.10**, Owner 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. Design-Builder shall be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

- 3.13.1 Design-Builder 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 Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- 3.13.3 Design-Builder will abide by all applicable rules and regulations of Owner with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by Owner.
- 3.13.4 Design-Builder shall provide access to residents and businesses affected by the construction of this Project to the greatest extent possible, including providing temporary base and asphalt as needed.
- 3.13.5 Design-Builder shall erect and maintain on Site a Project Bulletin Board, accessible to all Design-Builder's Sub-Consultant and Subcontractor employees, upon which Design-Builder shall post and maintain, throughout the Project's duration, all employment and safety information required by law and shall include information listing Design-Builder's bonding and insurance agencies/providers, to include agency contact names, address and telephone numbers.
- 3.13.6 As applicable, Owner will have appropriate Temporary Bench Marks (hereafter referred to as "TBM") and baselines (for both horizontal and vertical projects, as applicable) established. As of the date of the written Notice to Proceed, it will be Design-Builder's responsibility to protect, preserve and reestablish (if required) the TBM and/or baselines. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5".
- 3.13.7 As applicable, Design-Builder shall layout its work from established baselines and TBM indicated on the drawings and shall be responsible for all measurements in connection with the layout. Design-Builder shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout any part of the work. Design-Builder shall provide cut sheets to Owner's inspector seven (7) calendar days prior to construction of street and drainage work. Design-Builder shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for SAWS Work, if present. Design-Builder 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. Design-Builder shall provide staking and preparation of cut sheets after receiving notice to proceed from Owner. If present, Design-Builder shall provide SAWS with cut sheets (7) calendar days prior to commence of SAWS work. Design-Builder shall be responsible for maintaining and preserving baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, Design-Builder shall replace them at its own expense. At

the end of construction of the Project, Design-Builder shall provide Owner a grade certificate prepared by a Registered Professional Land Surveyor. This certificate shall state that the infrastructure is constructed in accordance to the construction documents or as approved by Owner and the Engineer of Record, which is noted on the record plan set.

3.14 CUTTING AND PATCHING

- 3.14.1 Design-Builder shall be responsible for all cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 3.14.2 Design-Builder shall not damage or endanger a portion of the Work or a fully or partially completed construction by either Owner or separate contractor by cutting, patching or otherwise altering such construction, or by excavation. Design-Builder shall not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and, if Owner so designates, of such separate contractor and said consent shall not be unreasonably withheld. Design-Builder unreasonably shall not withhold from Owner or Owner's separate contractor Design-Builder's consent to cutting or otherwise altering the Work.
- 3.14.3 Any part of the finished Work damaged by Design-Builder, either during installation or prior to Substantial Completion of the Work (or such earlier date established in **Section 9.9** herein), shall be repaired by Design-Builder so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this repair cannot be fully accomplished, the damaged item or part shall be replaced by Design-Builder.

3.15 CLEANING UP

- 3.15.1 During the progress of the Work, Design-Builder shall keep the Project Site and surrounding area including, but not limited to, creeks, drainage channels, easements, private property, free from accumulations of waste materials, rubbish and other debris resulting from the Work. As applicable, Design-Builder shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements and/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 Design-Builder fails to clean up as provided in the Contract Documents, Owner may do so and all costs incurred by Owner shall be paid by Design-Builder.
- 3.15.2 Prior to Substantial Completion of the Work, Design-Builder 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. As applicable,

Design-Builder shall clean, sweep, mop, brush and polish, to Owner's satisfaction, the interior of the improvements and/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. Design-Builder shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If Design-Builder fails to clean up the premises as provided in the Contract Documents, Owner may do so and all costs incurred by Owner shall be paid by Design-Builder.

3.16 **ACCESS TO WORK.** Contractor shall provide Owner and Owner's representatives access to the Work in preparation and in progress, wherever located.

3.17 **PATENT FEES AND ROYALTIES.** Design-Builder 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**

3.18.1 Design-Builder covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** Owner, its elected officials, employees, officers, directors, volunteers and representatives of Owner, 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 Design-Builder and of Owner) damage to property (other than the Work itself and including property of Design-Builder 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, Design-Builder, its agents, servants, employees, Sub-consultants 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 Design-Builder be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without, however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law.

- 3.18.2 In addition to the above, Design-Builder also covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** Owner, its elected officials, employees, officers, directors, volunteers and representatives of Owner, 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 Design-Builder and of Owner) damage to property (other than the Work itself and including property of Design-Builder and of Owner), but only to the extent caused by the intentional or deliberate misconduct, grossly negligent, willful acts or omissions of Design-Builder, its agents, servants, employees, Sub-consultants 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 Design-Builder be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law.
- 3.18.3 **INTELLECTUAL PROPERTY INDEMNIFICATION.** Design-Builder shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against Owner, its elected officials, employees, officers, directors, volunteers and representatives of Owner, 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 Design-Builder and its employee or its subcontractors and their agents, servants and employees, based on any deliverable or any other materials furnished hereunder by Design-Builder and used by either Owner or Design-Builder within the scope of this Agreement (unless said infringement results directly from Design-Builder's compliance with Owner's written standards or specifications). Design-Builder does not warrant against infringement by reason of Owner's or Owner's design of articles or their use in combination with other materials or in the operation of any process. Design-Builder 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, expressed in writing and signed by the parties hereto. Design-Builder agrees to consult with Owner's City Attorney during such defense or negotiations and make good faith efforts to avoid any position adverse to the interest of Owner. Owner will make available to Design-Builder any deliverables and/or works made for hire by Design-Builder necessary to the defense of Design-Builder against any claim of infringement for the duration of Design-Builder's legal defense.
- 3.18.4 If such infringement claim or action has occurred or, in Design-Builder's judgment, is likely to occur, Owner shall allow Design-Builder, at Design-

Builder's option and expense, (unless such infringement results directly from Design-Builder's compliance with Owners written standards or specifications or by reason of Owner's design of articles or their use in combination with other materials or in the operation of any process for which the Owner shall be liable) to either:

- (1) procure for Owner the right to continue using said deliverable and/or materials;
- (2) modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect Owner's intended use of the deliverable and/or materials as contemplated hereunder);
- (3) 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 Owner; or
- (4) if none of the foregoing alternatives is reasonably available to Design-Builder, upon written request, Owner shall return the deliverable and/or materials in question to Design-Builder and Design-Builder shall refund all monies paid by Owner, with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this **Section 3.18** shall fail to satisfy the third-party claimant, these actions shall not relieve Design-Builder from its defense and indemnity obligations set forth in this **Section 3.18**.

3.18.5 The indemnification obligations under this **Section 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 Design-Builder 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 Owner, its agents, consultants and/or representatives 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 Design-Builder is to comply with these statutes in the performance by Design-Builder of the Work and that the obligations of Owner, its agents, consultants and representatives under said statutes are secondary to that of Design-Builder.

3.18.7 OTHER PROVISIONS REGARDING INDEMNITY

3.18.7.1 The provisions of this Indemnification solely are 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 Design-Builder shall, within twenty-one (21) calendar days, advise Owner in writing of any potential or actual claim or demand against Owner or Design-Builder, as the case may be, known to Design-Builder and related to or arising out of Design-Builder's activities under this Contract and Design-Builder shall see to the investigation and defense of such claim or demand at Design-Builder's cost. Owner shall have the right, at its option and at its own expense, to participate in such defense without relieving Design-Builder of any of its obligations under this **Section 3.18.**

3.18.8 DEFENSE COUNSEL. Owner shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by Design-Builder in fulfilling its obligation hereunder to defend and indemnify Owner, unless such right is expressly waived by Owner in writing. Design-Builder shall retain Owner-approved defense counsel within ten (10) calendar days of Owner's written notice that Owner is invoking its right to Indemnification under this Contract. If Design-Builder fails to retain counsel within such time period, Owner shall have the right to retain defense counsel on its own behalf and Design-Builder shall be liable for all costs incurred by Owner. Owner also shall 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. Design-Builder represents and warrants to Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to 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, that Design-Builder:

3.19.1 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 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 is authorized to do business in the State of Texas and is properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, over the Work and over the site of the Project;
- 3.19.4 is acting within its duly authorized powers to execute this Contract and execute the performance and obligations thereof; and
- 3.19.5 its duly authorized representative(s) 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.** Design-Builder, in performing its obligations under this 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. Design-Builder 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 Design-Builder's employees and agents, Sub-Consultants, Sub-Contractors and their respective employees and agents in their relations with Owner's employees, agents, representatives, vendors, subcontractors, other third parties and those relating to the placement and administration of purchase orders and subcontracts.

ARTICLE IV. ADMINISTRATION OF THE CONTRACT

4.1 **DESIGN-BUILDER.** Design-Builder is a person registered and licensed as an Architect as defined pursuant to Texas Occupations Code Ann., Chapter 1051, a person registered and licensed as a Landscape Architect as defined pursuant to Texas Occupations Code, Chapter 1052, a person registered and licensed as a professional Engineer pursuant to Texas Occupations Code, Chapter 1001, and/or a firm employed by Owner to provide professional Architectural or Engineering services, exercising overall responsibility for the design of a Project or a significant portion thereof, performing certain contract administration responsibilities as set forth in the Contract and responsible for the construction of the Project pursuant to Owner's acceptance of the design. If the employment of Design-Builder is terminated, Owner may employ a new Design-Builder whose status under the Contract Documents shall be that of the former Design-Builder.

4.2 ROLES ADMINISTRATION OF THE CONTRACT

4.2.1 Owner will provide administration of the Contract as described in the Contract Documents, and Owner, Owner's ODR or consultant will represent Owner:

- (1) during construction;
- (2) until final payment is due; and
- (3) from time to time during the one-year period for correction of Work described in **Article XII** herein.

ODR and/or consultant(s) only will have authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified in writing by Owner in accordance with other provisions of the Contract.

- 4.2.2 Owner's instruction to Design-Builder may be issued through the ODR, Owner's consultant(s) or Owner's representatives and Owner reserves the right to issue instructions directly to Design-Builder. Design-Builder understands that Owner may modify the authority of Owner's representatives as provided in the terms of its contractual relationship with Owner's representatives and Owner shall, in such event, be vested with powers formerly exercised by such Owner's representatives. Nothing herein shall authorize independent agreements between Design-Builder and such Owner's representatives, nor shall Owner's representatives be deemed to have a legal relationship with Design-Builder.
- 4.2.3 Neither Owner nor Owner's representatives shall have control over, charge of nor be responsible for the construction means, methods or techniques, or for the safety precautions and programs in connection with the Work, since these are solely Design-Builder's rights and responsibilities under the Contract Documents. Sequencing and procedures will be coordinated and agreed upon by Owner and Design-Builder.
- 4.2.4 Owner will not be responsible for Design-Builder's failure to perform the Work in accordance with the requirements of the Contract Documents. Owner will not have control over, charge of and will not be responsible for acts or omissions of Design-Builder, Sub-consultants, Subcontractors, their respective agents, employees or any other persons or entities performing portions of the Work.
- 4.2.5 Communications by Design-Builder with Owner's consultants shall be through Owner. Communications by and with Design-Builder's Subcontractors, Sub-consultants and material suppliers shall be through Design-Builder. All communications by and with Owner's separate contractors, if any, shall be through Owner.
- 4.2.6 Owner shall review, approve or take other appropriate action upon Design-Builder'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. Owner will perform these reviews in a timely fashion so as to not delay the Work. Owner will respond to submittals, such as Shop Drawings, product data and samples, pursuant to the procedures set forth in 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 Design-Builder as required by the Contract Documents. Owner's review of Design-Builder's submittals shall not relieve the Design-Builder of the obligations under **Section 3.12**, **Section 3.3** and **Section 3.5** herein. Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Owner, any construction means, methods, techniques,

sequences or procedures. Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 4.2.7 Upon written request of Design-Builder, Owner will issue its interpretation of the requirements of the plans and specifications. Owner's response to such requests shall be made in writing within a time limit agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of Owner shall be furnished in compliance with this **Section 4.2**, then no delay will be recognized on account of any failure by Owner to furnish such interpretations except for actual substantiated delays, for which Design-Builder is not responsible, occurring more than fifteen (15) calendar days after written request is made for the interpretations.
- 4.2.8 Interpretations and decisions of Owner 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.
- 4.2.9 Design-Builder'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 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, an 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 Owner and Design-Builder arising out of or relating to the Contract. Claims must be initiated by written notice. Except as contemplated by **Section 8.2** herein, every Claim of Design-Builder, 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 Design-Builder by his/her signature) of Design-Builder, verifying the truth and accuracy of the Claim. The responsibility to substantiate a Claim shall rest with the party making the Claim.
- 4.3.2 **TIME LIMIT ON CLAIMS.** Except for those claims resulting from unusually severe weather, addressed in **Section 4.3.6** herein, Design-Builder claims shall be initiated within fifteen (15) calendar days after occurrence of the event giving rise to such Claim. Claims by Design-Builder must be submitted by written notice to Owner. Claims by Owner must be submitted by written notice to Design-Builder. Failure by Design-Builder to submit written notice of the claim within fifteen (15) calendar days shall constitute a waiver of such claim.
- 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**, **Section 9.7.1** and **Article 14** herein, Design-Builder shall proceed diligently with

performance of the Contract and 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 either are subsurface or otherwise concealed physical conditions which were not known to Design-Builder 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 Design-Builder, prior to the preparation by Design-Builder of its Bid and referred to above, or are 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 Design-Builder promptly shall notify Owner of such conditions before conditions are disturbed no more than three (3) calendar days after first observation of the conditions. Upon notification by Design-Builder, Owner promptly shall investigate such conditions. If Owner and Design-Builder 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** herein.

