

**PROFESSIONAL SERVICES AGREEMENT
FOR
DESIGN & PLANNING SERVICES FOR
RUNWAY & TAXIWAY IMPROVEMENTS (2012) AT THE
SAN ANTONIO INTERNATIONAL AIRPORT**

This Agreement is made and entered into by and between the City of San Antonio (hereinafter referred to as “City”), a Texas Municipal Corporation acting by and through its City Manager and _____ (hereinafter referred to as “Consultant”) by and through its Authorized Representative, both of which may be referred to herein collectively as the “Parties”.

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, City and Consultant do hereby agree as follows:

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I. DEFINITIONS

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

- 1.1 “Airport” means the San Antonio International Airport.
- 1.2 “Day” means calendar day unless specifically referred to otherwise.
- 1.3 “Director” means the director of the City’s Aviation Department.
- 1.4 “FAA” means Federal Aviation Administration.
- 1.5 “Project” means the development of a Surface Movement Guidance Control System Plan, and planning and design services associated reconstruction of Taxiways G and N and rehabilitation of Runway R at San Antonio International Airport, as more fully set out in Article IV, Scope of Services.
- 1.6 “Services” means those services described in the Scope of Services.

II. RELATIONSHIP OF THE PARTIES

2.1 Consultant accepts the relationship of trust, good faith and fair dealing established by this Agreement and shall cooperate with the City in furthering the City’s interests. The Consultant accepts this relationship of trust and confidence established with the City and covenants with the City to furnish the Consultant’s professional skill and judgment in furthering the interests of the City. The Consultant shall furnish consulting services as set forth herein and shall use the Consultant’s professional efforts to perform the services in an expeditious and economical manner consistent with the interests of the City. The Consultant will perform the required services consistent with sound and generally accepted consulting practices, exercising the degree of skill, care and judgment consistent with such practices in San Antonio, Texas.

2.2 Consultant shall require each sub-consultant, to the extent of the Services to be performed by the sub-consultant, to be bound to Consultant by the terms of the Agreement, and to assume toward Consultant all the obligations and responsibilities that Consultant, by this Agreement, assumes toward City. Each subcontract agreement shall preserve and protect the rights of City under the Agreement with

respect to the Services to be performed by the Sub-consultant so that subcontracting thereof will not prejudice such rights.

III. PERIOD OF SERVICE

3.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and its execution by both parties. This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract and the completion of the Project, including any extra work and any required extensions thereto, unless terminated, as provided for elsewhere in this Agreement.

IV. SCOPE OF SERVICES

4.1 Consultant, in consideration for the compensation herein provided, as outlined in Article VI. Compensation, shall render the required professional services in connection with the Project, including all associated services required for Consultant to provide such Services, and any and all Services which normally would be required by law or common due diligent practice, as more specifically outlined in Exhibit 1, Scope of Services.

4.2 Consultant acknowledges and accepts its responsibilities as the “Design Consultant” as defined and described in City’s General Conditions for Construction attached and incorporated herein as Exhibit 6.

4.3 Consultant shall complete all Project work within the Scope of Services in compliance with this Agreement, and agrees to staff the Project with sufficient, qualified personnel and equipment to complete the Project in a timely manner, in order not to delay or disrupt the progress of the Project. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested by City. Time is of the essence.

4.4 City retains the right to request replacement, for reasonable cause, of any employee or subconsultant assigned by Consultant to the Project. City’s decisions in this regard shall not be the basis for any claim for additional compensation by Consultant. However, in no event shall City’s direction be construed as the City’s assumption of Consultant’s duties to direct, coordinate and manage implementation of the Project, unless specific processes, procedures and systems, if any, are directed by the City

4.5 All work performed and reports and deliverables required pursuant to this Agreement shall be in compliance with all laws, rules, regulations and FAA Advisory Circulars.

4.6 All services and work performed under this Agreement must be conducted in full conformance with the Texas Occupations Code. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subconsultants of Consultant.

4.7 Acceptance of any deliverables by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subconsultants for the accuracy and competency of their deliverables or associated services; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the deliverables prepared by said Consultant, its employees, subconsultants, and agents.

4.8 Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents, as may be required to meet the needs of City and which are within its Scope of Services. After the approval of reports or other documents by City, any revisions, additions or other modifications

V. COORDINATION WITH THE CITY

5.1 Consultant shall hold periodic conferences with Director or his designee, so that the Project, as developed, shall have the full benefit of City's experience, and knowledge of existing needs and facilities, and be consistent with the City's current policies and standards.

5.2 The Director or his designee shall act on behalf of City with respect to the work performed under this Agreement, and shall have complete authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to materials, equipment elements and systems pertinent to Consultant's services.

5.3 City promptly will give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services, or any development that affects the scope or timing of Consultant's services.

VI. COMPENSATION

6.1 For and in consideration of the Services to be rendered by Consultant, City shall pay Consultant the not-to-exceed fee set forth in this Article VI, Compensation. Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined solely by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

6.2 The total compensation for all work to be performed by Consultant as fully defined in the Scope of Services, to include all travel and other expenses, shall not exceed AMOUNT IN WORDS AND 00/100 DOLLARS (\$XX,XXX.00). Consultant acknowledges that such not to exceed fee shall be sufficient compensation for all services, travel and other expense to be performed pursuant to or associated with the Scope of Services. The obligation of City to Consultant for compensation in connection with this Agreement cannot and will not exceed such sum of AMOUNT IN WORDS, (\$XXXX) without further amendment(s) to this Agreement.

6.3 Consultant shall bill all services in accordance with the hourly rates set out in Exhibit 2, Fee Schedule. No travel is contemplated under this Agreement for the scope set out in Article IV. Scope of Services and any travel must be approved in writing by the City prior to such travel. Consultant may submit invoices no more than once monthly. Such invoices must be for services completed and approved by the Director and actual travel, if previously approved in writing, and other expenses incurred and not previously invoiced and must show: a) the hours being billed delineated by task performed, employee name and position, b) a summary of the services performed during the period covered by the invoice, c) travel and other expenses with supporting documentation attached; and d) the total amount due for services, travel and expenses. Allowable travel, preapproved in writing by the City, and other expenses shall be invoiced at the actual cost incurred without markup and must be in compliance with the Aviation Department Consultant and Contractor Reimbursable Expense Policy, Exhibit 3 hereto, to be eligible for reimbursement. City reserves the right to request such additional information as the City deems necessary to support the invoiced charges.

6.4 The final payment due hereunder will not be paid until all designs, plans, specifications, exhibits, reports, data, and documents have been submitted, received, accepted and approved by the City.

6.5 Consultant shall, within ten (10) days following receipt of Compensation from City, pay all bills for services performed and furnished by others, in connection with the Project and the performance of the work, and shall, if requested, provide City with evidence of such payment. Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid sub-consultant and its services. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on the sub-consultants as are applicable to Consultant hereunder, and if City so requests, shall provide copies of such payments by Consultant to City. If Consultant has failed to make payment promptly to the sub-consultant for the Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City.

6.6 Consultant warrants that title to all Services covered by an Application for Payment will pass to City no later than the time of payment. Consultant further warrants that, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have been previously issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY CITY TO CONSULTANT.**

6.7

6.7.2 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

6.7.2.1 delays in the performance of Consultant's work;

6.7.2.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to City is provided by Consultant;

6.7.2.3 failure of Consultant to make payments properly to sub-consultants or vendors for labor, materials or equipment;

6.7.2.4 reasonable evidence that Consultant's work cannot be completed for the amount unpaid under this Agreement;

6.7.2.5 damage to City; or

6.7.2.6 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement; or

6.7.3 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld will be made within a reasonable time. City shall not be deemed in default by reason of withholding compensation as provided for in this Article VI.

6.7.3.1 In the event of any dispute(s) between the parties, regarding the amount properly compensable for any portion of the Services or as final compensation, or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely

manner and as required by the terms thereof, any such claim shall be waived.

6.7.3.3 Acceptance of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.

6.7.3.4 Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records, and shall have the right to audit same.

6.8 Reimbursable Expenses

6.8.1 When authorized by City in writing, Consultant will be entitled to reimbursement at cost for services and related expenses incurred for the following items:

6.8.1.1 Any travel, to include mileage reimbursement for travel by vehicle, will be reimbursed only if such travel was approved in writing by the City prior to such travel and must be in compliance with the Aviation Department Consultant and Contractor Reimbursable Expense Policy, Exhibit 3.

6.8.1.2 Reimbursement for travel, living and/or relocation costs will be limited to costs directly associated with Consultant's performance of Service under this Agreement. Consultant shall adhere to the Aviation Department Consultant and Contractor Travel, Living & Relocation Reimbursable Expense Policy, attached hereto as Exhibit 3, governing expenditures. Consultant shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed the amount noted, if any, in Consultant's attached Scope without further approval of City.

6.8.1.2 Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under the Agreement. These costs shall not exceed the amount noted, if any, in Consultant's attached Scope without further approval of City.

6.8.1.3 Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under Consultant's Agreement. These costs shall not exceed the amount noted, if any, in Consultant's attached Scope without further approval of City.

6.8.2 The City does not allow a markup on any of the above reimbursable items and only will reimburse approved hard costs incurred.

6.8.3 There shall be no markup on reimbursables from Sub-Consultants.

VII. OWNERSHIP AND RETENTION OF DOCUMENTS

7.1 Any and all documents, papers, records, writings, media or information in whatever form and character created by Consultant pursuant to the provisions of this Agreement and pertinent to the services rendered hereunder, (hereinafter "Documents") shall be the exclusive property of City; and such Documents shall not be the subject of any copyright or proprietary claim by Consultant. Consultant

understands and acknowledges that as the exclusive owner of any and all Documents, City has the right to use all Documents as City desires, without restriction and that City will be providing reports developed pursuant to this Agreement to the FAA. Any reuse outside of the scope of this Agreement without specific written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to Consultant

7.2 All of the Consultant's documentary work product reports and correspondence to City under this Agreement shall be the property of the City and, upon completion of this Agreement; such documentary work product shall be promptly delivered to City in a reasonably organized form, without restriction on its future use by City. The above notwithstanding, the Consultant shall retain all rights held prior to the effective date of this Agreement in any standard drawing details, designs, specifications, databases, computer software and any other proprietary information it may provide pursuant to this Agreement, whether or not such proprietary information was modified during the course of providing the services hereunder. The Consultant may retain for its files any copies of documents it chooses to retain and may use Consultant's work product as it deems fit. Any materially significant work product lost or destroyed by the Consultant shall be replaced or reproduced at the Consultant's non-reimbursable, sole cost.

7.3 Consultant agrees and covenants to protect any and all proprietary rights of the City in any materials provided to the Consultant. Such protection of proprietary rights by the Consultant shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to the City. Additionally, any materials provided to the Consultant by the City shall not be released to any third party without the written consent of the City and shall be returned intact to the City upon termination or completion of this Agreement or if instructed to do so by the Director

7.4 Consultant hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this Agreement to the City, including all equitable rights. No reports, maps, documents or other copyrightable works produced in whole or in part by this Agreement shall be subject of an application for copyright by the Consultant. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of the City (excluding any prior owned instrument of services, unless otherwise specified herein). **THE CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY, INsofar AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

7.5 Upon completion or termination of the Project, or upon request by the City, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement shall become the sole property of the City and shall be delivered at no cost to the City without restriction on future use. The City shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense.

7.6 The Consultant agrees to maintain all books, records and reports required under this Agreement for a period of not less than four (4) years after final payment is made and all pending matters are closed. In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the City, the Federal Aviation Administration and the Comptroller General of the United States, or any of their duly authorized representatives, access to any

books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

7.7 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the Consultant to provide the services or protect deliverables to City, 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 Consultant or its suppliers.

7.8 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VIII. TERMINATION OF AGREEMENT

8.1 Termination Without Cause.

8.1.1 This Agreement may be terminated by City without cause, prior to Director giving Consultant written notice to proceed, should Director, in his sole discretion, determine that it is not in City's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Consultant.

8.1.2 This Agreement may be terminated by the City at any time after issuance of the Director's notice to proceed, either for the City's convenience or because of Consultant's failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the City.

8.1.3 If the termination is for the convenience of the City, and following inspection and acceptance of Consultant's services properly performed prior to the effective date of termination an equitable adjustment in the contract price shall be made. Consultant shall not, however, be entitled to lost or anticipated profit on unperformed services, should City choose to exercise its option to terminate, nor shall Consultant be entitled to compensation for any unnecessary or unapproved work, performed during time between the issuance of the City's notice of termination and the actual termination date.

8.1.4 If the termination is due to Consultant's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the City for any additional cost occasioned to the City thereby.

8.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 8.1.3 of this clause.

8.1.6 The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

8.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the Director's notice to proceed, upon sixty (60) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

8.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article IV. Scope of Services; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Consultant shall have ten (10) calendar days after receipt of the written notice to cure such default. If Consultant fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

8.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, City may immediately terminate this Agreement, in whole or in part, "for cause":

8.3.1 Consultant makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or

8.3.2 Consultant violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

8.3.3 Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

8.3.4 Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of the Agreement; or

8.3.5 Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Consultant's assets or properties: or

8.3.6 Consultant fails to comply in any respect with the insurance requirements set forth in this Agreement.

8.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

8.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may

designate, at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed specifications, designs, plans, exhibits, documents, papers, records, charts, reports, and any other materials or information produced by, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, to include all reproductions of such work products, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

8.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. **Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.**

8.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon City. Consultant further acknowledges that the failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement by Consultant.

8.8 Failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to collect monies that Consultant otherwise may be entitled to for services performed under this Agreement.

8.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

IX. SUSPENSION OF WORK UNDER AGREEMENT

9.1 Right of City to Suspend. City may suspend this Agreement for any reason, with or without cause upon the issuance of written notice of suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Consultant of said notice. The notice of suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon Consultant's receipt of said notice.

9.2 Consultant's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the City, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by City and such termination shall be subject to all the requirements set out in Paragraphs 8.5 and 8.6 above, related to the Orderly Transfer and Fee Payment.

9.3 Procedures Upon Receipt of Notice of Suspension.

9.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

9.3.2 Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

9.3.3 All completed or partially completed designs, plans, specifications, studies, and other documents prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the City but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

9.3.4 During the period of suspension, Consultant shall have the option to at any time submit the above referenced statement to the City for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of the City under this Agreement, adjusted for any previous payments of the fee in question.

9.3.5 Any documents prepared in association with this Agreement shall be delivered to City by Consultant, as a pre-condition to final payment, within thirty (30) calendar days after receipt by City of Consultant's notice of termination.

9.3.6 In the event Consultant exercises its right to terminate this Agreement at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by City of Consultant's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

9.3.7 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this agreement, the City shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.

9.3.8 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty on the part of City. To this end, Consultant understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

X. INSURANCE REQUIREMENTS

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "Planning & Design for Runway & Taxiway Improvements (2012) at the

San Antonio International Airport” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City 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 the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Aviation Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

10.3 A Consultant’s financial integrity is of interest to the City; therefore, subject to Consultant’s right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant’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:

INSURANCE REQUIREMENTS	
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for The following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of \$5,000,000 per occurrence; \$15,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$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 \$5,000,000 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.

