



**SPECIFICATIONS & BID DOCUMENT  
FOR  
GA FIS TAXIWAY & APRON IMPROVEMENTS  
AT  
SAN ANTONIO INTERNATIONAL AIRPORT  
(PROJECT NO. 33-00050)**



RS&H, Inc.  
13750 San Pedro, Suite 300  
San Antonio, TX 78232  
H. (210) 224-2800  
Project No. 223.3267.004

**ISSUE FOR BID**

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Additional Provisions for Construction Contract Exceeding \$ 2000.

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Additional Provisions for Construction Contract Exceeding \$ 10,000.

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Additional Provisions for Construction Contract Exceeding \$ 25,000.

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AC 150/5370-2F Operational Safety on Airports during Construction

CITY OF SAN ANTONIO

Issued By: Aviation Department
ID NO.: 33-00050

Date Issued: August 6, 2014

(010) FORMAL INVITATION FOR BIDS (IFB) to CONTRACT
GA FIS APRON AND TAXIWAY IMPROVEMENT #33-00050

Sealed bids, subject to the Terms and Conditions of this Invitation for Bids and other contract provisions, will be received at the Office of the City Clerk, City Hall, 100 Military Plaza, 2nd floor San Antonio, Tx 78205 until 2:00 P.M. CST on Tuesday, September 9, 2014 (solicitation deadline) and publicly read aloud in City Council Chambers, 114 W. Commerce, Municipal Plaza Building. Bids must be submitted in a sealed envelope and clearly marked with the bidder's name, Project Name and ID NO. The City is not responsible for submissions not clearly and appropriately marked. Late submissions will be rejected and returned to bidder. A Non-Mandatory Pre-bid meeting will be held at San Antonio International Airport - Terminal A - Mezzanine, 9800 Airport Boulevard, San Antonio, TX 78216, Thursday, August 14, 2014 at 8:30 A.M. Deadline for questions is August 27, 2014 at 4.00 P.M.

This invitation includes the following Contract Documents:

- 010 Invitation for Bids and Contract Signature Page
020 Bid Form
025 Unit Pricing Form
030 Contractor's Questionnaire
040 Standard Instructions to Respondent
060 Supplemental Conditions
075 Performance Bond
076 Payment Bond
081 General conditions for Construction Contracts
105 Wage Decision
DBE Good Faith Effort Plan
Aviation Supplemental Conditions

Plans, Specifications and Special Conditions may be purchased at a cost of \$175.00 per set (tax included) from the office of RS&H, Inc., 13750 San Pedro Avenue, Suite 300, San Antonio, TX 78232; Phone 210-224-2800. No refund will be made for plan sets that are returned. Addenda will be posted on the web at www.sanantonio.gov/rfplists along with this solicitation. Changes to Plans, Specifications and Special Conditions will be included in an addendum and may be obtained from the office of RS&H, Inc. Bidder understands and agrees that bidder is responsible for obtaining addenda and adhering to all requirements in addenda. City is not responsible for incorrect information obtained through other sources.

The following documents (fully completed and with original signatures) constitute the required information to be submitted as a part of the bid proposal:

- 1) 010 Invitation for Bids & Contract Signature Page
2) 020 Bid Form
3) 025 Unit Pricing Form
4) 030 Contractor's Questionnaire
5) Bid Bond
6) DBE Good Faith Effort Plan for Federally Assisted Construction Contracts (DBE Form 1)
7) Letter of Intent for Federally Funded Contracts (DBE Form 2)
8) Buy American Certification
9) Signed Addenda Acknowledgement Forms

This is a Qualified Low Bid Solicitation. It is understood and agreed that the work is to be substantially completed on or before 342 calendar days. The award of a contract, if it is to be awarded, will be made within 120 calendar days of the date specified for the public bid opening. This project requires 1 project sign.

Wage Decision - Respondent shall meet the prevailing wage rate requirements established for this contract and shall reference the wage decision posted with this solicitation on the City's website.

The undersigned, by his/her signature, represents that he/she is authorized to bind the bidder to fully comply with Contract Documents for the amount(s) shown on the accompanying bid sheet(s). The work proposed to be done shall be accepted when fully completed and finished to the entire satisfaction of the City. The undersigned certifies all prices contained in this bid have been carefully checked and are submitted as correct and final. The bidder by submitting this bid and signing below, acknowledges that he/she has received & read the entire Bid and Contract document and agrees to be bound by the terms therein, has received all Addenda, and agrees to the terms, conditions, and requirements of the bidder's bid proposal and all documents listed in the tables above and the enabling Ordinance and associated documentation that form the entire Contract upon approval by the City Council.

Official Name of Company (legal): \_\_\_\_\_

Original Signature of Person Authorized to Sign Bid/Contract / Date Signer's Name: (Please Print or Type)

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# CITY OF SAN ANTONIO

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Project Name: GA FIS Taxiway and Apron Improvement  
ID NO.: 33-00050

Date Issued: August 6, 2014

The estimated construction budget for this contract is \$3,500,000.00

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020

## BID FORM

### I. BASE BID

Amount of Base Bid (Insert Amount in Words and Numbers): If Applicable, or write N/A, if not applicable

\$ \_\_\_\_\_

Amount of SAWS Water Base Bid (Insert Amount in Words and Numbers): If Applicable, or write N/A, if not applicable

\$ N/A

Amount of SAWS Sewer Base Bid (Insert Amount in Words and Numbers): If Applicable, or write N/A, if not applicable

\$ N/A

Amount of CPS Base Bid (Insert Amount in Words and Numbers): If Applicable, or write N/A, if not applicable

\$ N/A

**Total Amount of Base Bid (Insert Amount in Words and Numbers):**

\$ \_\_\_\_\_

### II. ALTERNATES

Amount of each Alternates (if applicable) insert in Numbers: If Applicable, or write N/A, if not applicable

Additive Alternate #1 -

N/A

**Total Amount of Bid for Additive Alternate #1 (Insert Amount in Words and Numbers):**

N/A

\$ N/A

### III. UNIT PRICES

Bidders shall submit unit pricing on the 025 Unit Pricing form, and it shall be attached immediately following this sheet.

### IV. ALLOWANCES (if applicable)

\_\_\_\_\_  
Official Name of Company (legal)

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Fax No.

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
E-mail Address

Name of the proposed **Project Manager:** \_\_\_\_\_

Name of the proposed **Site Superintendent:** \_\_\_\_\_

CITY OF SAN ANTONIO  
025 UNIT PRICING FORM

PROJECT NAME: GA FIS TAXIWAY APRON IMPROVEMENT  
PROJECT NO. 33-00050

ITEM SEQUENCE NO.	ITEM NO.	BID ITEM DESCRIPTION	UNIT OF MEASURE	APPROX. QUANTITIES	UNIT BID PRICE	AMOUNT
1	P-102-10.1	Safety and Security	LS	1.00		
2	P-103-4.1	Engineer's Field Office	LS	1.00		
3	P-104-5.1	Project Survey and Stakeout	LS	1.00		
4	P-105-5.1	Temporary Construction Items	LS	1.00		
5	P-106-5.1	Painted Pavement Marking Removal	SF	3,676.00		
6	P-107-4.1	Concrete Pavement Removal - Full Depth	SY	2,400.00		
7	P-107-4.2	Asphaltic Concrete Pavement Removal - Full Depth	SY	620.00		
8	P-107-4.3	Cement Treated Base Removal - Full Depth	SY	1,032.00		
9	P-107-4.4	Remove Concrete Oil/Water Separator - Full Depth	LS	1.00		
10	P-152-4.1	Unclassified Excavation	CY	5,900.00		
11	P-155-8.1	Lime Treated Subgrade	SY	1,621.00		
12	P-156-5.1	Erosion and Sedimentation Control	LS	1.00		
13	P-156-5.2	Erosion Control Logs	LF	120.00		
14	P-156-5.3	Inlet and outlet Protection	EA	9.00		
15	P-156-5.4	Construction Entrance/Exit	SY	358.00		
16	P-209-5.1	Crushed Aggregate Base Course 6"	CY	1,244.00		
17	P-304.8.1	Cement Treated Base 10"	SY	7,402.00		
18	P-403-8.1a	Bituminous Surface Course	TON	35.00		
19	F-162-5.1	Fence Removal	LF	250.00		
20	F-162-5.4	Temporary Fence 6' Chain Link Fence	LF	600.00		
21	F-162-5.5	Temporary 16" Vehicular Gate	EA	1.00		
22	P-501-8.1	Portland Cement Concrete 8"	SY	1,300.00		
23	P-501-8.2	Portland Cement Concrete 12"	SY	7,486.00		
24	P-620-5.1	Pavement Marking (Yellow) with reflective beads	SF	2,048.00		
25	P-620-5.2	Pavement Marking (White) with reflective beads	SF	118.00		
26	P-620-5.3	Pavement Marking (Black) without reflective beads	SF	2,709.00		
27	D-701-5.1	18" Diameter RCP Class V	LF	60.00		
28	D-701-5.2	24" Diameter RCP Class V	LF	424.00		
29	D-701-5.3	30" Diameter RCP Class V	LF	65.00		
30	D-751-5.2	4x4' Grate Inlet w/Manhole Top	EA	2.00		
31	D-751-5.3	5x5' Grate Inlet w/Manhole Top	EA	2.00		
32	D-751-5.5	4x4' Junction Box w/Manhole Top	EA	1.00		
33	D-751-5.6	6x6' Junction Box w/Manhole Top	EA	1.00		
34	D-751-5.7	10x10' Junction Box w/Manhole Top	EA	1.00		
35	T-901-5.1	Hydro-Mulch Seeding	ACRE	2.00		
36	T-904-5.1	Sodding	SY	5,500.00		

CITY OF SAN ANTONIO  
025 UNIT PRICING FORM

PROJECT NAME: GA FIS TAXIWAY APRON IMPROVEMENT  
PROJECT NO. 33-00050

ITEM SEQUENCE NO.	ITEM NO.	BID ITEM DESCRIPTION	UNIT OF MEASURE	APPROX. QUANTITIES	UNIT BID PRICE	AMOUNT
37	T-905-5.1	Topsoiling	CY	611.00		
38	L-108-5.1	1/C No. 8 AWG, 5Kv, Type L-824 Cable	LF	2,240.00		
39	L-108-5.2	1/C No. 6 AWG, Counterpoise including ground rods	LF	1,430.00		
40	L-110-5.1	Electrical Conduit, 1-2" Schedule 40 PVC	LF	2,240.00		
41	L110-5.2	Electrical Duct Bank, 4-4" Schedule 40 PVC	LF	82.00		
42	L-112-4.1	Directional Drill 1-2" Conduit, Schedule 80	LF	150.00		
43	L-125-5.1	L861T Taxiway Edge Light	EA	7.00		
44	L-125-5.2	L-861T(L) Taxiway Edge Light	EA	15.00		
45	L-125-5.3	L-858(L) Guidance Sign, Size 3, Style 2, Class 1	EA	4.00		
46	L-125-5.4	Remove Airfield Light	EA	6.00		
47	L-125-5.5	Maintenance of Airport Lighting System during Construction	LS	1.00		
48	L-125-5.6	Remove Conduit and Cable	LS	1.00		
49	L-125-5.7	L-852(L) Style 3 Taxiway Edge Light - in Pavement	EA	2.00		
50	L127-5.1	Modification of ALCS	LS	1.00		
51	100.1	Mobilization	LS	1.00		
52	100.2	Insurance and Bonds	LS	1.00		
53	101.1	Preparing Right-of-Way	LS	1.00		
54	530.1	Barricades, Signs and Traffic Handling	LS	1.00		
55	Tx 247	Flex Base Course	CY	484.00		
56	531.4	Install R1-2 Yield to Aircraft Sign	EA	2.00		
57	Tx 672	Type II-A-A Raised Pavement Markers	EA	16.00		
58	L-853	Type I Semiflush Marker for Centerline Marking	EA	9.00		

Total Bid Amount: \_\_\_\_\_

\_\_\_\_\_ certifies that the unit prices shown on this complete computer print-out for all of the bid items and the alternates contained in this proposal are the unit prices intended and that its bid will be tabulated using these unit prices and no other information from this print-out.

\_\_\_\_\_ Acknowledged and agrees that the total bid amount shown will be read as its total bid and further agrees that the official total bid amount will be determined by multiplying the unit bid prices shown in this print-out by the respective estimated quantities shown in the proposal and then totaling all of the extended amounts. \_\_\_\_\_ agrees to the terms, conditions, and requirements of the bidder's bid proposal.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_



- 1.7 **Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?  
 Yes                       No                      If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

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- 1.8 **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?  
 Yes                       No                      If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

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- 1.9 **LITIGATION DISCLOSURE - Failure to fully and truthfully disclose the information required by this Litigation Disclosure may result in the disqualification of your bid/proposal from consideration or termination of the contract, once awarded.**

- A. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?  
 Yes                       No
- B. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?  
 Yes                       No
- C. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?  
 Yes                       No
- D. Have you or any other member of your Firm or Team paid liquidated damages in the last three (3) years?  
 Yes                       No

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page and submitted with your bid as Attachment 1.9.

## 2. EXPERIENCE AND QUALIFICATIONS

- 2.1 **Prospective Respondents must show and document that they are responsible, qualified, capable, bondable, etc. to fulfill and abide by the specifications herein listed, and prospective respondents must have the capability and capacity in all respects to fully satisfy all of the contractual requirements described in this solicitation. Prospective bidders must not have been terminated by the City on any prior projects nor have any litigation with the City for any construction project.**

- 2.2 All Respondents' facilities, personnel and equipment may be subject to inspection before contract award.
- 2.3 How many years has your current organization been doing business as a construction general contractor? \_\_\_\_\_ years. If less than three years please explain on a separate page with your bid as Attachment 2.3 your organization's construction general contractor history.
- 2.4 How many years have you been doing construction-contracting work under previous business name(s)? \_\_\_\_\_ years.
- 2.5 **RELEVANT EXPERIENCE WITH AIRPORT RUNWAY AND TAXIWAY PROJECTS:**  
Bids shall be considered from responsible respondents with experience in airport runway and taxiway construction projects using Federal Aviation Administration (FAA) funds and construction specifications. The respondent's experience, in combination with its subcontractors' experience, should include three (3) airport runway/taxiway projects within the last five (5) years which include airport paving, as a minimum.

Contractor should include Project Summary Sheets that demonstrate knowledge of sequencing, staging and constructing challenges in limited areas and schedules for work due to airport environments. Project Summary Sheets should describe specific experience with airfield paving, pavement marking, electrical, and signage using FAA construction specifications. Each Project Summary Sheet should include: project name, project scope, location, duration (start and end dates), reference (owner name with a phone number and e-mail address), Original and final contract amount, date of final completion and names of project manager, superintendent, estimator and project engineer. The respondents should include the said "Project Summary Sheets" as Attachment 2.5 for Section 030, Contractor's Questionnaire. Bids submitted without required experience and documentation of airport runway and taxiway projects may be deemed non-responsive.

### 3. FINANCIAL

- 3.1 Please indicate the current limit of your BONDING CAPACITY:  
\_\_\_\_\_. **This limit indication reduces your risk of forfeiting a bid bond.** Properly informing the CITY of your current capacity for BONDED work allows the determination of awards in cases where a CONTRACTOR has the low bids for multiple projects and that total amount exceeds the capacity for bonding. If this section is left blank, CONTRACTOR agrees to be fully responsible for all active bid submissions to the limit of their respective bid bonds.
- 3.2 How much work is your firm currently contracted to provide? I.E. current total amount of work in dollars from ALL sources.  
\$ \_\_\_\_\_

**STANDARD INSTRUCTIONS TO RESPONDENT**

**Read Carefully**

**1. STANDARD TERMS AND CONDITIONS**

1.1 By submitting this offer, the Respondent:

- (a) Affirms that it is duly authorized to execute the proposed contract, that this company, corporation, firm, partnership or individual has not prepared this offer in collusion with any other Respondent, and that the contents of this offer, as to prices, terms or conditions of said offer, have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the public offer opening or official award of this contract, as applicable.
- (b) Represents, to the best of its knowledge, it is not indebted to the City of San Antonio hereafter referred to as "City." Indebtedness to City may be basis for non-award and/or cancellation of any award.
- (c) Agrees to comply with City Ordinance Number 2008-11-20-1045 concerning Wage and Hour Labor Standard Provisions for City of San Antonio Construction Projects (amending City Ordinance Number 71312). This is a public works Contract and chapter 2258 of the Texas Government Code requires that not less than the prevailing wage rate for work of a similar character in this locality shall be paid all laborers, workmen, and mechanics employed in the construction thereof. This includes overtime regulations. Refer to wage decision posted with this solicitation.

1.2 Respondents are required to submit their offers upon the following expressed conditions:

- (a) Respondents thoroughly shall examine the drawings, specifications, schedule(s), instructions and all other contract documents.
- (b) Respondents shall make all investigations necessary to thoroughly inform themselves of conditions at the Project site, the Specifications, the Plans and any Addenda to the Specifications and/or Plans issued. No plea of ignorance by Respondent of conditions which exist or may hereafter exist as a result of failure or omission on the part of the Respondent to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of City or the compensation to the vendor.
- (c) Respondents are advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. Any offer, after being opened, becomes subject to the Open Information Act, V.T.C.A. Government Code Chapter 552 Therefore, vendors clearly must indicate any portion of the submitted offer which the vendor claims is not subject to public inspection under the Open Information Act.
- (d) No officer or employee of City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to City of any materials, supplies or services, except on behalf of City as an officer or employee. This prohibition extends to City Public Service Board, San Antonio Water System and all City boards and commissions, other than those which are purely advisory. In this instance, a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City's ethics ordinance.

1.3 For federally funded projects, the Respondent certifies the following:

- (a) That it does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that it does not and will not permit its employees to perform services at any location, under its control where segregated facilities are maintained.
- (b) In accordance with the guidelines below, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency OR where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this offer.