4.3.5 **CLAIMS FOR ADDITIONAL COST.** If Design-Builder wishes to make a Claim for an increase in the Contract Sum, written notice as provided in this **Section 4.3** shall be given and accepted by Owner before proceeding to execute the Work, provided that prior notice is not required for Claims relating to an emergency endangering life or property. Design-Builder shall file a Claim in accordance with this **Section 4.3** if it believes additional cost is involved for reasons including, but not limited to:

- (1) a written interpretation from Owner;
- (2) an order by Owner to stop the Work where Design-Builder was not at fault;
- (3) a written order for a minor change in the Work issued by Owner;
- (4) failure of payment by Owner;
- (5) termination of the Contract by Owner for convenience;
- (6) Owner's suspension; or
- (7) other reasonable grounds.

4.3.6 **CLAIMS FOR ADDITIONAL TIME**

4.3.6.1 If Design-Builder wishes to make Claim for an increase in the Contract Time, written notice, as required in this **Section 4.3**, shall be given to

Owner. Design-Builder's Claim shall include an estimate of probable impact of delay on progress of the Work in accordance with **Section 3.10.11** herein. In the case of a continuing delay, only one Claim is necessary.

4.3.6.2 Design-Builder shall be entitled only 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 by National Weather Service and which affects the Project's critical path. Design-Builder shall bear the entire economic risk of all weather delays and disruptions. Design-Builder shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. With regard to Vertical projects with Owner, requests for an extension of time, pursuant to this **Section 4.3.6**, shall be submitted to Owner no later than the fifteenth (15th) calendar 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. With regard to Horizontal projects with Owner, upon Design-Builder reaching Substantial Completion, Owner and Design-Builder shall look back at the entire duration of the calendar day Project and review the totality of what Design-Builder claims were unusually severe weather disruptions. If the Project was delayed or disrupted due to unusually severe weather in excess of that normally experienced over the entire duration of the Project, Design-Builder may make a Claim for 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 by National Weather Service and which affects the Project's critical path. Any time extension granted to Design-Builder for either Vertical or Horizontal projects under **Section 4.3.6** shall be non-compensatory.

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 an act or omission of others for whose acts such party legally is responsible (including, with respect to Owner, the acts or omissions of Owner's separate consultants and contractors), written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) calendar days after the discovery of the injury or damage. The written notice shall provide sufficient detail to enable the other party to investigate the injury or damage.

4.3.8 **CHANGE IN UNIT PRICES.** As applicable, if unit prices are stated in the Contract Documents or subsequently agreed upon by Owner and Design-Builder 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 Owner or Design-Builder, 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 Design-Builder and to claims by 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, on estimated losses of labor efficiency, on a comparison of planned manloading to actual manloading or on 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 directly to have been 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 Documents, shall be as is provided in **Article VIII** herein.

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

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

4.3.10 **SUBCONTRACTOR PASS-THROUGH CLAIMS.** In the event that any Sub-consultant or Subcontractor of Design-Builder asserts a claim to Design-Builder that Design-Builder seeks to pass through to Owner under the Contract Documents, any entitlement to submit and assert the claim as to Owner shall be subject to:

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

4.3.10.2 the following additional three (3) requirements listed below, all three of said additional requirements shall be conditions precedent to the entitlement of Design-Builder to seek and assert such claim against Owner:

(1) Design-Builder shall:

(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) have entered into a written liquidating agreement with the Sub-Consultant or Subcontractor, prior to the claim's occurrence, under which Design-Builder has agreed to be legally responsible to the Sub-Consultant or Subcontractor for pursuing the assertion of such claim against Owner under said Contract and for paying to the Sub-Consultant or Subcontractor any amount that may be recovered, less Design-Builder's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by Design-Builder to Owner at the time such claim is submitted to Owner and a copy of any liquidating agreement shall be included by Design-Builder in the claim submittal materials.
- (2) Design-Builder shall have reviewed the claim of the Sub-Consultant or Subcontractor prior to its submittal to Owner and shall independently have evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. Design-Builder shall inform Owner that Design-Builder has made a review, evaluation and determination that the Claim is made in good faith and is believed to be valid.
- (3) Sub-Consultant or Subcontractor making the Claim to Design-Builder shall certify to both Design-Builder and 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 Design-Builder in the claim submittal materials.

4.3.10.3 Any failure of Design-Builder 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 Owner under this **Section 4.3** shall not be construed as a waiver of any defenses to the claim available to Owner under the Contract Documents or at law.

4.3.11 **OWNER'S RIGHT TO ORDER ACCELERATION AND TO DENY CLAIMED AND APPROPRIATE TIME EXTENSIONS, IN WHOLE OR IN PART.** Design-Builder 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:

- 4.3.11.1 If Design-Builder falls behind the approved construction schedule for whatever reason, Owner shall have the right, in Owner's sole discretion, to order Design-Builder 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 reasonably may direct. Upon receipt, Design-Builder shall take any and all action necessary to comply with Owner's order. In such event, any possible right, if any, of Design-Builder to additional compensation for any acceleration shall be subject to the terms of this **Section 4.3.11**.
- 4.3.11.2 In the event Owner agrees that Design-Builder is entitled to an extension if Contract Time and Design-Builder properly has initiated a Claim for a time extension, in accordance with **Section 4.3(a)** herein, Owner shall have the right, in Owner's sole discretion, to deny any portion of Design-Builder's Claim for an extension of Contract Time and order Design-Builder 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 Design-Builder provided within fourteen (14) calendar days after receipt of Design-Builder's Claim. If Owner denies Design-Builder's claim for an extension of Contract Time under this **Section 4.3.11**, either in whole or in part, Design-Builder 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 Design-Builder, Design-Builder still is unable to achieve Substantial Completion within the originally scheduled Contract Time, Owner will not be entitled to liquidated damages. Nothing in **Section 4.3.11** shall prohibit Design-Builder from filing a Claim for an extension of time Design-Builder feels it may be owed.
- 4.3.11.3 If Owner orders Design-Builder to accelerate the Work under **Section 4.3.11.2** herein, and Design-Builder 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 Owner if not for the need and right to complete the Project within the stipulated period, Design-Builder may initiate a Claim for schedule recovery or acceleration costs pursuant to **Section 4.3.1** herein. Any resulting Claim for these costs properly initiated by Design-Builder under **Section 4.3.1** herein 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 for additional crew, shift, or equipment costs, if requested in advance by Design-Builder and approved in writing by 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.** Owner shall not be liable for any costs related to an acceleration claim other than those described in this **Section 4.3.11.**

- 4.3.12 **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this contract shall be construed to waive Owner's Governmental Immunity from a 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 Claims by Design-Builder against Owner, not including Claims by Owner against Design-Builder alleging an error or omission by Design-Builder and Claims arising under **Section 10.3** and **Section 10.5** herein, initially shall be referred to Owner in writing for review and recommendation.
- 4.4.2 An initial recommendation by Owner 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 thirty (30) calendar days have passed after the Claim has been referred to Owner with no recommendation having been rendered by Owner.
- 4.4.3 Owner shall review Claims by Design-Builder and, within ten (10) work days of receipt of the Claim, take one or more of the following actions:
- (1) request additional supporting data from Design-Builder;
 - (2) issue an initial recommendation;
 - (3) suggest a compromise; or
 - (4) advise Design-Builder that Owner is unable to issue an initial Recommendation, due to a lack of sufficient information.
- 4.4.4 Following receipt of Owner's initial recommendation regarding a Claim, Owner and Design-Builder shall attempt to reach an agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement is reached, either party may request mediation of the dispute pursuant to **Section 4.5** herein.

4.4.5 If Owner requests Design-Builder to provide additional supporting data, Design-Builder either shall provide a response to the request for supporting data and advise Owner when the response or supporting data will be furnished or advise Owner that no response of supporting data will be furnished. Upon receipt of all information requested by Owner, Owner shall review the Claim and all received information within ten (10) calendar days of receipt of the information and shall take one of the following actions:

(1) issue a recommendation;

(2) suggest a compromise; or

(3) advise the parties Owner is unable to issue a recommendation due to lack information or conflict of interest.

4.4.6 Upon Owner's action (or inaction), the two parties may agree to accept recommendations made by either party or may request mediation of the dispute pursuant to **Section 4.5** herein.

4.4.7 **WAIVER OF LIEN.** It is understood that, by virtue of this Contract, no mechanic, contractor, Consultant, Sub-Consultant, material man, artisan or laborer, whether skilled or unskilled, ever shall, in any manner, have a 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 then present.

4.5.2 **REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.** Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Contract agree that they first shall 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 (30) calendar 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 **Section 4.5** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

- 4.5.3 **MEDIATION.** In the event that Owner or Design-Builder shall contend that the other has committed a material breach of this Contract, or the two parties can not reach a resolution of a claim or dispute pursuant to **Section 4.4** herein, as a condition preceding to filing a lawsuit either party shall request mediation of the dispute.
- 4.5.3.1 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.
- 4.5.3.2 In the event Owner and Design-Builder are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **Section 4.5** shall be deemed to have occurred.
- 4.5.3.3 The parties shall share the mediator's fee and any mediation 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 consent to a suit.

ARTICLE V. SUBCONTRACTORS

- 5.1 **DEFINITION.** A Subcontractor is a person or entity that has a direct contract with the Design-Builder 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, Sub-Consultant or an authorized representative of Subcontractor.
- 5.2 **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**
- 5.2.1 Design-Builder shall, prior to entering into an agreement with a Sub-Consultant or Subcontractor, notify Owner in writing of the names of all proposed Sub-Consultant and first-tier Subcontractors for the Work.
- 5.2.2 Design-Builder shall not employ any Sub-Consultant, 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 Sub-Consultant, 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 Sub-Consultant or 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 Sub-Consultant, Subcontractor, other person or organization proposed by Design-Builder after the Notice of Award, Design-Builder will be required to submit an acceptable substitute. Design-Builder shall not be required to employ any Sub-Consultant, Subcontractor, other person or organization against whom Design-Builder has reasonable objection.