10.4 Consultant agrees to require, by written contract, that all subconsultants providing goods or services hereunder obtain the same insurance coverage required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the sub-consultant. This provision may be modified by City'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 City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and 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). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Risk Management Department
P.O. Box 839966
San Antonio, Texas 78283-3966

10.6 The Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the City and its officers, officials, employees, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, 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 the City 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 the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant'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.

10.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

10.10 It is agreed that Consultant's insurance shall be deemed primary and noncontributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.11 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 the City shall be limited to insurance coverage provided.

10.12 Consultant and any Subconsultants are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 Consultant covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages (including but not limited to direct, indirect, special, exemplary, punitive, incidental and consequential 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, intellectual property infringements, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Consultant' activities under this Agreement, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, consultant or subcontractor of Consultant, and 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 paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.3 The provisions of this Indemnity are solely 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. Consultant shall advise the City in writing within 24 hours of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.

11.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

11.4 Acceptance of any deliverable or final designs, drawings, plans, specifications, or exhibits by the City shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, plans, specifications, exhibits or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the in the Services, designs, working drawings, plans, specifications, or exhibits or other documents and work prepared by said Consultant.

XII. CONSULTANT'S LIABILITY AND STANDARD OF CARE

12.1 Consultant warrants that the services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. For breach of this warranty, the City shall have the right to terminate this Agreement under the provisions of this Agreement.

12.2 Consultant shall be represented by personnel with appropriate certification(s) at meetings of any official nature concerning the Project, including but not limited to scope

XIII. CONSULTANT'S WARRANTY

13.1 Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of the foregoing warranty, the City shall have the right to terminate the Agreement under the provisions of this Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Consultant found in breach of such warranty, by a final judgment of a Court of Competent Jurisdiction, shall take no compensation under this Agreement for any services rendered and such forfeiture shall not bar the City from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly entitled. This Agreement is entered into under competency requirements of the Texas Professional Services Procurement Act governing municipal employment of professional and other professionals. Accordingly, Consultant further pledges and warrants its best and most competent professional efforts to secure to the City the benefits of the agreement.

XIV. ASSIGNMENT OF RIGHTS OR DUTIES

14.1 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of City. Professional services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this Agreement may be subcontracted upon the written approval of Director. As a condition of consent, if same is given, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City in accordance with this Article.

14.2 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and

shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, City may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

14.3 Consultant agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with Article VIII, Termination.

XV. INDEPENDENT CONTRACTOR

15.1 Consultant covenants and agrees that it is an independent contractor and not an officer, agent, servant, or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant. No term or provision of this Agreement or act of the Consultant in the performance of this Agreement shall be construed as making the Consultant the agent, servant or employee of the City, or as making the Consultant or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which the City provides to or for its employees.

15.2 No Third Party Beneficiaries - For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

XVI. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

16.1 It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs) as defined under 49 CFR Part 26, shall have "equality of opportunity" to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all DOT or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.

16.2 The Consultant agrees to employ good-faith efforts (as defined in the Aviation Department's

DBE Program) to carry out this policy through award of sub-consultant contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Aviation Department Contract, and/or the utilization of DBE suppliers where feasible. Consultants are expected to solicit bids from available DBE's on contracts which offer subcontracting opportunities.

16.3 Consultant specifically agrees to comply with all applicable provisions of the Aviation Department's DBE Program. The DBE Program may be obtained through the airport's DBE Liaison Officer at (210) 207-3505 or by contacting the City's Aviation Department.

16.4 The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate. Consultant agrees to include this clause in each sub-consultant contract the prime consultant signs with a sub-consultant.

16.5 The Consultant agrees to pay each sub-consultant under this Contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contract receives from the City of San Antonio. The Consultant further agrees to return retainage payments to each sub-consultant within fifteen (15) days after the sub-consultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval from the City of San Antonio. This Clause applies to both DBE and non-DBE sub-consultants.

16.6 All changes to the list of sub-consultants submitted with the proposal and approved by the City or Aviation Department, excluding vendors shall be submitted for review and approval by Aviation Department's DBE Liaison Office for approval when adding, changing, or deleting sub-consultants on airport projects. Consultants shall make a good-faith effort to replace DBE sub-consultants unable to perform on the contract with another DBE.

16.7 During the term of this Agreement, the Consultant must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Agreement, to request additional information, documentation or verification of payments made to subcontractors in connection with this Agreement. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of check must properly identify the project name or project number to substantiate payment.

16.8 The Consultant shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit 4.

16.9 Failure or refusal by a Proposer or Consultant to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part.

XVII. EQUAL EMPLOYMENT OPPORTUNITY

Consultant shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, Consultant agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XVIII. AMENDMENTS

Any alterations, additions, or deletions to the terms of this Agreement shall be effected by amendment, in writing, executed by City and Consultant. The Director shall have the authority to execute amendments that require up to \$50,000.00 in increased cost on behalf of the City without further action by the San Antonio City Council, subject to appropriation of funds for the increase in cost. Any other change will require approval of the City Council by passage of an ordinance therefore.

XIX. NOTICES

Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or five (5) calendar days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Aviation Department
Attn: Assistant Director of Planning, Development &
Construction
9800 Airport Boulevard
San Antonio, TX 78216

If intended for Consultant, to:

XX. INTEREST IN CITY CONTRACTS PROHIBITED

20.1 No officer or employee of the City shall have a financial interest, directly or indirectly, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service Board, the San Antonio Water System, Inc., and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.

20.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City owned utilities. An

officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Consultant must disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so will constitute a violation of City Ordinance No. 76933.

20.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City’s a Discretionary Contracts Disclosure Statement in compliance with City’s Ethics Code.

XXI. CLAIMS AND DISPUTES

21.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the City and Consultant arising out of or relating to the Agreement. Claims must be initiated by written notice. Every Claim of the Consultant, whether for additional compensation, additional time, or other relief shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Consultant by his signature) of the Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

21.2 Time Limit on Claims. Claims by the Consultant or by the City must be initiated within twenty-one (21) calendar days after discovery of the event giving rise to such Claim. Claims by the Consultant must be initiated by written notice to the City. Claims by the City must be initiated by written notice to the Consultant.

21.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing, the Consultant shall proceed diligently with performance of the Agreement and the City shall continue to make payments in accordance with the Agreement.

21.4 Claims for Additional Time. If the Consultant wishes to make Claim for an increase in the time for performance, written notice as provided in this Article XVII shall be given. The Consultant's Claim shall include an estimate of probable effect of delay on progress of the Services. In the case of a continuing delay only one Claim is necessary.

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

21.5.1 No consequential damages will be allowed.

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

21.5.3 No profit will be allowed on any damage claim.

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

21.7 Alternative Dispute Resolution.

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

21.7.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement 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 mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

XXII. RIGHT OF REVIEW AND AUDIT

22.1 The Consultant grants the City, or its designees, the right to audit, examine or inspect, at the City's election, all of the Consultant's records relating to the performance of the Services under the Agreement during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by the City. The Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

22.2 The City agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Consultant agrees to allow the City's designee access to all of the Consultant's Records, Consultant's facilities, and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

22.3 Consultant must include this audit clause in any subcontractor, supplier or vendor contract.

XXIII. AIRPORT SECURITY

23.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it. Consultant is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Aviation Director, the Transportation Security Administration ("TSA") or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Consultant must promptly report any information in accordance with those regulations promulgated by the FAA, the TSA and the City. Consultant must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement.

23.2 Consultant must comply with, and require compliance by its Subcontractors, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Aviation Director, Consultant must adopt procedures to control and limit access to the Airport Premises utilized by Consultant and its Subcontractors in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Consultant must have in place and in operation a security program for the Airport Premises utilized by Consultant that complies with all applicable laws and regulations. All employees of Consultant that require regular access to sterile or secure areas of the Airport must be badged in accordance with City and TSA rules and regulations.

23.3 Gates and doors located in and around the Airport Premises utilized by Consultant that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Consultant at all times when not in use, or under Consultant's constant security surveillance. Gate or door malfunctions must be reported to the Aviation Director or the Aviation Director's designee without delay and must be kept under constant surveillance by Consultant until the malfunction is remedied.

23.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing. Consultant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

XXIV. CONTRACT CONSTRUCTION

24.1 All parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

XXV. FAMILIARITY WITH LAW AND CONTRACT TERMS

25.1 Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, all applicable laws, regulations and FAA Advisory Circulars and guidelines, and all of the terms and conditions of this Agreement and will comply therewith.

XXVI. APPLICABLE LAW

26.1 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXVII. VENUE

27.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XXVIII. SEVERABILITY

28.1 In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable, and this Agreement shall be enforced as if such invalid, illegal, or unenforceable provision was not included in this Agreement.

XXIX. FORCE MAJEURE

29.1 In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXX. SUCCESSORS

30.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

XXXI. NON-WAIVER OF PERFORMANCE

31.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or

relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

31.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXXII. PARAGRAPH HEADINGS

32.1 The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXXIII. LEGAL AUTHORITY

33.1 The signer of this Agreement for City and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and Consultant respectively, and to bind City and Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXXIV. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

34.1 By execution of this Agreement, the undersigned authorized representative of Consultant certifies, and the City relies thereon, that neither Consultant., nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

“Principals”, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

34.2 Consultant shall provide immediate written notice to City, in accordance the notice provisions of this Agreement, if, at any time during the term of this Agreement, including any renewals hereof, Consultant learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

34.3 Consultant’s certification is a material representation of fact upon which the City has relied in entering into this Agreement. Should City determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the City may terminate this Agreement in accordance the terms of this Agreement.

XXXV. ENTIRE AGREEMENT

35.1 This Agreement, together with its authorizing ordinance, Exhibits and Attachments, embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San

Antonio City Council.

35.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE ____ DAY OF _____, 2012.

CITY OF SAN ANTONIO, TEXAS

CONSULTANT

By: _____
Sheryl L. Sculley
City Manager

By: _____
Signature

Printed Name

Title

Federal Tax ID#: _____

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT 1
SCOPE OF SERVICES

EXHIBIT 2
FEE SCHEDULE

EXHIBIT 3

**Consultant
And
Contractor
Travel, Living & Relocation Expense Policy**



City of San Antonio

As of 6/2/08

Reimbursable Expense Policy
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Consultant & Contractor Reimbursable Expense Policy
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1. GENERAL

1.1 Introduction

This Consultant & Contractor Reimbursable Expense Policy (the “Policy”) contains the guidelines for reimbursement of reasonable expenses incurred by Contractors and contractors (both of which shall hereinafter be referred to as “Contractor”) in work performed pursuant to an agreement with the City of San Antonio (hereinafter the “City”).

1.2 Scope

The policy and procedures contained herein apply to all Contractors in work performed in furtherance to an agreement with the City.

This policy also pertains to all reimbursable expenses by sub-consultants or subcontractors. The Contractor shall be responsible for ensuring that all subcontractor or sub-consultants adhere to this Policy.

The Contractor is responsible for becoming familiar with and adhering to the Policy as applicable for each reimbursable expense submitted.

1.3 Policy

Official reimbursable expenses shall be properly authorized, processed, conducted, reported, and reimbursed in accordance with this Policy. Contractor is expected to exercise good judgment in the type and amount of expense incurred.

For travel expenses, Contractor is expected to plan in advance of the departure date to obtain lowest cost fares, rates and accommodations. In addition, Contractor is encouraged to use all practical means, including internet discounters, to obtain the lowest cost fares, rates, and accommodations.

1.4 Definitions

The following definitions apply to this Policy:

Domestic Travel – Travel between business points within the continental United States (CONUS).

Actual and Reasonable Expenses – The specific, itemized expenses incurred, based on original receipts up to the amount judged by the Aviation Director as justifiable under the circumstances.

Official Travel Time – For the purposes of computing per diem allowances, official travel starts at the day and time the Contractor employee leaves their home, office, or other authorized point and ends on the day and time the Contractor employee returns home, to the office, or other authorized point. This definition is for computing per diem allowances only and may not be used for billing chargeable Contractor employee hours.

Travel Expenses – Includes meals, lodging, transportation and incidental expenses incurred for assignments within 30 consecutive calendar days at the same project site. The Contractor employee’s return home for the weekends does not break the continuity of the assignment.

Extended Travel Expenses - Includes meals, lodging, transportation and incidental expenses incurred for assignments 30 or more consecutive calendar days at the same project site. The Contractor employee’s return home for the weekends does not break the continuity of the assignment.

Reimbursable expenses – those expenses incurred in the furtherance of a project or assignment pursuant to an executed contract or agreement with the City.

Common Carrier Terminal – a terminal facility for the general public, such as an airport, train station, subway station or bus station.

1.5 Reimbursements

Expenses incurred by the Contractor while engaged in activities outside the scope of the Contractor Agreement or in violation of this Policy will be denied. This includes, but is not limited to, expenses incurred:

- Prior to the execution of the Agreement;
- After the expiration of the Agreement;
- At a location not included authorized by the Agreement;
- At a cost in excess of those costs allowed within the Agreement and/or within this Policy;
- In connection with work performed for customers of Contractor other than the City.

Only those expenses which are ordinary and necessary, and within the contracted for budget, to accomplish the contracted work are eligible for reimbursement.

Entertainment expenses, including alcohol, are not reimbursable.

1.6 Interrupted Itinerary

If official business travel is interrupted for personal convenience, any resulting expense shall not be the responsibility of the City.

2. Transportation Expenses

2.1 Guideline

Contractor must utilize the most economical mode of transportation and the most direct route consistent with the business purpose of the trip.

2.2 Air Travel

Lowest Available Airfare

Airfare reimbursement shall not exceed the lowest practical, available cost of competing airfare. Contractor shall, whenever practicable, make reservations two or more weeks in advance of travel. When all considerations are equal (e.g. travel time dates, times, destination, and work impacted by travel), Contractor must choose the lowest fare available at that time, regardless of personal preferences for air carrier.

Use of Business or First Class

No reimbursement will be made for Business or First Class travel without advance written approval from the Aviation Director (or designee). (Note: Business or First Class accommodations obtained through use of frequent flyer programs or at Contractor's expense will not require advance approval. However, Contractor must be able to provide the lowest available price of coach fair in order to be reimbursed for that portion of the expense.)

Extended Travel to Save Costs

The additional expenses associated with travel that includes an extended stay (e.g. Saturday night stay) may be reimbursed when the overall savings is at least \$150 compared to the cost if the Contractor had not extended the trip.

In determining if an extended stay will result in any cost savings, Contractor must consider the additional expenses associated with an extended stay. Such expenses shall include, but are not limited to, the additional cost of lodging, rental car, meals and parking.

2.3 Travel by Private Automobile

Reimbursement for Travel by Private Automobile

Travel by private automobile will only be reimbursed if such travel is for a valid business purpose. When a private automobile is used, actual mileage will be reimbursed at the most current rate allowable by the Internal Revenue Service. The number of miles driven must be documented by the Contractor. No additional reimbursement is made for expenses related to the use of the automobile. Routine repairs, cleaning, detailing, tires, gasoline, or other automobile expense items will not be reimbursed for privately owned automobiles.

When two or more persons share a privately owned automobile, only the driver may claim the reimbursement for mileage. Two or more persons traveling to the same destination, for the same purpose, and same or approximately the same time span on the same day or days shall be expected to share a privately owned automobile whenever possible.