**GUIDELINES FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this offer, the prospective lower tier participant is providing the certification set out below.

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. The prospective lower tier participant shall provide immediate written notice to the person to which this offer is submitted if, at any time, the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The person to whom this offer is submitted may be contacted for assistance in obtaining a copy of those regulations.

4. The prospective lower tier participant agrees by submitting this offer that, should the proposed covered transaction be entered into, it knowingly shall not enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

5. The prospective lower tier participant further agrees, by submitting this offer, that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

7. 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 clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## **2. DISCREPANCIES AND INTERPRETATION**

- (a) Prospective Respondents shall notify Consultant and City in writing at minimum eleven (11) calendar days prior to scheduled submittal deadline if discrepancies and ambiguities or omissions are found in the Project Plans and/or Specifications, or if further information or interpretation is desired.
- (b) Answers by Consultant and/or City will be given in writing to all prospective Respondents in Addendum form. All provisions and requirements of such addenda will supersede or modify affected portions of the Project Plans and/or Specifications. All addenda will be incorporated in and bound with the Contract Documents. No other explanation or interpretation will be considered official or binding upon the City.

## **3. PREPARATION OF BIDS**

Offers will be prepared in accordance with the following:

- (a) All information required by the invitation for offers shall be furnished or the bid may be deemed non-responsive.
- (b) Respondent shall complete the “020 Bid Form or 020 Proposal Form” and include the completed form in City’s solicitation documents. Failure to complete and submit this form may render Respondent’s proposal nonresponsive.
- (c) If applicable, Respondents shall submit unit pricing either on the forms provided by the City or its Consultant or submit an original computer printout sheet bearing certification by and signature for the offering firm. The unit prices shown on acceptable printouts will be unit prices used to tabulate the offer and used in the contract if awarded by City. As a minimum, computer printouts must contain the information and in the arrangement shown on the 025 Unit Pricing form included in City’s solicitation documents. Proposals with unit prices by computer printout may be considered nonresponsive if:
  - 1. The proposal does not bear the certification verbatim, as shown on the example in the City’s solicitation documents.
  - 2. The computer printout is not signed in the name of the firm to whom the proposal was issued.
  - 3. The computer printout omits or alters required offer items or includes items not shown in the City’s solicitation documents or specifications.

If the proposal submitted by Respondent contains both the form furnished by City, completed according to the instructions, and also a computer printout, completed according to the instructions, only one will be considered. In such a situation, the offer prices shown on the computer printout will be used to determine the offer.

- (d) Respondents shall submit a unit price for each Work element pay item for which an offer is requested, except in the case of an alternate. In such a case, the procedure is as follows:
  - 1. Additive Alternate: In the case of Additive Alternates, unit prices must be submitted for the base offer and the items in all proposed additive alternates separately.

2. Substitute Alternate: In the case of a Substitute Alternate (these alternates appear in sets of two or more related alternates), unit prices must be submitted for all the items in the base offer separately and for all the items in one of the related substitute alternates in each set.
- (e) Where there is an error in extension of price, the unit price shall govern.
  - (f) If a Respondent detects an error in quantities on the specifications or solicitation documents, unit price shall govern. Respondent shall notify City of such error by indicating in the comments section of the bid/pricing form or beside the item on City's proposal form or computer printout referenced in 3. (e) above. Respondent should not attempt to correct the error by inflating unit pricing.
  - (g) In the event additional or extra blank spaces remain after completion of the various forms, Contractor shall enter the terms "none" or "not applicable" on any remaining blank spaces as an indication that the Contractor has considered City requests for information on every line presented. Any blank unit prices will be tabulated and evaluated as "no cost" to the City.
  - (h) The combined total offers, for Mobilization and Preparing Right-of-Way shall not exceed eight percent (8%) of the total project offer. The 8% allowed for Mobilization and Preparing Right-of-Way will be calculated based upon the total of all offer components. An offer containing a combined total for Mobilization and Preparing Right-of-Way in excess of eight (8%) percent may be considered unbalanced and may be rejected.
  - (i) The unit price shall be inserted on the 025 Unit Pricing Form in the "UNIT BID PRICE" column. Extensions, which are the unit prices multiplied by the approximate quantities for each item, shall be inserted in figures in the amount column. Offers shall be submitted only on City's 025 Unit Pricing Form or approved computer printout sheets. Offers not so submitted will be considered nonresponsive. Conditional offers or unbalanced offers will be considered nonresponsive.
  - (j) Separated Contract: This project will be offered as a "separated contract", in accordance with a recent amendment to section 151.311 of the tax code, in order for the contractor to claim a tax exemption on the contract price of materials.

#### 4. SUBMISSION OF OFFERS

- (a) Respondent's Offer shall be enclosed in a sealed envelope addressed to the **City Clerk, City of San Antonio, 100 Military Plaza, San Antonio, Texas**, as set forth in the Invitation for Bid (IFB) or Invitation for Competitive Sealed Proposals (IFCSP). The name and address of Respondent, the date and hour of the offer/bid opening and the title of the offer solicitation shall be placed on the outside of the envelope.
- (b) Information and solicitation documents are obtainable from the Consultant as set forth in the published IFB/IFCSP. Solicitation documents also are on file in the Office of Planning and Development Division, Aviation Department, 457 Sandau Road, San Antonio, Texas 78216, or online at the following web address: <http://epay.sanantonio.gov/RFPListings/RFPList.aspx>
- (c) Offers must be submitted on the forms furnished. Offers, however, may be modified, provided such modifications are sealed and received by the City Clerk prior to the submission deadline.
- (d) By submittal of this offer, Respondent certifies to the best of its knowledge that all information is true and correct.
- (e) Every manufacturer, supplier, vendor, contractor and others interested in doing business with the City of San Antonio **MUST FIRST** register with the City by using the City of San Antonio's **Vendor Registration Website**: <http://www.sanantonio.gov/purchasing/SAePS.aspx>.

For assistance, in registration call Vendor Support at (210) 207-0118 or via e-mail at [vendors@sanantonio.gov](mailto:vendors@sanantonio.gov).

If Respondent submitting a bid is not registered in the City's Vendor Registration, the submitted bid may be rejected.

## **5. REJECTION OF OFFERS**

- (a) City may reject an offer if:
  - 1. Respondent misstates or conceals any material fact in the offer; or
  - 2. The offer does not strictly conform to law or the requirements of the offer;
  - 3. The offer is conditional.
  - 4. Respondent is deemed by the City to be unqualified.
  - 5. Respondent has exceeded its bonding capacity.
  - 6. The offer is unbalanced.
  - 7. Subcontractor/Supplier Utilization Plan is not submitted with bid, if applicable.
  - 8. Respondent fails to register in the City's Vendor Registration system.
- (b) In the event that a Respondent is or subsequently becomes delinquent in the payment of its City taxes, including state and local sales taxes, such fact shall constitute grounds for rejection of the offer or, if awarded the offer, for cancellation of the contract. City reserves the right to deduct any delinquent taxes from payments that City may owe to the delinquent Respondent as a result of such contract.
- (c) City may reject all offers, whenever it is deemed in the best interest of City to do so, and may reject any part of an offer unless the offer has been qualified as provided in 5(a) 3 above.
- (d) City, at its sole discretion also may waive any minor informalities or irregularities in any offer, to include failure to submit sufficient offer copies, failure to submit literature or similar attachments, or business affiliation information.

## **6. WITHDRAWAL OF OFFERS**

Offers may not be withdrawn after the time set for the offer opening, unless approved by City.

## **7. LATE OFFERS OR MODIFICATIONS**

- (a) Offers and modifications received after the time set for the offer opening (solicitation deadline) will not be considered.
- (b) Proposal amounts may not be amended or modified in any manner after the Solicitation Deadline in the published IFB/IFCSP, except as hereinafter provided.
- (c) City will perform a cursory review to determine if the offers are complete as to required contents, in proper form and are properly signed. An offer that is obviously defective will not be read aloud at the bid/offer opening, nor will the offer prices included therein be publicly revealed. If a minor clerical error or omission is discovered and classified by City as a technicality which the City of San Antonio has reserved the right to waive, or applicable law allows City a right to waive, Respondent's representative shall have the opportunity to make the appropriate correction.

**8. PROPOSAL GUARANTY:**

(a) Each Offer Proposal must be accompanied by an original Bid/Offer/Proposal Bond issued by a corporate surety company licensed to conduct business in the State of Texas, in the amount of not less than five percent (5%) of the greatest total amount of the Offer/Bid/Proposal, payable without recourse to the order of the City of San Antonio, Texas. These forms of security will serve as a guarantee that, if awarded the Contract, the Respondent will promptly enter into Agreement with City as required by the Contract Documents and execute Performance and Payment Bonds on City forms provided.

(b) Termination of Offer: No Offer shall be withdrawn or terminated by Respondent without consent of City for a period of ninety (90) calendar days after the solicitation deadline.

(c) Should the successful Respondent fail to execute the Contract and Bonds and provide the required insurance within twenty (20) calendar days after the date of transmittal of the Contract Documents by City to Contractor, said Proposal Guaranty shall become the property of City, not as a penalty, but as liquidated delay and administrative damages suffered by City as a result of the successful Respondent failing to enter into the awarded City Contract.

(d) Proposal guarantees of the first-, second- and third-ranked respondents (for IF CSP) or first-, second- and third-lowest bidders (for IFB) will be retained until after the Contract Agreement and Bonds have been executed.

**9. QUALIFICATIONS OF RESPONDENT:**

(a) City or its agents may make such investigations as it deems necessary to determine the ability and responsibility of Respondent to perform the Work. Respondent shall furnish to City reasonable information and data for this purpose as City may reasonably request. City reserves the right to reject any offer if the evidence submitted by, or investigation of, such Respondent fails to satisfy City that such Respondent is responsible to carry out the obligations of the Contract and to complete the Work contemplated therein.

(b) City has implemented a Contractor performance evaluation system. The evaluation will cover accomplishment of the Project with adequate manpower; ability to meet schedule; adequacy of materials and equipment; citizen complaint response; adjacent-to-project property owner relations; and attendance at public project meetings. Contractor's evaluation history also may be used by City Staff as a basis for recommendations of award to the City Council.

**10. AWARD OF CONTRACT**

(a) For Invitation for Bids, the contract will be awarded to the lowest responsible Respondent whose offer, conforming to the Invitation for Bids, is most advantageous to City.

(b) For Invitation for Competitive Sealed Proposals, the contract will be awarded to the Respondent whose offer, conforming to the Invitation for Competitive Sealed Proposals, is most advantageous to City.

(c) **A written award of acceptance (manifested by a City Ordinance) and appropriation (evidenced by Purchase Order) mailed or otherwise furnished to the successful Respondent results in a binding contract without further action by either party.**

(d) Breaking of tie offers shall be in accordance with V.T.C.A. Local Government Code § 271.901.

(e) City reserves the right to accept any items or groups of items on this offer, unless Respondent qualifies his/her offers by specific limitations (Re: Par. 5(a) (3) above).

(g) Although the information furnished to Respondents specified the approximate quantities needed, based on the best available information where a contract is awarded on a unit price basis, payment shall be based on the actual quantities supplied. City reserves the right to delete items, prior to the awarding of

the contract, and purchase said items by other means; or after the awarding of the contract, to increase or decrease the quantities offer in accordance with § 252.048 of the Texas Local Government Code. No changes shall be made without written notification of City.

- (h) Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons or their agents, who seek to contract for the sale or purchase of property, goods or services with City, shall file a completed Conflict of Interest Questionnaire, hereafter referred as (“CIQ”), with City Clerk not later than the seventh (7<sup>th</sup>) business day after the date that the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals, offers, correspondence, or another writing related to a potential agreement with City. The CIQ form is available from the Texas Ethics Commission at:

<http://www.ethics.state.tx.us/forms/CIQ.pdf>.

In addition to CIQ form, the City requires individuals to submit a CIQ-Addendum. The CIQ-Addendum is available from the City of San Antonio at:

<http://www.sanantonio.gov/atty/ethics/pdf/OCC-CIQ-Addendum.pdf>.

Completed CIQ forms and CIQ addendum may delivered by hand to the Office of the City Clerk at City Hall, 2<sup>nd</sup> floor, 100 Military Plaza, San Antonio, TX 78205 or may be mailed to the Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. Please consult your own legal advisor if you have questions regarding the statute or form.

## 11. SITE INVESTIGATION

- (a) The submittal of an Offer by Respondent shall constitute an admission that Respondent has fully examined the location of the proposed Work and the requirements of the Work. Respondent shall be familiar with all of the Contract Documents and other City instructions including Respondent’s ability to submit inquiries to City and Design Consultant before submitting an Offer so that no Contractor misunderstanding shall exist regarding the nature and character of the Work to be performed. No allowance will be made by City for any Respondent claim that the Offer/Proposal/Bid is based upon incomplete information as to the nature and character of the site or the Work involved.
- (b) After investigating the Project site and comparing the Plans and Specifications and other Contract Documents with the existing conditions, the prospective Respondent immediately should notify Consultant of any conditions for which the requirements of labor and materials are not clear, and pose any question regarding the quantity and extent of the Work involved. Respondent inquiry notifications to City and/or Consultant must be made in writing at least eleven (11) calendar days prior to the scheduled solicitation deadline.
- (c) It is understood and acknowledged by Respondent that full and complete allowance for conditions under which the Contractor will be required to perform construction, or that will in any manner affect Work under this Contract, are included in the Respondent's Proposal and reflected in the proposed Contract sum. If a soils investigation was conducted as a potential aid to the Consultant in preparation of the Contract Plans and Specifications, this information is available to prospective respondents for review at the Project Consultant’s office and is non-refundable. Copies may be purchased from the Consultant. **THIS INFORMATION IS AVAILABLE TO PROSPECTIVE RESPONDENTS WITHOUT EXPRESS OR IMPLIED REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTEE BY CITY OR CONSULTANT THAT IT IS COMPLETE OR CORRECT OR THAT IT REPRESENTS A TRUE, OR APPROXIMATELY TRUE, PICTURE OF THE SUB-SURFACE CONDITIONS TO BE ENCOUNTERED ACROSS THE PROPOSED WORK SITE. THIS INFORMATION IS SPECIFICALLY NOT PART OF THE CONTRACT DOCUMENTS.** Before submitting its Offer, each Respondent may, at Respondent’s own expense, make reasonable work site investigations and tests as the Respondent may deem necessary to determine his Offer for performance

of the Work in accordance with the Contract Documents. Access for such investigations and tests must be reasonably coordinated with the City.

## 12. RESTRICTION ON COMMUNICATION

Respondents are prohibited from communicating with City staff and City officials regarding this solicitation with the following exceptions:

- (a) Questions or other communication at the pre-submittal conference are allowed.
- (b) Written questions and comments concerning this solicitation shall be sent to the consultant, Mr. John Hippchen, P.E., 13750 San Pedro Avenue, Suite 300, San Antonio, TX 78232, Tel: 210-545-3103, email address: [john.hippchen@rsandh.com](mailto:john.hippchen@rsandh.com) and a copy to Mr. Kao-Lin Chen, P.E., the City's Aviation Department, Planning and Development Division at 457 Sandau Road, San Antonio, Texas 78216, Tel: 210-207-3506 and email address: [kaolin.chen@sanantonio.gov](mailto:kaolin.chen@sanantonio.gov). Questions received after the stated deadline will not be answered.
- (c) Respondent and/or its agent(s) are encouraged to contact the Aviation Department's DBE Liaison Officer for assistance or clarification with issues specifically related to the DBE policy and/or completion of the required DBE forms, prior to Respondent's submittal. Point of Contact person is Ms. Lisa Brice, Tel: 210-207-3505 and email address: [lisa.brice@sanantonio.gov](mailto:lisa.brice@sanantonio.gov). Ms. Brice may designate other members of the Aviation staff to address DBE issues raised by Respondent. After the solicitation's closing date, no contact is permitted by Respondent to the Aviation Department, DBE Liaison Office.. The City reserves the right to contact Respondent over DBE issues after the solicitation closing date.
- (d) Respondents shall provide responses to any questions asked of them by the Staff Contact Person before and after responses are received and opened.

Answers by Consultant and/or City will be given in writing to all prospective Respondents in Addendum form. All provisions and requirements of such addenda will supersede or modify affected portions of the Project Plans and/or Specifications. All addenda will be incorporated in and bound with the Contract documents. No other explanation or interpretation will be considered official or binding upon the City. All addenda will be posted on the City's website with this solicitation. It is respondent's responsibility to obtain addenda.

Violation of this provision by Respondent or his or her agent may lead to disqualification of its offer from consideration.

## SUPPLEMENTAL CONDITIONS

1. **When submitting a bid in person, visitors to City Hall must allow time for security measures.** Visitors to City Hall will be required to enter through the east side of the building. The public will pass through a metal detector and x-ray machine located in the lobby. All packages, purses and carried items will be scanned during regular business hours of 7 a.m. to 7 p.m. After the public proceeds through the metal detector, they will sign in and receive a visitor's badge. For those that might require the use of a ramp, entry is available on the south side of the building (Dolorosa side). Security will meet the visitor in the basement with a hand scanner.
  
2. **Scope of the Work** - The Contractor shall furnish all the materials and perform all the Work called for in the Contract Documents and more specifically described in the Plans and Specification for the Project entitled.
  
3. The Contractor shall begin Work at the job site within seven (7) calendar days after the date of the Owner's written Authorization to Proceed issued by the Owner's Representative.
  