- 5.2.3 Design-Builder fully shall be responsible to Owner for all acts and omissions of its Sub-Consultants, Subcontractors, persons and organizations directly or indirectly employed by the entities and persons and organizations for whose acts any of them may be liable to the same extent that Design-Builder is responsible for the acts and omissions of persons directly employed by Design-Builder. Nothing in the Contract Documents shall create any contractual relationship between Owner and any Sub-Consultant, Subcontractor or other persons or organizations having a direct contract with Design-Builder, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any Sub-Consultant, Subcontractor or other person or organization, except as may otherwise be required by law. Owner may furnish to any Sub-Consultant, Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Design-Builder 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 Design-Builder in dividing the Work among Sub-Consultants and/or Subcontractors or delineating the Work to be performed by any specific trade.
- 5.2.5 All Work performed for Design-Builder by a Sub-Consultant or Subcontractor will be pursuant to an appropriate agreement between Design-Builder and Sub-Consultant or Subcontractor and which specifically binds Sub-Consultant and/or 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, Design-Builder must report the actual payments to all SBEDA or DBE (as applicable) Sub-Consultants, Subcontractors and suppliers in the time intervals and format prescribed by Owner. Owner reserves the right, at any time during the term of this Contract, to request additional information, documentation or verification of payments made to such Sub-Consultants, Subcontractors and/or 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, properly must 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.

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

5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS.** Each subcontract agreement for a portion of the Work is assigned by Design-Builder to Owner shall provided that:

5.4.1 assignment is effective only after termination of the Contract by Owner and only for those subcontract agreements which Owner accepts by notifying Sub-Consultant, Subcontractor and Design-Builder in writing; and

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

5.4.3 Upon such assignment, if the Work has been suspended for more than thirty (30) calendar days, Sub-Consultant's and Subcontractor's compensation equally shall be adjusted for increase in cost resulting from the suspension.

ARTICLE VI. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS

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

6.1.1 Owner reserves the right to perform construction or operations related to the Project with 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 Conditions. If Design-Builder claims a delay or additional cost because of such action by Owner, Design-Builder shall make such Claim as provided in **Section 4.3** herein.

- 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Design-Builder” in the Contract Documents in each case shall mean the Design-Builder which executes each separate Owner/Design-Builder Agreement.
- 6.1.3 With regard to the activities of Owner’s own forces and of each separate contractor hired by Owner, Owner shall provide for coordination with the Work of Design-Builder and Design-Builder shall cooperate with Owner’s own forces. Design-Builder shall participate with Owner’s separate contractors and Owner in reviewing construction schedules when directed by Owner to do so. Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement with all parties. The construction schedules then shall constitute the schedules to be used by Design-Builder, separate Owner contractors and Owner until subsequently revised.
- 6.1.4 Unless otherwise provided in the Contract Documents, when Owner performs construction or operations related to the Project with Owner’s own forces, Owner shall be subject to the same obligations and have the same rights that apply to Design-Builder 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 Design-Builder shall afford Owner and Owner’s contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall coordinate the Design-Builder’s construction and operations with theirs as required by the Contract Documents.
- 6.2.2 If part of Design-Builder’s Work depends, for proper execution or results, upon the construction or operations by Owner or Owner’s contractors, Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Design-Builder so to report shall constitute an acknowledgment that Owner’s or Owner’s contractors completed or partially completed construction is fit and proper to receive Design-Builder’s Work, except as to defects not then reasonably discoverable.
- 6.2.3 Design-Builder shall reimburse Owner for costs incurred by Owner and which are payable to Owner’s contractors because of delays, improperly timed activities or defective construction of Design-Builder. Owner shall be responsible to Design-Builder for costs incurred by Design-Builder because of delays, improperly timed

activities and damage to the Work or defective construction of Owner's contractors.

6.2.4 Design-Builder promptly shall remedy any damage wrongfully caused by Design-Builder, its Sub-Consultants or its Subcontractors to any completed or partially completed construction or to property of Owner or Owner's contractors, as provided in **Section 10.2.5** herein.

6.2.5 Owner's contractors shall have the same responsibilities for cutting and patching as are described for Design-Builder in **Section 3.14** herein.

6.3 **OWNER'S RIGHT TO CLEAN UP.** If a dispute arises among or between Owner, Design-Builder or Owner's contractors, as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Owner may clean up and those clean-up costs will be allocated by Owner amongst those responsible.

ARTICLE VII. 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/Force Account 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 VII** and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement between Owner and Design-Builder; a Field Work Directive requires a directive by Owner and may or may not be agreed to by Design-Builder; 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 Owner.

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

7.1.4 Changes resulting from Change Orders, Field Work Directives or orders for minor changes shall be recorded by Design-Builder on the As-Built record documents.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written modification of the Contract signed by both Owner and Design-Builder (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.

- 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in **Section 7.3.4** herein.
- 7.2.3 Acceptance of a Change Order by Design-Builder 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 that 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 that Change Order. The execution of a Change Order by Design-Builder shall constitute conclusive evidence of Design-Builder's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against 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 of any claim 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.
- 7.2.4 Owner will prepare Change Orders and Field Work Directives and 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 Design-Builder promptly shall carry out and record on the As-Built record documents.
- 7.2.5 Design-Builder shall be entitled to include overhead and profit in any Change Order only as provided by Project Specifications.

7.3 **FIELD WORK DIRECTIVES**

- 7.3.1 A Field Work Directive is a written order signed by Owner directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum, Contract time or both. Owner may, by Field Work Directive and 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 between Owner and Design-Builder on the terms of a Change Order. Owner will issue a Field Work Directive to Design-Builder with a defined Not-To-Exceed dollar amount for the scope of Work defined.
- 7.3.3 Upon receipt of a Field Work Directive, Design-Builder promptly shall proceed with the change in the Work involved and, in writing, advise Owner of the Design-Builder'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.

- 7.3.4 If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as applicable:
- 7.3.4.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - 7.3.4.2 prices, including unit prices, stated in the Contract Documents or subsequently agreed upon;
 - 7.3.4.3 cost to be determined in a manner agreed upon by Owner and Design-Builder and a mutually acceptable fixed or percentage fee; or
 - 7.3.4.4 as provided in **Section 7.3.6** herein.
- 7.3.5 If Design-Builder promptly does not respond or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment initially shall be determined by Owner on the basis of reasonable costs and savings attributable to the change including, in case of an increase in the Contract Sum, as applicable, a reasonable allowance for overhead and profit. In such case, and also under **Section 7.3.4.3** herein, Design-Builder shall keep and present, in such form as Owner may prescribe, an itemized and detailed accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Section 7.3.5** shall be limited to the following:
- 7.3.5.1 costs of all labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;
 - 7.3.5.2 costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;
 - 7.3.5.3 rental costs of all machinery and equipment, exclusive of hand tools, whether rented by or from Design-Builder or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;
 - 7.3.5.4 expenses incurred in accordance with Design-Builder's standard personnel policy for travel approved in writing by Owner in advance;
 - 7.3.5.5 costs of premiums for all bonds and insurance, permit fees and allowable sales, use or similar taxes related to the Work;
 - 7.3.5.6 all additional costs of supervision and field office personnel directly attributable to the change; and

7.3.5.7 all payments made by the Design-Builder to Sub-Consultants or Subcontractors.

7.3.6 The amount of credit to be allowed by Design-Builder to 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 Design-Builder's allocated percent for profit and overhead, as confirmed by Owner, subject to any equitable adjustment recommended and approved by 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.

7.3.7 If Owner and Design-Builder agree with the determination made by Owner, 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.** Owner shall have authority to order minor changes in the Work not involving an 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 Owner and Design-Builder. Design-Builder promptly shall carry out such written orders and record such changes in the As-Built drawings.

7.5 **TIME REQUIRED TO PROCESS CHANGE ORDERS**

7.5.1 All responses by Design-Builder to proposal requests from Owner 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 Owner a minimum of thirty (30) calendar days after receipt by Owner to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Design-Builder's responses to proposal requests shall include a statement that the cost and additional time described and requested in Design-Builder's 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 written approval by either Owner or City Council or, where authorized by the state law and Owner ordinance, by Owner's City Manager or designee, pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to 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 Owner or 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, Design-Builder will proceed with the work under a pending Change Order only if directed in writing to do so by Owner.

ARTICLE VIII. TIME

8.1 PROGRESS AND COMPLETION

8.1.1 **TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE CONTRACT.** By executing the Contract, Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

8.1.2 Design-Builder shall proceed with the Work expeditiously using adequate forces and shall achieve Substantial Completion within the Contract Time.

8.1.3 Nothing in this **Article VIII** shall be construed as prohibiting Design-Builder from working on Saturdays if it so desires and giving Owner at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday, Sunday and holidays, so that Owner's representative may be scheduled to observe/inspect said Work and only if Design-Builder has performed work on the Project during the same week of the requested Saturday. Work on Sundays or holidays will not be permitted, except in cases of extreme emergency and then only with the written permission of Owner.

8.2 DELAYS AND EXTENSIONS OF TIME

8.2.1 Neither Owner nor Design-Builder, except as provided in this **Section 8.2**, shall be liable to the other for any delay to the Design-Builder's Work by reason of fire, act of God, riot, strike or any other cause beyond Owner's control. Should any of these listed factors delay the Work's critical path, as evidenced by a Time Impact Analysis developed by Design-Builder and verified by Owner, Design-Builder shall receive an extension of the Contract Times equal to the delay if a written claim is made within five (5) calendar days of the delaying event and granted by Owner. Under no circumstances shall Owner be liable to pay Design-Builder any compensation for such delays. Note that any request for an extension of time due to delays or disruption caused by unusually severe weather are defined in **Section 4.3.6.2** herein.

8.2.2 Should Design-Builder be delayed solely by the act, negligence or default of Owner and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by Design-Builder and verified by Owner, Design-Builder shall receive an extension of the Contract Time equal to the verified delay or portion thereof if a written claim is made within five (5)

- 8.2.3 Claims relating to time shall be made in accordance with applicable provisions of **Section 4.3** herein.
- 8.2.4 This Contract does not permit the recovery of damages by Design-Builder for delay, disruption or acceleration, other than those described in **Section 8.2.2** herein, provided under **Section 4.3.11(3)** herein and those justified by a Time Impact Analysis. Design-Builder agrees that it fully shall be compensated for all delays solely by an extension of non-compensatory time or as contemplated in **Section 8.2.2** herein.

ARTICLE IX. PAYMENTS AND COMPLETION

- 9.1 **CONTRACT SUM.** The Contract Sum is stated in the Design-Build Contract and, including authorized adjustments, is the total maximum Not-To-Exceed amount payable by Owner to Design-Builder for performance of the Work under the Contract Documents
- 9.2 **SCHEDULE OF VALUES**
- 9.2.1 A Schedule of Values for all of the Work shall be submitted and shall include quantities and prices of items which, when added together, equal the not-to-exceed contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable and allowable, overhead and profit shall be included as a separate line item.
- 9.2.2 Before the first Application for Payment, Design-Builder shall submit to Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This schedule, unless objected to by Owner, shall be used as a basis for reviewing Design-Builder's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

- 9.3.1 Design-Builder shall submit Applications for Payment to Owner electronically. Design-Builder electronically shall attach to its Application for Payment all data substantiating Design-Builder's right to payment as Owner may require, such as copies of requisitions from Sub-Consultants, Subcontractors and material suppliers reflecting retainage, if provided for in the Contract Documents, and reflecting a deduction for Liquidated Damages, if applicable. Applications for Payment shall not include requests for payment for portions of the Work which Design-Builder does not intend to pay to a Sub-Consultant, Subcontractor or material supplier, unless such Work has been performed by others whom Design-Builder 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 and verified by Owner. If approved in advance in writing by Owner, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by Owner. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Design-Builder with procedures reasonably satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest. Design-Builder solely shall be 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 Design-Builder warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from Owner shall, to the best of Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Design-Builder, Sub-Consultants, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **DESIGN-BUILDER SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY DESIGN-BUILDER, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER DESIGN-BUILDER, SUB-CONSULTANT(S) OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY OWNER TO DESIGN-BUILDER.**
- 9.3.4 By submission of an Application for Payment, Design-Builder certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, 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, 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 Sub-Consultants, Subcontractors and Design-Builder'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 Design-Builder; provided if any of the foregoing is not true and cannot be certified, Design-Builder will revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.4 PAY APPLICATION APPROVAL

9.4.1 Owner will, within **five (5) calendar days after receipt** of Design-Builder's Application for Payment, either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Design-Builder Owner's reasons for withholding approval, as provided in **Section 9.5.1** herein.