Charges for parking and toll roads are allowed; however receipts must be provided.

Reimbursement for Travel by Private Automobile in Lieu of Air Travel

When a private automobile is used instead of available air travel for the personal convenience of the Contractor, reimbursement of transportation costs by private automobile shall not exceed the documented amount of airfare Contractor would have paid had the Contractor traveled by air.

Reimbursement for Travel To or From a Common Carrier Terminal

When a Contractor drives a privately owned automobile to or from a common carrier terminal, the mileage and tolls for one round trip, plus parking for the duration of the trip may be claimed for reimbursement. Documented miles driven and receipts must be provided. Contractor is expected to use the lowest, reasonable cost parking option available.

2.4 Travel by Private Aircraft

When a private aircraft is used instead of available commercial air travel for the personal convenience of the Contractor, the reimbursement of transportation costs by private aircraft shall be reimbursed at a rate of 99.5 cents per mile up to the amount that would have been incurred by all Contractor employee travelers using common carrier transportation air fares. Documented aircraft landing and tie-down fees paid, if any, will be reimbursed separately, however, receipts must be provided.

Example:

Two Contractor Employee travelers in the same privately rented aircraft, traveling 500 miles to San Antonio. The common carrier transportation air fares round trip would have been \$250 per person. Total mileage of private aircraft would be 1,000 miles (500 miles each way) times 99.5 cents per mile for a total expense of \$995 for the private aircraft. The total reimbursable cost for the Contractor would be limited to \$500 (2 contractor employees times \$250 each), plus any documented aircraft landing and tie-down fees paid.

2.5 Rental Cars

Rental cars may be used for transportation to or from a common carrier terminal. Rental cars may also be used upon arrival at the official business destination when the use of public transportation or other transportation such as taxis is not practical when considering the cost, number of miles to be traveled and other factors. Only commercial agencies may be used. Contractors are strongly encouraged to request the lowest available rate when making rental car reservations.

Reimbursement

Reimbursement is limited to standard size sedan or vehicle commensurate with the requirements of the trip. The cost of the rental car and gasoline will be reimbursed. Documented miles driven and receipts must be provided. There is no reimbursement for mileage for a rental car.

The car must be turned in promptly. Daily charges, outside Official Travel Time, will not be reimbursed.

When a rental car is used on a non-exclusive basis for the City, reimbursement of the rental car and gasoline cost must be pro-rata based on mileage on City projects versus the total mileage.

Insurance

The Contractor assumes all risks and expenses associated with obtaining insurance deemed necessary when using a rental car. Car rental insurance, including collision damage waivers, is not reimbursable.

2.6 Ground Transportation

The following guidelines apply to ground transportation to or from a common carrier terminal at the business destination.

Taxis

The cost of the taxi ride plus a reasonable gratuity will be reimbursed. A reasonable gratuity may not exceed 10% of the total fare. Receipts must be provided.

Airport Shuttle Service

The cost of the airport shuttle ride plus gratuity will be reimbursed. Receipts must be provided.

Local Buses and Subways

Local bus and subway fares are reimbursable; however, receipts are not required.

3. Living Expenses

3.1 Lodging

Lodging expenses for travel within the Continental United States (CONUS) are reimbursed at the lesser of actual cost or the maximum rate established in the U. S. General Services Administration (GSA) Federal Travel Regulation Domestic Per Diem Rates. Lodging taxes, although not included in the GSA per diem rate for lodging, are reimbursable. Contractors are strongly encouraged to request the lowest available rate when making the lodging reservations.

Hotel bills must show the hotel name and locations, dates room was occupied and the rate per day. Other items appearing on the hotel bill should be identified as to the business reason for the charges.

Contractor will not be reimbursed for the following expenses appearing on the hotel bill:

- Alcohol (alone or part of meal)

- Entertainment
- Personal services
- Laundry/Dry cleaning if travel is less than five days

When accommodations are shared with other than an official Contractor employee, reimbursement is limited to the cost that would have been incurred had the Contractor been traveling alone.

3.2 Non-Commercial Lodging

Contractor lodging in non-commercial facilities such as house trailers or field camping are reimbursed actual expenses up to the maximum applicable GSA lodging rate. No reimbursement is provided for housing as a guest in a private home.

3.3 Meals Expense

Meals expense for travel within the Continental United States (CONUS) are reimbursed at actual cost, up to the maximum rate established in the U. S. General Services Administration (GSA) Federal Travel Regulation Domestic Per Diem Rates.

Meal expenses for the first and last day of travel are reimbursed at the lower of actual costs or the pro-rated GSA per diem rate listed below:

Beginning of “Official Travel Time”		Ending of “Official Travel Time”	
Date of Departure		Date of Departure	
Prior to 11:00 am	100% per diem	Prior to 11:00 am	33% per diem
11:01 am to 5:00 pm	66% per diem	11:01 am to 5:00 pm	66% per diem
After 5:00 pm	33% per diem	After 5:00 pm	100% per diem

For travel of more than 12 hours but less than 24 hours; meals are reimbursed at the pro-rated GSA per diem rates defined above.

Daily expenses incurred within the vicinity of the Contractor employee’s primary work site shall not be reimbursed.

3.4 Incidental Expenses

Payments for tolls, parking charges, cab fares can be reimbursed with proper documentation. Reasonable laundry and dry cleaning expenses will be allowed if travel is over a period of 5 consecutive days. Additionally, reasonable gratuities may be reimbursed if itemized.

Expenses for entertainment and personal convenience items such as alcohol, in-room movies, reading materials and clothing are not reimbursable.

3.5 Daily Allowance and Lodging Allowance for Extended Travel

Travel during which a Contractor remaining at one work location for 30 days or more in any calendar year months shall be considered an extended travel assignment. The 30 days begins on the first day at the work location. The Contractor’s return home for weekends does not break the continuity of an extended travel assignment.

The maximum reimbursable rate for extended travel assignments will be the lesser of actual costs of lodging (housekeeping, utilities and furniture rental), meals, and incidentals (as previously outlined above) **or** 60% of the maximum rate established in the U. S. General Services Administration (GSA) Federal Travel Regulation Domestic Per Diem Rates.

All extended travel must be approved in advance by the Aviation Director or designee prior to Contractor committing to any extended lodging arrangement.

4. Relocation Assistance

4.1 Requirements

Relocation assistance is generally not provided to Contractors. However, in rare Aviation Department agreements, relocation of key personnel may be allowed for long term capital projects. The expenses related to the Contractor employee relocation must be budgeted in advance at the time the agreement is signed. Additionally, all requests must be approved by the Aviation Director in advance of offering any relocation assistance to a Contractor employee. The request must include a justification why this position could not be filled by hiring an employee locally and why the assistance is needed. Evidence will be required demonstrating the efforts made to hire the employee locally. Any relocation assistance will be limited based on the type of employee as explained below.

4.2 Limitations

Relocation assistance will only be considered when a Contractor employee is required to change his/her place of residence more than 50 miles because of work location and the employee’s duties are deemed in the best interest of the Aviation Department agreement requirements. Once the relocation assistance is approved, the employee shall receive reimbursement for the lesser of the actual documented necessary and reasonable relocation expenses or the maximum allowable assistance based on type of employee as defined below:

<i>Personnel Type</i>	Relocation Assistance Limitations	
	<i>The lower of:</i>	
Key Position	Actual Allowable Expenses	\$10,000 max
Professional Positions	Actual Allowable Expenses	\$5,000 max

4.3 Allowable Expenses In General

Relocation assistance will only be paid for reasonable expenses of moving household goods and personal effects (including storage expenses), and travel expenses to a new residence. The cost of traveling will only include the shortest and direct route available by conventional transportation. Any expenses incurred for additional overnight stays or side trips for sightseeing purposes will not be reimbursed.

4.4 Travel Expenses by Car

Use of personal vehicle to relocate the household goods and personal effects will be reimbursed at the lesser of:

- Actual expenses for gas and oil for the personal vehicle, if accurate records are maintained for these expenses, **or**
- The standard mileage reimbursement rate for moving expenses, as the Internal Revenue Service regulations.

In either method, parking fees and tolls paid as a part of the relocation will be reimbursed.

Reimbursement will not be allowed for general repairs, general maintenance, insurance, or depreciation on the vehicle.

4.5 Household Goods and Personal Effect Expenses

Relocation assistance will be allowed for the cost of packing, crating, and transporting household goods and personal effects. Reimbursement will also be allowed for costs of connecting or disconnecting utilities required because of moving the household goods, appliances, or personal effects.

4.6 Storage Expenses

Relocation assistance will be allowed for reasonable costs of storing and insuring household goods and personal effects within any period of 30 consecutive days after the day the household goods and personal effects are moved from the former home and before their delivery to the new home.

4.7 Travel Expenses

Relocation assistance will be allowed for reasonable costs of transportation and lodging for the Contractor employee and members of their household while traveling from their former home to their new home. This will include reasonable lodging expenses that do not exceed one day in the area of the former home.

4.8 Non-reimbursable Relocation Expenses

Relocation assistance will not extend to the following types of expenses:

- Any part of the purchase price of the new home.
- Expenses of buying or selling a home (including closing costs, mortgage fees, and points).
- Expenses of entering into or breaking a lease.
- Home improvements to help sell the former residence.
- Loss on the sale of the former residence.
- Mortgage penalties.
- Real estate taxes.
- Refitting of carpet and/or draperies.
- Return trips to former residence.
- Security deposits of any kind.
- Storage charges except as defined above.
- Registration fees for automobile license plates, tags, etc.
- Fees associated with acquiring a Texas driver's license.

4.9 Relocation Assistance Recovery

If the City of San Antonio has paid for relocation assistance to a Contractor's employee and the employee leaves the Contractor's employment before six (6) months of relocation, the City will be entitled to recover the full amount of the relocation assistance paid from Contractor.

5. Miscellaneous Expenses

5.1 General

Miscellaneous expenses that are ordinary and necessary to accomplish the official business purpose of the trip are reimbursable. Receipts are required for all miscellaneous expenses. The most common of these expenses are as follows:

- Use of computers, printers, faxing machines, and scanners.
- Postage and delivery.
- Office supplies specific to the project.

Expenses that will not be reimbursed will be items for personal use or items that do not have a direct business reason or benefit to the project. Examples of these expenses are:

- Business gifts.
- Snacks or other entertainment items for staff meetings and/or meetings with sub-Contractors.
- Mileage expense for purchase of items where the direct project related item purchased was not the sole reason for the trip.

- Carrying cases for cell phones or computers.
- Items that could be used on more than one project.

5.2 Telephone Calls

Telephone charges should be made per a calling plan with reasonable calling rates. If City, in its sole determination, finds that a calling plan is unreasonable, City may reimburse Contractor at a rate that City determines to be reasonable. Claims for phone call require a statement of the date, person called, phone number, and business reason for the call.

Personal phone calls are not reimbursable.

5.3 Local Business Meetings

Costs associated with local business meetings must be reasonable and have a direct business reason for the City of San Antonio. Local business meeting exceeding \$150 must be approved in advance of the scheduled meeting. As stated in previous sections, entertainment is not reimbursable. If alcohol is served at the business meeting this will deem the event as a social event and the entire event will not be reimbursable.

Meals served at an approved business meeting event will be reimbursed at the lesser of the actual cost or the daily per diem rate as specified by GSA for that particular meal. The GSA has established per diem meal rates by breakfast, lunch and dinner. Facility charges associated with this event must be reasonable and approved in advance.

6. Travel Expense Settlement

6.1 Reimbursement

A travel expense statement must be prepared and submitted with the appropriate supporting documents. At a minimum, the expense statement should be in a legible format consistent with business standards and must contain the following elements:

- Name of Contractor being reimbursed.
- Name of Contractor employee that incurred the expenses.
- Dates covered in the expense report.
- Business reason for incurring expenses on behalf of City.
- Legible format and consistent with business standards.

All required receipts must be legible and submitted with the expense statement. If required receipts cannot be obtained or have been lost a statement providing the reason for the unavailability or loss should be noted. In the absence of a satisfactory explanation, the amount involved will not be reimbursed.

Because lodging receipts may include non-reimbursable charges, lodging will not be reimbursed without a copy of the receipt or facsimile document containing itemized charges for the room, e.g., taxes, telephone, etc. from the hotel.

Expenses should be itemized chronologically according to the nature and type of travel expense (i.e. airfare, hotel, meals, etc.). The completed and supported travel expense statement should be submitted in the first billing cycle following the incurrence of the expense.

6.2 Right to Audit

The City reserves the right to audit actual expenses. Expenses will be reimbursed in accordance with the procedures set out herein at actual cost within the limits and requirements established by this policy or, if applicable, the Agreement.

EXHIBIT 4

DBE COMPLIANCE AND ENFORCEMENT

DBE Subcontracting Obligation - Upon approval of the required DBE utilization documentation, the Submitting Firm receiving award of the contract shall enter into a subcontract with each approved DBE subcontractor listed in their Submittal. The contract shall be for the scope of work and amount stated in the Submittal documents. DBE subcontracts shall not be terminated, nor shall the scope of work or the amount to be paid to the DBE be altered by the prime consultant prior to the written approval of the Aviation Department's DBE Liaison Officer (DBELO).

Subcontractor Substitutions, Addition or Deletions - The Prime Consultant/Contractor must notify the DBELO in writing of the necessity to substitute, add or delete a subcontractor in order to fulfill the DBE requirements. A change in the scope of work and/ or amount stated in the submittal shall not be made before the DBELO approval. Requests should be submitted with sufficient time for review and approval, which may take up to 3 working days. The request shall be made utilizing DBE Form 3 (Change of Subcontractor/Supplier).

Failure to Meet DBE Contract Requirements – Failure to utilize the listed DBE subcontractors as stated in the Consultant's/Contractor's Submittal constitutes breach of contract and may lead to the cancellation or termination of the Contract.

Relief from DBE Requirements – After award of the Contract, no relief of the DBE requirements will be granted except in exceptional circumstances. Requests for complete or partial wavier of the DBE requirements of this Contract must be submitted in writing the DBELO. The request for relief must contain details of the request, the circumstances that make the request necessary, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Consultant/Contractor to contract with the DBEs listed in the Submittal documents, and supporting documentation of efforts made to locate and solicit replacement or substitution of DBE subcontractor.

Penalties for Noncompliance - Failure to comply with any portion of the DBE Program, and whose failure to comply continues for a period of 30 calendar days after the Consultant/Contractor receives written notice of such noncompliance, may be subject to any or all of the following penalties:

- a. Withholding of ten percent of all future payments for the Eligible project until it is determined the Consultant/Contractor is in compliance.
- b. Withholding of all future payments for the Eligible project until it is determined the Consultant/Contractor is in compliance.
- c. Cancellation of the Eligible Project.
- d. Refusal of all future contracts or sub-contracts with the San Antonio Airport System for a minimum of one year and a maximum of three years from the date upon which this penalty is imposed. In the event a penalty is imposed, the Consultant/Contractor continues to be obligated to pay its subcontracts, laborer, suppliers, etc.

The San Antonio International Airport System will provide a cure-period to allow Consultants/Contractors to comply with the terms of the contract and associated default provisions.