4. **Liquidated Damages for Delay in Substantial Completion & Final Completion:** Contractor shall pay Owner the sum indicated on the table below for each and every calendar day of unexcused delay in achieving Substantial Completion/Final Completion beyond the Scheduled Completion/Final Completion Dates. Any sums due and payable hereunder by Contractor shall be payable, not as a penalty, but as Liquidated Damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing the Contract. Such Liquidated Damages shall apply regardless of whether Contractor has been terminated by Owner prior to Substantial Completion, so long as Contractor's actions or inactions contributed to the delay. Such Liquidated Damages shall be in addition to and not in preclusion of any recovery of actual damages resulting from other defects in Contractor's performance hereunder for matters other than delays in Substantial Completion/Final Completion. When Owner reasonably believes that Substantial Completion/Final Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Contractor an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Contractor overcomes the delay in achieving Substantial Completion/Final Completion, or any part thereof, for which Owner has withheld payment, Owner promptly shall release to Contractor those funds withheld but no longer applicable as Liquidated Damages.

### Liquidated Damages

Contractual Milestone	Contractual Milestone Description and Requirements	From	To	Liquidated Damages
1	Substantial Completion	NTP Phase 1	127 calendar days	\$2,500.00 per day
2	Final Completion	Substantial Completion Phase 1	30 calendar days	\$1,500.00 per day
1	Substantial completion	NTP Phase 2	155 calendar days	\$2,500.00 per day
2	Final Completion	Substantial Completion Phase 2	30 calendar days	\$1,500.00 per day

5. **The Contract Sum** - The Owner shall pay the Contractor for the proper performance of the Contract, subject to additions and deduction provided therein, the Contract sum is listed in the Purchase Order.
  
6. **Partial Payment** - Each month, the Owner shall make a progress payment as approved by the Owner's Representative in accordance with the General Conditions.

7. Acceptance and Final Payment - Final Payment shall be due on final Owner acceptance of the Project Work, provided the Contract has been completed by Contractor as provided in the General Conditions. Before issuance of the final payment, the Contractor shall submit an affidavit and reasonable additional supporting evidence if required, as satisfactory to the Director of Finance, City of San Antonio, that all labor payrolls, construction materials and supply bills, subcontractors, and other indebtedness connected with the Work have been paid in full, or that an outstanding debt is being disputed and that the corporate surety or its agent is processing the outstanding claim and is willing to defend and/or indemnify the City should the City make final Contract payment.

8. Contractor shall comply with Standard Specification 1000 in its invoicing.

GA FIS Taxiway & Apron Improvements  
Project No.: 33-00050

# PERFORMANCE BOND

STATE OF TEXAS )  
COUNTY OF BEXAR )  
CITY OF SAN ANTONIO )

The City of San Antonio, a municipal corporation in the State of Texas (hereafter referred to as "City") and \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_ (hereafter referred to as "Contractor" or "Principal") have entered into a Contract (hereafter referred to as "the Contract") dated \_\_\_\_\_, 20\_\_ for the **GA FIS Taxiway & Apron Improvements** (hereafter referred to as "the Project"). Said Contract is incorporated by reference into this Statutory Performance Bond, pursuant to Chapter 2253 of the Texas Government Code (hereafter referred to as "this Bond").

By virtue of this Bond, Contractor as Principal and \_\_\_\_\_ with its physical address at \_\_\_\_\_, a mailing address of \_\_\_\_\_ and a business telephone number of \_\_\_\_\_ as Surety (hereafter referred to as "Surety") do hereby acknowledge each to be bound to Owner as an Obligee in the maximum amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (hereafter referred to as the "Bond Sum"). Contractor and Surety hereby further bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally for payment of this Bond, to City as provided herein.

1. **GENERAL CONDITIONS.** It is a condition of this Bond that if Contractor promptly performs its Contract obligations (hereafter referred to as the "Work"), Surety's obligations pursuant to this Bond are null and void. Otherwise, Surety's obligations shall remain in full force and effect. Surety waives any requirement to be notified of alterations or extensions of time, or any other duly authorized modifications, made by City to the Contract. Upon making demand on this Bond, City shall make the Contract balance (equal to the total amount payable by City to Contractor pursuant to the Contract less amounts paid by City to Contractor) available to Surety for completion of the Work.
2. **SURETY OBLIGATION.** If Contractor does not faithfully construct and complete said work, as defined in the Scope of Work under its contract with City, and City invokes its contractual rights and declares Contractor in default, Surety promptly shall remedy the default and, at City's sole option, Surety shall:
  - A. within a reasonable time (but not later than thirty (30) days after Surety receives written notice of Contractor's/Principal's Default), with written notice to City, step into and assume the role, all rights and all obligations of the defaulting Contractor/Principal under the Contract. Upon assumption of this role, Surety and all sureties directly shall contract with a Completion Contractor hired/engaged by Surety and all sureties to complete the structure(s), Work and improvements, pursuant to the Scope of Work in the Contract with Contractor/Principal. The selection of the Completion Contractor must be approved in writing by City and such approval shall not unreasonably be withheld. Surety and all sureties solely shall be responsible for any and all costs incurred, up to the Bond Sum, to complete the structure(s), Work and improvements, pursuant to the Scope of Work in the Contract with Contractor/Principal; or

- B. In the event Surety fails to contract with a Completion Contractor within ninety (90) days of receipt of City's written notice of Default, City may, at City's sole discretion, select a Completion Contractor in accordance with Texas Law. In this event of Surety and all sureties failing to contract with a Completion Contractor within ninety (90) days of receipt of City's written notice of Default, Surety and all sureties then shall pay City any and all costs, up to the Bond Sum, for City's selected Completion Contractor to complete the structure(s), Work and improvements, as defined in the Scope of Work in the Contract with Contractor/Principal; or
  - C. at City's sole discretion, Surety and all sureties shall pay to City City's estimated amount for City to execute a Project Completion Contract with a Completion Contractor, selected by City in accordance with Texas Law, solely to complete the structure(s), Work and improvements, pursuant to the Scope of Work in the Contract with Contractor/Principal. Surety and all sureties shall pay City any and all costs, up to the Bond Sum, for the City-selected Completion Contractor to complete the structure(s), Work and improvements, as defined in the Scope of Work in the contract with Contractor/Principal.
3. **VENUE.** The obligations of the parties under this Bond shall be performable in Bexar County, Texas. If legal action, such as civil litigation, is necessary in connection with this Bond, exclusive venue shall be in Bexar County, Texas.

**THIS BOND** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
SURETY (seal)

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Print Title)

[ATTACH POWER OF ATTORNEY]

[Additional signatures, if any, appear on attached page]

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

# PAYMENT BOND

STATE OF TEXAS )  
COUNTY OF BEXAR )  
CITY OF SAN ANTONIO )

The City of San Antonio, a municipal corporation in the State of Texas (hereafter referred to as "City") and \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_ (hereafter referred to as "Contractor" or "Principal") have entered into a Contract (hereafter referred to as "the Contract") dated \_\_\_\_\_, 20\_\_ for the **GA FIS Taxiway & Apron Improvements** (hereafter referred to as "the Project"). Said Contract is incorporated by reference into this Statutory Payment Bond, pursuant to Chapter 2253 of the Texas Government Code (hereafter referred to as "this Bond").

By virtue of this Bond, Contractor as Principal and \_\_\_\_\_, with its physical address at \_\_\_\_\_, a mailing address of \_\_\_\_\_ and a business telephone number of \_\_\_\_\_ as Surety (hereafter referred to as "Surety") do hereby acknowledge each to be bound to City as an Obligee in the maximum amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (hereafter referred to as the "Bond Sum"). Contractor and Surety hereby further bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally for payment of this Bond, as provided herein.

- 1. GENERAL CONDITIONS.** It is a condition of this Bond that if Contractor promptly makes payment of all sums for all labor, services, materials and equipment furnished for use in the performance of the Scope of Work required by the Contract, Surety's obligations pursuant to this Bond are null and void. Otherwise, Surety's obligations shall remain in full force and effect. Surety waives any requirement to be notified of alterations or extensions of time, or any other duly authorized modifications, made by City to the Contract.
- 2. SURETY OBLIGATION.** Surety's obligation under this Bond is for the benefit and sole protection of all persons supplying labor, services, materials and equipment in the prosecution of said Contract. Surety's obligation to the Claimant(s) shall not exceed the Bond Sum.

**THIS BOND** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
SURETY (seal)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

[ATTACH POWER OF ATTORNEY]

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

[Additional signatures, if any, appear on attached page]

ATTEST: \_\_\_\_\_

**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)  
DBE GOOD FAITH EFFORT PLAN FOR FEDERALLY FUNDED CONTRACTS  
(DBE FORM 1)**

**NAME OF PROJECT:** GA FIS Taxiway & Apron Improvements

**PROPOSER INFORMATION:**

Name of Proposer: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Is your firm certified? \_\_\_ Yes \_\_\_ No Type of Certification: \_\_\_ DBE \_\_\_ MBE \_\_\_ WBE \_\_\_ AABE \_\_\_ SBE

Age of Firm (Number of Years in Business): \_\_\_\_\_ years

Annual Gross Receipts of the Firm: \_\_\_\_\_ Less than \$500,000 \_\_\_\_\_ \$500,000 to \$1 million  
 \_\_\_\_\_ \$1 million to \$2 million \_\_\_\_\_ \$2 million to \$5 million  
 \_\_\_\_\_ Over \$5 million

- 1. List ALL SUBCONTRACTORS/SUPPLIERS that will be utilized on this contract. The apparent successful proposer for professional services contracts shall submit a Letter of Intent (DBE Form 2) for all firms to be utilized on this contract to the Aviation Department's DBE Liaison Officer at the time the bid is submitted. If the Aviation Department does not receive completed copies from the apparent successful proposer with the bid the Good Faith Effort Plan can not be approved. An approved Good Faith Effort Plan is required prior to award of any contract.**

Name & Address of Company	Scope of Work/Supplies to be Performed/ Provided by Firm	Estimated Contract or % Level of Participation	If Firm is DBE Certified, Provide Certification Number	Date Written Notice Was Sent and Method (Letter, Fax, E-mail)
1.				
2.				
3.				
4.				
5.				

(Use Additional Sheets if Necessary)

**IF DBE GOAL HAS BEEN MET OR EXCEED, SKIP TO ITEM 9**

2. List all firms you contacted with subcontracting/supply opportunities for this project that will not be utilized for this contact by choice of either the proposer, subcontractor, or supplier. *Written notices to firms contacted by the proposer for specific scopes of work identified for subcontracting/supply opportunities must be provided to subcontractor/supplier not less than five (5) business days prior to bid/proposal due date.* The following information is required for all firms that were contacted of subcontracting/supply opportunities:

Name & Address of Company	Scope of Work/Supplies to be Performed/ Provided by Firm	Estimated Contract Amount or % Level of Participation	If Firm is DBE Certified, Provide Certification Number	Date Written Notice Was Sent and Method (Letter, Fax, E-mail)	Reason Agreement Was Not Reached
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					

(Use additional sheets as needed)

In order to verify a proposer's good faith efforts, it may be necessary to provide the City with copies of the written notices to all firms contacted by the proposer for specific scopes of work identified in relation to the subcontracting/supply opportunities in the above named project. If requested by the DBE Liaison, copies of said notices must be provided to the DBE Liaison within five (5) business days of such request. Such notices shall include information on the plans, specifications and scope of work.

3. Did you attend the pre-proposal conference scheduled by the City for this project? \_\_\_\_\_ Yes \_\_\_\_\_ No

4. List all DBE listings or directories, contractor associations, and/or any other associations utilized to solicit DBE subcontractors/suppliers:

\_\_\_\_\_

\_\_\_\_\_

5. Discuss efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goal:

---

---

6. Indicate advertisement mediums used for soliciting bids from DBEs. (Please attach a copy of the advertisement(s):

---

---

7. Discuss efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance:

---

---

8. Discuss efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services:

---

---

9. Name and phone number of person appointed to coordinate and administer the Federal DBE Good Faith Efforts of your company on this project.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

10. The Good Faith Effort Plan for Federally Funded Contracts must be approved by the Aviation Department's DBE Liaison Officer prior to award of contract.

11. The Federal DBE Good Faith Efforts Plan is subject to the review by the Aviation Department's DBE Liaison and final approval in determining whether Good Faith Efforts have been made rests with the Aviation Director.

#### AFFIRMATION

*I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

NAME AND TITLE OF AUTHORIZED OFFICIAL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

*FOR SAN ANTONIO INTERNATIONAL AIRPORT USE ONLY:*

Plan Reviewed by \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of DBE Liaison

Recommendation: Approval: \_\_\_\_\_ Denial: \_\_\_\_\_  
Action Taken: Approved: \_\_\_\_\_ Denied: \_\_\_\_\_



NAME OF PROJECT: GA FIS Taxiway & Apron Improvements

DECLARATION OF PRIME CONTRACTOR

*I hereby declare and affirm that I am the*

---

*(Title of Declarant)*

*and a duly authorized representative of*

---

*(Name of Prime Contractor)*

*to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the firm signed this form in the place indicated, and no material facts have been omitted.*

*The undersigned intends to enter into a formal agreement with the listed firm for work as indicated by this form and will, if requested, provide the Airport's DBE Liaison with a copy of that agreement within three (3) business days of execution.*

---

*(Name of Declarant)*

---

*(Signature)*

---

*(Date)*

**SUBMIT THIS PAGE FOR EACH SUBCONTRACTOR/SUPPLIER FOR THIS CONTRACT, AS LISTED ON ITEM 1 OF DBE GOOD FAITH EFFORT PLAN FOR FEDERALLY FUNDED CONTRACTS [DBE FORM 1] AND/OR CHANGE OR ADDITION OF SUBCONTRACTORS/SUPPLIERS ON FEDERALLY FUNDED CONTRACTS (DBE FORM 3)**

**SAN ANTONIO INTERNATIONAL AIRPORT  
CHANGE OF SUBCONTRACTORS/SUPPLIERS ON FEDERALLY FUNDED CONTRACTS  
(DBE FORM 3)**

**NAME OF PROJECT:** GA FIS Taxiway & Apron Improvements

Name of Proposer: \_\_\_\_\_  
 The above named firm requests approval of the following addition(s) and/or deletion(s) of the Subcontractor/Supplier firm(s) to the approved DBE Good Faith Effort Plan for Federally Funded Contracts (DBE Form 1) and Letter of Intent (DBE Form 2) as originally submitted as part of the above referenced project. **No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

Delete	Name of Firm	Is firm a Subcontractor or Supplier	Description of Work to be Performed by Firm	Is firm DBE Certified Yes or No?	Total Dollars of Work to be Performed by Firm

REASON(S) FOR REMOVING EACH SUBCONTRACTOR(S)/SUPPLIER(S) LISTED ABOVE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Please indicate the name of the firm(s) you wish to add or substitute. **A Letter of Intent (DBE Form 2) for any additional/substitute subcontractor(s)/supplier(s) must be submitted to the City for approval with this form. No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

Add	Name of Firm	Is firm a Subcontractor or Supplier	Description of Work to be Performed by Firm	Is firm DBE Certified Yes or No?	Estimated Dollars of Work to be Performed by Firm

1. If a DBE Subcontractor/Supplier was deleted/terminated/replaced, was it replaced with another DBE subcontractor/Supplier? Yes \_\_\_ No \_\_\_ If not, why not:  
 \_\_\_\_\_
2. **If another DBE Subcontractor/Supplier did not replace the DBE Subcontractor/Supplier, please submit for our review the good faith efforts used to find another DBE to perform at least the same amount of work under the contract as the DBE that was deleted/terminated/replaced.**
3. **If a Subcontractor/Supplier is added at any time during this project, Contractor shall submit for our review and approval the good faith efforts used to find a DBE to perform such work.**

**AFFIRMATION**  
*THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

Name & Title of Authorized Official: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Approved: \_\_\_\_\_ Denied \_\_\_\_\_

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

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**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 shall 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 shall become a part of the Contract through award of the Contract and the Base Bid shall 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 shall 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 Transportation and Capital Improvements (hereafter referred to as “TCI”), 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 Work Directive, Change Order or Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind between:

(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 o’clock p.m. on weekdays, except legal holidays, or the hours during which Contractor has been authorized to work by Owner.

- 1.1.12 **“DEPARTMENT”** means the Department of Transportation and Capital Improvements (hereafter referred to as “TCI”), City of San Antonio, Texas or Director of TCI.
- 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 shall 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 shall 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 shall be sent to Contractor by TCI Contract Services, notifying Contractor of the award of a contract. In its Notice of Award Letter, Contractor shall be informed of a date certain by which Contractor's bond(s) and evidence of insurance shall be delivered to TCI 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 TCI 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 shall 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 comment of Work (unless otherwise specified elsewhere in the Contract Documents), Contractor shall submit to the Director of TCI 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

Consultant, Owner's Designated Representative(s) and others, as appropriate, shall be held to establish a working understanding among the parties as to the Work and discuss, at minimum: the Project Schedule(s) referenced in this **Article 1**; the procedures for handling Shop Drawings and other submittals; the processing of Applications for Payment; and Contractor maintaining required records. The Notice to Proceed may be issued at the Pre-Construction Conference or issued by Owner at any time at Owner's discretion. Said issuance of the Notice to Proceed shall not be unreasonably withheld by Owner.

- 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 shall 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. Any such use without written authorization shall be at the sole risk and liability of

Contractor. Contractor, Subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant's Consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant's Consultants. Submittal or distribution to meet official regulatory requirements or for other purposes, in connection with this Project, is not to be construed as publication.

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 required only to the extent consistent with the Contract Documents and which reasonably is inferable from the Contract Documents as deemed necessary to produce the indicated results. In cases of discrepancy between any drawing and the dimension figures written thereon:

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

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

1.3.3.1 Organization of the Specifications into divisions, sections, articles, and the arrangement of Drawings shall not control 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 time of opening of Contractor's Bid Proposal, except as otherwise may be specifically stated or where a particular issue is indicated. Municipal and utility standards shall govern except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent shall govern.