9.4.2 The certification of an Application for Payment will, based upon Design-Builder's evaluation of the Work and the data comprising the Application for Payment, constitute a representation by Design-Builder that the Work has progressed to the point indicated and that, to the best of Design-Builder'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 Owner. The issuance of a Certificate for Payment will constitute a representation that Design-Builder is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that Owner 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 Owner to substantiate Design-Builder's right to payment;
- (4) or made any examination to ascertain how or for what purpose Design-Builder has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT

9.5.1 The Application for Payment may be rejected to protect Owner for any of the following reasons:

9.5.1.1 Work not performed or defective ;

- 9.5.1.2 third party claims filed or reasonable evidence indicating a probable filing of such claims for which Design-Builder is responsible hereunder unless security acceptable to Owner is provided by Design-Builder;
 - 9.5.1.3 failure of Design-Builder to make payments properly to Sub-Consultants, 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 Design-Builder has failed to provide Owner adequate assurance of its continued performance within a reasonable time after demand;
 - 9.5.1.5 damage to Owner or Owner's 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;
 - 9.5.1.7 persistent failure by Design-Builder to carry out the Work in accordance with the Contract Documents;
 - 9.5.1.8 the applicable liquidated damages were not included in the Application for Payment;
 - 9.5.1.9 billing for unapproved/unverified materials stored off Site; or
 - 9.5.1.10 a current Schedule update has not been submitted by Design-Builder.
- 9.5.2 Owner shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Section 9.5.1** herein.

9.6 **PROGRESS PAYMENTS**

- 9.6.1 After the final approval of the Application for Payment, Owner may make payment in the manner and within the time provided in the Contract Documents.
- 9.6.2 During the latter part of each month, as the Work progresses on all Owner Contracts regardless of Contract Sum, Owner and Design-Builder shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Design-Builder-acquired materials stored on the Project Site, and/or within off-site storage facilities either owned or leased by Design-Builder. Upon receipt of a complete and mathematically accurate Application for Payment from Design-Builder, Owner shall make payments, in accordance with **Article IX** herein, to Design-Builder within thirty (30) calendar days on Contracts totaling four hundred thousand dollars (\$400,000.00) or less, based upon such cost determination and at the Contract prices in a sum equivalent to ninety percent (90%) of each such invoice. The remaining ten percent (10%) retainage shall be held by Owner until the Final Completion. However, where the Contract amount exceeds four hundred thousand dollars (\$400,000.00), installments shall be paid to Design-Builder 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 Application for Payment from the Design-Builder, and the retainage held until Final Completion shall be five percent (5%).

- 9.6.3 Owner's payment of installments shall not in any way be deemed to be a final acceptance by Owner of any part of the Work and shall not prejudice Owner in the final settlement of the Contract account or relieve Design-Builder from completion of the Work as herein provided.
- 9.6.4 Design-Builder shall, within ten (10) calendar days following receipt of payment from 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 Owner with written evidence of such payment. Design-Builder's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Design-Builder is able to demonstrate to Owner bona fide disputes associated with the unpaid Sub-Consultant(s), Subcontractor(s) or supplier(s) and its/their work. Design-Builder shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Sub-Consultants and Subcontractors as are applicable to Design-Builder hereunder, and if Owner so requests, shall provide copies of such subcontractor payments to Owner. If Design-Builder has failed to make payment promptly to its Sub-Consultants, Subcontractors or for materials or labor used in the Work for which Owner has made payment to the Design-Builder, Owner shall be entitled to withhold payment to Design-Builder to the extent necessary to protect Owner.
- 9.6.5 Owner may, on request, furnish to a Sub-Consultant or Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Design-Builder and action taken thereon by Design-Builder on account of portions of the Work done by such Sub-Consultants or Subcontractor.
- 9.6.6 Owner shall have an obligation to pay or to see to the payment of money to a Sub-Consultant or Subcontractor, except as may otherwise be required by law, if any.
- 9.6.7 Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.2**, **Section 9.6.3** and **Section 9.6.4** herein regarding Sub-Consultants and/or Subcontractors.
- 9.6.8 A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.
- 9.6.9 Design-Builder shall, as a condition precedent to any obligation of Owner under this Contract, provide to Owner payment and performance bonds in the full penal

amount of the Contract, in accordance with Texas Government Code Chapter 2253.

9.7 SUBSTANTIAL COMPLETION

- 9.7.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof sufficiently is complete, in accordance with the Contract Documents, so that Owner may 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 Final Completion is achieved. Owner also shall be entitled, at any time, to deduct out of any sums due to Design-Builder any or all Liquidated Damages due Owner in accordance with the Contract between Owner and Design-Builder.
- 9.7.2 When Design-Builder considers that the Work, or a portion thereof which Owner agrees to accept separately, is Substantially Complete, Design-Builder shall prepare and submit to Owner a preliminary comprehensive list of items to be completed or corrected prior to Final Completion and final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents.
- 9.7.3 Upon receipt of Design-Builder's list of items to be completed or corrected, Owner will make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If Owner's inspection discloses any item, whether or not it was included on Design-Builder's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that Owner may occupy or utilize the Work or designated portion thereof as designed for its intended use, Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by Owner. In such case, Design-Builder then shall submit a request for another inspection by Owner to determine Substantial Completion and Design-Builder shall be responsible for all costs incurred by Owner and associated with the requested re-inspection.
- 9.7.4 When the Work or designated portion thereof is Substantially Complete, Owner shall prepare a Certificate of Substantial Completion (Vertical Projects) or a Letter of Conditional Approval (Horizontal Projects) which shall:
- (1) 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;
 - (2) establish responsibilities of Owner and Design-Builder, as agreed to by Owner and Design-Builder, for security, maintenance, heat, utilities, damage to the Work and insurance; and

- (3) fix the time limit by which Design-Builder shall complete all items on the list accompanying the Certificate and reach Final Completion.

Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or the designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion.

9.8 PARTIAL OCCUPANCY OR USE

- 9.8.1 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 Design-Builder, provided such occupancy or use is consented to by the insurer as required under **Section 11.4.1.5** herein 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 Owner and Design-Builder have accepted in writing the responsibilities assigned to each 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 Design-Builder considers a portion of the Work to be Substantially Complete, Design-Builder shall prepare and submit a list of items to be completed or corrected prior to Final Completion and final payment and submit such list to Owner, as provided under **Section 9.8.2** herein. Consent of Design-Builder 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 Owner and Design-Builder or, if no agreement is reached, by the decision of Owner.
- 9.8.2 Immediately prior to such Partial Occupancy or use, Owner and Design-Builder shall 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.
- 9.8.3 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.
- 9.8.4 Upon such Partial Occupancy or use, and upon Substantial Completion, Owner may assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.
- 9.8.5 Partial Occupancy or use by Owner does not constitute substantial completion and does not start any warranty period(s).

9.9 FINAL COMPLETION AND FINAL PAYMENT

- 9.9.1 When all of the Work finally is completed and ready for final inspection, Design-Builder shall notify Owner thereof in writing. Thereupon, Owner will make final inspection of the Work and, if the Work is complete in full accordance with this

Contract and this Contract fully has been performed, the final Application for Payment may be submitted. If Owner is unable to approve the final Application for Payment for reasons for which Design-Builder is responsible and Owner is required to repeat a final inspection of the Work, Design-Builder shall be responsible for all costs incurred by Owner and associated with such repeat final inspection(s) and said costs may be deducted by Owner from the Design-Builder's retainage.

9.9.2 Design-Builder shall not be entitled to payment of retainage unless and until Design-Builder submits to Owner:

- (1) Design-Builder's affidavit that the payrolls, invoices for materials and equipment and other liabilities, to include Liquidated Damages connected with the Work for which Owner might be responsible, fully have been paid or otherwise satisfied or will be paid from final payment;
- (2) releases and waivers of liens from all Subcontractors of Design-Builder and of any and all other parties required by Owner or Owner that either are unconditional or conditional on receipt of final payment;
- (3) Certificates of insurance showing continuation of required insurance coverages; such other documents as Owner may request; and consent of Surety to final payment; and
- (4) all other documents required to be submitted by Design-Builder to Owner, as shown on Owner's Retainage Checklist, which shall be provided to Design-Builder upon request.

9.9.3 If, after Substantial Completion of the Work, Final Completion thereof materially is delayed through no fault of Design-Builder or by Issuance of Change Orders affecting Final Completion, and Owner so confirms, Owner shall, upon application by Design-Builder and certification by Owner 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 Design-Builder to Owner 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.

9.9.4 Request for final payment by Design-Builder shall constitute a waiver of all claims against Owner except those previously made in writing to Owner and identified as unsettled at the time of final Application for Payment.

9.10 ADDITIONAL INSPECTIONS

9.10.1 In addition to any Liquidated Damages payable by Design-Builder to Owner, if:

- (1) Owner is required to make more than one inspection for Substantial Completion;
- (2) Owner is required to make more than one inspection for Final Completion, or
- (3) the Work is not substantially complete within **thirty (30) calendar** days after the date established for Substantial Completion in the Contract Documents, Owner shall be entitled to deduct from the Contract Sum amounts paid by Owner for any additional inspections or services, provided that Owner undertook these services due to the fault or neglect of Design-Builder.

ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Design-Builder 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, Design-Builder 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 Design-Builder Sub-Consultants, Subcontractors and employees. Owner shall have the right, but not the obligation, to inspect and verify Design-Builder's compliance with Design-Builder's responsibility for protecting the safety and health of its Sub-Consultants, Subcontractors and employees.

10.1.2 Design-Builder 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 Design-Builder's insurers and the State of Texas in connection with such injuries or fatalities.

10.1.3 Contractor shall adopt its own policy to assure a drug and alcohol free work place while performing the Work. Design-Builder's employees, agents, Sub-Consultants and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Design-Builder, its employees, agents, Sub-Consultants and Subcontractors shall not use, possess, distribute or sell illegal, illicit and/or prescribed controlled drugs or drug paraphernalia or misuse legitimate prescription drugs while on Site or performing

the Work. Design-Builder, its employees, agents, Sub-Consultants and Subcontractors shall not use, possess, distribute or sell alcoholic beverages while performing the Work or while on Site or performing the Work. Design-Builder will remove any of its employees, Sub-Consultant or Subcontractor employees from performing the Work or from the Site 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 Design-Builder to remove employees or Sub-Consultant or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Design-Builder's, Sub-Consultant's or Subcontractor's employees only may be considered for return to work after Design-Builder certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Design-Builder will not employ any individual, or will not accept any Sub-Consultant or Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.

10.1.4 Design-Builder 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 Design-Builder 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 X** by Design-Builder, a Sub-Consultant or a Subcontractor will be a material and substantial breach of this Contract. In the event that Owner shall determine that Design-Builder has breached or violated the terms of this **Section X**, then Owner shall determine, immediately upon written notice to Design-Builder, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until Owner is satisfied that the safety provisions hereof shall not be breached or violated thereafter. If Owner terminates the Contract as a result of such breach or violation, Owner and Design-Builder shall complete their obligations hereunder to one another in accordance with **Section 14.2** herein.

10.1.6 Nothing contained in this **Article X** shall be interpreted as creating or altering the legal duty of Owner to Design-Builder or to Design-Builder's agents, employees, Sub-Consultants, Subcontractors or third parties, or altering the status of Design-Builder as an independent contractor.

10.1.7 Notwithstanding either of the above provisions, or whether Owner exercises its rights set forth herein, Owner neither warrants nor represents to Design-Builder, Design-Builder's employees or agents, any Sub-Consultant, Subcontractors or any other third party that Design-Builder's safety policy meets the requirements

of any applicable law, code, rule or regulation, nor does Owner warrant that the proper enforcement of Design-Builder'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 Design-Builder's obligations under applicable law or the contract documents.