EXHIBIT 5

FEDERAL CONTRACT PROVISIONS – ARCHITECTURAL/ENGINEERING PROFESSIONAL SERVICES CONTRACTS

PROVISION 1. CIVIL RIGHTS ACT OF 1964, TITLE VI – CONSULTANT CONTRACTUAL REQUIREMENTS

During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

1.1 Compliance with Regulations. The Consultant shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

1.2 Nondiscrimination. The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Consultant under the contract until the Consultant complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The Consultant shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such

provisions including sanctions for noncompliance. Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**PROVISION 2. AIRPORT & AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 –
GENERAL CIVIL RIGHTS PROVISIONS**

2.1 The Consultant assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of Consultants, this provision binds the Consultants from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

PROVISION 3. DISADVANTAGED BUSINESS ENTERPRISES

3.1 Contract Assurance (§26.13) - The Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

3.2 Prompt Payment (§26.29) - The Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the Consultant receives from the City. The Consultant agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

PROVISION 4. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

4.1 No Federal appropriated funds shall be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

4.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the Consultant shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

PROVISION 5. ACCESS TO RECORDS AND REPORTS

5.1 The Consultant shall maintain an acceptable cost accounting system. The Consultant agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

PROVISION 6. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Consultant or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

PROVISION 7. RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

PROVISION 8. TRADE RESTRICTION CLAUSE

8.1 The Consultant or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

8.2 Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Consultant or subcontractor who is unable to certify to the above. If the Consultant knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

8.3 Further, the Consultant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Consultant may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

8.4 The Consultant shall provide immediate written notice to the sponsor if the Consultant learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by

reason of changed circumstances. The subcontractor agrees to provide written notice to the Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

8.5 This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Consultant or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

8.6 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8.7 This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

PROVISION 9. TERMINATION OF CONTRACT

9.1 The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

9.2 If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

9.3 If the termination is due to failure to fulfill the Consultant's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

9.4 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

9.5 The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

PROVISION 10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

10.1 The Consultant, by acceptance of this contract, certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by acceptance of this contract, that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Consultant or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this contract.

EXHIBIT 6

GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

ARTICLE I. GENERAL PROVISIONS

1.1 CONTRACT DEFINITIONS

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

- 1.1.1 “**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 Contractor. 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 Contractor’s Bid Proposal.
- 1.1.2 “**AMENDMENT**” is a written modification of the Contract prepared by Owner or Design Consultant and signed by Owner and Contractor, (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**” means 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 Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only in writing by a Field

- (1) Design Consultant and Contractor;
- (2) Owner and a Subcontractor or Sub-Subcontractor; or
- (3) any persons or entities other than Owner and Contractor.

1.1.8 **“CONTRACT DOCUMENTS”** means the Construction Contract between Owner and Contractor, 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) other documents listed in the Contract, including Field Work Directives, Change Orders and/or Amendments;
- (7) a written order for a minor change in the Work issued by Design Consultant and/or Owner, as described in **Article VII** herein.

The geotechnical and subsurface reports which Owner may have provided to Contractor 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 **“CONTRACTOR”** means the entity that has entered into a Contract with Owner to complete the Work. Contractor, as used herein, includes Construction Manager at Risk or other applicable entities performing work under a Contract with City.

1.1.11 **“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

- 1.1.12 **“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.
- 1.1.13 **“DESIGN CONSULTANT”** unless the context clearly indicates otherwise, means an Engineer, Architect or other Design Consultant 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 **“FIELD WORK DIRECTIVES”** OR **“FORCE ACCOUNT”** is a written order signed by Owner directing a change in the Work prior to agreement an adjustment, if any, in the Contract Sum and/or Contract, as further defined in **Section 7.3** herein.
- 1.1.16 **“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.
- 1.1.17 **“NOTICE TO PROCEED (HEREIN ALSO REFERRED TO AS “WORK PROJECT AUTHORIZATION” OR “NTP”)**” is a written notice given by Owner to Contractor establishing the date on which the Contract Time will commence to run and the date on which Contractor may begin performance of its contractual obligations.
- 1.1.18 **“OWNER”** is defined in **Article II** herein.
- 1.1.19 **“OWNER DESIGNATED REPRESENTATIVE (ODR)”** means the person(s) designated by Owner to act for Owner.
- 1.1.20 **“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 or by separate contractors. All references in these General Conditions to or concerning the Work or the Site of the Work will use the term “Project,” notwithstanding that the Work only may be a part of the Project.
- 1.1.21 **“PROJECT MANAGEMENT TEAM”** is composed of Owner, its representatives, Design Consultant and Program Manager (if any) for this Work.
- 1.1.22 **“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 Contractor.
- 1.1.23 **“SPECIAL CONDITIONS”** are terms and conditions to an Agreement that supplement and are superior to these General Conditions and grant greater authority or impose greater restrictions upon Contractor, 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.

- 1.1.24 **“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.
- 1.1.25 **“SUBSTANTIAL COMPLETION”** is the date certified by Owner and Design Consultant, 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.
- 1.1.26 **“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.
- 1.1.27 **“THE 3D MODEL”** is the Building Information Model prepared by Design Consultant in the format designated, approved and acceptable to Owner with databases of materials, products and systems that can be used by Contractor 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 Contractor and not Owner or Design Consultant.
- 1.1.28 **“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 Contractor, or any Subcontractors, Sub-Subcontractors, material suppliers or any other entities for which Contractor is responsible, to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.
- 1.1.29 **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

- 1.2.1 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 Contractor by CIMS Contract Services, notifying Contractor of the award of a contract. In its Notice of Award Letter, Contractor will be informed of a date certain by which Contractor's bond(s) and evidence of insurance shall be delivered to CIMS Contract Services.
- 1.2.2 **DELIVERY OF CONTACT AND BONDS.** Not later than the Pre-Construction meeting and prior to the commencement of any Work on the Project, Contractor shall deliver a fully executed Contract to Owner, along with such bonds as Contractor 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.
- 1.2.3 **DELIVERY OF EVIDENCE OF INSURANCE.** Not later than the Pre-Construction meeting, and prior to the commencement of any Work under this Contract, Contractor shall deliver evidence of insurance to Owner. Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the 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. Contractor 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 Management Department, shall have authority to waive this requirement.
- 1.2.4 **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 Contractor or any Subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Contractor receiving a Notice to Proceed is performed at Contractor's risk.
- 1.2.5 **SUBMISSION OF PROJECT SCHEDULE(S).** Prior to commencement of Work (unless otherwise specified elsewhere in the Contract Documents), Contractor 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 Pre-Construction Conference.
- 1.2.6 **PRE-CONSTRUCTION CONFERENCE.** Before Contractor commences any Work on the Project, a Pre-Construction Conference attended by Contractor, Design

- 1.2.7 Payments for services, goods, 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 City's discretion, this Agreement may be terminated immediately with no additional liability to City.

1.3 CONTRACT DOCUMENTS

- 1.3.1 **EXECUTION OF CONTRACT DOCUMENTS.** Execution of the Contract by Contractor is a representation Contractor has been provided unrestricted access to the existing improvements and conditions on the Project Site, Contractor thoroughly has investigated the visible conditions at the Site and the general local conditions affecting the Work and Contractor's investigation was instrumental in preparing its bid or proposal submitted to Owner to perform the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum arising from conditions which Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.
- 1.3.2 **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.** The Drawings, Specifications and other documents, including those in electronic form, prepared by Design Consultant, its consultants or other consultants retained by Owner for the Project, which describe the Work to be executed by Contractor (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. Contractor shall be permitted to retain one record set. Neither Contractor nor any Subcontractor, sub-Subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Design Consultant or Design Consultant's consultants. All copies of Construction Documents, except Contractor's record set, shall be returned or suitably accounted for to Design Consultant on request and upon completion of the Work. The Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant's consultants, along with copies thereof furnished to Contractor, are for use solely with respect to this Project. The drawings, specifications or other documents are not to be used by Contractor or any 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. Contractor, Subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the

- 1.3.2.1 All of Contractor'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 Contractor's Bid Proposal.
- 1.3.2.2 Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially-significant Work product lost or destroyed by Contractor shall be replaced or reproduced at Contractor's non-reimbursable sole cost. In addition, Owner shall have access during normal business hours, during the duration this Contract is in effect and for four (4) years after the final completion of the Work, unless there is an ongoing dispute under the Contract, then such access period shall extend longer until final resolution of the dispute, to all of Contractor'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. Contractor shall not be required to keep records of, or provide access to, the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers. Nothing herein shall deny Contractor the right to retain duplicates. Refusal by Contractor to comply with the provisions hereof shall entitle Owner to withhold any payment(s) to Contractor until compliance is obtained.
- 1.3.2.3 All of Contractor's documentary Work product shall be maintained within Contractor's San Antonio offices, unless otherwise authorized by Owner. After expiration of this Contract, Contractor's documents may be archived in the Contractor'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 Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by Contractor shall be

- (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 Contractor 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, Design Consultant or Owner's Resident Inspector or other specified 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

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 herein as "1" and in descending order:

1. Modifications to this Agreement signed by Contractor, Owner and Design Consultant;
2. Addenda, with those of later date(s) having precedence over those with earlier date(s);
3. Special Conditions;
4. General Conditions;
5. Special Provisions (Horizontal Projects);
6. Specifications;
7. 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 and Design Consultant.

1.3.3.7 When the work is governed by reference to standards, building codes, manufacturer's instructions or other documents, unless otherwise specified, the 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.

1.3.3.9 Special Provisions, if any, shall be issued by Owner directly to Contractor, shall become part of the Project Specifications and shall modify Owner's Standard Specifications.

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 Contractor a representative (hereafter referred to as "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 City's agents, elected officials, employees, officers, directors, volunteers, representatives, successors and assigns.

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

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER

2.2.1 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 Contractor 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 Contractor. It is incumbent upon Contractor 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 Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse Owner for all extra costs incurred 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, Contractor shall be furnished, free of charge, up to ten (10) complete sets of the Plans and Specifications by Design Consultant. Additional complete sets of Plans and Specifications, if requested by Contractor, will be furnished at reproduction cost to Contractor.
- 2.2.4 Owner's personnel may, but are not required to, be present at the construction site during progress of the Work, along with Design Consultant in the performance of its duties, to verify Contractor'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 Contractor's Applications for Payment and payroll records.
- 2.2.5 Owner shall reimburse Contractor for the necessary Project-related approvals, fees and required permits with no markup paid to Contractor for these necessary Project-related approvals, fees and required permits costs unless said costs are stipulated in the Contract Documents as a part of the Work.
- 2.2.6 **OWNER'S RIGHT TO STOP THE WORK.** If Contractor 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 Contractor 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 Contractor 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 Contractor to stop the Work shall not give rise to any claim by Contractor for additional time, cost or general conditions costs.
- 2.2.7 **OWNER'S RIGHT TO CARRY OUT THE WORK.** If Contractor 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 Contractor reflecting the reasonable cost of correcting such deficiencies, neglect or failure of Contractor, including all of Owner's incurred expenses and compensation for Design Consultant's additional services made necessary by such default, neglect or failure of Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts for the Work performed, Contractor shall pay the difference to Owner.

ARTICLE III. CONTRACTOR

3.1 GENERAL

- 3.1.1 Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means the Contractor or the Contractor’s authorized representative.
- 3.1.2 Contractor shall perform the Work in a good and workmanlike manner, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.
- 3.1.3 Contractor 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 Design Consultant in Design Consultant’s administration of the Contract or by tests, inspections or approvals required or performed by Owner or any person other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

Any error, inconsistencies or omissions discovered by Contractor 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 Design Consultant, or the work installed by other contractors, is not guaranteed by Owner. Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations.

3.2.1.2 In all cases of interconnection of its Work with existing conditions or with work performed by others, Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to Contractor’s failure to so verify all such grades, elevations, dimensions or

- 3.2.2 As between Owner and Contractor, and subject to the provisions of **Section 3.2.4** below, Contractor has no responsibility for the timely delivery, completeness, accuracy and/or sufficiency of the Specifications or Drawings (or any errors, omissions, or ambiguities therein), and is not responsible for any failure of the design of the facilities or structures as reflected thereon to be suitable, sound or safe. Contractor shall be deemed to have satisfied itself as to the design contained in and reflected by the Specifications and the Drawings. In particular, but without prejudice to the generality of the foregoing, Contractor will review the Contract Documents to establish that:
- 3.2.2.1 the information is sufficiently complete to perform the Work; and
 - 3.2.2.2 there are no obvious or patent ambiguities, inaccuracies or inconsistencies within or between the documents forming the Contract; and
 - 3.2.2.3 Contractor shall work with the aforementioned Contract Documents so as to perform the Work and of each and every part thereof such that the Work and each and every part thereof will, jointly and severally, be in accordance with the requirements of the Contract Documents and in particular, but without limiting the generality of the foregoing, such that the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance specifications.
- 3.2.3 Any design errors or omissions noted by Contractor during its review promptly shall be reported to Owner, but it is recognized that the Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain if Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to Contractor promptly shall be reported both to Owner and Design Consultant.
- 3.2.4 If Contractor believes additional cost or time is involved because of clarifications or instructions issued by Design Consultant, in response to the Contractor's Notices or Requests for Information, Contractor shall make Claims as provided in **Section 4.3.6** and **Section 4.3.7** herein. If Contractor fails to perform the obligations of **Section 3.2.1** and **Section 3.2.2** herein, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had performed such obligations. Contractor shall not be liable to Owner or Design Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents, unless Contractor recognized or should have recognized such error, inconsistency, omission or differences and knowingly failed to report it to Owner and Design Consultant, as required by this **Section 3.2.4**.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.1 Contractor shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a reasonably prudent Contractor, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor 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, Contractor then shall evaluate the jobsite safety thereof and, except as stated herein below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If, upon its evaluation, Contractor determines such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give timely written notice to Owner and Design Consultant and Contractor 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, Design Consultant and Contractor.
- 3.3.2 Contractor shall be responsible to Owner for the acts and omissions of Contractor's agents and employees, Subcontractors and their agents and employees and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors.
- 3.3.3 Contractor 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 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq.
- 3.3.5 It is understood and agreed the relationship of Contractor to Owner shall be of an independent contractor. Nothing contained or inferable in the Contract documents shall be read, deemed or construed to make Contractor the agent, servant or employee of Owner or create any partnership, joint venture or other association between Owner and Contractor. Any direction or instruction by Owner, in respect of the Work, shall relate to the results the Owner desires to obtain from the Work and shall in no way affect Contractor's independent contractor status, as described herein.
- 3.3.6 Contractor shall review Subcontractor(s) written safety programs, procedures and precautions in connection with performance of the Work. However, Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations and ordinances,

3.4 LABOR AND MATERIALS

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

3.4.2 **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 Contractor from the City of San Antonio’s Labor Compliance Office and included in Contractor’s Project bid package and Plans & Specifications, prior to Contractor bidding of the Project and such schedule shall become a part hereof. Contractor 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 Contractor or any 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 Contractor 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. Contractor, 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. Contractor 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 Contractor or any Subcontractor employed on the project.

3.4.3 SUBSTITUTIONS

3.4.3.1 Contractor’s proposed 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 Contractor; and
- (c) when in the judgment of Owner or Design Consultant, 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 and Design Consultant:

- (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 **Section 3.4.2.1** herein, an affidavit stating:
 - (1) Contractor's proposed substitution conforms to and meets all the requirements of the pertinent Specifications and requirements shown on the Drawings; and
 - (2) Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by Design Consultant.