1.3.3.4 The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows, with the highest authority listed 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 shall provide and maintain the Preliminary Budget and general schedule, if any, for the Project. The Preliminary Budget shall 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 shall 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, shall 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 workers employed on the Work site, the workers' occupational classification, the time each worker is engaged in the Work and the equipment used by the workers 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 locations promptly shall be rectified by Contractor without any additional cost to Owner.

3.2.2 As between Owner and Contractor, and subject to the provisions of **Section 3.2.4** below, Contractor has no responsibility for the timely delivery, completeness, accuracy and/or sufficiency of the Specifications or Drawings (or any errors, omissions, or ambiguities therein), and is not responsible for any failure of the design of the facilities or structures as reflected thereon to be suitable, sound or safe. 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 shall 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 shall, 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, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this **Section 3.4.6** are not intended to impose upon Contractor any additional obligations Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations or statutes pertaining to the Occupational Safety and Health Administration.

#### **3.4 LABOR AND MATERIALS**

- 3.4.1 Unless otherwise provided in the Contract Documents, 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, 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, worker or mechanic employed for

each calendar day, or portion thereof, in which such laborer, worker 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, workers 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 shall 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 shall 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 shall 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 Consultant, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment installed. Contractor may make substitutions only with the consent of Owner, after Contractor's compliance with **Section 3.4.2** herein.
- 3.4.8 All materials shall be shipped, stored and handled in a manner which shall 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 shall 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 shall be of good quality and new, unless otherwise required or permitted by the Contract Documents, the Work shall be free from defects not inherent in the quality required or permitted and the Work shall conform to the requirements of the Contract Documents. Work not conforming to this warranty and these requirements, including substitutions not properly approved and authorized by Owner, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by Owner's failure to promptly notify Contractor. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 3.5.2 A right of action by Owner for any breach of 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 shall 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 shall notify Contractor of deficiencies and Contractor shall start remedying these defects within seven (7) calendar days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by Owner and Design Consultant, even though such prosecution may extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date and conduct the required walk through with Owner, Contractor's warranty obligations described in this **Section 3.5.5** shall continue until such inspection is conducted and any deficiencies found in the inspection is corrected.

3.5.6 Warranties shall become effective on a date established by Owner in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment and those occurrences addressed in **Section 3.5.4** herein. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to Final Completion shall become effective on the later of the date the Work is completed or corrected and accepted by Owner and 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 shall 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. Contractor, immediately upon notification by the Owner of water penetration, shall determine the source of water penetration and perform any work necessary to make the building watertight. Contractor also shall repair or replace any damaged material, finishes and/or fixtures damaged as a result of any water penetration, returning the building to original condition. The costs of such determination and repair shall be borne by Contractor only to the extent that the leak(s) is/are attributable to faulty workmanship or unauthorized or defective materials.

**3.6 TAXES.** Contractor shall 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 shall 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 acquisition of a "Land Disturbing Activities Permit" for a Project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the Project Site. However, any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. It shall be Contractor's responsibility to prepare and submit the permit approval documentation provided by the regulatory agencies prior to beginning any Work.

### **3.8 ALLOWANCES**

- 3.8.1 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 shall not be unreasonably withheld, except with good reason (including any termination or disability of the superintendent) or under extraordinary circumstances. The superintendent may not be employed on any other project prior to Final Completion of the Work without the approval of Owner, which approval shall not be unreasonably withheld.

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 shall 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 requirements herein is an essential part of the Work to be performed under the Contract.

3.10.2 **SCHEDULING PERSONNEL.** Unless otherwise indicated in writing by Owner, 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 shall 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 shall, 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, shall 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 shall 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 shall 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 shall 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, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of Contractor's Project Schedule. In the event Contractor fails to define any element of Work, activity or logic and Owner's review does not detect this omission or error, such omission or error, whether or when discovered by Contractor or Owner, shall be corrected by Contractor at the next monthly schedule update and shall not affect the Project or Contract completion date.
- 3.10.8.4 Acceptance of the Project Schedule, or update and/or revision thereto, does not indicate any approval of 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 shall 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 shall 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 shall 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 shall 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 commencement of an impact or the notice for a change is given to Contractor. Not providing notice to Owner within twenty (20) calendar days after receipt shall indicate Contractor's approval of the time charges as shown on that time statement. Future consideration of that statement shall not be permitted and Contractor forfeits its right to subsequently request a time extension or time suspension unless the circumstances are such that Contractor could not reasonably have knowledge of the impact by the end of the next estimate period.

3.10.11.1 When changes are initiated or impacts are experienced, 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** herein of the Time Impact Analysis be submitted at the commencement of the impact, if needed to make a decision regarding the suspension of Contract time. Approval or rejection of each Time Impact Analysis by Owner shall be made within fourteen (14) calendar days after receipt, unless subsequent meetings and negotiations are necessary.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

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

### **3.13 USE OF SITE**

- 3.13.1 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- 3.13.2 Contractor shall not load nor permit any part of any structure to be loaded in any manner that shall endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that shall endanger it.
- 3.13.3 Contractor shall 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 shall 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 shall 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 withheld. Contractor unreasonably shall not withhold from Owner or a Owner's separate contractor Contractor's consent to cutting or otherwise altering the Work.

- 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 device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

### **3.18 INDEMNITY PROVISIONS**

3.18.1 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, shallful 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 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.

3.18.3 **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 shall 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 **WORKER 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 workers and, in addition, all Federal statutes and rules existing there under for protection, occupational safety and health to workers. 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 Contractor's sole cost. Owner shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this **Section 3.18**.

3.18.8 **DEFENSE COUNSEL.** Owner shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by 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, Subcontractors and agents in their relations with Owner's employees, Consultants, agents, representatives, vendors, Subcontractors, other third parties and those relating to the placement and administration of purchase orders and subcontracts.

#### **ARTICLE IV. ADMINISTRATION OF THE CONTRACT**

**4.1 DESIGN 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 shall provide administration of the Contract, as described in the Contract Documents, and Design Consultant shall 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 shall 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 Design Consultant, nor shall Design Consultant be deemed to have a legal relationship with Contractor.
- 4.2.3 Neither Design Consultant nor Owner shall 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 shall be coordinated and agreed upon by Owner, Design Consultant and Contractor and shall remain the responsibility of Contractor for implementation.
- 4.2.4 Design Consultant shall not be responsible for Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Design Consultant shall not have control over, charge of and shall 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 shall 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 shall perform these reviews in a timely fashion so as to not delay the Work. Design Consultant promptly shall 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 shall issue its interpretation of the requirements of the plans and specifications. Design Consultant's response to such requests shall be made in writing within a time limit agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of Design Consultant shall be furnished in compliance with this **Section 4.2**, then no delay shall be recognized on account of any failure by Design Consultant to furnish such interpretations except for actual substantiated delays, for which Contractor is not responsible, occurring more than fifteen (15) calendar days after written request is made for the interpretations.
- 4.2.8 Interpretations and decisions of Design Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.
- 4.2.9 Design Consultant's decisions on matters relating to aesthetic effect shall 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 shall 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 the Work in accordance with **Section 3.10.11** herein. In the case of a continuing delay, only one Claim is necessary.

4.3.6.2 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 (15<sup>th</sup>) 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 shall 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 shall 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 shall apply both to Claims by Contractor and to Claims by Owner:
- 4.3.9.1 No consequential, indirect, incidental, punitive or exemplary damages shall 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 shall 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 shall 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, shall 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 sequences or to otherwise accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as Owner reasonably may direct. Upon receipt, Contractor shall take any and all action necessary to comply with Owner's order. In such event, any possible right, if any, of Contractor to additional compensation for any acceleration shall be subject to the terms of this **Section 4.3.11**.

4.3.11.2 In the event Owner agrees that 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 shall 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 equipment costs, if requested in advance by Contractor and approved in writing by Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, profit and field overhead, not to exceed the markups permitted by this Contract, shall be allowed on the claimed costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING, BUT NOT LIMITED TO, HOME OFFICE OVERHEAD) OR ANY OTHER COSTS SHALL BE ALLOWED ON ANY ACCELERATION CLAIM.** Owner shall not be liable for any costs related to an acceleration claim other than those described in this **Section 4.3.11**.

4.3.12 **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this contract shall be construed to waive Owner's Governmental Immunity from a lawsuit, which Immunity is expressly retained to the extent it is not clearly and unambiguously waived by State law.

#### **4.4 RESOLUTION OF CLAIMS AND DISPUTES**

4.4.1 Claims by 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 shall 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 shall be furnished or advise Design Consultant that no response of supporting data shall 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 written notice of such dispute to the other, then the parties shall proceed with the alternative dispute resolution process contained in **Section 4.5** herein, including mediation and/or litigation. All negotiations pursuant to this **Section 4.5** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- 4.5.3 **MEDIATION.** In the event that Owner 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 defined as 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, shall 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 shall 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 shall 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 shall 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) shall be bound. Subcontractors similarly shall 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 or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.
- 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 shall 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 shall prepare Change Orders and Field Work Directives and shall 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 shall 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 cannot 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 shall 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 SHALL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Contractor shall 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 shall 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 electronically shall 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 shall 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 shall 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 shall constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that Design Consultant has:

- (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
- (2) reviewed construction means, methods, techniques, sequences or procedures;
- (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by 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 shall 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 or for materials or labor used in the Work for which Owner has made payment to the Contractor, Owner shall be entitled to withhold payment to Contractor to the extent necessary to protect Owner.
- 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 shall make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If Owner's or Design Consultant's inspection discloses any item, whether or not it was included on Contractor's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that Owner may occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by Owner or Design Consultant. In such case, Contractor then shall submit a request for another inspection by Owner and Design Consultant to determine Substantial Completion and Contractor shall be responsible for all costs incurred and associated with re-inspection.

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 shall 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 state of the progress of the Work shall be determined by written agreement between Owner and Contractor or, if no agreement is reached, by the decision of Design Consultant.

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 shall 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 shall 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 without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Design Consultant prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.4 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 shall 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 shall not employ any individual, or shall 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 shall 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 shall insure that no accidents or injuries shall 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 also shall HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND Owner, its elected officials, employees, officers, directors, volunteers and representatives of Owner, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of 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 shall 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 shall 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 shall 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 shall 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 sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction shall be adequately protected.

**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 shall be at the regular established rate; where no meters are required and used, the charge shall 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 or administrative interpretation of these laws, rules, regulations, ordinances or rules of common law including, but not limited to, any judicial or administrative order, consent decree or judgment affecting the Project.

10.10.2 In the event 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, Owner and Design Consultant 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 and Design Consultant 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, Design Consultant 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 by law, which specifically shall cover such insured objects during installation and until final acceptance by Owner. This insurance shall include the interests of Owner, Contractor, Subcontractors and Sub-Subcontractors in the Work, and Owner and Contractor shall be named insureds.

11.2.3 **LOSS OF USE INSURANCE.** Owner, at Owner's option, may purchase and maintain such insurance as shall 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 shall 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 shall 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 a replacement certificate of insurance with all applicable endorsements included. Owner shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during the Contract.

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 shall 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 shall 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 first performed after Substantial Completion, by the period of time between Substantial Completion and the actual completion of the Work.
- 12.3.4 The obligations of 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 Contract Documents. The establishment of the one (1) year time period, as described in **Section 12.3.2** relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.
- 12.3.9 Any Work repaired or replaced, pursuant to this **Article XII**, shall be subject to the provisions of **Article XII** to the same extent as Work originally performed or installed.

**12.4 Acceptance of Nonconforming Work.** Owner may, in Owner's sole discretion, accept Work that is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction. Upon that occurrence, the Contract Sum shall be reduced as appropriate and equitable, as solely determined by Owner. Any adjustment shall 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 shall 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 shall make a detailed inspection of the Work and shall advise Contractor and Contractor's Surety of the items that require correction. Owner or Design Consultant shall make a subsequent inspection and, if the corrections have been properly performed, Owner shall 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 Contractor. Contractor and the Surety shall be liable to Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including, but not limited to, additional fees of Design Consultant and attorney's fees) and liquidated or actual damages incurred as a result of the termination.

13.3.5 Owner shall not be required to obtain the lowest bid for the Work of completing the Contract, as described in **Section 13.3.3** herein, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and 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 workers 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 shall 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 Contractor, except as may be specifically agreed in writing by Change Order, Amendment or Supplemental Agreement.

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

#### **14.7 INDEPENDENT MATERIALS TESTING AND INSPECTION**

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 shall be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of any independent Consultants shall be described in the agreements between Owner and those Consultants. The provision of inspection services by Owner shall 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 NON-DISCRIMINATION.** As a party to this Contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2,

Article X of the City Code and further, Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless Contractor is exempted by state or federal law, or as otherwise established herein. Contractor covenants that it shall take all necessary actions to insure that, in connection with any Work under this Contract, Contractor and its Subcontractor(s) shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, 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 include a contribution or expenditure made and reported in accordance with law.
- 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 stores records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in Owner's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

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

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

## **ARTICLE XVI. ATTORNEY FEES**

The Parties hereto expressly agree that, in the event of litigation, all parties waive rights to payment of attorneys' fees that otherwise might be recoverable, pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law or any other provision for payment of attorney's fees.

## **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 shall 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 shall 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 shall 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, shall 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 shall 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 shall 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 shall be subsidiary to the Project and shall not directly be paid for by Owner, unless otherwise stated in the Plans and Specifications. Owner shall 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.



CITY OF SAN ANTONIO  
**CAPITAL IMPROVEMENTS  
MANAGEMENT SERVICES**

P.O. Box 839966 • San Antonio, Texas 78283-3966

June 26, 2013

Dear Contractor;

For all current and future projects awarded by the City of San Antonio, kindly be aware that you are required to adhere to the terms and conditions of the General Conditions for City of San Antonio Construction Contracts (hereafter referred to as the "General Conditions"). It is through those General Conditions that the City is able to ensure projects are built correctly and the project proceeds as required by the City.

Schedule Requirement

One of the key provisions of those General Conditions is **Section 3.10**, titled Contractor's Project Schedules. Under the City's General Conditions, among other obligations, a Contractor is obligated to create and maintain a Critical Path Method (hereafter referred to as "CPM") Project Schedule, showing the manner of execution of Work by which the Contractor intends to follow, in order to complete the Project within the allotted time. This CMP Schedule is required to be in Primavera 5.0 or Contractor 4.1 or greater submitted electronically to the CIMS Schedule and Project Manager.

Schedule Updates

After acceptance of the Contractor's CPM Project Schedule the City, pursuant to **Section 3.10.9** of the General Conditions, Contractor is required to submit a thorough schedule update, to reflect progress to date on the Project and to reflect the current plans of Contractor to complete the Project on a monthly basis.

If Contractor has failed to submit an updated Project schedule, the City reserves the right to withhold payment until the Contractor complies with the schedule update requirement.

Time Impact Analysis

Under **Section 3.10 et al.** of the General Conditions, if a Contractor knows of an event that has occurred or will occur that will impact Contractor's submitted and approved schedule, the



CITY OF SAN ANTONIO  
**CAPITAL IMPROVEMENTS  
MANAGEMENT SERVICES**

P.O. Box 839966 • San Antonio, Texas 78283-3966

Contractor is required to notify the City of the occurrence of the event causing the impact to the schedule within twenty (20) calendar days of the event. Failure to file such notification of an impact to the schedule with the City, results in the forfeiture of the Contractor's right to request a time extension or time suspension, based on the occurrence of that event.

Additionally, when changes are initiated or impacts are experienced, the Contractor electronically shall submit to the City a written Time Impact Analysis describing the influence of each change or impact. A Time Impact Analysis will be required as justification for making time adjustments to the Contract's completion date.

Recovery / Acceleration Schedule

Finally, under **Section 3.10.2** of the General Conditions, upon submission of the schedule update by the Contractor and review by the City, if the City concludes that the Contractor rate of Work is inadequate such that the Contractor will be unable to meet the contract Milestones or the contract's Substantial Completion date, the City then "may give written notice to the Contractor and direct the 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" by the City and the Contractor.

If you have any questions about any of the information contained in this letter, or if you wish to discuss any of the items addressed herein, do not hesitate to contact Thomas Gonzalez at (210) 207-1328 or [CIMS.Schedules@sanantonio.gov](mailto:CIMS.Schedules@sanantonio.gov).

Sincerely,

Lisa Torres  
CIMS Scheduler

CC: Razi Hosseini, P.E.  
Ruben Guerrero, P.E.



CITY OF SAN ANTONIO  
**CAPITAL IMPROVEMENTS  
MANAGEMENT SERVICES**

P.O. Box 839966 • San Antonio, Texas 78283-3966

June 26, 2013

Dear Contractor;

For all current and future projects awarded by the City of San Antonio, kindly be aware that you are required to adhere to the terms and conditions of the General Conditions for City of San Antonio Construction Contracts (hereafter referred to as the "General Conditions"). It is through those General Conditions that the City is able to ensure projects are built correctly and the project proceeds as required by the City.

Schedule Requirement

One of the key provisions of those General Conditions is **Section 3.10**, titled Contractor's Project Schedules. Under the City's General Conditions, among other obligations, a Contractor is obligated to create and maintain a Critical Path Method (hereafter referred to as "CPM") Project Schedule, showing the manner of execution of Work by which the Contractor intends to follow, in order to complete the Project within the allotted time. This CMP Schedule is required to be in Primavera 5.0 or Contractor 4.1 or greater submitted electronically to the CIMS Schedule and Project Manager.

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Sincerely,

Lisa Torres  
CIMS Scheduler

CC: Razi Hosseini, P.E.  
Ruben Guerrero, P.E.

