

- 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 or 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 cannot 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 (also referred to as "PRIMELink"). 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, at minimum, every thirty (30) days throughout the duration of the Project. 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 of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, 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 Contractor 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 the 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 accrued by and payable to Owner by Contractor, Owner shall be entitled to deduct from the Contract Sum amounts paid to Design Consultant by Owner for any additional inspections or services, provided that Design Consultant undertook these services due to the fault or negligence of Contractor if:

- (1) Design Consultant is required to make more than one inspection to determine if Substantial Completion has been achieved by Contractor;
- (2) Design Consultant is required to make more than one inspection to determine if Final Completion has been achieved by Contractor; or
- (3) the Work is not substantially complete within **thirty (30) calendar** days after the date established for the Work's 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;

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; and

10.2.1.4 the contents of a building or structure, when Contractor is working in, on or around an existing/operating City facility.

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 \$50,000 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**

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 this 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 this 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 this 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 this 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 this 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 this 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.

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## Special Conditions for Task Order Contracts

When applying these General Conditions for City of San Antonio Construction Contracts to Task Order contracts for horizontal work, **Section 9.3 Application for Payment, Section 9.4 Pay Application Approval, Section 9.5 Decisions to Reject Application for Payment, Section 9.6 Progress Payments and Section 9.9 Final completion and Final Payment** of the City's General Conditions for City of San Antonio Construction Contracts hereby are deleted in their entireties and collectively replaced with the following replacement Sections:

### 9.3 APPLICATION FOR PAYMENT/CONTRACTOR BILLING

- 9.3.1 Under an issued Task Order contract with Owner, Contractor shall not be required to submit an application for payment to Owner for materials and work performed. Instead, Owner shall calculate the accrual of materials utilized for the subject payment period and submit a request for payment from Owner on Contractor's behalf.
- 9.3.2 Owner, through its on-site Project Inspector, shall calculate the daily total of materials utilized by Contractor performing horizontal work through an issued Task Order contract. Inspector's daily total of utilized materials shall be confirmed daily by Contractor. Inspector also shall keep a monthly running total of work performed and materials utilized as agreed upon, for each day of Work, by Contractor.
- 9.3.3 Inspector, at minimum every thirty (30) days throughout the Project's duration, then shall submit, on Contractor's behalf, the agreed upon total materials utilized by Contractor for the outstanding days, up to the date of Inspector's submittal, to Owner's TCI Fiscal Department for payment to Contractor.
- 9.3.4 Owner's TCI Fiscal Department then shall issue payment to Contractor, within \_\_\_\_ days of receipt of Inspector's and Contractor's agreed upon total materials utilized, calculated at the rate for the utilized materials reflected in Contractor's Task Order contract with Owner.
- 9.3.5 Unless otherwise provided in the Contract Documents, payments by Owner 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.

9.3.6 Contractor warrants, upon Owner's submittal of an Application for Payment to Contractor, 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.**

9.3.7 By Owner's submission of an Application for Payment on behalf of Contractor and by its concurrence with said submission, 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 PAYMENT APPROVAL**

9.4.1 Contractor's concurrence of the total daily Work performed, as recorded by the on-site Project Inspector and subsequent confirmation by Contractor of the daily total of materials utilized by Contractor, shall constitute a representation by Contractor to Owner the Work has progressed to the point indicated and that, to the best of Contractor's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by Owner. Contractor's concurrence further shall constitute a representation that Contractor is entitled to payment in the amount submitted. The issuance of a Payment to Contractor shall not be a representation that Owner has:

- (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
- (2) reviewed construction means, methods, techniques, sequences or procedures;

- (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate 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 PAYMENT TO CONTRACTOR

9.5.1 A request for payment to Contractor may be rejected at any time by Owner to protect Owner for any of the following reasons:

9.5.1.1 Work not performed or is 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 time allotted on the issued Task Order and that the unpaid balance on the issued Task Order 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 issued Task Order and/or Contract Documents;

9.5.1.8 the applicable liquidated damages were not included in the Owner-submitted 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 to Owner.