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

- 3.4.3.3 In the event of a substitution submittal under this **Section 3.4.3**, and whether or not any such proposed substitution is accepted by Owner or Design Consultant, Contractor shall reimburse Owner, at Owner's reasonable discretion, for any fees incurred and charged by Design Consultant or other consultants 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 the ODR or requested in writing by Contractor and approved by Owner.
- 3.4.4 Contractor shall, at all times, enforce strict discipline and good order among persons working on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the assigned work. Contractor shall be liable for and responsible to Owner for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone who Contractor may allow to perform any Work on the Project and their respective officers, agents, employees, and consultants who Contractor may allow to come on the job site, with the exception of Owner or Owner's Designee. Owner, at any time, for any reason or for no reason, may direct Contractor to remove any employee, Subcontractor, material supplier or anyone else from the Project and Contractor promptly shall comply with Owner's direction. In addition, if Contractor receives written notice from Owner complaining about any Subcontractor, employee or anyone who is a hindrance to proper or timely execution of the Work, Contractor shall remedy such complaint without delay to the Project and at no additional cost to Owner. This provision shall be included in all contracts between the Contractor and all Subcontractors of all tiers.
- 3.4.5 Contractor recognizes and acknowledges that the Project Site is a public facility representing the City of San Antonio. As such, Contractor 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 Contractor'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 Contractor or any Subcontractor, employees or consultants of Owner or any visitor to the site by employees of Contractor or a Subcontractor strictly is forbidden. Any employee of Contractor or a Subcontractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Contractor, including removal from the Project Site.
- 3.4.6 Contractor 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 shall be new, except as otherwise provided in the Contract Documents. If required by Owner or Design

- 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 Contractor 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 longer 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, Contractor 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 Contractor at the administrative office of Owner. To the extent that it requests copies of such documents, Owner will reimburse Contractor and its Subcontractors for copying costs. Contractor shall not be required to keep records of or provide access to the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers.

3.5 WARRANTY

- 3.5.1 Contractor 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, 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 this warranty and these requirements, including substitutions not properly approved and

- 3.5.2 A right of action by Owner for any breach of Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Contract at law or in equity, regarding any defective Work.
- 3.5.3 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 Contractor, upon written timely demand by Owner, to replace defective materials and equipment and re-execute any defective Work disclosed to the Contractor 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 Contractor 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 may have its own separate and independent date of Substantial Completion or Final Completion. If separate dates for Substantial Completion and Final Completion are granted by Owner, Contractor 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. If separate dates are granted, Contractor agrees to provide notice of the warranty expiration date(s) to Owner and Design Consultant 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 any one (1) year warranty period, Contractor shall accompany Owner and Design Consultant 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 Contractor of deficiencies and Contractor shall

- 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 Design Consultant or the date of final completion of the Work.
- 3.5.7 Neither final payment nor compliance by Contractor with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve Contractor or its sureties of liability, with respect to any warranties or responsibility for faulty materials and workmanship. Contractor warrants that the Work will conform to the requirements of the Contract Documents.
- 3.5.8 Contractor 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 Contractor's right also to enforce the manufacturer's warranties. As a condition precedent to final payment, Contractor 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 Contractor 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 Contractor as required by the Contract Documents, with and between Owner and Contractor. 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 Contractor 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 Contractor's control.

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. Upon request by Contractor, Owner will provide Contractor 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, it is the responsibility of and Contractor shall secure all permits, licenses and inspections. Owner and Design Consultant may assist Contractor, when necessary, in obtaining such permits, licenses and inspections necessary for the proper execution and completion of the work. For federally funded construction projects, when applicable, Owner shall 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 not Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes and rules and regulations. However, if Contractor observes that portions of the Contract Documents are at variance therewith, Contractor promptly shall notify Owner and Design Consultant in writing of any variances and all necessary changes shall be accomplished by appropriate modification(s) before Contractor performs any Work affected by such modification(s).
- 3.7.4 If Contractor performs Work knowing Work is contrary to laws, statutes, ordinances, building codes and rules and regulations, without such notice to and approval from Owner and Design Consultant, Contractor shall assume sole responsibility for performing such Work and shall bear all costs attributable to correct such Work.
- 3.7.5 Contractor 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

3.8 ALLOWANCES

- 3.8.1 Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as Owner may direct, but Contractor shall not be required to employ persons or entities to whom Contractor has reasonable objection.
- 3.8.2 Unless otherwise provided in the Contract Documents:
- 3.8.2.1 Allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- 3.8.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses, contemplated for stated allowance, shall be included in the 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 Contractor'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 Contractor 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, Contractor 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 written Notice to Proceed. The superintendent shall represent Contractor at all time and all directions given to the superintendent shall be binding on Contractor. The designated superintendent shall not be replaced without written notice to and the approval of Owner, which approval will not be unreasonably withheld, except with good reason (including any termination or

- 3.9.2 Contractor shall furnish a list to Design Consultant and Owner of all Architects, Engineers, consultants, Sub-Consultants, job-site superintendents, Subcontractors and suppliers involved in the Project construction. Design Consultant also shall provide said information to Owner.
- 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 Contractor, Subcontractor or sub-Subcontractor and/or supplier involved in the Project.
- 3.9.2.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to remove from the Project any employee(s) Owner, at its sole discretion, deems incompetent, careless, insubordinate, unnecessary 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 or consultants to function in the capacity of Owner's Inspector, whose primary function will be daily inspections, checking pay requests or construction timelines and the verification of the storage of supplies and materials.
- 3.9.2.4 Contractor shall not change any key personnel or key Subcontractors without the prior written consent of Owner, which consent shall not be unreasonably withheld. In the event key personnel leaves Contractor'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.** Contractor shall create and maintain a Critical Path Method (hereafter referred to as "CPM") Project Schedule, showing the manner of execution of Work which Contractor 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**. Contractor shall create and maintain the Project Schedule using project management scheduling software compatible with Owner's project management scheduling software. The observance of the

3.10.2 **SCHEDULING PERSONNEL.** Unless otherwise indicated in writing by Owner, Contractor 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, Contractor shall submit Project Schedule(s) for the Work in relation to the entire Project to Owner and Design Consultant 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. Contractor shall submit the schedule to Owner and Design Consultant 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. Contractor 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 Contractor 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 Contractor 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 Contractor 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. Contractor 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 Contractor, 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 Contractor 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.** Contractor shall provide Owner a legend for all abbreviations used. 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. Contractor 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 Contractor.

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 reflected. The calculation of days should be reflected in the appropriate duration columns.
- 3.10.6.3 Work shall be scheduled based upon Contractor’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 Contractor plans to work. Contractor shall designate all twelve (12) Owner holidays as non-working days (holidays). For dates beyond the then-current calendar year, Contractor shall 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 shall 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 Contractor;
 - 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 shall 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 Contractor's use in managing the Work. The Project Schedule is for the information of Owner and to demonstrate that Contractor 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 Contractor's activities, as shown on the schedule.
- 3.10.8.2 Within fifteen (15) calendar days of receipt of Contractor's proposed Project Schedule, Owner shall evaluate the Schedule for compliance with this specification and notify Contractor of its findings. If Owner requests a revision or justification, Contractor shall provide satisfaction to Owner within seven (7) calendar days. If Contractor submits a Project Schedule for acceptance, based on a sequence of work not shown in the plans, Contractor 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 Contractor's Project Schedule only is for conformance to the requirements of the Contract Documents. Review and acceptance by Owner of Contractor's Project Schedule does not relieve Contractor of any of its responsibility for the Project Schedule, Contractor'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,

- 3.10.8.4 Acceptance of the Project Schedule, or update and/or revision thereto, does not indicate any approval of Contractor'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 Contractor 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 Contractor's responsibility for timely completion, or waive Owner's right to damages for Contractor's failure to do so.
- 3.10.8.7 Contractor's scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract time.
- 3.10.8.8 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to Owner, as of the date of the submittal, of the accurate depiction of all progress to date and that Contractor 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 and Design Consultant as directed. Owner has no duty to make progress payments to Contractor unless Contractor's payment application 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.
- 3.10.9.2 The Project Schedule update shall be submitted no later than the date the pay application is submitted.
- 3.10.9.3 Contractor 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 still 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.

3.10.9.4 The monthly Schedule Update shall include a progress narrative, explaining the Project's progress, identifying all 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 Contractor.

3.10.9.5 Each Schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by Contractor, Owner and Design Consultant. 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

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

3.10.9.7 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.

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

3.10.9.9 Neither Owner nor Contractor shall have exclusive ownership of float time in the schedule and all float time shall inure to the benefit of the Project.

3.10.9.10 Submission of any schedule under this Contract constitutes a representation by Contractor that, as of the date of the submittal:

(1) the schedule represents the sequence in which Contractor 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, Contractor is able to complete the remaining Work in the sequence and time indicated; and

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

3.10.9.11 If Contractor desires to make major changes in the Project Schedule, Contractor 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 Contractor 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 Contractor 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 Contractor and direct Contractor, at Contractor's sole expense, to propose and adopt a plan to accelerate the Work so that the Work conforms to the Project Schedule and Project Milestones previously agreed upon. Contractor 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 Contractor may proposes, if acceptable to Owner.

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

3.10.10.4 Should Owner deem Contractor's plan of action inadequate to achieve the desired acceleration to bring the Work back on the Project Schedule and achieve Substantial Completion on time, Owner shall have the right to order Contractor, at Contractor's sole expense, 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 Contractor 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 **(1) – (5)** herein collectively referred to as “Extraordinary Measures”).

Such Extraordinary Measures Owner directs 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. Contractor 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 pursuant to this **Section 3.10.5** as frequently as Owner deems necessary to ensure Contractor’s performance of the Work is in compliance with any milestone date or completion date(s) set forth in the Contract Documents.

3.10.10.7 If reasonably required by Owner, Contractor 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 Contractor shall recommend to Owner and Design Consultant a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the Project Schedule.

3.10.11 **PROJECT SCHEDULE TIME IMPACT ANALYSIS**

3.10.10.1 Contractor shall notify Owner when an impact may justify an extension of Contract time or adjustment of milestone dates. Said notice shall be made by Contractor in writing as soon as possible, but no later than the end of the next estimate period after the

3.10.11.1 When changes are initiated or impacts are experienced, Contractor 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 Contractor'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 Contractor 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, Contractor 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**

3.11 DOCUMENTS AND SAMPLES AT THE SITE

- 3.11.1 Contractor shall maintain, on Site and for Owner's use, one record copy of the Drawings, Specifications, Addenda, Change Orders and other Amendments, in good order and currently marked, to record field changes and selections made during construction, along with one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These record copies also shall be available to Design Consultant and shall be delivered to Design Consultant for submittal to Owner upon completion of the Work.
- 3.11.2 Contractor shall at all times maintain job records including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries and job meeting minutes applicable to the Project. Contractor shall make such reports and records available for inspection by Owner, Design Consultant and/or their respective agents, during normal business hours if requested 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 Contractor or its agents, manufacturers, suppliers or distributors and which illustrate and detail some portion of the Work.
- 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.
- 3.12.3 Samples are physical samples of materials, equipment or workmanship that are representative of some portion of the Work, furnished by the Contractor to Owner to assist Owner and Design Consultant in the establishment of workmanship and quality standards by which the Work will be judged.
- 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittals is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Design Consultant is subject to the limitations of **Section 4.2.8** herein. Informational submittals, upon which Design Consultant is not expected to take responsive action, may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Design Consultant without action.

- 3.12.5 Contractor shall review for compliance with the Contract Documents, approve and submit to Design Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by Design Consultant without action.
- 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor 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 and review has been approved by Design Consultant. Design Consultant 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 Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Design Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor specifically has informed Design Consultant in writing of such deviation at the time of submittal and:
- (1) Design Consultant has given written approval in the specific deviation as a minor change in the Work; or
 - (2) a Change Order or Field Work Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Design Consultant's approval thereof.
- 3.12.9 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Design Consultant on previous submittals. In the absence of such written notice, Design Consultant's approval of a resubmission shall not apply to such revisions.
- 3.12.10 Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services specifically are required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and

3.13 USE OF SITE

- 3.13.1 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- 3.13.2 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- 3.13.3 Contractor 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 Contractor 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 Contractor shall erect and maintain on Site a Project Bulletin Board, accessible to all Contractor and Subcontractor employees, upon which Contractor shall post and maintain, throughout the Project's duration, all employment and safety information required by law and Contractor shall include information listing Contractor'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 a baseline (for both horizontal and vertical projects, as applicable) established. As of the date of the Notice To Proceed, it will be Contractor's responsibility to protect, preserve and reestablish (if required) the TBM and/or baseline. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5".
- 3.13.7 As applicable, Contractor shall layout its work from an established baseline and TBM indicated on the drawings and shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout any part of the work. Contractor shall provide cut sheets to Owner's inspector at minimum seven (7) calendar days prior to construction of street and drainage work. Contractor shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for SAWS Work, if present. Contractor shall provide cut sheets for improvements where Sewer profiles are provided for various phases of the project and cut sheets for Water profiles, if applicable. Contractor shall provide staking and preparation of cut sheets after receiving notice to proceed from Owner. If present, Contractor shall provide SAWS with cut sheets at minimum (7) calendar days prior to commence of SAWS work. Contractor shall be responsible for maintaining and preserving a baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, Contractor shall replace them at its own expense. At the end of construction of the Project, Contractor 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 Contractor 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 Contractor shall not damage or endanger a portion of the Work or a fully or partially completed construction by either Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor 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

- 3.14.3 Any part of the Work damaged by Contractor, 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 Contractor 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 fully be accomplished, a damaged item or part shall be replaced by Contractor.

3.15 CLEANING UP

- 3.15.1 During the progress of the Work, Contractor shall keep the Project Site and surrounding area including, but not limited to, creeks, drainage channels, easements and private property free from accumulations of waste materials, rubbish and other debris resulting from the Work. As applicable, Contractor 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 Contractor fails to clean up as provided in the Contract Documents, Owner may elect to do so and all costs incurred by Owner shall be paid by Contractor.

- 3.15.2 Prior to Substantial Completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project Site clean and ready for occupancy by Owner. As applicable, Contractor 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. Contractor shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If Contractor fails to clean up the premises as provided in the Contract Documents, Owner may elect to do so and all costs incurred by Owner shall be paid by Contractor.

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

3.17 PATENT FEES AND ROYALTIES. Contractor shall pay all license fees and royalties and assume all costs incident to the use of the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or

3.18 INDEMNITY PROVISIONS

- 3.18.1 Contractor 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 Contractor and of Owner) damage to property (other than the Work itself and including property of Contractor and of Owner), but only to the extent caused by the negligent acts or omissions of, or incident to or in connection with or resulting from the negligent acts or omissions of, Contractor, its agents, servants, employees or its Subcontractors and their agents, servants and employees, in connection with the Work to be performed, services to be rendered or materials to be furnished under this Contract, 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 Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law. In the event Contractor 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.
- 3.18.2 In addition to the above, Contractor 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 Contractor and of Owner) damage to property (other than the Work itself and including property of Contractor and of Owner), but only to the extent caused by the intentional or deliberate misconduct, grossly negligent, willful acts or omissions of Contractor, its agents, servants, employees, or its Subcontractors and their agents, servants and employees, or in connection with the Work to be

included herein, in no event shall Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law. In the event Contractor 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.