General Decision Number: TX140016 01/03/2014 TX16

Superseded General Decision Number: TX20130016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennon and Williamson Counties) and HIGHWAY Construction Projects

Modification Number	Publication Date
0	01/03/2014

\* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures).....	\$ 12.56	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER Paving & Curb.....	\$ 12.94	
Structures.....	\$ 12.87	
LABORER Asphalt Raker.....	\$ 12.12	
Flagger.....	\$ 9.45	
Laborer, Common.....	\$ 10.50	
Laborer, Utility.....	\$ 12.27	
Pipelayer.....	\$ 12.79	
Work Zone Barricade Servicer.....	\$ 11.85	
PAINTER (Structures).....	\$ 18.34	
POWER EQUIPMENT OPERATOR: Agricultural Tractor.....	\$ 12.69	
Asphalt Distributor.....	\$ 15.55	
Asphalt Paving Machine.....	\$ 14.36	
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	
Concrete Pavement Finishing Machine.....	\$ 15.48	
Crane, Hydraulic 80 tons or less.....	\$ 18.36	
Crane, Lattice Boom 80 tons or less.....	\$ 15.87	
Crane, Lattice Boom over 80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	
Directional Drilling Locator.....	\$ 11.67	
Directional Drilling Operator.....	\$ 17.24	
Excavator 50,000 lbs or Less.....	\$ 12.88	
Excavator over 50,000 lbs...\$	17.71	
Foundation Drill, Truck Mounted.....	\$ 16.93	
Front End Loader, 3 CY or Less.....	\$ 13.04	
Front End Loader, Over 3 CY.\$	13.21	
Loader/Backhoe.....	\$ 14.12	
Mechanic.....	\$ 17.10	
Milling Machine.....	\$ 14.18	
Motor Grader, Fine Grade....\$	18.51	

Motor Grader, Rough.....	\$ 14.63
Pavement Marking Machine....	\$ 19.17
Reclaimer/Pulverizer.....	\$ 12.88
Roller, Asphalt.....	\$ 12.78
Roller, Other.....	\$ 10.50
Scraper.....	\$ 12.27
Spreader Box.....	\$ 14.04
Trenching Machine, Heavy....	\$ 18.48
Servicer.....	\$ 14.51
Steel Worker	
Reinforcing.....	\$ 14.00
Structural.....	\$ 19.29
TRAFFIC SIGNAL INSTALLER	
Traffic Signal/Light Pole	
Worker.....	\$ 16.00
TRUCK DRIVER	
Lowboy-Float.....	\$ 15.66
Off Road Hauler.....	\$ 11.88
Single Axle.....	\$ 11.79
Single or Tandem Axle Dump	
Truck.....	\$ 11.68
Tandem Axle Tractor w/Semi	
Trailer.....	\$ 12.81
WELDER.....	\$ 15.97

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with

characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

#### Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial

contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

AN ORDINANCE 2008-11-20-1045

AMENDING ORDINANCE 71312 CONCERNING WAGE AND HOUR  
LABOR STANDARD PROVISIONS FOR CITY OF SAN ANTONIO  
CONSTRUCTION PROJECTS.

\* \* \* \* \*

**WHEREAS**, federal and state laws require that all companies working on publicly funded construction projects must pay prevailing wage rates to its contractor and subcontractor employees, as determined by the U.S. Department of Labor; and

**WHEREAS**, governing procedures were established to ensure the City's compliance with various state laws through Ordinance No. 71312 approved on March 29, 1990 which provided for the Wage and Labor Standard Provision for locally funded City construction projects; and

**WHEREAS**, there have been changes in state law, as well as, organizational and process changes within the City that necessitate an amendment to Ordinance No. 71312; and

**WHEREAS**, this Ordinance amends Ordinance No. 71312 to a) reflect the changes in the Texas Government Code, Section 2258, Prevailing Wages, (superseding Article 5159a, Revised Civil Statutes), b) incorporate changes in the City's organizational structure renaming the Wage and Hour Office of the Public Works Department to the Labor Compliance Office, Capital Improvements Management Services Department, c) reflect changes in the City processes and the implementation of an electronic compliance program, and d) clarify language and eliminate ambiguities in the Ordinance, including the processes used by contractors for the restitution of underpayment of wages to workers whose contact information or current address is unknown; and

**WHEREAS**, approval of this Amendment will accurately reflect current laws, City organizational structure and current processes; **NOW THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Ordinance No. 71312 concerning Wage and Hour Labor Standard Provisions for City of San Antonio construction projects are hereby amended and the amended Wage and Labor Standard Provisions are attached hereto and incorporated by reference herein as Attachment I.

**SECTION 2.** This Ordinance shall take effect ten days after passage.

**PASSED AND APPROVED** this 20th day of November, 2008.

  
M A Y O R  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
City Attorney for

3

WAGE AND LABOR STANDARD PROVISIONS  
CITY OF SAN ANTONIO FUNDED CONSTRUCTION

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2. WAGE & HOUR OFFICE, CAPITAL IMPROVEMENTS MANAGEMENT SERVICES DEPARTMENT RESPONSIBILITIES
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4. BREACH OF WAGE & LABOR STANDARDS PROVISIONS
5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION
6. MINIMUM WAGE
7. OVERTIME COMPENSATION
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9. WORK CONDUCTED ON HOLIDAYS
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11. POSTING WAGE DETERMINATION DECISION/STATEMENT AND "NOTICE TO EMPLOYEES"
12. PAYROLLS & BASIC PAYROLL RECORDS
13. LABOR DISPUTES
14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES
15. EMPLOYEE INTERVIEWS TO ASSURE WAGE & LABOR STANDARD COMPLIANCE
16. "ANTI-KICKBACK" PROVISION
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20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED
21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS
22. CONTRACTOR'S RESPONSIBILITY

1. GENERAL STATEMENT

For all City of San Antonio funded public works construction contracts, the City of San Antonio, in accordance with Texas Government Code Section 2258, requires that not less than the general prevailing wage rates (minimum hourly base pay and minimum hourly fringe benefit contribution) for work of similar character be paid to contractor and subcontractor employees. These wage rates are derived from the most current applicable federal prevailing wage rates as published by the United States Department of Labor, Dallas, Texas and authority of Ordinance Nos. 60110 and 71312 as amended and passed by the City Council of the City of San Antonio.

Any deviation from Wage and Labor Standard Provisions compliance shall be cause for City's withholding either periodic interim or final payment to the contractor until such deviations are properly corrected.

2. LABOR COMPLIANCE OFFICE RESPONSIBILITIES

Labor Compliance Office, Capital Improvements Management Services Department, City of San Antonio, is primarily responsible for all Wage and Labor Standard Provisions investigation and enforcement and will monitor contractor/subcontractor practices to assure the Director of Capital Improvements Management Services Department that:

- a. Appropriate weekly compliance statements and payroll records are submitted to the City by the contractor/subcontractors and that such are reviewed for compliance with the Wage and Labor Standard Provisions.
- b. Apprentices/trainees working on the project are properly identified by the contractor/subcontractor on payroll records and documented as being included in programs currently sanctioned by appropriate federal or state regulatory agencies.
- c. Applicable Wage Determination Decisions, including any applicable modifications, and related statements must be posted at the work-site by the contractor and that proper job classification and commensurate minimum hourly base and fringe wage rates are paid.
- d. Employees are periodically interviewed (at random) to assure proper work classification and wage rates.
- e. The Labor Compliance Office will investigate all allegations that no person employed by contractor/subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.

- f. That any and all periodic administrative directives to the Labor Compliance Office from the Director of Capital Improvements Management Services are being implemented. For purpose of these Wage and Labor Standard Provisions, the Director of Capital Improvements Management Services means the Director, his successor, or his designee.

### 3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES

Claims and disputes not promptly and routinely settled by the contractor/subcontractor and employee pertaining to wage rates, or to job classifications of labor employed regarding the work covered by this contract, shall be reported by the employee in writing, within sixty (60) calendar days of employee's receipt of any allegedly incorrect classification, wage or benefit report, to the Labor Compliance Office, City of San Antonio for further investigation. Claims and disputes not reported by the employee to the City's Labor Compliance Office in writing within the sixty (60) calendar day period shall be deemed waived by the employee for the purposes of the City administering and enforcing the City's contract rights against the contractor on behalf of the employee. Waiver by the employee of this City intervention shall not constitute waiver by the City to independently pursue contractual rights it has against the contractor/subcontractor for breach of contract and other sanctions available to enforce the Wage and Labor Standard Provisions.

### 4. BREACH OF WAGE AND LABOR STANDARD PROVISIONS

The City of San Antonio reserves the right to terminate a contract for cause if the contractor/subcontractors shall knowingly and continuously breach, without timely restitution or cure, any of these governing Wage and Labor Standard Provisions. A knowing and unremedied proven violation of these Wage and Labor Standard Provisions may also be grounds for debarment of the contractor/subcontractor from future City of San Antonio contracts for lack of responsibility, as determined by the City of San Antonio. Recurrent violations, whether remedied or not, will be considered by the Director of Capital Improvements Management Services Department when assessing the responsibility history of a potential contractor/subcontractor prior to competitive award of future Project Management Office projects. The general remedies stated in this paragraph 4. above, are not exhaustive and not cumulative for the City reserves legal and contractual rights to other specific remedies outlined herein below and in other parts of this contract and as are allowed by applicable City of San Antonio ordinances, state and federal statutes.

### 5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION

In the event that a contractor/subcontractor discovers that construction of a particular work element requires a certain employee classification and skill that is not listed in the wage determinations decision contained in the original contract

documents, contractor/subcontractors will make prompt inquiry (before bidding, if possible) to the Labor Compliance Office identifying that class of laborer/mechanics not listed in the wage determination decision who are intended to be employed, or who are being employed, under the contract. Using his best judgement and information resources available to him at the time, and any similar prior decisions, the Director of Capital Improvements Management Services Department, City of San Antonio shall classify said laborers/mechanics by issuing a special local wage determination decision to the contractor/subcontractor, which shall be enforced by the Labor Compliance Office.

#### 6. MINIMUM WAGE

All laborers/mechanics employed to construct the work governed by this contract shall be paid not less than weekly the full amount of wages due (minimum hourly base pay and minimum hourly fringe benefit contribution for all hours worked, including overtime) for the immediately preceding pay period computed at wage and fringe rates not less than those contained in the wage determination decision included in this contract. Only payroll deductions as are mandated by state or federal law and those legal deductions previously approved in writing by the employee, or as are otherwise permitted by state or federal law, may be withheld by the contractor/subcontractor.

Should the contractor/ subcontractor subscribe to fringe benefit programs for employees, such programs shall be fully approved by the City in adopting a previous U.S. Department of Labor (DOL) decision on such fringe benefit programs or by applying DOL criteria in rendering a local decision on the adequacy of the fringe benefit programs. The approved programs shall be in place at the time of City contract execution and provisions thereof disclosed to the Labor Compliance Office, City of San Antonio, for legal review prior to project commencement.

Regular contractor/subcontractor contributions made to, or costs incurred for, approved fringe benefit plans, funds or other benefit programs that cover periods of time greater than the one week payroll period(e.g. monthly or quarterly, etc.) shall be prorated by the contractor/subcontractor on weekly payroll records to reflect the equivalent value of the hourly and weekly summary of fringe benefits per employee.

#### 7. OVERTIME COMPENSATION NON-FEDERALLY FUNDED PROJECTS

No contractor/subcontractor contracting for any part of the City of San Antonio funded contract work (except for worksite related security guard services) which may require or involve the employment of laborers/ mechanics shall require or permit any laborer/mechanic in any seven (7) calendar day work period in which he or she is employed on such work to work in excess of 40 hours in such work period unless said laborer/ mechanic receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of 40 hours in a seven (7) calendar day work period. Fringe benefits

must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

The contractor/subcontractor is allowed to pay a minimum hourly cash equivalent of minimum hourly fringe benefits listed in the wage determination decision in lieu of the contribution of benefits to a permissible fringe benefit plan for all hours worked including overtime as described in paragraph 6 above. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the wage determination decision.

9. WORK CONDUCTED ON HOLIDAYS-NON-FEDERALLY FUNDED PROJECTS

If a laborer/mechanic is employed in the normal course and scope of his or her work on the jobsite on the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King, Jr. Day, or the calendar days observed as such in any given year, work performed shall be paid for at no less than one and one half (1 1/2) times the regular minimum hourly base pay regardless of the total number of hours the laborer/mechanic has accumulated during the pay period.

10. UNDERPAYMENT OF WAGES OR SALARIES

- a. When a "full investigation" (as called for in and as construed under Texas Government Code Section 2258) establishes underpayment of wages by contractor/subcontractor to laborers/mechanics employed upon the work covered by a contract with the City of San Antonio, the City shall withhold an amount from the contractor, out of any payments (Interim progress and/or final) due the contractor, the City of San Antonio may also consider it necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages plus possible penalty (see b. below). The amount withheld, excluding any possible penalty to be retained by City, may be disbursed at an appropriate time after "full investigation" by the City of San Antonio, for and on behalf of the contractor/subcontractor (as may be appropriate), to the respective laborers/mechanics to whom the same is due or on their behalf to fringe benefit plans, funds or programs for any type of minimum fringe benefits prescribed in the applicable wage determination decision.
- b. Texas Government Code Section 2258, states that the contractor shall forfeit as a penalty to the City of San Antonio the sum of sixty dollars (\$60.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the said stipulated rate for any work done under this contract, whether by the contractor himself or by any subcontractor working under him. Pursuant to and supplemental to this statutory authority, the City of San Antonio and the contractor/subcontractor contractually acknowledge and agree that said sixty dollar (\$60.00) statutory penalty shall be construed by and between the City of San Antonio and the contractor/subcontractor as liquidated damages and will apply to

any violations of paragraphs 6, 7, or 9 herein, resulting from contractor/subcontractor underpayment violations.

- c. If unpaid or underpaid workers cannot be located by the Contractor or the City after diligent efforts to accomplish same, the contractor shall report the wages as "unclaimed property" in accordance to Texas State law.

The City of San Antonio requires that the prime contractor send to the Labor Compliance Office a copy of the supporting documentation for the unclaimed property submitted to the State.

11. DISPLAYING WAGE DETERMINATION DECISIONS/AND NOTICE TO LABORERS/MECHANICS STATEMENT

The applicable wage determination decision as described in the "General Statement" (and as specifically included in each project contract), outlining the various worker classifications and mandatory minimum wages and minimum hourly fringe benefit deductions, if any, of laborers/mechanics employed and to be employed upon the work covered by this contract, shall be displayed by the contractor/ subcontractor at the site of work in a conspicuous and prominent public place readily and routinely accessible to workmen for the duration of the project. In addition, the contractor/subcontractor agrees with the contents of the following statement, and shall display same, in English and Spanish, near the display of the wage determination decision:

**NOTICE TO LABORERS/MECHANICS**

Both the City of San Antonio and the contractor/subcontractor agree that you must be compensated with not less than the minimum hourly base pay and minimum hourly fringe benefit contribution in accordance with the wage rates publicly posted at this jobsite and as are applicable to the classification of work you perform.

Additionally, you must be paid not less than one and one-half times your basic hourly rate of pay for any hours worked over 40 in any seven (7) calendar day work period, and for any work conducted on the following holidays: New Year's Day, Memorial Day, Fourth of July; Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King Day or the calendar days observed as such in any given year.

Apprentice and trainee hourly wage rates and ratios apply only to apprentices and trainees recognized under approved Federal, or State, apprenticeship training program registered with the Bureau of Apprenticeship and Training, U.S. Dept. of Labor.

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must make direct inquiry to the employer and inquire in writing within sixty (60) calendar days of your receipt of any allegedly incorrect wage or benefit check or report, to the City of San Antonio Labor Compliance Office, Capital Improvements Management Services Department, P.O. Box 839966, San Antonio, Texas 78283-3966. It

is mandatory that the worker promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the City of San Antonio, Labor Compliance Office within the sixty (60) calendar day period so that they do not waive your potential right of recovery under the provisions of the City of San Antonio Project Management Office contract that governs this project.

Both the City of San Antonio and the contractor/subcontractor agree that no laborer/mechanic who files a complaint or inquiry concerning alleged underpayment of wages or benefits shall be discharged by the employer or in any other manner be discriminated against by the employer for filing such complaint or inquiry.

## 12. PAYROLLS & BASIC PAYROLL RECORDS

- a. The contractor and each subcontractor shall prepare payroll reports in accordance with the "General Guideline" instructions furnished by the Labor Compliance Office of the City of San Antonio. Such payroll submittals shall contain the name and address of each such employee, his correct labor classification, rate of pay, daily and weekly number of hours worked, any deductions made, and actual basic hourly and fringe benefits paid. The contractor shall submit payroll records each week, and no later than seven (7) working days following completion of the workweek being processed, to the Labor Compliance Office, City of San Antonio. These payroll records shall include certified copies of all payrolls of the contractor and of his subcontractors, it being understood that the contractor shall be responsible for the submission and general mathematical accuracy of payrolls from all his subcontractors. Each such payroll submittal shall be on forms deemed satisfactory to the City's Labor Compliance Office and shall contain a "Weekly Statement of Compliance", as called for by the contract documents. Such payrolls will be forwarded to Capital Improvements Management Services, Labor Compliance Office, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.
- b. All City of San Antonio construction contracts are subject to contract compliance tracking, and the prime contractor and any subcontractors are required to provide any stated and/or requested contract compliance-related data electronically in the Labor Compliance Electronic Certified Payrolls System. The prime contractor and all subcontractors are required to respond not later than the stated response date or due date to any instructions or request for information from the Labor Compliance Office. All prime contractors and subcontractors shall periodically review the City of San Antonio Labor Compliance Electronic Certified Payrolls System to manage contact information and contract records. The prime contractor shall ensure that all subcontractors have completed all requested forms and that all contact information is accurate and up-to-date. The City of San Antonio Labor Compliance Office may require additional information related to the contract to be provided through the San Antonio Labor Compliance Electronic Certified

Payrolls System at any time before, during, or after contract award.