10.2 SAFETY OF PERSONS AND PROPERTY

- 10.2.1 Design-Builder shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to:
- 10.2.1.1 employees performing 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 Design-Builder or Design-Builder's Sub-Consultants, 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 the Work.
- 10.2.2 Design-Builder 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 Design-Builder 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 all 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, Design-Builder shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel. Prior to the use of any explosives, Design-Builder shall submit a written blasting plan, shall obtain Owner approval and shall comply with Owner's requirements for such use.
- 10.2.5 Design-Builder promptly shall remedy any and all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). Design-Builder also shall hold harmless and unconditionally indemnify, protect and defend Owner, its elected officials, employees, officers, directors, volunteers and representatives of Owner, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of Design-Builder and Owner) referred in **Section 10.2.1.2** and **Section 10.2.1.3** herein, but only to the extent caused in whole or in part by the acts or omissions of Design-Builder, its agents, servants, and

employees, or its Sub-Consultant(s) and/or Subcontractor(s) and its/their agents, servants, and employees, or anyone directly or indirectly employed by Design-Builder, Sub-Consultant or Subcontractor, or by any other person or entity for which Design-Builder, Sub-Consultant or Subcontractor 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 Design-Builder be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without, however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of Design-Builder are in addition to Design-Builder's obligations under **Section 3.18** herein.

- 10.2.6 Design-Builder shall designate a responsible member of Design-Builder's organization at the site whose duty shall be the prevention of accidents. This person shall be Design-Builder's superintendent, unless otherwise designated by Design-Builder in writing to Owner.
- 10.2.7 Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- 10.2.8 Notwithstanding the delivery of a survey or other documents by Owner, Design-Builder 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. Design-Builder acknowledges and accepts that the location of underground utilities (both public and private) reflected on any Owner-provided plans are not guaranteed and may not be completely accurate. Design-Builder shall locate and verify any and all utilities and associated service lines prior to beginning any Work. Design-Builder shall be responsible for and shall repair, at Design-Builder's own expense, any damage done to lines, cables, pipes and pipelines identified and not identified to Design-Builder.

10.3 EMERGENCIES

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

10.3.2 If Design-Builder causes damage resulting in an issue of safety and/or security to a property owner, Design-Builder immediately shall repair any damage caused. If Design-Builder does not or will not act immediately to repair the damage caused by Design-Builder to eliminate the resulting safety and/or security issue(s), Owner shall act to repair the damage caused and deduct all costs associated with the repair from any money due Design-Builder.

10.4 PUBLIC CONVENIENCE AND SAFETY

10.4.1 Design-Builder 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 Owner. Sidewalks or streets shall not be obstructed, except by special permission of 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 Owner reserves the right to remedy any neglect on the part of Design-Builder, in regard to public convenience and safety, which may come to Owner's attention, after twenty-four (24) hours notice in writing to Design-Builder. In case of an emergency, Owner shall have the right immediately to remedy any neglect without notice to Design-Builder. In either case, the cost of any work done by or for Owner to remedy Design-Builder's neglect shall be deducted by Owner from Design-Builder's Contract Sum. Design-Builder shall notify Owner, including Owner's Traffic Control Department, 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 given at least forty-eight (48) hours in advance. Owner reserves the right to postpone and/or prohibit any closure or obstruction of any streets or thoroughfares, to the extent necessary for the safety and benefit of the traveling public. Design-Builder shall, when directed by Owner, keep any street or streets in condition for unobstructed use by Owner departments. When Design-Builder is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, Design-Builder's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.4.3 Design-Builder shall limit airborne dust and debris throughout the Project site and its duration. Design-Builder shall apply the necessary amounts of water or other appropriate substance required to maintain sufficient moisture content for dust control. For Owner Horizontal projects, Design-Builder shall apply appropriate amounts of water or other appropriate substance to the base on streets under construction and on detours required to maintain sufficient moisture control in the surface layer for dust control.

10.5 **BARRICADES, LIGHTS AND WATCHMEN.** If the Work is carried on, in or adjacent to any street, alley or public place, Design-Builder shall, at Design-Builder's own cost and

expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, provide sufficient watchmen and take such other precautionary measures necessary for the protection of persons or property and of the Work. The requirements for the use of barricades shall comply with Owner's Barricade Specification 530. The term "lights," as used in this **Section 10.5**, shall mean flares, flashers or other illuminated devices. A sufficient number of barricades with adequate lights, markings and directional devices also shall be erected to keep vehicles from being driven on or into any Work under construction. Design-Builder will be held liable for all damage to the Work due to failure of barricades, signs, lights and/or watchmen necessary to protect the Work. Whenever evidence is found of such damage, Owner may order the damaged portion immediately removed and replaced by Design-Builder at Design-Builder's sole cost and expense. Design-Builder's responsibility for maintenance of barricades, signs, lights and for providing watchmen, as required under this **Section 10.5**, shall not cease until the Project finally has been accepted by Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED. In case it is necessary for Design-Builder to change or move the property of Owner or of any telecommunications or public utility, such property shall not be touched, changed, removed or interfered with until ordered to do so by Owner. Owner reserves the right to grant any public or private utility personnel the authority to enter upon the Project site for the purpose of making such changes or repairs to their property that may become necessary during the performance of the Work. Owner reserves the right of entry upon the Project site at any time and for any purpose including, but not limited to, repairing or relaying sewer and water lines and appurtenances, repairing structures and for making other repairs, changes or extensions to any of Owner's property. Owner's actions shall conform to Design-Builder's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to Owner by Design-Builder.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS. When existing storm sewers or drains have to be taken up or removed, Design-Builder shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Design-Builder also shall provide for all storm sewage and drainage which will be received from these storm drains and sewers. For this purpose, Design-Builder shall provide and maintain, at Design-Builder's own expense, adequate pumping facilities and temporary outlets or diversions. Design-Builder shall, at Design-Builder'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 Owner. 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/WIRELESS ACCESS

10.8.1 When Design-Builder desires to use Owner's water in connection with the Work, Design-Builder shall make complete and satisfactory arrangements with the San

Antonio Water System and shall be responsible for the cost of the water used. Where meters are required and used, the water charge will be at the regular established rate; where no meters are required and used, the water charge will be as prescribed by Owner ordinance; or where no ordinance applies, payment shall be based on estimates made by the representatives of the San Antonio Water System.

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

10.8.3 If Design-Builder elects or is required by Owner to place and operate out of a construction trailer or office on the Project site, for which all related costs shall be borne by Design-Builder, Design-Builder shall provide for an electronic device to exchange data wirelessly via a local area computer network, to include high-speed internet connections (commonly known as "Wi Fi access"), for Owner personnel's use while on the Project site, for the duration of the Project.

10.9 USE OF FIRE HYDRANTS. Design-Builder, Sub-Consultants, 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 to any fire hydrant, stop valve or stop cock, or tap any water main belonging to Owner, unless duly authorized in writing to do so by Owner.

10.10 ENVIRONMENTAL COMPLIANCE

10.10.1 Design-Builder its Sub-Consultants and Subcontractors are deemed to have made themselves familiar with and shall at all times 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 Design-Builder encounters materials on the Project Site 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, Design-Builder immediately shall stop Work in the affected

area and report in writing the facts of such encounter to Owner. Work in the affected area shall not thereafter be resumed except by written order of Owner and written consent of Design-Builder, unless and until the encountered 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, Owner shall remediate the Hazardous Substance with a separate contractor or through a Change Order with Design-Builder. If the Hazardous Substance exists in the affected area due to the fault or negligence of Design-Builder or any of its Sub-Consultants or Subcontractors, Design-Builder shall be responsible for remediating the condition at the sole expense of Design-Builder. If applicable, such remediation shall be in accordance with Design-Builder'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 not due to the fault of Design-Builder, its Sub-Consultants or Sub-Contractors, may be granted by Owner and only in the event the Project's critical path is affected and Design-Builder is not the source of the Hazardous Substance. 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 VIII** herein.

- 10.10.3 Design-Builder shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substance brought into or onto the site by Design-Builder or any of its Sub-Consultant, Subcontractor or supplier. Design-Builder 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/or disposal, notify Owner so that Owner may observe the activities; provided, however, that it shall be Design-Builder's sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities.

ARTICLE XI. INSURANCE; INDEMNIFICATION; BONDS

- 11.1 Prior to the commencement of any work under this Agreement, Design-Builder shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to Owner's CIMS/Contract Services Department, which clearly shall be labeled "*insert name of project/contract*" **Project** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an agent authorized by that insurer to bind coverage on its behalf. Owner will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to Owner. Owner shall have no duty

to pay or perform under this Agreement until such certificate and endorsements have been received and approved by Owner's CIMS Department. No officer or employee, other than Owner's Risk Manager, shall have authority to waive this requirement.

- 11.2 Owner reserves the right to review the insurance requirements of this **Article XI** during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverage and limits when deemed necessary and prudent by Owner's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance will Owner allow modification whereby Owner may incur increased risk.
- 11.3 Design-Builder's financial integrity is of interest to Owner; therefore, subject to Design-Builder's right to maintain reasonable deductibles in such amounts as are approved by is insurance companies, Design-Builder shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof at Design-Builder's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

d. Personal Injury e. Contractual Liability f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. g. Explosion, Collapse, Underground h. Damage to property rented by you	h. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

11.4 Design-Builder agrees to require, by written contract, that all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same insurance coverage required of Design-Builder herein, and provide a certificate of insurance and endorsement that names Design-Builder and Owner as additional insureds. Design-Builder shall provide Owner with said certificate and endorsement prior to the commencement of any work by any Sub-Consultants and/or Subcontractor. This provision may be modified by Owner’s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by Owner’s Risk Manager, which shall become a part of the contract for all purposes.

11.5 As they apply to the limits required by Owner, Owner shall be entitled, upon request and without expense, to receive copies of any and all of Design-Builder’s policies, declaration page(s) and all endorsements thereto and Owner may require the 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 of the parties hereto or the underwriter of any such policies). Design-Builder shall be required to comply with any such requests by Owner and shall submit a copy of the replacement certificate of insurance to Owner at the address provided below within ten (10) calendar days of the requested change and Design-Builder shall pay any costs incurred resulting from said changes and requests:

City of San Antonio

Attn: CIMS Contract Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 11.6 If Owner requests a copy/copies of an insurance policy, Design-Builder prominently shall comply and Design-Builder shall mark those portions of the policy, if any, Design-Builder regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Design-Builder's policy, Owner shall submit the received request, along with Design-Builder's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of Design-Builder's policy information. Design-Builder and Owner agree that Owner will be bound by the AG opinion/decision. Similarly, Design-Builder agrees and accepts Owner will provide all Design-Builder information pursuant to a court order or a litigation discovery rule requiring or directing Owner to disclose any of Design-Builder's information.
- 11.7 Design-Builder agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:
- Name Owner, its officers, officials, employees, volunteers, and elected representatives as additional insureds by using endorsement CG 20 26 or broader, as respects operations and activities of, or on behalf of, the named insured performed under contract with Owner, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where Owner is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of Owner.
 - Provide thirty (30) calendar days advance written notice directly to Owner of any suspension, cancellation or non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 11.8 Within ten (10) calendar days of a suspension, cancellation or non-renewal of coverage, Design-Builder shall provide a replacement Certificate of Insurance and applicable endorsements to Owner. Owner shall have the option to suspend Design-Builder's performance, should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 11.9 In addition to any other remedies Owner may have upon Design-Builder's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, Owner shall have the right to order Design-Builder to stop work

hereunder and/or withhold any payment(s) which become due to Design-Builder hereunder until Design-Builder demonstrates compliance with the requirements hereof.