3.18.3 **INTELLECTUAL PROPERTY INDEMNIFICATION.** Contractor shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against 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 Contractor and its employee or its Subcontractors and their agents, servants and employees, based on any deliverable or any other materials furnished hereunder by Contractor and used by either Owner or Contractor within the scope of this Agreement (unless said infringement results directly from Contractor's compliance with City's written standards or specifications). Contractor does not warrant against infringement by reason of Owner's or Design Consultant's design of articles or their use in combination with other materials or in the operation of any process. Contractor shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, unless otherwise mutually agreed upon, expressed in writing and signed by the parties hereto. Contractor 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 Contractor any deliverables and/or works made for hire by Contractor necessary to the defense of Contractor against any claim of infringement for the duration of Contractor's legal defense.

3.18.4 If such infringement claim or action has occurred or, in Contractor's judgment, is likely to occur, Owner shall allow Contractor, at Contractor's option and expense, (unless such infringement results directly from Contractor's compliance with Owners written standards or specifications or by reason of Owner's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process for which the City shall be liable) to elect to:

- (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 Contractor, upon written request, Owner shall return the deliverable and/or materials in question to Contractor and Contractor 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 Contractor 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 Contractor or any Subcontractor, supplier or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.

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

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 Contractor shall, within twenty-one (21) calendar days, advise Owner in writing of any potential or actual claim or demand against Owner or Contractor, as the case may be, known to Contractor and related to or arising out of Contractor's activities under this Contract and Contractor shall see to the investigation and defense of such claim or demand at

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 Contractor in fulfilling its obligation hereunder to defend and indemnify Owner, unless such right is expressly waived by Owner in writing. Contractor 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 Contractor fails to retain counsel within such time period, Owner shall have the right to retain defense counsel on its own behalf and Contractor 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. Contractor represents and warrants the following 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 Contractor:

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 properly is licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work and 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 had directed its duly authorized representative(s) to visit the Site of the Work, familiarize itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

3.20 BUSINESS STANDARDS. Contractor, in performing 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. Contractor shall review with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees,

ARTICLE IV. ADMINISTRATION OF THE CONTRACT

4.1 DESIGN CONSULTANT. A Design Consultant is a person registered as an Architect pursuant to Tex. Occupations Code Ann., Chapter 1051, as a Landscape Architect pursuant to Texas Occupations Code, Chapter 1052, and/or a person licensed as a professional Engineer pursuant to Texas Occupations Code, Chapter 1001, or a firm employed by Owner to provide professional architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in its Contract and these General Conditions. If the employment of a Design Consultant is terminated, Owner shall employ a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant.

4.2 ROLES IN ADMINISTRATION OF THE CONTRACT

4.2.1 Owner and Design Consultant will provide administration of the Contract, as described in the Contract Documents, and Design Consultant will be Owner's representative:

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

Design Consultant 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 Documents.

4.2.2 Owner's instruction to Contractor may be issued through Design Consultant and Owner reserves the right to issue instructions directly to Contractor or through other designated Owner representatives. Contractor understands that Owner may modify the authority of such Design Consultant as provided in the terms of its contractual relationship with Design Consultant, and Owner shall, in such event, be vested with powers formerly exercised by such Design Consultant, provided written notice of such modification immediately shall be served on Contractor. Nothing herein shall authorize independent agreements between Contractor and

- 4.2.3 Neither Design Consultant nor Owner will have control over, charge of nor be responsible for the construction means, methods or techniques, or for the safety precautions, quality control program and other programs in connection with the Work, since these solely are Contractor's rights and responsibilities under the Contract Documents. Sequencing and procedures will be coordinated and agreed upon by Owner, Design Consultant and Contractor.
- 4.2.4 Design Consultant will not be responsible for Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Design Consultant will not have control over, charge of and will not be responsible for acts or omissions of Contractor, Subcontractor, their respective agents, employees or any other persons or entities performing portions of the Work.
- 4.2.5 Owner and Contractor shall endeavor to communicate with each other directly, through Design Consultant and/or through the ODR about matters arising out of or relating to the Contract. Communications by and with Design Consultant's consultants shall be through Design Consultant. Communications by Owner and Design Consultant with Contractor's employees Subcontractors and material suppliers shall be through Contractor. All communications by and with Owner's separate contractors shall be through Owner.
- 4.2.6 Design Consultant will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Design Consultant will perform these reviews in a timely fashion so as to not delay the Work. Design Consultant promptly 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 Contractor as required by the Contract Documents. Design Consultant's review of Contractor's submittals shall not relieve the Contractor of the obligations under **Sections 3.3, 3.5 and 3.12** herein. Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Design Consultant, any construction means, methods, techniques, sequences or procedures. Design Consultant'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 Owner or Contractor, Design Consultant will issue its interpretation of the requirements of the plans and specifications. Design

- 4.2.8 Interpretations and decisions of Design Consultant will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.
- 4.2.9 Design Consultant's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by 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 Contractor 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 Contractor, whether for additional compensation, additional time or other relief including, but not limited to, claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Contractor by his/her signature) of Contractor, 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, as addressed in **Section 4.3.6** herein, Contractor Claims must be initiated within fifteen (15) calendar days after occurrence of the event giving rise to such Claim. Claims by Contractor must be submitted by written notice to both Owner and Design Consultant. Claims by Owner must be submitted by written notice to Contractor. Failure by Contractor 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, Contractor 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 are otherwise concealed physical conditions which were not known to Contractor and which differ materially from those indicated in the Contract Documents or in the reports of investigations and tests of subsurface and latent physical conditions provided by Owner to Contractor prior to the preparation by Contractor of its Bid, as 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 Contractor promptly shall notify Owner and Design Consultant of such conditions before conditions are disturbed, and in no event more than three (3) workdays after first observation of the conditions. Upon notification by Contractor, Design Consultant promptly will investigate such conditions and report its findings to Owner. If Owner and Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to **Section 4.5** herein.

4.3.5 **CLAIMS FOR ADDITIONAL COST.** If Contractor 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. Contractor shall file a Claim in accordance with this **Section 4.3** if Contractor believes additional cost is involved for reasons including, but not limited to:

- (1) a written interpretation from Design Consultant;
- (2) an order by Owner to stop the Work where Contractor was not at fault;
- (3) a written order for a minor change in the Work issued by Design Consultant;
- (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 Contractor wishes to make Claim for an increase in the Contract Time, written notice, as required in this **Section 4.3**, shall be given. Contractor's Claim shall include an estimate of probable impact of delay on progress of

4.3.6.2 Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site, as determined from climatological data set forth by National Weather Service and which affects the Project's critical path. Contractor shall bear the entire economic risk of all weather delays and disruptions. Contractor 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 and Design Consultant not 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 Contractor reaching Substantial Completion, Owner and Contractor will look back at the entire duration of the calendar day Project and review the totality of what Contractor 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, Contractor 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 Contractor 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 other party legally is responsible (including, with respect to Owner, the acts or omissions of Owner's separate 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 Contractor 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 Contractor, the applicable unit prices shall be equitably adjusted.

4.3.9 **CLAIMS FOR CONSEQUENTIAL DAMAGES.** Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to Claims by Contractor 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 to directly 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 Subcontractor of Contractor asserts a Claim to Contractor that Contractor 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 Contractor to seek and assert such Claim against Owner:

(1) Contractor shall:

(a) have direct legal liability as a matter of contract, common law, or statutory law to Subcontractor for the claim that Subcontractor is asserting; or

(b) have entered into a written liquidating agreement with Subcontractor, prior to the Claim's occurrence, under which Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such Claim against Owner under said Contract and for paying to Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The relationship, liability or responsibilities shall be identified in writing by Contractor to Owner at the time such Claim is submitted to Owner and a copy of any liquidating agreement shall be included by Contractor in the Claim submittal materials.

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

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

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

4.3.10.4 Receipt and review of a Claim by 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.** Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

4.3.11.1 If Contractor falls behind the approved construction schedule for whatever reason, Owner shall have the right, in Owner's sole discretion, to order Contractor to develop a schedule recovery plan to alter its work

4.3.11.2 In the event Owner agrees that Contractor is entitled to an extension of Contract Time and Contractor 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 Contractor's Claim for an extension of Contract Time and order Contractor to exercise its commercially reasonable efforts to achieve Substantial Completion on or before the date that would have been required, but for the existence of the event giving rise to the Claim, by giving written notice to Contractor provided within fourteen (14) calendar days after receipt of Contractor's Claim. If Owner denies Contractor's claim for an extension of Contract Time under this **Section 4.3.11**, either in whole or in part, Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then-existing Scheduled Completion Date. If, after initiating good faith acceleration efforts and it is shown that, through no fault of Contractor, Contractor fell behind on the approved construction schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time, Owner will not be entitled to liquidated damages. Nothing in this **Section 4.3.11.2** shall prohibit Contractor from filing a Claim for an extension of time Contractor feels it may be owed.

4.3.11.3 If Owner orders Contractor to accelerate the Work under **Section 4.3.11.2** herein, and Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents for an amount of time that would have justified approval by Owner if not for the need and right to complete the Project within the stipulated period, Contractor 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 Contractor 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 for Contractor to bring the Work back within the then existing approved construction schedule. These direct costs of Contractor include, but are not limited to, the premium portion of overtime pay for additional crew, shift, or

- 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 Contractor against Owner and Claims by Owner against Contractor, including those alleging an error or omission by Design Consultant but excluding those arising under **Section 10.3** and **Section 10.5** herein, shall be referred initially to Design Consultant for consideration and recommendation to Owner.
- 4.4.2 An initial recommendation by Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the parties arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to Design Consultant with no recommendation having been rendered by Design Consultant.
- 4.4.3 Design Consultant will review Claims and, within ten (10) work days of receipt of a Claim, take one or more of the following actions:
- (1) request additional supporting data from the party making the Claim;
 - (2) issue an initial recommendation;
 - (3) suggest a compromise; or
 - (4) advise the parties that Design Consultant is unable to issue an initial Recommendation, due to a lack of sufficient information or conflict of interest.
- 4.4.4 Following receipt of Design Consultant's initial recommendation regarding a Claim, Owner and Contractor shall attempt to reach 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 Design Consultant requests either or any party to provide a response to a Claim or to furnish additional supporting data, such requested party shall provide a response or the requested supporting data to Design Consultant, advise Design Consultant when the response or supporting data will be furnished or advise Design Consultant that no response or supporting data will be furnished.
- 4.4.6 With receipt of all information requested by Design Consultant, Design Consultant 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 Design Consultant is unable to issue a recommendation due to lack information or conflict of interest.
- 4.4.7 Upon Design Consultant'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.
- 4.4.8 **WAIVER OF LIEN.** It is understood that, by virtue of this Contract, no mechanic, contractor, 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 the 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. Both Owner and Contractor agree that 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

4.5.3 **MEDIATION.** In the event that Owner and/or Contractor 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 with the following requirements:

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 Contractor 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.

4.6 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, Owner may administer its design and construction management through an Internet-based Project Management system. In such cases, Contractor shall conduct communication through this medium 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 management 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.

ARTICLE V. SUBCONTRACTORS

5.1 DEFINITION

A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or

an authorized representative of Subcontractor. The term “Subcontractor” does not include a separate contractor or Subcontractor of a separate contractor.

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

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

5.2.2 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner, prior to the Notice of Award and not objected to in writing by Owner prior to the Notice of Award, will be deemed acceptable to Owner. Acceptance of any Subcontractor, other person or organization by Owner shall not constitute a waiver of any right of Owner to reject defective Work. If Owner, after due investigation, has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor will be required to submit an acceptable substitute. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

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

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

5.2.5 All Work performed for Contractor by a Subcontractor will be performed pursuant to an appropriate agreement between Contractor and Subcontractor which specifically binds 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, Contractor must report the actual payments to all SBEDA or DBE (as applicable) 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 Subcontractors and suppliers in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of canceled checks paid to SBEDA or DBE Subcontractors and suppliers and/or confirmation inquiries directly to the SBEDA or DBE participants. Proof of payments, such as copies of canceled checks, 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.** Reference 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-CONTRACTUAL RELATIONS

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

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each Subcontractor agreement for a portion of the Work assigned by Contractor to Owner shall provided that:

5.4.1 assignment is effective only after termination of the Contract by Owner and only for those Subcontractor agreements which Owner accepts by notifying Subcontractor and Contractor 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 any such assignment, if the Work has been suspended for more than thirty (30) calendar days, 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 General Conditions of the Contract identical or substantially similar to these. If Contractor claims that a delay or additional cost is involved, due to such action by Owner, Contractor shall make a Claim as provided in **Section 4.3** herein.
- 6.1.2 When separate contracts are awarded for different portions of the Project or for other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor that executes each separate Owner-Contractor Agreement.
- 6.1.3 Owner shall provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work of Contractor and Contractor fully shall cooperate with said coordination. Contractor shall participate with other separate contractors and Owner in reviewing all construction schedules when directed by Owner to do so. Contractor shall make any revisions to its construction schedule deemed necessary after said joint review and mutual agreement. The revised construction schedules then shall constitute the schedules to be used by Contractor, separate contractors and Owner until subsequently revised.
- 6.1.4 Unless otherwise provided in the Contract Documents, when Owner and Owner's own forces perform construction or operation related to the Project, Owner shall be subject to the same obligations and to have the same rights that apply to Contractor under these General Conditions and the Contract Documents.

6.2 MUTUAL RESPONSIBILITY

- 6.2.1 Contractor shall afford Owner and Owner's separate contractor(s) reasonable opportunity for the introduction and storage of materials and equipment, the performance of their activities and the coordination of Contractor's construction and operations with theirs, as required by the Contract Documents.
- 6.2.2 If part of Contractor's Work depends, for proper execution or results, upon the construction or operations by Owner or a separate contractor, Contractor 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 Contractor to so report shall constitute an acknowledgment that Owner's separate contractor's completed

- 6.2.3 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. Owner shall be responsible to Contractor for costs incurred by Contractor because of delays, improperly timed activities and damage to the Work or defective construction of Owner's separate contractor(s).
- 6.2.4 Contractor promptly shall remedy any damage wrongfully caused by Contractor or its Subcontractor(s) to any completed or partially completed construction or to property of Owner or Owner's separate contractor(s), as provided in **Section 10.2.5** herein.
- 6.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in **Section 3.14** herein.
- 6.3 OWNER'S RIGHT TO CLEAN UP.** If a dispute arises among or between Contractor, Owner's separate contractor(s) and Owner, 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 costs will be allocated amongst those parties 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 among the Owner and Contractor; a Field Work Directive requires a directive by Owner and, if necessary, Design Consultant and may or may not be agreed to by Contractor; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by Owner.
- 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents and Contractor 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 Contractor 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 Contractor (and approved by City Council, if required) that 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 Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including, but not limited to impact, delay or acceleration damages arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and any extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, cost and additional time, if any. 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 or Design Consultant 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 Contractor promptly shall carry out and record on the As-Built record documents.
- 7.2.5 Contractor and Subcontractors 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 directive signed by Owner and, if necessary, Design Consultant directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum or 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 on the terms of a Change Order. Owner will issue a Field Work Directive to Contractor with a defined Not-To-Exceed dollar amount for the scope of Work defined.
- 7.3.3 Upon receipt of a Field Work Directive, Contractor promptly shall proceed with the change in the Work involved and, in writing, advise Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- 7.3.4 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 Contractor 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 Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall initially be determined by Design Consultant 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, Contractor 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 from Contractor or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;
 - 7.3.5.4 expenses incurred in accordance with Contractor'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 Contractor to Subcontractors.