- c. A designated point of contact for contractor access to the San Antonio Labor Compliance Electronic Certified Payrolls System shall be provided for each prime contractor upon award of the contract.
- d. Copies of payroll submittals and basic supporting payroll records of the contractor/subcontractors accounting for all laborers/mechanics employed under the work covered by this contract shall be maintained during the course of the work and preserved for a period of three (3) years after completion of the project. The contractors/subcontractors shall maintain records which demonstrate: any contractor commitment to provide fringe benefits to employees as may be mandated by the applicable wage determination decision, that the plan or program is adjudged financially responsible by the appropriate approving authority, (i.e. U. S. Department of Labor, U.S. Department of Treasury, etc.), and that the provisions, policies, certificates, and description of benefits of the plan or program as may be periodically amended, have been clearly communicated in a timely manner and in writing, to the laborers/mechanics affected prior to their performing work on the project.
- e. The contractor/subcontractor shall make the above records available for inspection, copying, or transcribing by authorized representatives of the City of San Antonio at reasonable times and locations for purposes of monitoring compliance with this contract.
- f. All certified payrolls submitted to the Labor Compliance Office are deemed true and accurate. If upon review of the certified payrolls, wage underpayment violations are identified and noted, restitution will be calculated and penalties will be issued to the prime contractor of the project. In order to refute a wage violation, the contractor/subcontractor must provide supporting documentation to the Labor Compliance Office for review and consideration.

### 13. LABOR DISPUTES

The contractor/subcontractor shall immediately notify the Project Management Office or designated representative of any actual or impending contractor/subcontractor labor dispute which may affect, or is affecting, the schedule of the contractor, or any other contractor/subcontractor work. In addition, the contractor/subcontractor shall consider all appropriate measures to eliminate or minimize the effect of such labor disputes on the schedule, including but not limited to such measures as: promptly seeking injunctive relief if appropriate; seeking appropriate legal or equitable actions or remedies; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; and any other measures that may

be appropriately utilized to mitigate or eliminate the jobsite and scheduling effects of the labor dispute.

14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

No laborers/mechanics to whom the wage, salary, or other labor standard provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor/subcontractors because such employee has filed any formal inquiry or complaint or instituted, or caused to be instituted, any legal or equitable proceeding or has testified, or is about to testify, in any such proceeding under or relating to the wage and labor standards applicable under this contract.

15. EMPLOYEE INTERVIEWS TO ASSURE WAGE AND LABOR STANDARD COMPLIANCE

Contractor/subcontractors shall allow expeditious jobsite entry of City of San Antonio Labor Compliance representatives displaying and presenting proper identification credentials to the jobsite superintendent or his representative. While on the jobsite, the Labor Compliance representatives shall observe all jobsite rules and regulations concerning safety, internal security and fire prevention. Contractor/subcontractors shall allow project employees to be separately and confidentially interviewed at random for a reasonable duration by the Labor Compliance representatives to facilitate compliance determinations regarding adherence by the contractor/subcontractor to these Wage and Labor Standard Provisions.

16. "ANTI-KICKBACK" PROVISION

No person employed in the construction or repair of any City of San Antonio public work shall be induced, by any means, to give up to any contractor/subcontractor or public official or employee any part of the hourly and/or fringe benefit compensation to which he is otherwise entitled.

17. "FALSE OR DECEPTIVE INFORMATION PROVISION"

Any person employed by the contractor/subcontractor in the construction or repair of any City of San Antonio public work, who is proven to have knowingly and willfully falsified, concealed or covered up by any deceptive trick, scheme, or device a material fact, or made any false, fictitious or fraudulent statement or representation, or made or used any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be permanently removed from the jobsite by contractor/subcontractor. The City of San Antonio reserves the right to terminate its contract for cause as a result of serious and uncured violations of this provision.

## 18. EMPLOYMENT OF APPRENTICES/TRAINEES

a. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship & Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor/subcontractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below or is not registered or otherwise employed as stated above, shall be paid the wage rate for the classification of work he actually performs. The contractor/subcontractor is required to furnish to the Labor Compliance Office of the City of San Antonio, a copy of the certification, along with the payroll record that the employee is first listed on. The wage rate paid apprentices shall be not less than the specified rate in the registered program for the apprentice's level of progress expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination decision.

b. Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to an individually registered program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee wage rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the wage rate determined by the classification of work he actually performs. The contractor/subcontractor is required to furnish a copy of the trainee program certification, registration of employee-trainees, ratios and wage rates prescribed in the program, along with the payroll record that the employee is first listed on, to the Labor Compliance Office of the City of San Antonio. In the event the Employment and Training Administration withdraws approval of a training program, the contractor/subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved by the Employment and Training Administration.

c. Paragraphs above shall not operate to exclude training programs approved by the OFCCP, United States Department of Labor and as adopted by the Associated General Contractors (AGC) of Texas, Highway, Heavy, Utilities and Industrial Branch. Guidelines for these training programs shall be the same as those established for federally funded projects. This subparagraph shall not apply to those portions of a project deemed to be building construction.

d. The Ratio to Apprentice to Journeyman for this project shall be the same as the ratio permitted under the plan approved by the Employment and Training, Administration, Bureau of Apprenticeship and Training, U.S. Department of Labor, by Craft. A copy of the allowable Ratios is included with the applicable Wage Determination Decision in the specifications for this project.

When a "full investigation" (as called for in, and as construed under, Texas Government Code Section 2258) evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for contractor/subcontractor employees working on this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or other sections of its contract, shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, the liquidated damages sum of seventy-five dollars (\$75.00) for each calendar day, or portion thereof, for each certified Apprentice or Trainee employee assigned to a Journeyman that exceeds the maximum allowable Apprentice/ Trainee to Journeyman ratio stipulated for any work done under this contract, whether by the contractor himself or by any subcontractor working under him.

#### 19. JOBSITE CONDITIONS

Contractors/subcontractors shall not allow any person employed for the project to work in surroundings or under construction conditions which are unsanitary, unhealthy, hazardous, or dangerous as governed by industry standards and appropriate local, state and federal statutes, ordinances, and regulatory guidelines.

#### 20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

a. The contractor/subcontractor shall knowingly only employ persons of appropriate ages commensurate with the degree of required skill, strength, maturity and judgment associated with the activity to be engaged in, but not less than the age of fourteen (14) years, as governed by the Texas Child Labor Law, Chapter 51 of the Texas Labor Code "Child Labor" and Texas Department of Labor and Standards rulings and interpretations associated with that statute. It is hereby noted that in some circumstances generally governed by this section, a federal statute (see: Fair Labor Standards Act, 29 USCS Section 212; Volume 6A of the Bureau of National Affairs Wage Hour Manual at Paragraph 96:1; "Child Labor Requirements in Nonagricultural Occupations" WH Publication 1330, July 1978 as may be amended), could pre-empt the Texas Statute and therefore be the controlling law on this subject. The contractor/subcontractor should seek clarification

from state and federal agencies and legal counsel when hiring adolescent employees for particular job classifications.

- b. Prohibited persons not to be employed are also those persons who, at the time of employment for this contract, are serving sentence in a penal or correctional institution except that prior approval by the Director of Capital Improvements Management Services is required to employ any person participating in a supervised work release or furlough program that is sanctioned by appropriate state or federal correctional agencies.
- c. The Contractor/subcontractors shall be responsible for compliance with the provisions of the "Immigration Reform and Control Act of 1986" Public Law 99-603, and any related State enabling or implementing statutes, especially as they in combination apply to the unlawful employment of aliens and unfair immigration-related employment practices affecting this contract.

#### 21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

The contractor shall cause these Wage and Labor Standard Provisions, or reasonably similar contextual adaptations hereof, and any other appropriate state and federal labor provisions, to be inserted in all subcontracts relative to the work to bind subcontractors to the same Wage and Labor Standards as contained in these terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors or sub-subcontractors and to give the contractor similar, if not greater, general contractual authority over the subcontractor or subcontractors as the City of San Antonio may exercise over the contractor.

#### 22. CONTRACTOR'S RESPONSIBILITY

The prime contractor shall be responsible for ensuring that its subcontractors comply with the Wage and Labor Standards Provisions.

## INSURANCE

A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Risk Management Department, which shall be clearly labeled "**GA FIS Taxiway & Apron Improvements**" 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 Risk Management Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) 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.

C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$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	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$5,000,000 per occurrence; \$15,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

d. Personal Injury e. Contractual Liability f. Damage to property rented by you	f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence (\$5,000,000 if AOA access is required)
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.

D) Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor 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 subcontractor. 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.

E) 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). Contractor 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. Contractor 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

F) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, 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.

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

H) .In addition to any other remedies the City may have upon Contractor'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 Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

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

J) It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San

Antonio for liability arising out of operations under this Agreement.

K) 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..

L) Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

### **INDEMNIFICATION**

**CONTRACTOR 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, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, 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, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR 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.**

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

## SUPPLEMENT TO STANDARD INSTRUCTIONS TO RESPONDENTS

### 1. Project Description:

The primary purpose of this project is to construct taxiway and apron pavement(s); airfield lighting, signage and electrical infrastructure; drainage improvements; and reconstruction of a portion of the perimeter road to complete the GA FIS Taxiway & Apron Improvements project. There should not be any work within the runway operating environment that will require closure of any runways. Work will be allowed 24-hours/day, seven days/week. The Contractor will be able to access the project seven days/week and 24 hours/day. Construction of the project will be within the active Air Operations Area (AOA). All construction within the AOA will be conducted in accordance with the requirements of SAT Operations and FAA Advisory Circular 150/5370-2 latest edition, *Operational Safety on Airports During Construction*. In addition, Contractor personnel will be required to obtain security badging to work within the AOA and all construction vehicles on the AOA must be operated by personnel who have completed the AOA driver's training class conducted by SAT Operations or are accompanied by an Airport approved escort vehicle.

In general, the Project Work can be categorized as 1) Work within the taxiway operating environment(s) and 2) Work outside of the taxiway operating environment(s). Work within the taxiway operating environment(s) may require closure of a portion of Taxiway R and Taxiway D. **All work within these areas shall be coordinated with SAT Operations.** Work outside of the taxiway operating environment will be allowed anytime during the Contract Period. Subsequent to its re-opening, Taxiway R and Taxiway C will be active and all requirements of SAT Operations and FAA Advisory Circular 150/5370-2F, *Operational Safety on Airports During Construction* will be strictly enforced.

2. A responsive bid shall consist of the following:
  - a. Compliance with items set forth in Division A, 010 Invitation for Bid.
3. In determining a low bidder, the City shall consider the total of the following:
  - a. Base Bid and all Alternative Bids (where applicable).
  - b. Contractor's qualifications.

# STANDARD INSTRUCTIONS TO BIDDERS FOR FEDERALLY ASSISTED CONTRACTS (SIB-AVIATION)

## 1. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

1.1 It is the policy of the City of San Antonio to involve qualified Small, Minority, African-American, Woman-owned, and local business enterprises to the greatest extent feasible in the City's construction, procurement, professional services, and leases and concessions contracting. Per Ordinance #69403, the City of San Antonio, its employees, contractors, and subcontractors shall not discriminate on the basis of race, color, religion, national origin, sex, age, or handicap in the award and performance of contracts. Violation of this ordinance is a criminal offense and subject to penalty.

### 1.2 Requirements for **ALL** bids:

1.2.1 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) 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-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.

1.2.2. The Bidder/Contractor agrees to employ good-faith efforts (as defined in the Aviation Department's DBE Program) to carry out this policy through award of subcontracts to disadvantaged business enterprises to the fullest extent consistent with the sufficient performance of the Aviation Department Contract, and/or the utilization of DBE suppliers where feasible. Aviation Department bidders/contractors are expected to solicit bids from available DBE's on contracts which offer subcontracting opportunities.

1.2.3. Bidder/Contractor 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.

**1.2.4 Notification is hereby given that a DBE contract specific goal has been established on this bid/contract. The applicable DBE goal is 9.2% of the total dollar value of this contract.**

1.2.5 The Contractor shall appoint a high-level official to administer and coordinate the Contractor's efforts to carry out the DBE Policy and Program requisites. The Contractor's official should coordinate and ensure approval of the required "Good-Faith Effort Plan" (Attachment 1).

1.2.6 The Contractor shall maintain records, as specified in the audit and records section of the contract, showing: (i) all subcontract/supplier awards, specifically awards to DBE firms; (ii) specific efforts to identify and award such contracts to DBEs; and (iii) submit when requested, copies of executed contracts to establish actual DBE participation.

1.2.7 The Contractor shall agree to submit periodic reports of subcontract and/or supplier awards to DBE firms in such form and manner and at such times as the Aviation Department shall prescribe and shall provide access to books, records, and accounts to authorized officials of the City, Aviation Department, state, and/or federal agencies for the purpose of verifying DBE participation and good-faith efforts to carry out the DBE Policy and Program. All Aviation Department contractors may be subject to a post contract DBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a Contractor's good-faith efforts on future airport contracts.

- 1.2.8 All construction Bidders/Contractors with contracts subject to formal review and approval shall make good-faith efforts (as defined and approved by the City through the Aviation Department in its DBE Program) to subcontract and achieve the applicable contract specific DBE goal with certified DBEs. Contractors failing to achieve the applicable contract specific DBE goal or contractors failing to maintain the specific DBE goal percentage involvement initially achieved, will be required to provide documentation demonstrating that they have made good-faith efforts in attempting to do so through the submittal of an Aviation Department approved “*DBE Good-Faith Effort Plan*”. *Bidders are required to satisfy applicable DBE program requirements prior to the award of the Aviation Department contract.* Bidders must submit a *DBE Good-Faith Effort Plan* or will be considered non-responsive.
- 1.2.9 A Bidder/Contractor may count towards its DBE goal sixty percent (60%) of its expenditures for materials and supplies required under a contract and obtained from a regular dealer, and one hundred percent (100%) of such expenditures to a DBE manufacturer. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Bidder or Contractor.
- 1.2.10 The City and Aviation Department encourages the Bidder/Contractor to utilize currently approved and certified DBE firms on the contract for DBE goal achievement and credit purposes. The Aviation Department utilizes the services of the South Central Texas Regional Certification Agency (SCTRCA) to certify DBE eligibility status. Please contact the SCTRCA at 305 E. Euclid, Suite 102, San Antonio, Texas 78212 (210/227-4722) for information regarding DBE trade areas or to apply for DBE status. The Aviation Department accepts DBE certification from any one of the five (5) certifying agencies under the Texas Unified Certification Program (TUCP) – Texas Department of Transportation (TxDOT), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, and the Corpus Christi Regional Transportation Authority.
- 1.2.11 Submittal of DBE status certification information for **all** DBE firms utilized or proposed to be utilized on the project as subcontractors, sub-consultants, or vendors, to include prime contractors when applicable, in the performance of work on said project. Additionally, prime contractors must submit a “Letter of Intent” form (Attachment 2) for **each** subcontractor prior to award of contract.
- 1.2.12 The following DBE-related contractual clause shall be applicable and is specifically included as part of the construction contract. Contractors shall also include this clause in each subcontract the prime contractor signs with a subcontractor.

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor 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”.

Additionally, Contractors agree to the following prompt payment and retainage payment clause:

“The Prime Contractor agrees to pay each subcontractor under this Prime Contract for satisfactory performance of its Contract no later than thirty (30) days from the receipt of each payment the Prime Contractor receives from the City of San Antonio. The Prime Contractor further agrees to return retainage payments to each subcontractor within thirty (30) days after the subcontractor’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 subcontractors”.

- 1.2.13 All changes to the list of subcontractors submitted with the bid and approved by the City or Aviation Department, including major vendors, shall be submitted for review and approval by the Aviation Department's DBE Liaison Office. DBE Form 3, *Change of Subcontractors/Suppliers* (Attachment 3) is to be completed and submitted to Aviation Department officials for approval when adding, changing, or deleting subcontractors on airport projects. *Contractors shall make a good-faith effort to replace DBE subcontractors unable to perform on the contract with another DBE.*
- 1.2.14 Failure or refusal by a Bidder or Contractor to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the bid 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, and the Contractor may be debarred from further contracts with the City of San Antonio.

Additional Supplemental General Conditions Required  
for  
Aviation Department Projects

- 1) The use of explosives is strictly prohibited on the airport properties, including airside property and landside property.
- 2) The Contractor will be responsible for construction staking except for verifying and making benchmarks for horizontal and vertical control.
- 3) Survey Layout:  
The Contractor shall employ an experienced and competent surveyor, registered in the State of Texas, to lay out the detail lines and grades of the work from the horizontal and vertical control established in those contract documents. A closed traverse and level loop within a close proximity of the construction site will be provided by the contractor's surveyor. A copy of such work will be presented to the Architect/Engineer for review prior to any field layout by the Contractor.
- 4) This contract shall be a calendar day contract.
- 5) Extension of Time for Adverse Weather:  
Extension of time for adverse weather conditions not reasonably anticipated as provided in Subparagraph 8.3.1 will be granted for those days where precipitation is 0.10 inch or greater and where the number of such days exceed the normal number of rain days in that particular month. This provision shall cease at the time of Substantial Completion. The determination of the normal number of rain days per month shall be according to Local Climatological Data prepared by the National Oceanic and Atmospheric Administration.

For the San Antonio area, the climatological data is recorded at the airport weather station. The Contractor may expect adverse weather for the number of calendar days in accordance with the following local climatological data prepared by NOAA.

	<u>0.10 In. or More Precipitation at San Antonio Airport</u>
January	2
February	4
March	2
April	4
May	4
June	3
July	3
August	3
September	5
October	6
November	3
December	3
 Total Days Lost	 42

The contractor agrees that the measure of adverse weather during the period covered by the Specification shall be the number of days in excess of those shown for each month.