- 11.10 Nothing herein contained shall be construed as limiting in any way the extent to which Design-Builder may be held responsible for payments of damages to persons or property resulting from Design-Builder's or its Sub-Design-Builders' and/or Subcontractors' performance of the work covered under this Agreement.
- 11.11 It is agreed that Design-Builder's insurance shall be deemed primary and non-contributory, with respect to any insurance or self insurance carried by the City of San Antonio, for liability arising out of operations under this Agreement.
- 11.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of Owner shall be limited to insurance coverage provided.
- 11.13 Design-Builder and any Sub-Design-Builders and/or Subcontractors are responsible for all damage to their own equipment and/or property.
- 11.14 **UMBRELLA' LIABILITY INSURANCE.** Design-Builder shall obtain, pay for and maintain Umbrella Liability Insurance during the Contract term, insuring Design-Builder 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. Owner shall be named as an additional insured, using endorsement CG 20 26 or broader. No aggregate shall be permitted for this type of coverage. The Umbrella Liability Insurance policy shall provide "drop down" coverage, where the underlying primary insurance coverage limits are insufficient or exhausted.
- 11.15 **POLICY ENDORSEMENTS AND SPECIAL CONDITIONS**

Each insurance policy to be furnished by Design-Builder 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:

- 11.15.1 If Owner elects to employ a Construction Manager on the Project, Design-Builder, Sub-Consultant(s) and Subcontractor(s) shall include the Construction Manager on all liability insurance policies, to the same extent as Owner is required to be named as additional insured.
- 11.15.2 Owner shall have the option to suspend Design-Builder's performance if there is a lapse in insurance coverage at any time during the Contract term.
- 11.15.3 The terms "Owner," "City" or "City of San Antonio" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Owner and the individual members, employees and agents thereof in their official capacities while acting on behalf of Owner.

- 11.15.4 The policy phrase or clause “Other Insurance” shall not apply to Owner where Owner is an additional insured on the policy. The required insurance coverage furnished by Design-Builder shall be the primary insurance for all purposes for the Project, as well as the primary insurance for the additional insured named in the required policies.
- 11.15.5 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 with contractual liability coverage(s) sufficient to include such obligations with the applicable liability policies.
- 11.16 Concerning the insurance to be furnished by Design-Builder, it is a condition precedent to acceptability that:
- 11.16.1 All policies must comply with the applicable requirements and special provisions of this **Article XI**.
- 11.16.2 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 Owner’s decision regarding whether any policy contains such provisions and contrary to this requirement shall be final.
- 11.16.3 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 otherwise are acceptable to Owner.
- 11.17 Design-Builder agrees to the following special provisions:
- 11.17.1 Design-Builder 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 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 XI**.
- 11.17.2 Neither the insurance companies issuing the insurance policies nor Design-Builder shall have any recourse whatsoever against Owner for payment of any premiums or assessments for any deductibles, as all such premiums and assessments solely are the responsibility and risk of Design-Builder.

- 11.17.3 Approval, disapproval or failure to act by Owner, regarding any insurance supplied by Design-Builder, Sub-Consultant(s) or Subcontractor(s), shall not relieve Design-Builder 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 Design-Builder's insurance company likewise shall not exonerate or relieve Design-Builder from liability.
- 11.17.4 No special payments shall be made for any insurance policies that Design-Builder, Sub-Consultants and Subcontractors are required to carry. Except as provided in **Section 11.5.3.4** herein, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.
- 11.17.5 Any insurance policies required under this **Article XI** may be written in combination with any of the other policies, where legally permitted, but none of the specified limits neither may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this **Article XI** be limited or circumvented by doing so.
- 11.18 **Indemnification.** Design-Builder, whose professional services are the subject of this Agreement, covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, Owner and the elected officials, employees, officers, directors, volunteers and representatives of Owner, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal or bodily injury, death and property damage, made upon Owner directly or indirectly arising out of, resulting from or related to Design-Builder's activities under this Agreement, including any acts or omissions of Design-Builder, any agent, officer, director, representative, employee, Sub-Consultant or Subcontractor of Design-Builder, their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this Section 15.1 shall not apply to any liability resulting from the negligence of Owner, its officers or employees, in instances where such negligence causes personal injury, death or property damage. IN THE EVENT DESIGN-BUILDER AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- 11.19 The provisions of this **Article XI** solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Design-Builder shall advise Owner in writing within twenty four (24) hours of any claim or demand against Owner or Design-Builder known to Design-Builder related to or arising out of Design-Builder's activities under this Agreement and shall see to the

investigation and defense of such claim or demand at Design-Builder's cost. Owner shall have the right, at its option and at its own expense, to participate in such defense without relieving Design-Builder of any of its obligations under this **Section XI**.

11.20 PERFORMANCE BOND AND PAYMENT BONDS

11.20.1 Subject to the provisions of **Section 11.21** herein, Design-Builder shall, with the execution and delivery of the Contract, furnish and file with Owner, in the amounts required in this **Article XI**, the surety bonds described in **Section 11.20.2** and **Section 11.20.3** herein, with said surety bonds in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each surety bond shall be signed by Design-Builder, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of **Section 11.3.3** herein and approved by 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 and shall include:

11.20.2 PERFORMANCE BOND. A good and sufficient bond in an amount equal to one hundred percent (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 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.

11.20.3 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.

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

11.22 No surety will be accepted by Owner that is in default, delinquent on any bonds or that is a party to any litigation against Owner. All bonds shall be made and executed on

Owner's standard forms, shall be approved by Owner and shall be executed by not less than one (1) 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 Owner. Each bond shall be executed by Design-Builder and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie 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.

11.23 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 Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on Owner until:

- (1) it has been approved as to form by Owner's City Attorney;
- (2) it has been executed by Owner's City Manager;
- (3) the performance and payment bonds and evidence of insurance have been furnished to Owner by Design-Builder, as required by the Contract Documents; and
- (4) a fully executed Contract has been delivered to Design-Builder.

11.24 The failure of Design-Builder to execute the Contract and deliver the required bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as Owner can assemble and deliver the Contract and by the time the Owner-scheduled Pre-Construction meeting is held shall, at Owner's option, constitute a material breach of Design-Builder's bid proposal and 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 Owner by reason of Design-Builder's failure to execute the Contract within ten (10) days and deliver bonds and insurance by the Owner-scheduled Pre-Construction meeting, the filing of a bid proposal shall constitute an acceptance of this **Section 11.24**. In the event Owner should re-advertise for bids, the defaulting Design-Builder shall not be eligible to bid and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this **Section 11.24**.

ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK

12.1 **Inspecting Work.** Owner shall reject Design-Builder's Work that does not conform to the Contract Documents. Whenever Owner considers it necessary or advisable, Owner shall

require Design-Builder to inspect or test the Work in accordance with this **Article XII**, whether or not such Work is fabricated, installed or completed.

12.2 UNCOVERING WORK

12.2.1 If a portion of the Work is covered, concealed and/or obstructed, contrary to Owner's requirements specifically expressed in the Contract Documents, it must be uncovered for Owner's inspection and properly be replaced at Design-Builder's expense without any change in the Contract Time or Sum.

12.2.2 If a portion of the Work has been covered, concealed and/or obstructed and Owner has not inspected the Work prior to its being covered, concealed and/or obstructed, Owner retains the right to inspect such Work and, when directed, Design-Builder shall uncover it. If said Work is found to be in accordance with the Contract Documents, the costs for uncovering and replacement shall, by appropriate Change Order, be paid by Owner. If such Work uncovered is found to not be in accordance with the Contract Documents, Design-Builder shall pay all costs associated with the uncovering, correction and replacement of the Work, unless the condition found was caused by Owner's separate contractor, in which event Owner shall be responsible for payment of actual costs incurred by Design-Builder.

12.3 CORRECTING WORK

12.3.1 Design-Builder promptly shall correct any Work rejected by Owner 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. Design-Builder shall bear costs of correcting such rejected Work, along with all costs for additional testing and inspections, along with all compensation for Owner's services and incurred expenses made necessary thereby.

12.3.2 In addition to Design-Builder's warranty obligations, if any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents including, but not limited to, these General Conditions, Design-Builder promptly shall correct the Work after receipt of written notice from Owner to correct, unless Owner previously has given Design-Builder a written acceptance or waiver of the defect or nonconformity. Design-Builder's obligation to correct defective or nonconforming Work remains in effect for:

12.3.2.1 one (1) year after the date of Substantial Completion of the Work or a designated portion of the Work;

- 12.3.2.2 one (1) year after the date for commencement of warranties established by agreement in connection with partial occupancy under **Section 9.9.1** hereto; or
- 12.3.2.3 the stipulated duration of any applicable special warranty required by the Contract Documents.
- 12.3.3 The one (1) year period, described in **Section 12.3.2.1**, **Section 12.3.2.2** and **Section 12.3.2.3** herein, 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.
- 12.3.4 The obligations of Design-Builder under **Section 3.5** herein and this **Section 12.3** shall survive final acceptance of the Work and the termination of this Contract. Owner promptly shall give notice to Design-Builder after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in this **Section 12.3** does not limit the ability of Owner to require Design-Builder to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by Owner at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one (1) year period also does not relieve Design-Builder from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one (1) year correction period.
- 12.3.5 Design-Builder shall remove from the Project Site those portions of the Work which are not in accordance with the requirements of the Contract Documents and neither are corrected by Design-Builder nor accepted by Owner.
- 12.3.6 If Design-Builder fails to correct any defective or nonconforming Work within what Owner deems a reasonable time after Owner gives written notice of rejection to Design-Builder, Owner may correct the defective or nonconforming Work in accordance with this **Section 12.3**. If Design-Builder does not proceed promptly with correction of any defective or nonconforming Work within what Owner deems a reasonable time fixed by written notice from Owner, Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment, all at Design-Builder's expense. If Design-Builder does not pay the costs incurred by Owner of removal and storage of the defective or nonconforming work within ten (10) calendar days after written notice by Owner, Owner may, upon ten (10) additional calendar days written notice, sell the materials and equipment at auction or at private sale and shall account to Design-Builder for the proceeds, after deducting all costs and damages that should have been borne by Design-Builder to correct the defective work, including all compensation for Owner's services and expenses made necessary as a result of the sale, removal and storage. If the proceeds of such a sale do not cover the costs that Design-Builder should have borne and were incurred by Owner, the Contract Sum shall be reduced by the deficiency. If payments due to Design-Builder then

or thereafter are not sufficient to cover the deficiency, Design-Builder shall pay the difference to Owner.

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

12.3.8 Nothing contained in this **Section 12.3** shall be construed to establish a period of limitation with respect to other obligations which Design-Builder might have under the Contract Documents. The establishment of the one (1) year time period, as described in **Section 12.3.2** herein, relates only to the specific obligation of Design-Builder 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 or to the time within which proceedings may be commenced to establish Design-Builder's liability with respect to Design-Builder's obligations other than specifically to correct the Work.

12.3.9 Any Work repaired or replaced, pursuant to this **Article XII**, shall be subject to the provisions of **Article XII** to the same extent as Work originally performed or installed.

12.4 **Acceptance Of Nonconforming Work.** Owner may, in Owner's sole discretion, accept Work that is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction. Upon said occurrence, the Contract Sum will be reduced as appropriate and equitable, as solely determined by Owner. Any adjustment will be accomplished whether or not final payment has been made.

ARTICLE XIII. 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 fully has been completed, a final inspection is made by Owner and final acceptance and final payment is made by Owner.