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 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.
- 9.6.2 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.
- 9.6.3 Owner 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 on account of portions of the Work done by such Subcontractor.
- 9.6.4 Owner shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.
- 9.6.5 Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.3** and **Section 9.6.4** herein regarding Subcontractors.
- 9.6.6 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.
- 9.6.7 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.

## **9.9 FINAL COMPLETION AND FINAL PAYMENT**

- 9.9.1 When all of the Work on an issued Task Order finally is complete and ready for final inspection, Contractor shall notify Owner in writing. Thereupon, Owner shall make final inspection of the Work and, if the Work is complete in full accordance with the issued Task Order and, pursuant to this Contract, fully has been performed, Contractor shall submit a final Application for Payment. If Owner is unable to approve the final Application for Payment for reasons for which Contractor is responsible and Owner is 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 final payment.
- 9.9.2 If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Owner so confirms, Owner shall, upon application by Contractor and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. 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.
- 9.9.3 For all payments made through an issued Task Order contract, City shall not withhold any retainage from payments made to Contractor.

General Decision Number: TX150016 01/02/2015 TX16

Superseded General Decision Number: TX20140016

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, McClellon and Williamson Counties) and HIGHWAY Construction Projects

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/02/2015

	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 a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or

"UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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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.

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END OF GENERAL DECISION

## **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 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 from the City's Labor Compliance Office and included in the project bid package prior to the bidding of the Project and such schedule shall become a part hereof. Contractor shall forfeit, as a penalty to Owner, sixty dollars (\$60.00) for each laborer, workman or mechanic employed for each calendar day, or portion thereof, in which such laborer, workman or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Contractor or any subcontractor employed on the project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Contractor from its obligation under any Federal or State Law, regarding the wages to be paid to or hours worked by laborers, workmen or mechanics, insofar as applicable to the work to be performed hereunder. Contractor, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Contractor agrees it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This Contract provision shall be included in its entirety in any subcontract agreement entered into by the Contractor or any Subcontractor employed on the project.

## 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 Aviation Department, which shall be clearly labeled "STORM WATER OUTFALL REPAIRS (RE-BID)" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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:

TYPE	AMOUNTS
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: <ul style="list-style-type: none"> <li>a. Premises/Operations</li> <li>*b. Independent Contractors</li> <li>c. Products/Completed Operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> <li>f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.</li> <li>g. Damage to property rented by you</li> </ul>	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  g. \$100,000
4. Business Automobile Liability <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ul>	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
*if applicable	

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: Aviation 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:

This project consists of construction work at San Antonio International Airport and Stinson Municipal Airport in San Antonio, Texas. The intent of the contract is to provide for construction and completion, in every detail, of the work described. It is further intended that the Contractor furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

The Contractor shall provide unit prices for the base bid and also for the alternate bid. The description of the base bid and alternate bid is as follows:

**BASE BID**

Provide all labor, material, equipment and appurtenances required to construct the repairs to six (6) existing stormwater outfalls at San Antonio International Airport. The work includes demolition of existing concrete structures; earthwork; construction of new outfall pipes and structures; installation of rock riprap; erosion and sediment control installation, maintenance, and removal; re-vegetation of disturbed areas; and other miscellaneous site repairs and improvements.

**ALTERNATE BID NO. 1**

Provide all labor, material, equipment and appurtenances required to construct the repairs to two (2) existing stormwater outfalls at Stinson Municipal Airfield. The work includes demolition of existing concrete structures; earthwork; construction of new outfall pipes and structures; installation of rock riprap; erosion and sediment control installation, maintenance, and removal; re-vegetation of disturbed areas; and other miscellaneous site repairs and improvements.

If Base Bid is awarded, NTP to Substantial Completion is 135 calendar days. If both Base Bid and Alternate Bid No. 1 are awarded, NTP to Substantial Completion is 180 calendar days.