- 6) Aviation Department may close the construction site due to security reasons. The contractor will not be compensated for any loss due to shut down for the first three closures. Each day shall be counted as one shut down regardless of the total hours involved for each day.
- 7) Contractor shall provide, prepare and distribute agendas and minutes for all construction progress meetings and/or coordination meetings.
- 8) As per FAA policy, the prime contractor must provide the Aviation Department a Buy American Preference certificate.
- 9) Staging Area and Storage Area:
  - A) The contractor needs to maintain areas in a clean condition at all times.
  - B) If the contractor and/or their subcontractors store equipment, fuel, paint, and or other hazard material at the staging areas, and/or storage areas, the contractor will perform and pay their own costs for soils and water testing before use of the site, upon exit from the site and any site remediation that may be necessary, as directed by the Owner.
  - C) Prior to occupying and upon vacating any staging area/and or storage areas, the contractor shall submit the owner a minimum of 10 photographs documenting the initial and final conditions of the staging area and/or storage area. Each photograph must have a date. During the construction, the contractor needs to provide 5 progress photographs for each area with each payment request.
  - D) The contractor shall provide a written notice to the owner two weeks in advance prior to vacating the staging areas and/or storage areas.
  - E) The policies stated here will be applied to the areas owned by the private citizens and leased by the contractor for the project involved.
  - F) All work and required pictures are part of subsidiary to Item 100.1, Mobilization/Demobilization.
- 10) Reflective Safety Vests and Hard Hats:
  - A) At a minimum, all reflective safety vests must meet ANSI Class-2, Level-2 Standards.
  - B) All construction personnel or site visitors on the project sites shall wear the hard hat and the reflective safety vest at all times.
  - C) All construction personnel or site visitors entering AOA site must wear the reflective safety vest at all times, regardless inside the project site or not.
- 11) The Aviation Department has the Soil Management Plan. The said plan can be downloaded from the <http://www.sanantonio.gov/Aviation/EnvironmentalStewardship/SoilManagement.aspt>. All four appendixes are attached after this section. The contractor has to follow the instructions stated in the said Soil Management Plan to handle all required tests and to submit the SMP Manager Authorization Form for all import soils and/or exported soil for approval before the contractor can import the soil to the project site or to export the soil out of the airport project site, regardless the location of the project site, inside AOA fence or outside AOA fence. All required materials, equipment, labor, tool, and incidentals necessary to complete the work to meet the requirements stated on the Aviation Department's Soil Management Plan are one part of subsidiary to Item 101, Preparing Right-of Way.

# SAN ANTONIO INTERNATIONAL AIRPORT

9800 Airport Boulevard  
San Antonio, Texas 78216



## Soil Management Plan

*Prepared by: San Antonio International Airport  
Environmental Stewardship Division*

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C	Soil Stockpile Plan
D	SMP Authorization Form

## 1.0 Introduction

The Environmental Stewardship Division (ESD) of the San Antonio Airport System (SAAS) has developed this *Soil Management Plan* (SMP) to establish practices for managing soil generated or handled by Airport projects to assure that excavated/imported soil suspected of being contaminated is separated from clean soil and managed in compliance with Federal, State and Local rules and regulations.

This *Soil Management Plan* is designed to:

- ensure that soil entering or leaving the San Antonio International Airport (SAT) or Stinson Municipal Airport (SSF) is not contaminated;
- verify that surplus soil leaving SAT or SSF is not mixed with contaminated soil at an off-Airport location;
- ensure that test procedures to identify soil contamination are scientifically appropriate;
- provide a tracking method for soil disposition.

Note: This *Soil Management Plan* is not designed nor is it intended to be a *Site Safety Plan*. Determination of compliance with Occupational Safety and Health Administration (OSHA) regulations and appropriate training for construction workers is the sole responsibility of the contractor.

### 1.1 Purpose and Scope

This *Soil Management Plan* is designed to assist SAAS, SAAS contractors and SAAS tenants with cradle to grave liability for contaminated media, provide guidelines to identify potential, or known, environmental conditions that may be encountered during construction projects at SAT or SSF, and assure compliance with applicable laws, regulations and/or policies. The scope of this *Soil Management Plan* is to provide guidelines and procedures to effectively address environmental issues associated with soil excavated from SAAS projects; generated on-Airport, or imported from off-Airport sources to be used by SAAS contractors.

Compliance with applicable federal, state and local health and safety regulations is the responsibility of SAAS and each contractor and/or tenant engaging in activities relevant to this *Soil Management Plan*. Construction contracts may provide more specific project related obligations.

### 1.2 Definitions

ESD – SAAS's Environmental Stewardship Division.

Project Manager – This is the individual in charge of any construction project that involves the moving or handling of soil. The project manager may be an employee of SAAS, a tenant, or a contractor. The Project Manager is responsible for ensuring the adherence to all requirements of this *Soil Management Plan*.

P&D – SAAS's Planning and Development Division

SAAS – San Antonio Airport System

SAT – San Antonio International Airport

SMP – Soil Management Plan

SMP Authorization – Written authorization from ESD and/or P&D to transport soils to or from SAT or SSF. The written authorization must specify the off-Airport location, expected contaminant levels, soil quantity, time period and Airport site(s) covered by the authorization. Written authorization to import or export soil must be obtained prior to acceptance of contractual obligations for soil importation or exportation.

Soil Stockpile Plan – The *Soil Stockpile Plan* must be generated and maintained by ESD and the Planning & Development Division (P&D) with support from the Wildlife Division (which monitors wildlife activities and hazardous wildlife on and near the airport). The *Soil Stockpile Plan* must distinguish between surplus soil and soil required to remain available on-Airport for use in future planned construction projects. The *Soil Stockpile Plan* must consider soil volume, structural properties, and designate stockpile locations to preserve and maintain surplus clean soils for future development projects as P&D deems appropriate.

Soil – Refers to soil, dirt, fill, gravel, sand, rock, aggregate, alluvium, crushed concrete, constructions soils/spoils, demolition material, backfill, topsoil, engineering fill or earthen material.

SSF – Stinson Municipal Airport

TCEQ - Texas Commission on Environmental Quality

Soil Screening Plan – A written plan prepared by the Project Manager whose construction project involves the moving or handling of soil. This project *Soil Screening Plan* must be submitted for ESD and/or P&D approval prior to conducting related project activities. The project *Soil Screening Plan* must consider:

- Nature of historic activity and potential existing contamination at the construction site (PM can obtain this information from ESD or from Phase I Environmental Site Assessment);
- Description of contaminants that will be screened;
- Identification and justification for contaminants that will not be actively screened;
- Proposed screening methodology;
- Identification of action thresholds for each contaminant;
- Description of handling procedures for soil containing contaminants

- exceeding pre-established screening thresholds; and
- Designated haul routes (if applicable).

Due Diligence Review – The due diligence review is an environmental evaluation conducted by ESD and P&D, applicable to any off-Airport facility to which excavated soil generated by SAAS projects is to be taken for disposal or imported for use on-Airport. The due diligence review must evaluate the proposed off-Airport soil facility for compliance with the provisions of the federal Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) or Resource Conservation & Recovery Act (RCRA). ESD's due diligence review will include:

Due diligence review of proposed soil suppliers:

- Description of soil material
- Description of source of soil material
- Analytical data for soil and/or all quality control data guaranteeing the use of non-contaminated soil.

Due diligence review of proposed off-Airport Soil Disposal Sites:

- Description of soil material to be disposed
- Description of potential contamination of soil to be disposed
- Analytical analysis of soil
- Review of recent (5 to 10 years) federal and state environmental enforcement actions against soil disposal site
- Review and copies of any relevant environmental permits to ensure soil disposal facility can accept soil from Airport
- Description of any programs/protocols/assurances to prevent contamination from other sources during transportation, storage and disposal.

A due diligent review may involve the collection of samples to evaluate potential soil contamination. Sampling will be required, on a case by case bases by ESD, depending on the due diligence review.

### **1.3 Soils and Geologic Setting**

See Appendix A regarding the soil and geology at each SAAS facility.

### **1.4 Applicability**

This SAAS *Soil Management Plan* applies to:

- A. Surplus soil generated by on-Airport projects;
- B. Fill dirt, gravel, spoils, sand, soil, aggregate, and infrastructure supporting earthen material required by SAAS projects;
- C. Soil imported for on-Airport use;
- D. Soil disturbed due to on SAAS property projects; and

- E. Soil that is disturbed in the process of contaminant remediation.
- F. Investigation Derived Waste (IDW)

Implementation of this Soil Management Plan is effective immediately and is intended for use all on-Airport property projects.

## 1.5 Department Responsibilities

### Aviation Environmental Stewardship Division (ESD)

ESD must implement the *Soil Stockpile Plan* with full support from P&D as requested. ESD responsibilities must include:

- Documenting the sources of stockpiled soil;
- Documenting the sources of soil used by the various SAAS projects;
- Assist in the security of any contaminated soil stockpiles;
- Provide technical and regulatory assistance to Project Managers when possible;
- Conducting/oversee due diligence reviews;
- Authorizing importation and exportation of soil as requested;
- Overseeing implementation of protocols for testing and categorizing soil;
- Evaluation and review of field and laboratory test results;
- Approval of off-Airport soil destinations; and
- Reporting to Administering Agencies, as required, on circumstances relating to contaminated soil.

### Aviation Planning & Development (P & D) Division

Tasks include:

- Assist with the update of any *Soil Stockpile Plan* site maps;
- Coordinate current and future soil projects with ESD; and
- Review structural properties and quantities of soils needed for planned development projects as well as providing specifications for all soil projects.

## 2.0 Soil Stockpile Area Requirements

The location of clean soil stockpiles will be **DESIGNATED BY ESD AND P&D. LOCATIONS ARE REFLECTED WITHIN THE SOIL STOCKPILE PLAN (APPENDIX C)**. All soils suspected of contamination must be tested, profiled (characterized) and properly disposed.

### 2.1 Storm Water Pollution Prevention Plan

Each contractor and/or tenant conducting construction activities will develop, implement and maintain a Storm Water Pollution Prevention Plan (SWP3), if applicable, in accordance with Texas Pollution Discharge Elimination System (TPDES) rules and regulations.

### 2.2 Erosion Control Measures

Erosion controls (silt fence, rock berms, vegetation, etc...) must be installed and maintained around all stockpile areas. Controls must be inspected by contractor after each rain event. Erosion controls in need of repair/replacement must be corrected within one week. If unaddressed within the one week timeframe, SAAS retains the right to make the required corrections and back charge the contractor for time and material.

### 2.3 Security

During non-operational hours, or when not staffed, soil stockpile area(s) must be fenced off and entrance/exit gates locked or located within the AOA. Reflective markers must be used for night time vehicle safety.

### 2.4 Soil segregation

Soil that will be stockpiled on SAAS property will be segregated by project and/or contamination. Additionally, each stockpile must have signage indicating material type, generating date, originating project and contamination status.

### 2.5 Environmental Contamination

A Limited Phase II Environmental Site Assessment (ESA) will be completed before commissioning and decommissioning any SAAS soils. All stockpile facilities must be constructed using appropriate structural and operational methods to minimize potential environmental contamination (e.g. use of impervious barriers where suspect contaminated soil is stored prior to profiling and disposal).

### 2.6 Vehicle Maintenance/Fueling

Maintenance and fueling of vehicles and earth moving equipment at stockpile sites must be limited as much as practicable. Reasonable measures should be employed to prevent environmental contamination where such vehicle maintenance activities at the project site are unavoidable.

The trucks used for moving soil between the construction site and any stockpile area must meet all Texas Department of Transportation (TXDOT) rules and regulations. Trucks not meeting these regulations will not be authorized to work.

### 3.0 Potential Contaminants and Environmental Concerns

Contaminant spills and releases occurring during construction activities must be responded to in a timely and effective manner by the responsible party. Even relatively small hydrocarbon releases are reportable to regulatory agencies when evidenced by sheens on receiving waters of the United States/Texas. SAAS requires immediate reporting of contaminant spills and releases to Airport Communications and immediate action to contain, mitigate and clean up spills and releases to prevent migration to infrastructure discharging to receiving waters and, thereby minimize environmental impact and compounded response costs. SAAS requires preventative maintenance of equipment, at appropriate locations, in order to minimize the potential for preventable spills and releases due to equipment failure. Prevention of spills and releases of oil and oil products may also be required pursuant to Spill Prevention Control and Countermeasures (SPCC) regulations (refer to 40 CFR 112.1). *SPCC Plans* are dependent on oil product storage capacity (ESD can provide guidance upon request).

Contractors can reduce the possibility of generating contaminated materials by proper management and maintenance of their construction areas (equipment mobilization and staging areas; materials lay-down yards). SAAS requires that Contractors conducting activities at SAT and SSF to properly handle, store, and label construction materials to prevent environmental multi-media contamination (air, soil, and water) to the maximum extent practicable.

The following is intended to be a general reference list of contaminants that could be encountered during construction activities at SAT and SSF:

#### 3.1 Jet A Fuel (Jet A)

Jet A has been used to fuel commercial, cargo and private aircraft at SAT and SSF.

Jet A has a nearly water-white appearance; is a mobile, oily liquid; and has a mild petroleum paraffinic odor typical of kerosene. Jet A has an auto-ignition temperature of 475°F (246°C), a lower boiling point of 320°F (160°C), a flash point of 100°F (38°C), and a specific gravity of 0.81. The Lower Explosive Limit (LEL) is 0.5% and the Upper Explosive Limit (UEL) is 6.0%. The vapor pressure density of Jet A fuel is 5 mm/Hg. Jet A is essentially water insoluble (floats on the surface of water).

#### 3.2 Aviation Gasoline (AvGas)

AvGas is used to fuel piston engine aircraft at SAT and SSF.

AvGas is generally a clear blue liquid with a gasoline hydrocarbon odor. AvGas has a lower boiling point of 158°F (70°C), a flash point of -49°F (-45°C), and a specific gravity of 0.71. The vapor density of AvGas is 4 mm/Hg, the LEL is 0.6% and the UEL is 8.0%. AvGas is essentially insoluble in water.

#### 3.3 Motor Gasoline (MoGas)

MoGas is used to fuel ground service equipment (GSE).

MoGas is a clear colored liquid (typically red-orange) with a pungent petroleum hydrocarbon odor. MoGas has a lower boiling point of 102°F (39°C), a flash point of 35°F (-37°C), and a specific gravity of 0.8. The vapor density of MoGas is 3 to 4 mm/Hg, the LEL is 1.5% and the UEL is 7.6%. MoGas is essentially insoluble in water.

### 3.4 Low Sulfur Diesel (LSD)

LSD is typically used to fuel construction equipment and therefore, may be encountered during construction activities.

LSD is a pale yellow liquid with a hydrocarbon odor. LSD has a lower boiling point of 349°F (176°C), a flash point of 125°F (52°C), and a specific gravity of 0.84. The vapor pressure of LSD is 0.04 PSIG, the LEL is 0.6% and the UEL is 4.7%. LSD is essentially insoluble in water.

### 3.5 Solvents

Solvents are primarily used to clean aircraft and vehicle parts. These activities have typically been restricted to maintenance areas in hangars and at maintenance shops

### 3.6 Aircraft De-icing and Anti-icing Fluid (ADAF)

Both ethylene glycol and propylene glycol are used at SAAS as ADAF. De-icing activities are performed at gates, RONs, ramps and along taxiways. ADAF residuals may be encountered when construction project excavation is conducted proximate to terminal gates due to prior gate deicing practices.

Glycol-based fluids are generally colorless, odorless, viscous, hygroscopic liquids. Aircraft deicing/anti-icing ethylene glycol has a lower boiling point of 383°F (195°C), a flash point of 232°F (111°C), and a specific gravity of 1.1. The vapor density of ethylene glycol is 2.1 mm/Hg, the LEL is 3.2% and the UEL is 15.3%. Ethylene and propylene glycol used for aircraft deicing/anti-icing may have a pungent odor and may have an orange to green appearance (depending on concentration). Both ethylene and propylene glycol are miscible in water (mix readily with water).

### 3.7 Metals

Some metals are evidenced at low concentrations in soils and groundwater at SAT and SSF (referred to as background since naturally occurring). Chromium associated with paint and painting operations, and lead from leaded gasoline may occur at levels above background concentrations. Significant contamination is not usually encountered; either as background or resulting from prior occupancy activities conducted at SAT and SSF. If there is a suspected cause making contamination testing prudent, the suspect media will be tested for the eight RCRA identified metals and the Texas three metals using specified U.S. Environmental Protection Agency (EPA) laboratory protocols. Metals include: antimony, arsenic, barium, beryllium, cadmium, chromium, mercury, nickel, lead, selenium, and silver.

### **3.8 Battery Acids**

Increasing airline use of electric GSE at SAT and SSF has resulted in the establishment of a growing fleet of battery powered GSE and construction of numerous electric vehicle recharging stations. Spills of battery acid from GSE occur occasionally. Battery acid spills may occur on ramps, around charging stations and near maintenance facilities. Acidic conditions may be encountered in excavated soils from these locations.

### **3.9 Other Construction Components**

Other contaminants may be discovered in the course of a project or generated due to methods used during construction. Project generated contaminants can result from boring operations that generate process wastewater or by petroleum contamination generated, for example, by hydraulic leaks from construction equipment. Construction related process wastewater must be properly contained, collected and disposed.

## 4.0 Management of Soils at Project Sites

This *Soil Management Plan* has been developed as a framework for field determination, classification, transportation, and disposition of excavated soil, free phase product, contaminated dissolved phase groundwater, and vapors that may be encountered during construction projects. This *Soil Management Plan* must be followed by SAAS and contract personnel. Each Project Manager is responsible for administering the *Soil Management Plan* during ongoing pre-construction and construction activities they oversee.