13.2 **Warranty Fulfillment.** Prior to the expiration of the specified warranty period provided for in the Contract Documents, Owner will make a detailed inspection of the Work and will advise Design-Builder and Design-Builder's Surety of the items that require correction. Owner will make a subsequent inspection and, if the corrections properly have been performed, Owner will issue a letter of release on the maintenance obligations to Design-Builder. If, for any reason, Design-Builder 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 properly have been performed and a letter of release from Owner to Design-Builder is 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 Owner for any cause after giving seven (7) calendar days advance written notice and an opportunity to cure to Design-Builder, if applicable, including, but not limited to, the following causes:

- 13.3.1.1 Failure or refusal of Design-Builder to start the Work within ten (10) calendar days after the date of the written Notice to Proceed is issued by Owner to Design-Builder commence Work;
- 13.3.1.2 A reasonable belief of Owner that the progress of the Work being made by Design-Builder is insufficient to complete the Work within the specified Contract time;
- 13.3.1.3 Failure or refusal of Design-Builder to provide sufficient and proper equipment or construction forces to execute the Work properly and in a timely manner;
- 13.3.1.4 Owner's reasonable belief that Design-Builder has abandoned the Work;
- 13.3.1.5 Owner's reasonable belief that Design-Builder has become insolvent, bankrupt, or otherwise is financially unable to carry on the Work;
- 13.3.1.6 Failure or refusal on the part of Design-Builder to observe any material requirements of the Contract Documents or to comply with any written orders given by Owner, as provided for in the Contract Documents;
- 13.3.1.7 Failure or refusal of Design-Builder promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Design-Builder in writing by Owner or Design Consultant;
- 13.3.1.8 A reasonable belief by Owner that collusion exists or has occurred for the purpose of illegally procuring the contract, a Sub-Consultant or a Subcontractor, or that a fraud is being perpetrated on Owner in connection with the construction of Work under the Contract; or
- 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 in **Section 13.3.1** herein, or for any other cause except termination for convenience pursuant to **Section 13.3.5** herein, Design-Builder shall, as of the date specified by Owner, immediately discontinue the Work or a portion of the Work as Owner shall designate, whereupon the Surety shall, within fifteen (15) calendar days after the written Notice of Termination by Owner For Cause has been served upon Design-Builder and the Surety or its authorized agents, assume

the obligations of Design-Builder for the Work or that portion of the Work which Owner has ordered Design-Builder to discontinue and Surety shall:

- 13.3.2.1 perform the Work with forces employed by the Surety;
- 13.3.2.2 with the written consent of Owner, tender a replacement Design-Builder to take over and perform the Work, in which event the Surety shall be responsible for and pay to the replacement Design-Builder 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 Owner, tender and pay to 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 Owner for any other loss sustained as a result of Design-Builder's default.

In the event of a Termination by Owner For Cause involving **Article 13.3.2.1** and/or **Article 13.3.2.2**, Surety shall assume Design-Builder's place in all respects and the amount of funds remaining and unpaid under the Contract shall be paid by Owner to Surety for all Work performed by Surety or the accepted replacement Design-Builder, in accordance with the terms of the Contract Documents, subject to any rights of Owner to deduct any and all costs, damages or liquidated or actual damages that Owner incurred, including, but not limited to, any and all additional fees and expenses of and incurred by Owner and any attorneys fees Owner incurs as a result of Design-Builder's default and subsequent termination.

13.3.3 The balance of the Contract Sum remaining at the time of Design-Builder's default and subsequent termination shall become due and payable by Owner 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** herein, exercise its obligation to assume the obligations of the Contract and that portion of the Work which Owner has ordered Design-Builder to discontinue, then Owner shall have the power to complete the Work by contract or otherwise, as Owner may deem necessary and so elects. Design-Builder agrees that Owner shall have the right to:

- (1) take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of any and every kind, to be provided by Design-Builder for the purpose of the Work; and

- (2) procure other tools, equipment, labor and materials for the completion of the Work at Design-Builder's and Surety's expense; and
- (3) charge to the account of Design-Builder/Surety the expenses of completion and labor, materials, tools, equipment, and incidental expenses.

13.3.4 All expenses incurred by Owner to complete the Work shall be deducted by Owner out of the balance of the Contract Sum remaining unpaid to or unearned by Design-Builder. Design-Builder and Surety shall be liable to 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 Owner and attorney's fees) and liquidated or actual damages incurred as a result of the termination.

13.3.5 Owner shall not be required to obtain the lowest bid for the Work of completing the Contract, as described in **Section 13.3.3** herein, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and all other damages, as provided in **Section 13.3.3** herein. In case Owner's costs and damages are less than the sum which would have been payable under the Contract if the Work had been completed by Design-Builder pursuant to the Contract, then Owner may pay Design-Builder (or Surety, in the event of a complete Termination by Owner For Cause) the difference, provided that Design-Builder (or 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 Work had been completed by Design-Builder pursuant to the Contract, then Design-Builder and its Surety shall pay the amount of the excess to Owner immediately upon written notice from Owner to Design-Builder and/or Surety for the excess amount owed. When only a particular part of the Work is being carried on by Owner, by contract or otherwise under the provisions of this Section, Design-Builder 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 Owner.

13.3.6 The right to terminate this Contract for the convenience of Owner (including, but not limited to, non-appropriation of funding) expressly is retained by Owner. In the event of a termination for convenience by Owner, Owner shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Design-Builder. Upon Design-Builder's receipt of such written notice, Design-Builder immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Design-Builder then shall be paid by Owner, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred and not yet paid to date, the actual cost incurred and not yet paid to date of all materials installed and the actual cost incurred and not yet paid to date of all materials stored at the Project site or away from the Project site, as approved in writing by Owner and which can not be returned, plus applicable overhead, profit and the actual, reasonable and documented

termination costs, if any, paid by Design-Builder in connection with the Work in place which is completed and in conformance with the Contract Documents up to the date of termination for convenience, less all amounts previously paid for the Work. No amount ever shall be paid to Design-Builder 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 temporarily be suspended by Owner, for a time period not to exceed ninety (90) calendar days, immediately upon written notice to Design-Builder for any reason including, but not limited to:

13.4.1.1 the causes described in **Section 13.3.1.1** through **Section 13.3.1.9** herein;

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 Design-Builder immediately shall resume the temporarily suspended Work when ordered in writing to do so by Owner. Owner shall not, under any circumstances, be liable for any claim of Design-Builder arising from a temporary suspension due to a cause described in **Section 13.4.1** herein; provided, however, that in the case of a temporary suspension for any of the reasons described under **Section 13.4.1.2** through **Section 13.4.1.4** herein, where Design-Builder 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 Owner, Owner will make an equitable adjustment for the following items, provided that a claim properly is made by Design-Builder under **Section 4.3** herein:

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 Owner;

13.4.2.2 an equitable adjustment to the Contract Sum for the actual, necessary and reasonable costs of properly protecting any Work finished or partially finished during the period of the temporary suspension; provided, however, that no payment of profit and/or 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 to

the Contract Sum shall be due if said equipment is moved to another Project site of Owner.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

14.1 **Small Business Economic Development Advocacy.** Contractor shall comply with the requirements of Owner's Small Business Economic Development Advocacy Office posted in the Project's solicitation documents and the Contract Documents.

14.2 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

14.2.1 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.

14.2.2 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. Design-Builder shall, during the performance of the Work, comply with all applicable City of San Antonio codes and ordinances, as amended, and all applicable State of Texas and Federal laws, rules and regulations, as amended.

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

14.4 **WRITTEN NOTICE.** 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, facsimile transmission, email, U.S. mail (postage prepaid) or by overnight delivery to an officer, management level employee or other designated representative of either party. Mailed or e-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 to the other in accordance with this **Section 14.4**. Mailed notices shall be deemed received as of three (3) calendar days after mailing.

14.5 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

14.5.1 The duties and obligations imposed on Design-Builder by the Contract Documents and the rights and remedies available to 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.

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

14.6 **Interest.** 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 Article IX of these General Conditions.

14.7 **INDEPENDENT MATERIALS TESTING AND INSPECTION.** In some circumstances, Owner shall retain, independent of Design-Builder, inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Project by Owner. Such consultants will be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of any independent consultants of Owner will be described in the agreements between Owner and those consultants. The provision of inspection services by Owner will be for Quality Assurance and shall not reduce or lessen Design-Builder's responsibility for the Work or its duty to establish and implement a thorough Quality Control Program to monitor the quality of construction and guard Owner against defects and deficiencies in the Work, as required herein. Design-Builder fully and solely is responsible for constructing the Project in strict accordance with the Construction Documents.

14.8 **OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER.** Contractor acknowledges the Charter of the City of San Antonio and its Ethics Code prohibits 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 Owner of any Owner agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with Owner or in the sale to Owner of land, materials, supplies or service if any of the following individual(s) or entities is a party to the contract or sale:

(1) an Owner officer's or Owner's employee's parent, child or spouse;

(2) a business entity in which Owner officer or employee, his/her 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;

(3) a business entity in which any individual or entity listed above is a Subcontractor on an Owner contract, or

(4) a partner or a parent or subsidiary business entity.

Pursuant to the subsection above, Design-Builder warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and/or agents are neither officers nor employees of Owner. Design-Builder further warrants and certifies that it has tendered to Owner a Discretionary Contracts Disclosure Statement in compliance with Owner's Ethics Code. Any violation of this **Section 14.8** 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 14.8**, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with Owner shall render a Contract voidable by the Owner's City Manager or City Council.

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

14.10 INDEPENDENT DESIGN-BUILDER. In performing the Work under this Contract, the relationship between Owner and Design-Builder is that of an independent contractor. Design-Builder shall exercise independent judgment in performing the Work and solely is responsible for setting working hours, scheduling and/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 Design-Builder an agent, servant or employee of Owner or making Design-Builder or any of Design-Builder's employees, agents or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation which Owner provides to its employees.

14.10 NONDISCRIMINATION. As a condition of this Contract, Design-Builder covenants that it will take all necessary actions to insure that, in connection with any Work under this Contract, Design-Builder, its Sub-Consultant(s) and its Subcontractor(s) 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. Design-Builder also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Design-Builder shall keep, retain and safeguard all records relating to this Contract or Work performed there under, for a minimum period of four (4) years from Final Completion, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute, with full access allowed to authorized representatives of 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 Owner may terminate this Contract immediately if Design-Builder 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, Owner may require Design-Builder to remove any employee of Design-Builder, a Sub-Consultant, a Subcontractor or any employee of a Sub-Consultant and/or Subcontractor from the Project who has violated the restrictions of this **Article XIV** or any similar State or Federal law and Owner may obtain reimbursement for any expenditures made to Design-Builder as a result of the improper offer, agreement to confer or the conferring of a benefit to a City of San Antonio employee or official.

ARTICLE XV. AUDIT

15.1 RIGHT TO AUDIT DESIGN-BUILDER'S RECORDS

- 15.1.1 By execution of the Contract, Design-Builder grants Owner the right to audit, examine, inspect and/or copy, at Owner's election at all reasonable times during the term of this Contract and for a period of four (4) years following the completion or termination of the Work, all of Design-Builder's written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by an Owner designee, which may include its internal auditors or an outside representative engaged by Owner. Design-Builder agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under this Contract, then, such retention period shall extend until and/or upon final resolution of the dispute. As used in these General Conditions, "Contractor written and electronically stored records" include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Design-Builder written and electronically stores records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in Owner's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.
- 15.1.2 Owner agrees that it will exercise the right to audit, examine or inspect Design-Builder's records only during regular business hours. Design-Builder agrees to allow Owner and/or Owner's designee access to all of the Design-Builder's Records, Design-Builder's facilities and current or former employees of Design-Builder, deemed necessary by Owner or its designee(s), to perform such audit, inspection or examination. Design-Builder also agrees to provide adequate and appropriate work space necessary for Owner or its designees to conduct such audits, inspections or examinations.

15.1.3 Contractor shall include this **Article XV** in any Subcontractor, Supplier or vendor contract.

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Special Conditions for Design-Build Horizontal Projects

3.2.5 Differing Site Conditions (Adds Section 3.2.5 to Owner's Design-Build General Conditions)

Design-Builder promptly shall, before such discovered conditions and/or structures are disturbed, notify Owner in writing of differing site conditions. Differing site conditions are defined as subsurface or latent physical and/or structural conditions at the Site differing

materially from those indicated in the Plans, Specifications and other Contract Documents or newly discovered and previously unknown physical conditions at the Site of an unusual nature differing materially from those geophysical conditions typically encountered in the type Work being performed and generally being recognized as not indigenous to the San Antonio, Bexar County, Texas environs.