7.3.6 The amount of credit to be allowed by Contractor 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 Contractor's allocated percent for profit and overhead, as confirmed by Design Consultant, subject to any equitable adjustment recommended by Design Consultant 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 Contractor agree with the determination made by Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.3.8 If Owner and Contractor can not reach an agreement on either an adjustment on the Contract Sum and Contract Time, pursuant to an issued Field Work Directive, Owner and Contractor shall execute a Change Order for the adjustment on the Contract Sum or Contract Time, if any, the parties do agree upon for the Work performed and Contractor reserves the right to file a Claim for any disagreements in Contract Sum or Contract Time not addressed in the Change Order, pursuant to **Section 4.4** herein. If Owner and Contractor can not agree on both the adjustment in the Contract Sum and the Contract Time associated with an issued Field Work Directive, Owner unilaterally shall file a Change Order listing Owner's adjustments in the Contract Sum and/or Contract Time and Contractor reserves the right to file a Claim for payment and/or time, pursuant to **Section 4.4** herein.

7.4 MINOR CHANGES TO THE WORK. Owner or Design Consultant shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Owner and Contractor. Contractor 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 Contractor to proposal requests from Owner or Design Consultant shall be accompanied by a complete itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow Owner and Design Consultant 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 Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in Contractor'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, Contractor 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, Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- 8.1.2 Contractor 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 Contractor 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 Contractor has performed work on the Project during the same week of the requested Saturday, Sunday or holiday.

8.2 DELAYS AND EXTENSIONS OF TIME

- 8.2.1 Neither Owner nor Contractor, except as provided for in this **Section 8.2**, shall be liable to the other for any delay to Contractor'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 Contractor and verified by Design Consultant, Program Manager and Owner, Contractor 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 Contractor 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 addressed in **Section 4.3.6.2** herein.
- 8.2.2 Should Contractor be delayed solely by the act, negligence or default of Owner or Design Consultant, and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and Owner, Contractor 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) calendar days of the act, negligence or default of Owner or Design Consultant and granted by Owner. In addition, Contractor, upon timely notice to Owner, with substantiation by Owner and Design Consultant and upon approval of Owner, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs incurred by Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or supplier to administer their Work. Compensation for Subcontractor's and supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to the Owner-caused event. In no event will Contractor be entitled to home office or other off-site expenses or damages.
- 8.2.3 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 Contractor for delay, disruption or acceleration, other than those described in **Section 8.2.2** herein, as provided under **Section 4.3.11(3)** herein and those justified by a Time Impact Analysis. Contractor 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 Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by Owner to Contractor for performance of the Work under the Contract Documents. Contractor accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the San Antonio City Council. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any party to this Contract.

9.2 SCHEDULE OF VALUES

9.2.1 A Schedule of Values for all of the Work shall be submitted by Contractor and shall include quantities and prices of items which, when added together, equal a 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, overhead and profit shall be included as a separate line item.

9.2.2 Before the first Application for Payment, Contractor shall submit to Owner and Design Consultant 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 and Design Consultant may require. This schedule, unless objected to by Design Consultant or Owner, shall be used as a basis for reviewing Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Contractor shall submit Applications for Payment to Owner electronically. Contractor shall electronically attach to its Application for Payment all data substantiating Contractor's right to payment as Owner or Design Consultant may require, such as copies of requisitions from 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 Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work 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 Contractor with procedures reasonably satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest. Contractor 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 Contractor 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 Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONTRACTOR.**
- 9.3.4 By submission of an Application for Payment, Contractor 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 Subcontractors and Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor; provided if any of the foregoing is not true and cannot be certified, Contractor will revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.4 PAY APPLICATION APPROVAL

- 9.4.1 Design Consultant shall, within ten (10) business days after receipt of Contractor's Application for Payment, either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Contractor and Owner the Design Consultant's reasons for withholding approval, as provided in **Section 9.5.1** herein.
- 9.4.2 The certification of an Application for Payment will constitute a representation by Design Consultant to Owner, based on Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Design Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by Design Consultant. The issuance of a Certificate for Payment further will constitute a representation that Contractor

- (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 Contractor's right to payment; or
- (4) made any examination to ascertain how or for what purpose Contractor 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 Contractor is responsible hereunder unless security acceptable to Owner is provided by Contractor;

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

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

9.5.1.5 damage to Owner or another contractor;

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

9.5.1.7 persistent failure by Contractor 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 Contractor.

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 Contractor shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Contractor-acquired materials stored on the Project Site, and/or within off-site storage facilities either owned or leased by Contractor. Upon receipt of a complete and mathematically accurate Application for Payment from Contractor, Owner shall make payments, in accordance with **Article IX** herein, to Contractor 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 Contractor at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of Owner receipt of a complete and mathematically accurate Application for Payment from the Contractor, 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, shall not prejudice Owner in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work herein provided.

9.6.4 Contractor 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. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to Owner bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if Owner so requests, shall provide copies of such Subcontractor payments to Owner. If Contractor has failed to make payment promptly to Contractor's Subcontractors

- 9.6.5 Owner and/or Design Consultant shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Owner and Design Consultant on account of portions of the Work done by such Subcontractor.
- 9.6.6 Neither Owner nor Design Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.
- 9.6.7 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 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 Contractor 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 Contractor any or all Liquidated Damages due Owner in accordance with the Contract between Owner and Contractor.
- 9.7.2 When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is Substantially Complete, Contractor shall prepare and submit to Owner and Design Consultant 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 Contractor to complete all Work in accordance with the Contract Documents.
- 9.7.3 Upon receipt of Contractor's list of items to be completed or corrected, Owner and Design Consultant will make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If Owner's or Design

9.7.4 When the Work or designated portion thereof is Substantially Complete, Design Consultant or 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 Contractor, as agreed to by Owner and Contractor, for security, maintenance, heat, utilities, damage to the Work and insurance; and
- (3) fix the time limit by which Contractor shall complete all items on the list accompanying the Certificate.

Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or 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 Contractor, 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 Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion of the Work to be Substantially Complete, Contractor 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 and Design Consultant, as provided under **Section 9.8.2** herein. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The

- 9.8.2 Immediately prior to such partial occupancy or use, Owner, Contractor and Design Consultant collectively 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, Contractor shall notify Owner and Design Consultant thereof in writing. Thereupon, Owner and Design Consultant will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the final Application for Payment may be submitted. If Owner and Design Consultant are unable to approve the final Application for Payment for reasons for which Contractor is responsible and Owner and Design Consultant are required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by Owner from the Contractor's retainage.
- 9.9.2 Contractor shall not be entitled to payment of retainage unless and until it submits to Owner its affidavit that the payrolls, invoices for materials and equipment, and other liabilities, to include Liquidated Damages, connected with the Work for which Owner or the Owner's property might be responsible fully have been paid or otherwise satisfied or will be paid from final payment; releases and waivers of liens from all Subcontractors of Contractor and of any and all other parties required by Design Consultant or Owner that either are unconditional or conditional on receipt of final payment; Certificates of insurance showing continuation of required insurance coverage; such other documents as Owner may request; and consent of Surety to final payment. A Retainage Checklist shall be provided by Owner to Contractor upon request.
- 9.9.3 If, after Substantial Completion of the Work, Final Completion thereof materially is delayed through no fault of Contractor or by Issuance of Change Orders affecting Final Completion, and Design Consultant so confirms, Owner shall, upon application by Contractor and certification by Design Consultant and

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

9.10 ADDITIONAL INSPECTIONS. In addition to any Liquidated Damages payable to Owner by Contractor, Owner shall be entitled to deduct from the Contract Sum amounts paid to Design Consultant for any additional inspections or services, provided that Design Consultant undertook these services due to the fault or neglect of Contractor if:

- (1) Design Consultant is required to make more than one inspection for Substantial Completion;
- (2) Design Consultant 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.

ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

- 10.1.2 Contractor shall notify Owner immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities including, but not limited to, copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.
- 10.1.3 Contractor has adopted or shall adopt its own policy to assure a drug and alcohol free work place while performing the Work. Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell illegal, illicit and/or prescribed controlled drugs or drug paraphernalia or misuse legitimate prescription drugs while on Site or performing the Work. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell alcoholic beverages while performing the Work or while on Site or performing the Work. Contractor will remove any of its employees 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 Contractor to remove employees or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Contractor's or Subcontractor's employees only may be considered for return to work after Contractor certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Contractor will not employ any individual, or will not accept any Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.
- 10.1.4 Contractor shall comply with all applicable federal, state and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether the owner thereof has a permit for a concealed weapon.
- 10.1.5 Both Owner and Contractor agree that these safety and health terms are of the highest importance and that a breach or violation of any of the terms of this **Section X** by Contractor or a Subcontractor will be a material and substantial breach of this Contract. In the event that Owner shall determine that Contractor has breached or violated the terms of this Section, then Owner shall determine, immediately upon written notice to Contractor, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until Owner 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 Contractor 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 Contractor or to Contractor's agents, employees, Subcontractors or third parties, or altering the status of Contractor as an independent contractor.
- 10.1.7 Notwithstanding either of the above provisions, or whether Owner exercises its rights set forth herein, Owner neither warrants nor represents to Contractor, Contractor's employees or agents, any Subcontractors or any other third party that Contractor's safety policy meets the requirements of any applicable law, code, rule or regulation, nor does Owner warrant that the proper enforcement of Contractor's policy will insure that no accidents or injuries will occur. In addition, any action by Owner under these provisions in no way diminishes any of Contractor's obligations under applicable law or the contract documents.

10.2 SAFETY OF PERSONS AND PROPERTY

- 10.2.1 Contractor 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 Contractor or Contractor's Subcontractors or Sub-Subcontractors; and
 - 10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction.
- 10.2.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 10.2.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying 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, Contractor 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, Contractor shall submit a written blasting plan, shall obtain Owner's approval and shall comply with Owner's requirements for such use.

- 10.2.5 Contractor promptly shall remedy any and all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). Contractor shall also 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 Contractor and of Owner) referred to 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, omissions and/or negligence of Contractor, its agents, servants and employees, its Subcontractor(s) and its/their agents, servants and employees, anyone directly or indirectly employed by Contractor or Subcontractor and/or by any other person or entity for which Contractor 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 Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without, however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of Contractor are in addition to Contractor's obligations under **Section 3.18** herein. In the event Contractor 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.
- 10.2.6 Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to Owner and Design Consultant.
- 10.2.7 Contractor 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, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the property. Contractor acknowledges and accepts that the location of underground utilities (both public and private) reflected on any City-provided plans are not guaranteed and may not be completely accurate. Contractor shall locate and verify any and all utilities and associated service lines prior to beginning any Work. Contractor shall be responsible for and shall repair, at Contractor's own expense, any damage done to lines, cables, pipes and pipelines identified or not identified to Contractor.

10.3 EMERGENCIES.

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

10.3.2 If Contractor causes damage resulting in an issue of safety and/or security to a property owner, Contractor immediately shall repair any damage caused. If Contractor does not or will not act immediately to repair the damage caused by Contractor 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 Contractor.

10.4 PUBLIC CONVENIENCE AND SAFETY

10.4.1 Contractor shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by 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 Contractor, in regard to public convenience and safety, which may come to Owner's attention after twenty-four (24) hours notice in writing to Contractor. In case of an emergency, Owner shall have the right immediately to remedy any neglect without notice. In either case, the cost of any work done by or for Owner to remedy Contractor's neglect shall be deducted by Owner from Contractor's Contract Sum. Contractor shall notify Owner, Owner's Traffic Control Department and Design Consultant when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be 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. Contractor shall, when directed by Owner or Design Consultant, keep any street or streets in condition for unobstructed use by Owner departments. When Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.4.3 Contractor shall limit airborne dust and debris throughout the Project site and its duration. Contractor shall apply the necessary amounts of water or other appropriate substance required to maintain sufficient moisture content for dust

control. For City horizontal projects, Contractor 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, Contractor shall, at Contractor'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 as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, and shall be illuminated by lights as required under City's Barricades specifications. 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 markings and directional devices also shall be erected to keep vehicles from being driven on or into any Work under construction. Contractor will be held responsible 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 or Design Consultant may order the damaged portion immediately removed and replaced by Contractor at Contractor's sole cost and expense. Contractor'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 has been finally accepted by Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED. In case it is necessary for Contractor to change or move the property of Owner or of any telecommunications or public utility, such property shall not be touched, 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 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 Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to Owner by Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS. When existing storm sewers or drains have to be taken up or removed, Contractor shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Contractor also shall provide for all storm sewage and drainage which will be received from these storm drains and sewers. For this purpose, Contractor shall provide and maintain, at Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. Contractor shall, at Contractor's own expense, construct such troughs, pipes or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by Design Consultant. All storm water and

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER/ELECTRICITY FOR THE PROJECT/WIRELESS ACCESS

10.8.1 When Contractor desires to use Owner's water in connection with the Work, Contractor shall make complete and satisfactory arrangements with the San Antonio Water Service and shall be responsible for the cost of the water Contractor uses. Where meters are required and used, the charge will be at the regular established rate; where no meters are required and used, the 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 Service.

10.8.2 Contractor 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. Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by Contractor through a retail electric provider.

10.8.3 If Contractor elects or is required by City to place and operate out of a construction trailer or office on the Project site, for which all related costs shall be borne by Contractor, Contractor 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 City personnel's use while on the Project site for the duration of the Project.

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

10.10 ENVIRONMENTAL COMPLIANCE

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

10.10.2 In the event Contractor encounters on the Project Site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, Contractor immediately shall stop Work in the affected area and report in writing the facts of such encounter to Owner and Design Consultant. Work in the affected area shall not thereafter be resumed except by written order of Owner and written consent of Contractor, unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, Owner shall remediate the Hazardous Substance with a separate contractor or through a Change Order with Contractor. If the Hazardous Substance exists in the affected area due to the fault or negligence of Contractor or any of its Subcontractors, Contractor shall be responsible for remediating the condition at the sole expense of Contractor. If applicable, such remediation shall be in accordance with Contractor's Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by Owner only if the Project critical path is affected and Contractor 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 Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substance brought into or onto the site by Contractor or any Subcontractor or Contractor's Supplier. Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation and/or disposal, notify Owner and Design Consultant so that they may observe the activities; provided, however, that it shall be Contractor's sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities.

ARTICLE XI. INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

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

11.1.1.1 Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to Owner; Employer's Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit;

11.1.1.2 Commercial General Liability Insurance, Personal Injury Liability, Independent Contractor's Liability and Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (and/or Subcontractor's) liability for injury to or death of Owner's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence, \$2,000,000 annual aggregate. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. Owner shall be named as additional insured by using endorsement CG 20 26 or broader. The general liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the Project in question.

11.1.1.3 Business Automobile Liability Insurance, covering owned, hired and non- owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.