The occasional presence of contaminated media (soil, groundwater, and free phase product) may be encountered from time to time. Information collected from pre-construction investigation activities should be summarized to determine likely locations of contaminants within the construction footprint. Close attention must be paid to excavated soil for contamination. Suspect soils must be stockpiled for subsequent evaluation, treatment, reuse or disposal.

The project *Soil Screening Plan* should reflect the results of pre-construction investigations and any project due diligence review. The *Soil Screening Plan* must be submitted by the construction Project Manager to ESD and P&D for review and concurrence during the construction review process. The *Soil Screening Plan* will identify screening methods and frequencies using the environmental principles discussed in Section 4.1.

**CAUTION:** When environmental conditions associated with contaminated media are encountered, the contractor is required to ensure compliance with applicable federal, state, and local regulations and is responsible to protect worker health and safety.

In the event excavated or construction pre-screened soil evidences contact with potential contaminants not listed in the *Soil Screening Plan*, construction activities in the affected area must be immediately terminated pending ESD & P&D evaluation of the pending issues.

### 4.1 Soil Screening & Sampling

As much as possible, soil characterization must be performed prior to soil importation or excavation. The designated Project Manager must observe soil for visual evidence of contamination. Soil samples will be collected as described in the project specific *Soil Screening Plan*. Typically this may involve visual and olfactory soil observations, PID readings, headspace analysis, soil sampling and/or manufacturer documentation.

#### 4.1.1 Screening Methods

Volatile organic compounds (and some semi-volatile organic compounds) may be screened using approved field technology photo-ionization detection (PID) or flame ionization-detection (FID) direct reading instrumentation, as appropriate, to screen for volatile organic compounds (VOCs); immuno-assay tests for semi-volatile; x-ray fluorescence (XRF) for metals (refer to table below). Field analysis alone will not authorize off-Airport disposal options or approval. Field analysis results may be used to

determine the appropriateness of returning clean soil to the excavation; to determine the appropriateness of transporting clean soil to another on-Airport clean soil stockpile; or to decide which suspect soils must be stockpiled and sampled for contamination.

Only trained personnel must conduct direct reading instrumentation excavated soil screening; calibrate direct reading instruments, deploy recommended instrument manufacturer's methods, or use analytical kits of any kind. Daily calibration, using recommended instrument manufacturer's methods or analytical kit requirements must be completed and recorded for submission to ESD prior to project close-out.

Field methods must be documented; retained in project management files and submitted to ESD. Should screening method results exceed limits outlined, work is to be stopped and ESD and/or P&D immediately contacted.

Potential Contaminant	Analytical Field Test Method
Jet A Fuel	PID, FID, Immunoassay Kit, Portable GC
Aviation Gas	PID, FID, Immunoassay Kit, Portable GC
Vehicle Gas	PID, FID, Immunoassay Kit, Portable GC
Diesel Fuel	PID, FID, Immunoassay Kit, Portable GC
Solvents	Portable GC, Immunoassay Kit, Electron Capture GC
Aircraft Deicing Fluids	Colorimetric Kit
Metals	X-Ray fluorescence
Pesticides/PCBs	Portable GC, Immunoassay Kit
Hydraulic Fluids	PID, FID, Immunoassay Kit, Portable GC

\*PID - Photo Ionization Detector

\*FID - Flame Ionization Detector

\*GC - Gas Chromatograph

#### 4.1.2 Soil Sampling

Soil must not be imported or exported without a completed SMP authorization (see attached form) issued/approve by ESD and/or P&D. A *Soil Screening Plan* must be prepared and followed for all projects. At a minimum, soils should be analyzed for the following:

Chemical of Concern (COC)	Test Method
Total Petroleum Hydrocarbon (TPH)	TX1005
Benzene, Toluene, Xylene and Ethylbenzene (BTEX)	8021 or 8260
Polycyclic Aromatic Hydrocarbons (PAH) <sup>4</sup>	8310 or 8270
Metals (RCRA-8) plus Antimony, Beryllium and Nickel	200.7

<sup>4</sup> - TPH testing will be used to screen for PAHs using method TCEQ-1005. If the laboratory reports any detection of hydrocarbons in the carbon range greater than nC12, then the sample with the highest

concentration of hydrocarbons in the > nC12 range must be analyzed for PAHs. The PAH results will be compared to the PAH results listed above.

See Appendix B for the acceptable concentrations of Chemicals of Concern (COCs).

#### 4.1.3 Sampling Frequencies

Project Type	Frequency
Soil Importation	One (1) composite sample per 1,000 cubic yards (or less)*. Additional visual screening of imported soil is required at a minimum of one (1) per every five (5) trucks*.
Soil Exportation (initial screening)	One (1) composite sample per 1,000 cubic yards
Soil Exportation (off site disposal)	One (1) composite sample per 50 cubic yards (the requirements of the disposal facility may be substituted for the above composite sampling frequency).

\* - This sampling frequency may be relaxed based upon demonstration of minimal likelihood of encountering contamination and/or documentation provided by soil supplier.

#### 4.1.4 Confirmation Sampling

Project specific soil sampling requires the collection of soil samples from sidewalls and the finished grade bottom of excavations where contaminated media was encountered. This will allow determination of the levels of potential contaminants that may remain in the area. ESD may also require confirmation sample(s) to verify that contamination is no longer present in the construction footprint should results of field screening and laboratory results of excavated soils sampled so indicate.

Typically, excavated soil with no evidence of contamination from pre-construction investigations, no visual or olfactory evidence of contamination, and no elevated PID readings (less than 20 parts per million (ppm)) may be deemed clean soil and will not require additional analytical testing or laboratory sampling. Clean soil, upon ESD's approval, may be directly transported to the clean soil stockpile area for subsequent reuse. If a Project Manager anticipates off-Airport disposal or reuse, an SMP authorization must be obtained from ESD and/or P&D.

Excavated soil evidencing contamination from pre-construction investigations; visual or olfactory screening; direct reading instrumentation hits above 20 ppm; or other approved field screening methods must be stockpiled for further evaluation. Excavated soils suspected of contamination must be segregated at the project site from clean soil based on field screening and placed on and covered with vapor barriers (e.g. visqueen). Once segregated, the material must be sampled, profiled and disposed.

## **4.2 Excavated Soils**

As much as possible, soil characterization must be performed prior to soil excavation. The designated Project Manager must observe unexcavated and excavated soil for visual evidence of contamination. Excavated soil samples will be collected as described in the project specific *Soil Screening Plan*. Typically this will involve visual and olfactory soil observations, PID readings, headspace analysis, and sampling.

## **4.3 Imported Soils**

Screening of imported materials prior to entering Airport property or a project site is acceptable for material such as rocks and pea gravel. Soil screening results that exceed pre-established contamination levels **will not** be brought onto SAAS property without the expressed authorization of ESD and/or P&D. If no levels are pre-established this will be the detection limit of any contamination subject to the materials screening protocols. Field notes for the screening will be collected and submitted to ESD and/or P&D.

### **4.3.1 Ready-to-Plant, Mulch and Topsoil**

Ready-to-Plant, Mulch and Professional Topsoil will be addressed on a case by case basis. These soils are generally contract spec soils that will be mixed per the required specifications. The P&D Division should approve the spec and source before the contractor brings the soil on to the airport.

### **4.3.2 Material Used for Concrete**

Soil importation for production of concrete is necessitated by the scope and scale of some SAAS Airport capital development projects. It is important to conduct imported concrete production materials screening to prevent distribution of imported materials that may have been previously contaminated. Given that materials used to produce concrete are typically manufactured products, ESD anticipates that screening will be less rigorous than suspect soils. The Project Manager will be responsible to document imported soils screening consistent with ESD and/or P&D approved project specific soil screening prior to accepting imported soils used for the on-Airport production of concrete.

## **4.4 Suspected Contaminated Material**

When field-screening results indicate levels above the action threshold (**20 ppm**), the material will be stockpiled onsite and placed on and covered with a vapor barrier. The Project Manager will contact ESD and/or P&D and notify them that soil sampling is required. While awaiting results from the laboratory, the soils will remain in this hold status until a determination is made for final disposition. If laboratory analysis results indicate that the soil is clean, the soil may be moved to a clean stockpile for reuse. If laboratory results indicate there is contamination; but contaminate concentrations are below the standards set in Appendix B, this soil may be subsequently transported for reuse at appropriate projects. When results indicate levels of contamination too high for reuse, this material will be designated for profiling and disposal.

## **4.5 Soil Disposition/Transportation**

Project Managers are responsible for transporting soils to and from the project site. Imported materials and materials generated by on-Airport projects destined for off-airport disposition will proceed only after express authorization by ESD and/or P&D. Project Managers will assure that any soil that will be stockpiled at Airport stockpile reuse areas will be free of trash, debris, rubbish, or construction rubble. Haul trucks will be required to follow designated haul routes (specified in *Soil Screening Plan*) from the excavation area to the soil stockpile area(s).

Soil must not be exported without a completed SMP Authorization Form approved issued by ESD and/or P&D. Soil screening must be conducted on all exported materials pursuant to the approved *Soil Screening Plan* prior to leaving Airport Property. The soil screening plan must reflect the anticipated contaminants in the soil to be exported and the results of the due diligence review of the off-site facility. Detailed records must permanently be maintained documenting sample test results, soil source location, soil destination, the due diligence review, and all other relevant data.

THE PROJECT MANAGER WILL COMPLETE AND SUBMIT A SMP AUTHORIZATION FORM TO ESD AND/OR P&D FOR APPROVAL (See Appendix D). THIS SHOULD BE INCLUDED IN THE INITIAL PLAN REVIEW PROCESS.

The contractor is solely responsible for Health and Safety measures required for safe transportation of the excavated materials to the designated destination on or off-Airport.

The Project Manager will record the following information for all materials received at any SAAS stockpile area:

- Date/Time
- Project name and ESD and/or P&D authorization approval
- Truck number and size
- Truckloads of material received
- Type of material received
- Truck Tickets

The following additional information will be recorded for confirmed and suspected contaminated materials:

- Description of material
- Parameters analyzed
- Material ID Number (given by Project Manager)
- Sampling results
- Disposal location
- Date removed
- Truck Tickets

## 4.6 Soil Sampling and Classifications

Final characterization of excavated soils will result in one of three soil classifications. The following sections summarize the designation criteria associated with each classification. A brief discussion of each classification is presented for guidance.

### 4.6.1 Unregulated Soil

Unregulated soil is soil evidencing no detectable levels of potential contaminants of concern. Unregulated soil may be reused on-Airport, as the Planning and Development Division deems necessary.

### 4.6.2 Impacted Soil

Impacted soils exhibiting analytical results below established maximum concentration levels for each COC analyte may be reused on-Airport only. Reuse locations must meet TRRP requirements restricting reuse in projects with finished grade impervious surfaces and where no human exposure pathways will occur (e.g.: under pavement or other impervious cover as allowed by regulation). ESD and/or P&D concurrence with reuse of impacted soils for designated projects is required.

### 4.6.3 Contaminated Soil

Contaminated soils are soils exhibiting analytical results above established RCRA levels for any COC analyte. Contaminated soils will be profiled and properly disposed.

## 4.7 Sample Documentation

Samples collected from the soil stockpiles, or confirmation samples collected from excavation sidewalls and finished grade will be identified using a four-part system. The sample identification system will consist of the following:

- A location designator based on the SAAS Airport's Emergency Grid System;
- A matrix identifier;
- A sample number; and
- Depth of sample collection (where applicable).

The first portion of the sample identifier will identify the soil origination utilizing the SAAS Airport Emergency Grid System as described above. Therefore, analytical results from the soil stockpiles can be traced to locations on the airport property where the soil was excavated.

The second portion of the sample identifier will identify the sample as a soil sample (SS) collected at the source, groundwater (GW), or stockpile (SP) sample.

During excavation, soil samples will be numbered within each grid location (i.e., in subsequent grid locations, sample numbers will start over). The depth at which the sample was obtained will be noted as the final portion of the sample identifier.

For example, the tenth sample obtained in the 4GA grid square from an excavation at a depth of 2 feet would be labeled:

4GA – SS-10 (2)

Stockpile samples will be numbered according to the soil source location. For example, a sample obtained from stockpiled soil whose source is the 4GA grid square at a depth of approximately 5 feet would be labeled:

4GA – SP – 1(5)

A sample log and sampling map will be created to document all samples collected. The sample log will contain the sample identification number, sample matrix, date and time collected, location description, number of jars, analyses requested, PID readings (if any), and relevant notes. The sampling map will be a drawing that will identify the location of each sample taken, the location of the project in relation to other onsite activities, a north arrow and any other requested information.

Proper chain-of-custody documentation will be maintained for all samples sent to the laboratory using the appropriate Chain-of-Custody form.

## 5.0 Management of soil stockpile areas

The Project Manager must manage the *Stockpile Screening Plan* that will guide day to day operation and handling of soil and soil stockpiles.

### 5.1 Soil Classification Management

ESD and/or P&D will review the *Soil Screening Plan* for each project and determine if soil is eligible for direct shipment to a clean soil stockpile area. This determination will be communicated to the Project Manager. Please refer to Section 4.5 for proper soil stockpiling recordkeeping requirements.

#### 5.1.1 Unregulated Soil

If the soil is determined to be uncontaminated and has been approved for storage at the Airport's Buckhorn site the Project Manager (or his designee) will unlock the site (Buckhorn) at the scheduled time and remain on site until delivery is complete. The area will be re-secured when not supervised. The Project Manager (or his designee) will inspect loads to verify that they are debris free and properly authorized. Trucks with construction debris will be returned to the project site for debris removal. Soils transported to a clean soil stockpile area will be segregated by project.

#### 5.1.2 Impacted Soil

Impacted soils exhibiting analytical results below established maximum concentration levels for each COC analyte may be reused on-Airport only. Stockpile storage locations must be approved by ESD and/or P&D.

#### 5.1.3 Contaminated Soil

Contaminated soils are soils exhibiting analytical results above established RCRA levels for any COC analyte. Contaminated soils must be properly profiled and disposed of at an approved ESD and/or P&D facility. Long term stockpiling of contaminated soil on Airport property is prohibited.

All contaminated soils stockpiled will be placed on an impervious material and covered with an impervious material.

Construction materials not for immediate use must be stockpiled in designated areas. Other materials may be stored at approved locations proximate to the work area provided however that the piles are no greater than 18" in height. Higher piles may be permitted only during working hours and in such quantity that they may be reduced in height to 18" maximum within thirty (30) minutes of notification."

Soils stationed at Buckhorn will be placed in windrows no more than six feet in height. Soils will be segregated and records maintained by the Project Manager

to identify soil sources, soil types and contamination test results.

## **5.2 Maintenance of Soil Stockpiles.**

Stockpiles must be maintained in a manner to minimize wildlife attractants. All requirements of Section 2.0 must be met.

## 6.0 Data Management

### 6.1 Field Documentation

Quantities of excavated/imported soils, soil types, PID readings, trucking data, etc. must be documented by the Project Manager in a daily logbook, by photo-documentation and/or by use of electronic record keeping.

### 6.2 Soil Tracking

The sources of excavated soils must be tracked and maintained along with sampling, analytical, and disposal records. SAAS Airport's Emergency Grid System will be utilized to aid in tracking excavated soil sources. SAAS Airport's Emergency Grid System is laid out such that north-south grid lines are labeled numerically beginning with the number 1 and east-west grid lines are labeled alphabetically from A to S. Each grid square is 1,000' by 1,000'. Each grid square is further sectioned by 4 smaller squares (500' by 500') that are labeled with a letter designation (e.g.: a location can therefore be designated as 4GA, which denotes a particular area 500' by 500'). If the Emergency Grid System is not utilized for soil stockpile tracking then an alternate method must be approved by ESD and/or P&D.

As part of the *Stockpile Management Plan*, it is also necessary to track the final disposition of all soil. See the *Stockpile Management Plan* and Section 4.5 for additional tracking information.

### 6.3 Sample Documentation

Samples collected from the soil stockpiles, or confirmation samples collected from excavation sidewalls and finished grade will be identified using a four-part system. The sample identification system will consist of the following:

- A location designator based on the SAAS Airport's Emergency Grid System;
- A matrix identifier;
- A sample number; and
- Depth of sample collection (where applicable).

A sample log and sampling map will be created to document all samples collected. The sample log will contain the sample identification number, sample matrix, date and time collected, location description, number of jars, analysis requested, PID readings (if any), and relevant notes. The sampling map will be a drawing that will identify the location of each sample taken, the location of the project in relation to other onsite activities, a north arrow and any other requested information.

Proper chain-of-custody documentation will be maintained for all samples sent to the laboratory using the appropriate Chain-of-Custody form.

See Section 4.0 for more sampling information.

#### **6.4 Project Database**

A database will be created and maintained by ESD and/or P&D. This database will include "trip tickets", laboratory analytical results, excavation dates, stockpile numbers, and stockpile locations.

## 7.0 REPORTING

### 7.1 Emergency Notifications

In the event of an environmental emergency, the following notifications must be made immediately:

- SAT/SSF Communications Center – (210) 207-3433
- Operations 202 – (210) 413-4928
- Operations 210 – (210) 207-3590
- Operations – (210) 207-3540
- Environmental Stewardship Manager – (210) 207-3402
- SAAS Environmental Stewardship Division – (210) 207-3518
- Planning & Development – (210) 207-3519
- San Antonio Fire/Police Department – 911
- SAT Fire/Rescue – (210) 207-3473

### 7.2 Reports – Project Manager

#### Weekly Status Reports

A Weekly Status Report will be prepared during construction activities describing the field activities conducted that week and summarize the total amount of soil excavated/imported and specify quantities of soil stockpiled and suspected of contamination.

#### Post-Construction Report

As a pre-requisite to project closeout, the Project Manager will verify all previously submitted information/reports are correct and up to date. Any missing information such as truck tickets, soil analysis and/or disposal manifests will be submitted to ESD and/or P&D.

# **Appendix A**

## **Soil & Geologic Tables**