Owner promptly shall investigate the reported physical and/or structural conditions and shall determine whether or not the physical and/or structural conditions do materially so differ and thereby cause an increase or decrease in Design-Builder's cost of and/or time required for performance of any part of the Work under this Contract. In the event that Owner reasonably determines that the physical and/or structural conditions materially so differ, a negotiated and equitable adjustment shall be made to the Contract Time and/or Contract Sum and a Change Order promptly shall be issued by Owner.

- (1) No claim of Design-Builder under this **Section 3.2.5** shall be allowed unless Design-Builder has given the written notice called for above, prior to disturbing the discovered conditions and/or structures.
- (2) No Contract adjustment shall be allowed under this **Section 3.2.5** for any effects caused on unchanged work.

3.4.7 Material Testing (Added to Section 3.4.7 of Owner's Design-Build General Conditions)

Materials not meeting Contract requirements or that do not produce satisfactory results will be rejected by Owner, unless Owner approves corrective actions. Upon rejection, Design-Builder immediately shall remove and replace rejected materials. If Design-Builder does not comply with these requirements, Owner may remove and replace defective material and all costs incurred by Owner for testing, removal and replacement of rejected materials shall be deducted from any money due or owed to Design-Builder.

The source of supply of each of the materials shall be approved by Owner before delivery is started and, at the option of Owner, may be sampled and tested by Owner for determining compliance with the governing specifications before delivery is started. If it is found after trial that sources of supply previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, Design-Builder shall furnish materials from other approved sources. Only materials conforming to the requirements of the Contract documents and approved by Owner shall be used by Design-Builder in the work. All materials being used by Design-Builder are subject to inspection or test at any time during preparation or use. Any material which has been tested and accepted at the source of supply may be subjected to a check test after delivery and all materials which, when retested, do not meet the requirements of the specifications will be rejected. No material which, after approval, has in any way become unfit for use shall be used in the Work.

If, for any reason, Design-Builder selects a material which is approved for use by Owner by sampling, testing or other means, and Design-Builder decides to change to a different material requiring additional sampling and testing by Owner for approval, Design-Builder shall pay for

any expense incurred by Owner for such additional sampling and testing and the costs incurred by Owner shall be deducted from any money due or owed to Design-Builder.

4.3.8 Change in Unit Prices (Added to Section 4.3.8 of Owner's Design-Build General Conditions)

Unit prices established in the Contract documents only may be modified when a Change Order or Field Work Directive causes a material change in quantity to a Major Bid Item. A Major Bid Item is defined as a single bid item that constitutes a minimum of five percent (5%) of the total contract value. A material change in quantity is defined as an increase or decrease of twenty five percent (25%) or more of the units of an individual bid item or an increase or decrease of twenty five percent (25%) or more of the dollar value of a lump sum bid item. Revised unit pricing only shall apply to the quantity of a major bid item in excess of a twenty five percent (25%) increase or decrease of the original Contract quantity.

7.2.5 Allowable Markups (Added to Section 7.2.5 of Owner's Design-Build General Conditions)

Maximum allowable markups for Change Order pricing, when said pricing is not determined through unit prices, are established as follows:

7.2.5.1 Labor

Design-Builder shall be allowed the documented payroll rates for each hour laborers and foremen actually shall be engaged in the Work. Design-Builder shall be allowed to receive an additional twenty five percent (25%) as compensation, based on the total wages paid said laborers and foremen. No charge shall be made by Design-Builder for organization or overhead expenses. For costs of premiums on public liability and workers compensation insurance(s), Social Security and unemployment insurance taxes, an amount equal to fifty five percent (55%) of the sum of the labor cost, excluding the twenty five percent (25%) documented payroll rate compensation allowed herein, shall be the established maximum allowable labor burden cost. No charge for superintendence will be made unless considered necessary and approved by Owner or a Change Order includes an extension of the Contract Time.

7.2.5.2 Materials

Design-Builder shall be allowed to receive the actual cost, including freight charges, for materials used on such Work, including an additional twenty five percent (25%) of the actual cost as compensation. When material invoices indicate an available discount, the actual cost shall be determined as the invoiced price less the available discount.

7.2.5.3 Equipment

For Design-Builder-owned machinery, trucks, power tools or other equipment, necessary for use on Change Order work, the Rental Rate Blue Book for Construction Equipment (hereafter referred to as “Blue Book”) rate, as modified by the following, will be used to establish Design-Builder’s allowable hourly rental rates. Equipment used shall be at the rates in effect for each section of the Blue Book at the time of use. The following formula shall be used to compute the hourly rates:

$$H = \frac{M \times R1 \times R2}{176} + OP$$

Where
H = Hourly Rate
M = Monthly Rate
R1 = Rate Adjustment Factor
R2 = Regional Adjustment Factor
OP = Operating Costs

If Design-Builder-owned machinery and/or equipment is not available and equipment is rented from an outside source, the hourly rate shall be established by dividing the actual invoice cost by the actual number of hours the equipment is involved in the Work. Owner reserves the right to limit the hourly rate to comparable Blue Book rates. When the invoice specifies that the rental rate does not include fuel, lubricants, repairs and servicing, the Blue Book hourly operating cost shall be allowed to be added for each hour the equipment operates. The allowable equipment hourly rates shall be paid for each hour that the equipment is involved in the Work and an additional maximum of fifteen percent (15%) may be added as compensation.

7.2.5.4 Sub-Consultant and Subcontractor Markups

Design-Builder will be allowed administrative cost only when extra work, ordered by Owner, is performed by a Sub-Consultant or Subcontractor. The maximum allowable payment for administrative cost will not exceed five percent (5%) of the total Sub-Consultant/Subcontractor work. Off-duty peace officers and patrol cruisers shall be considered as Subcontractors, with regard to consideration of allowable Design-Builder markups.

7.3.9 Field Work Directive Allowable Markups (Adds Section 7.3.9 to Owner’s Design-Build General Conditions)

Maximum allowable markups for Field Work Directives shall follow the allowable markups established in Section 7.2.5 herein.

8.2.2 Standby Equipment Costs (Added to Section 8.2.2 of Owner’s Design-Build General Conditions)

Design-Builder shall be entitled to standby costs only when directed to standby in writing by Owner. Standby costs may include actual documented Project overhead costs of Design-Builder, consisting of administrative and supervisory expenses incurred at the Project Site. Standby equipment costs shall not be allowed during periods when the equipment would otherwise have been idle.

No more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty (40) hours shall be paid per week for standby time and no more than one hundred and seventy six (176) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 176, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Design-Builder.

10.11 Road Closures and Detour Routes (Adds Section 10.11 to Owner's Design-Build General Conditions)

Design-Builder shall not begin construction of the Project or close any streets until adequate barricades and detour signs have been provided, erected and maintained in accordance with the detour route and details shown on the Project Plans. Design-Builder shall notify Owner forty eight (48) hours in advance of closing any street to through traffic. Local traffic shall be permitted the use of streets under construction whenever feasible.

10.12 Use of Owner Streets (Adds Section 10.12 to Owner's Design-Build General Conditions)

Design-Builder shall confine the movements of all steel-tracked equipment to the limits of the Project Site and any such equipment shall not be allowed use of Owner's streets unless being transported on pneumatic-tired vehicles. Any damage to Owner's streets caused by Design-Builder and/or Design-Builder's equipment, either outside the limits of the Project site or within the limits of the Project site but not within the limits of the current phase then being constructed, shall be repaired by Design-Builder at its own expense and as prescribed by Owner's specifications and direction. If Design-Builder can not or refuses to repair street damage caused by Design-Builder and/or Design-Builder's equipment, Owner may perform the repairs and all expenses incurred by Owner in performing the repairs shall be deducted for any money due or owed to Design-Builder.

10.13 Maintenance of Traffic (Adds Section 10.13 to Owner's Design-Build General Conditions)

In accordance with the approved traffic control plan and as specified in the Contract, Design-Builder shall:

- (1) keep existing roadways open to traffic or construct and maintain detours and temporary structures for safe public travel;

- (2) maintain the Work in passable condition, including proper drainage, to accommodate traffic;
- (3) provide and maintain temporary approaches and crossings of intersecting roadways in a safe and passable condition;
- (4) construct and maintain necessary access to adjoining property as shown in the plans or as directed by Owner; and
- (5) furnish, install and maintain traffic control devices in accordance with the Contract.

The cost of maintaining traffic will be subsidiary to the Project and will not directly be paid for by Owner, unless otherwise stated in the Plans and Specifications. Owner will notify Design-Builder if Design-Builder fails to meet the above traffic requirements. Owner may perform the work necessary for compliance, but any action n by Owner shall not change the legal responsibilities of Design-Builder, as set forth in the Contract Documents. Any costs incurred by Owner for traffic maintenance shall be deducted from money due or owed to Design-Builder.

10.14 Abatement and Mitigation of Excessive or Unnecessary Construction Noise (Adds Section 10.14 Owner's Design-Build General Conditions)

Design-Builder shall ensure abatement and mitigation of excessive or unnecessary construction noise to the satisfaction of Owner and as prescribed by all applicable state and local laws.

10.15 Incidental Work, Connections, and Passageways (Adds Section 10.15 Owner's Design-Build General Conditions)

Design-Builder shall perform all incidental Work necessary to complete and comply with this Contract including, but not limited to the following:

- (1) Design-Builder shall make and provide all suitable reconnections with existing improvements (generally excluding new connections with or relocation of utility services, unless specifically provided for otherwise in the Contract Documents) as are necessarily incidental to the proper completion of the Project;
- (2) Design-Builder shall provide passageways or leave open such thoroughfares in the Work Site as may be reasonably required by Owner; and
- (3) Design-Builder shall protect and guard same at its own risk and continuously shall maintain the Work Site in a clean, safe and workmanlike manner.

EXHIBIT D
SBEDA PLAN

DRAFT

EXHIBIT E
PAYMENT AND PERFORMANCE BOND FORMS

DRAFT

PAYMENT BOND

STATE OF TEXAS)
COUNTY OF BEXAR) Know all men by these presents:
OWNER OF SAN ANTONIO)

1. That we

_____,
as Principal, and _____,
as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto Owner of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of \$ _____ for payment of which sum well and truly to be made in and unto said Owner of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said _____ hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said Owner of San Antonio, for the construction and completion for said Owner of certain structures, work and improvements generally described as

(Insert Name of Project and Location)

and for the performance and observance of diverse other matters and things in connection with said work, and, interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect: and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by Owner, nor by the exercise or failure to exercise by or on behalf of Owner any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this _____ day of _____ A.D. 20 ____.

(Contractor)

By: _____

(Typed Name)

(Surety)

By: _____

(SEAL)

(Typed Name)

Address of Surety for Service Purposes

PERFORMANCE BOND

STATE OF TEXAS)
COUNTY OF BEXAR) Know all men by these presents:
OWNER OF SAN ANTONIO)

1. That we _____,
as Principal, and _____,
as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto Owner of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of \$ _____ for payment of which sum well and truly to be made in and unto said Owner of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said _____ hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said Owner of San Antonio, for the construction and completion for said Owner of certain structures, work and improvements generally described as

(Insert Name and Location of Project)

and for the performance and observance of diverse other matters and things in connection with said work; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation.

3. NOW THEREFORE, if Contractor, the principal party to this obligation shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all included instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said structures, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by Owner, nor by the exercise or failure to exercise by or on behalf of Owner any right or remedy provided by the contract or specifications or by any law or ordinance.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this _____ day of _____ A.D. 20 ____.

(Contractor)

By: _____
(Typed Name)

(Surety)

(SEAL)

By: _____
(Typed Name)

Address of Surety for Service Purposes

EXHIBIT F
DESIGN-BUILDER'S DESIGN SCHEDULE

DRAFT

EXHIBIT G
DESIGN-BUILDER'S WORK PROGRESS SCHEDULE

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EXHIBIT H

DESIGN-BUILD SCOPE OF SERVICES

DRAFT