11.1.1.4 Five (5) calendar days prior to a suspension, cancellation or non-renewal of any required line of insurance coverage, Contractor shall provide Owner a replacement certificate of insurance with all applicable endorsements included. Owner shall have the option to suspend Contractor.

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

11.2 PROPERTY INSURANCE

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

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

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

11.2.2 **BOILER AND MACHINERY INSURANCE.** If applicable, Owner shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or

- 11.2.3 **LOSS OF USE INSURANCE.** Owner, at Owner's option, may purchase and maintain such insurance as will insure Owner against loss of use of Owner's property due to fire or other hazards, however caused. Owner waives all rights of action against Contractor that it may now have or have in the future for loss or damage to Owner's property howsoever arising, including consequential losses due to fire or other hazards however caused.
- 11.2.4 Contractor shall provide to Design Consultant for delivery to Owner a Certificate of Insurance evidencing all property insurance policies procured under **Section 11.2** herein and all endorsements thereto, before any exposure to loss may occur.
- 11.2.5 Partial occupancy or use in accordance with **Section 9.9** herein shall not commence until the insurance company/companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.3 PERFORMANCE BOND AND PAYMENT BONDS

- 11.3.1 Subject to the provisions of **Section 11.3.2** herein, Contractor 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 11.3.1.1** and **Section 11.3.1.2** 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 Contractor, 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:
- 11.3.1.1 **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.

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

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

11.3.3 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 Contractor 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.

11.3.4 The person or persons, partnership, company, firm, limited liability company, association, corporation or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with 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 Contractor, as

required by the Contract Documents; and

(4) a fully executed Contract has been delivered to Contractor.

11.3.5 The failure of Contractor 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 Contractor'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 Contractor'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 11.3.5**. In the event Owner should re-advertise for bids, the defaulting Contractor 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 11.3**.

11.4 'UMBRELLA' LIABILITY INSURANCE. Contractor shall obtain, pay for and maintain Umbrella Liability Insurance during the Contract term, insuring Contractor for an amount of not less than \$5,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. Owner and Design Consultant shall be named as additional insureds using endorsement CG 20 26 or broader. No aggregate shall be permitted for this type of coverage. The Umbrella Liability Insurance policy shall provide "drop down" coverage, where the underlying primary insurance coverage limits are insufficient or exhausted.

11.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

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

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

11.5.1.2 Within five (5) calendar days of a suspension, cancellation or non-renewal of any required line of insurance coverage, Contractor shall provide Owner

- 11.5.1.3 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.
- 11.5.1.4 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 Contractor shall be the primary insurance for all purposes for the Project, as well as the primary insurance for the additional insureds named in the required policies.
- 11.5.1.5 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.
- 11.5.2 Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability which:
- 11.5.2.1 All policies must comply with the applicable requirements and special provisions of this **Article 11**.
- 11.5.2.2 Any policy evidenced by a Certificate of Insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and Owner’s decision regarding whether any policy contains such provisions and contrary to this requirement shall be final.
- 11.5.2.3 All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that otherwise are acceptable to Owner.
- 11.5.3 Contractor agrees to the following special provisions:
- 11.5.3.1 Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against 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**.

- 11.5.3.2 Insurance companies issuing the insurance policies and Contractor shall have no 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 Contractor.
- 11.5.3.3 Approval, disapproval or failure to act by Owner, regarding any insurance supplied by Contractor or any Subcontractor(s), shall not relieve Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by Contractor's insurance company shall likewise not exonerate or relieve Contractor from liability.
- 11.5.3.4 Owner reserves the right to review the insurance requirements of this **Article XI** during the effective period of this Contract and to adjust insurance coverage and insurance limits when deemed necessary and prudent by Owner's Risk Management Division, based upon changes in statutory law, court decisions or the claims history of Contractor and Subcontractors. Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions. Upon request by Owner, Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage.
- 11.5.3.5 No special payments shall be made for any insurance policies that Contractor 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.
- 11.5.3.6 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.

ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK

12.1 Inspecting Work. Owner and Design Consultant will have authority to reject Work that does not conform to the Contract Documents. Whenever Owner or Design Consultant considers it necessary or advisable, Owner and/or Design Consultant will have authority to require inspection or testing of 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 or Design Consultant's requirements specifically expressed in the Contract Documents, it must be uncovered for Owner's or Design Consultant's inspection and properly be replaced at Contractor'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 Design Consultant or Owner has not inspected the Work prior to its being covered, concealed and/or obstructed, Owner and Design Consultant retain the right to inspect such Work and, when directed by Owner, Contractor 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, Contractor shall pay all costs associated with the uncovering, correction and replacement of the Work, unless the condition found was caused by Owner or Owner's separate contractor, in which event Owner shall be responsible for payment of actual costs incurred by Contractor.

12.3 CORRECTING WORK

- 12.3.1 Contractor promptly shall correct any Work rejected by Owner or Design Consultant as failing to conform to the requirements of the Contract Documents, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, along with all costs for additional testing, inspections and compensation for Design Consultant's services and expenses made necessary thereby.
- 12.3.2 In addition to Contractor'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, Contractor shall correct it promptly after receipt of written notice from Owner or Design Consultant to correct unless Owner previously has given Contractor a written acceptance or waiver of the defect or nonconformity. Contractor'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 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

- 12.3.4 The obligations of Contractor under **Section 3.5** herein and this **Section 12.3** shall survive final acceptance of the Work and termination of this Contract. Owner shall give notice to Contractor promptly 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 Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by Owner or Design Consultant at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one (1) year period also does not relieve Contractor 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 Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- 12.3.6 If Contractor fails to correct any defective or nonconforming Work within what Owner deems a reasonable time after Owner or Design Consultant gives written notice of rejection to Contractor, Owner may correct the defective or nonconforming Work in accordance with this **Section 12.3**. If Contractor promptly does not proceed with correction of any defective or nonconforming Work within a reasonable time fixed by written notice from Owner or Design Consultant, Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay the costs of removal and storage within ten (10) calendar days after written notice by Owner or Design Consultant, 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 Contractor for the proceeds, after deducting all costs and damages that should have been borne by Contractor to correct the defective work, including all compensation for Design Consultant's services and expenses made necessary as a result of the sale, removal and storage. If the proceeds of sale do not cover the costs that Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to Contractor then or thereafter are not sufficient to cover the deficiency, Contractor shall pay the difference to Owner.
- 12.3.7 Contractor 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 Contractor'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 Contractor might have under the

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 that 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 has been finally completed, a final inspection is made by Owner and Design Consultant 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 or Design Consultant will make a detailed inspection of the Work and will advise Contractor and Contractor's Surety of the items that require correction. Owner or Design Consultant will make a subsequent inspection and, if the corrections have been properly performed, Owner will issue a letter of release on the maintenance obligations to Contractor. If, for any reason, Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have properly been performed and a letter of release from Owner to Contractor 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 good cause after giving seven (7) calendar days advance written notice and an opportunity to cure to Contractor, including but not limited to the following causes:

13.3.1.1 Failure or refusal of Contractor to start the Work within ten (10) calendar days after the date of the written Notice to Proceed is issued by

Owner to Contractor commence Work.

- 13.3.1.2 A reasonable belief of Owner or Design Consultant that the progress of the Work being made by Contractor is insufficient to complete the Work within the specified Contract time.
 - 13.3.1.3 Failure or refusal of Contractor to provide sufficient and proper equipment or construction forces properly to execute the Work in a timely manner.
 - 13.3.1.4 A reasonable belief that Contractor has abandoned the Work.
 - 13.3.1.5 A reasonable belief that Contractor 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 Contractor to observe any material requirements of the Contract Documents or to comply with any written orders given by Owner or Design Consultant, as provided for in the Contract Documents.
 - 13.3.1.7 Failure or refusal of Contractor promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Contractor 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 or a Subcontractor, or that a fraud is being perpetrated on Owner in connection with the construction of Work under the Contract.
 - 13.3.1.9 Repeated and flagrant violation of safe working procedures.
- 13.3.2 When the Work or any portion of the Work is terminated for any of the causes itemized in **Section 13.3.1** herein, or for any other cause except termination for convenience pursuant to **Section 13.3.5** herein, Contractor shall, as of the date specified by Owner, immediately discontinue the Work or 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 Contractor and the Surety or its authorized agents, assume the obligations of Contractor for the Work or that portion of the Work which Owner has ordered Contractor to discontinue and Surety may:
- 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 Contractor to take over and perform the Work, in which event the Surety shall be

responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

13.3.2.3 with the written consent of 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 Contractor's default.

In the event of Termination by Owner For Cause involving **Article 13.3.2.1** and/or **Article 13.3.2.2**, the Surety shall assume Contractor's place in all respects and the amount of funds remaining and unpaid under the Contract shall be paid by Owner for all Work performed by the Surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of 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 Design Consultant and any attorneys fees Owner incurs as a result of Contractor's default and subsequent termination.

13.3.3 The balance of the Contract Sum remaining at the time of Contractor's default and subsequent termination shall become due and payable to the Surety as the Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If the Surety does not, within the time specified in **Section 13.3.2** herein, exercise its obligation to assume the obligations of the Contract, or that portion of the Work which Owner has ordered Contractor to discontinue, then Owner shall have the power to complete the Work by contract or otherwise, as Owner may deem necessary and elect. Contractor 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 every kind, to be provided by Contractor for the purpose of the Work; and
- (2) procure other tools, equipment, labor and materials for the completion of the Work at Contractor's expense; and
- (3) charge to the account of Contractor 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

- 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 the 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 Contractor pursuant to the Contract, then Owner may pay Contractor (or the Surety, in the event of a complete Termination by Owner For Cause) the difference, provided that Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then Contractor and its Surety shall pay the amount of the excess to Owner immediately upon written notice from Owner to Contractor and/or the 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, Contractor shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workmen employed and provided by 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 Contractor. Upon Contractor's receipt of such written notice, Contractor immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Contractor shall then 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, the actual cost of all materials installed and the actual cost of all materials stored at the Project site or away from the Project site, as approved in writing by Owner but not yet paid for and which can not be returned, plus applicable overhead, profit, and actual, reasonable and documented termination costs, if any, paid by Contractor 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 Contractor for lost or anticipated profits on any part of the Work not performed.

13.4 TEMPORARY SUSPENSION OF THE WORK

- 13.4.1 The Work or any portion of the Work may temporarily be suspended by Owner, for a time period not to exceed ninety (90) calendar days, immediately upon written notice to Contractor 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 Contractor 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 Contractor 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 Contractor is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to Owner, Owner will make an equitable adjustment for the following items, provided that a claim properly is made by Contractor 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 and Design Consultant;
 - 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 City's Small Business Economic Development Advocacy Office as 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. Contractor 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 Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the promises, covenants, terms, conditions and obligations contained in the Contract Documents. Contractor shall not assign, transfer or convey its interest or rights in the Contract, in part or as a whole, without the written consent of Owner. If Contractor attempts to make an assignment, transfer or conveyance without Owner's written consent, Contractor 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 Contractor, 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 or by facsimile transmission, email or by mail, postage prepaid, or by overnight delivery to an officer, management level employee or other designated representative of either party. Mailed or email notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed received as of three (3) calendar days after mailing.

14.5 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

14.5.1 The duties and obligations imposed on Contractor 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

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

14.7.1 In some circumstances, Owner shall retain, independent of Contractor, the 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 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 Contractor'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 the Owner against defects and deficiencies in the Work, as required herein. Contractor 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 the City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (1) a City officer or employee; his parent, child or spouse;
- (2) a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity;
- (3) a business entity in which any individual or entity above listed is a Subcontractor on a City contract, or
- (4) a partner or a parent or subsidiary business entity.

Pursuant to this **Article XIV**, Contractor 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. Except with Owner's low-bid contract

awards, Contractor 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 article shall constitute malfeasance in office and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this **Section 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 is performed in Bexar County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Bexar County, Texas.

14.10 INDEPENDENT CONTRACTOR. In performing the Work under this Contract, the relationship between Owner and Contractor is that of an independent contractor. Contractor 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 Contractor an agent, servant or employee of Owner or making Contractor or any of Contractor's employees, agents or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation which Owner provides to its employees.

14.11 NONDISCRIMINATION. As a condition of this Contract, Contractor covenants that it will take all necessary actions to insure that, in connection with any Work under this Contract, Contractor 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. Contractor 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, Contractor 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.

14.12 GIFTS TO PUBLIC SERVANTS

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

14.12.2 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

- 14.12.3 Notwithstanding any other legal remedies, Owner may require Contractor to remove any employee of Contractor, a Subcontractor or any employee of a 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 Contractor as a result of an improper offer, an 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 CONTRACTOR'S RECORDS

- 15.1.1 By execution of the Contract, Contractor 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 Contractor'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. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until 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 Contractor written and electronically stored 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 Contractor's records only during regular business hours. Contractor agrees to

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

Special Conditions for Horizontal Projects

3.2.5 Differing Site Conditions (Adds Section 3.2.5 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

Contractor 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 and/or Design Consultant 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 Contractor'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 Contractor under this **Section 3.2.5** shall be allowed unless Contractor 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 GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

Materials not meeting Contract requirements or that do not produce satisfactory results will be rejected by Owner, unless Owner or Design Consultant approves corrective actions. Upon rejection, Contractor immediately shall remove and replace rejected materials. If Contractor 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 Contractor.

The source of supply of each of the materials shall be approved by Owner or Design Consultant 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, Contractor 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 Contractor in the work. All materials being used by Contractor 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, Contractor selects a material which is approved for use by Owner or Design Consultant by sampling, testing or other means, and Contractor decides to change to a different material requiring additional sampling and testing by Owner for approval, Contractor 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 Contractor.

4.3.8 Change in Unit Prices (Added to Section 4.3.8 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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 GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

Contractor shall be allowed the documented payroll rates for each hour laborers and foremen actually shall be engaged in the Work. Contractor 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 Contractor 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

Contractor 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 Contractor-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 Contractor’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 Contractor-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 Subcontractor Markups

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

7.3.9 Field Work Directive Allowable Markups (Adds Section 7.3.9 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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 GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

Contractor 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 Contractor, 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 Contractor.

10.11 Road Closures and Detour Routes (Adds Section 10.11 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

Contractor 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. Contractor 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 City Streets (Adds Section 10.12 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

Contractor 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 Contractor and/or Contractor'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 Contractor at its own expense and as prescribed by Owner's specifications and direction. If Contractor can not or refuses to repair street damage caused by Contractor and/or Contractor'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 Contractor.

10.13 Maintenance of Traffic (Adds Section 10.13 to GENERAL CONDITIONS FOR

CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

In accordance with the approved traffic control plan and as specified in the Contract, Contractor 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 Contractor if Contractor 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 Contractor, as set forth in the Contract Documents. Any costs incurred by Owner for traffic maintenance shall be deducted from money due or owed to Contractor.

10.14 Abatement and Mitigation of Excessive or Unnecessary Construction Noise (Adds Section 10.14 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

Contractor 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 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

- (1) Contractor 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) Contractor shall provide passageways or leave open such thoroughfares in the Work Site as may be reasonably required by Owner; and

(3) Contractor shall protect and guard same at its own risk and continuously shall maintain the Work Site in a clean, safe and workmanlike manner.