2. A responsive bid shall consist of the following:
  - a. Compliance with items set forth in Division A, Formal Invitation for bids (IFB) and Contract
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

# Additional Supplemental General Conditions Required For Aviation Department Projects

- 1) The use of explosives is strictly prohibited on airports.
- 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 will be provided by the surveyor to the Contractor. 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.

	0.10 In. or More Precipitation at San Antonio Airport
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

6/9/2009

SGC-Aviation-1

4/17/2012

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 and neat condition.
  - B) If the contractor and/or their subcontractors store equipment, fuel, paint, or other hazardous material at the staging areas, and/or storage areas, the contractor will perform and pay the costs for soil 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 areas and/or storage areas, the contractor shall submit to the owner a minimum of 10 photographs documenting the initial and final conditions of the staging areas and/or storage areas. 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 two weeks written notice to the owner 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.

# 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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## 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**

# **Appendix B**

## **COC Acceptable Concentration Limits**

Acceptable COC concentrations are as follows:

Chemical of Concern (COC)	Results (mg/kg)
<b>Total Petroleum Hydrocarbons (TPH) <sup>(1)</sup></b>	
C6 – C12	65.00
>C12 – C28	200.00
>C12 – C35	200.00
>C28 – C35	200.00
<b>Polycyclic Aromatic Hydrocarbons (PAH) <sup>(1 unless otherwise specified and 3)</sup></b>	
Acenaphthene	240.00
Anthracene	6900.00
Acenaphthylene	410.00
Benzo(a)anthracene	18.00
Benzo(a)pyrene	7.60
Benzo(b)fluoranthene	600.00
Benzo(g,h,i)perylene	46486.86
Benzo(k)fluoranthene	620.00
Chrysene	1545.38
Dibenz(a,h)anthracene	15.00
Fluoranthene	1917.25
Fluorene	300.00
Indeno(1,2,3-cd)pyrene	170.00
Naphthalene <sup>2</sup>	31.00
Phenanthrene	420.00
Pyrene	1116.00
<b>Benzene, Toluene, Xylene and Ethylbenzene (BTEX) <sup>(1)</sup></b>	
Benzene	0.025
Toluene	8.20
Total Xylene	120.00
Ethylbenzene	7.60
<b>Metals <sup>(2, unless otherwise specified)</sup></b>	
Antimony	1.00
Arsenic	5.90
Barium	300.00
Beryllium	1.50
Cadmium <sup>1</sup>	1.50
Chromium (total)	30.00
Lead	15.00
Mercury	0.04
Nickel	10.00
Selenium	0.30
Silver <sup>1</sup>	0.48
<b>NOTES</b>	
<sup>1</sup> - TCEQ Tier I Residential Soil PCLs, 0.5 acre source – GW Soil Ing.	
<sup>2</sup> - TCEQ Chapter 350 -Texas-Specific Soil Background Concentrations	
<sup>3</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.	

# **Appendix C**

## **Soil Stockpile Plan**

# **Appendix D**

## **SMP Manager Authorization Form**

**San Antonio Airport System  
Environmental Stewardship Division  
SMP Manager Authorization Form**

Date: \_\_\_\_\_ Project Manager/Company: \_\_\_\_\_

Request for:  Exportation of Material  Importation of Material

Project Name: \_\_\_\_\_

Type of Material: \_\_\_\_\_  
(i.e. topsoil, engineered fill material, rock, crushed stone, sand, CTB, mulch)

Amount of Imported Material: \_\_\_\_\_ Amount of Exported Material: \_\_\_\_\_

Analytical Test Results (attached): \_\_\_\_\_ (minimum one sample per 50 yds<sup>3</sup>)

Rock and pea gravel screening results: \_\_\_\_\_ (Screening required per load/truck)

Exported Soil Location: \_\_\_\_\_ Import Soil/Material \_\_\_\_\_

**Vendor Information**

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

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

City/State: \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Contractor, PM, CM)

\*Please attach a copy of the contract specifications requiring importation.

Soil Management Plan (SMP) Manager Approval

\_\_\_\_\_  
(SMP Manager or Designee)

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