



SPECIFICATION AND BID DOCUMENTS

FOR

STORM WATER OUTFALL REPAIRS (RE-BID)

AT SAN ANTONIO AIRPORT SYSTEMS

PROJECT NO. 33-00036

May 11, 2015

Prepared By:



TBPE No. F-2144



Freese and Nichols, Inc. (F-2144)

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CITY OF SAN ANTONIO

Issued By: Aviation Department
ID NO.: 33-00036

Date Issued: May 11, 2015

**(010) FORMAL INVITATION FOR BIDS (IFB) to CONTRACT
STORM WATER OUTFALL REPAIRS (RE-BID)**

Sealed bids, subject to the Terms and Conditions of this Invitation for Bids and other contract provisions, will be received at the Office of the City Clerk, City Hall, 100 Military Plaza, 2nd floor San Antonio, Tx 78205 until **2:00 P.M. CST on Tuesday, June 16, 2015** (solicitation deadline) and publicly read aloud in **City Council Chambers, 114 W. Commerce, Municipal Plaza Building**. Bids must be submitted in a sealed envelope and clearly marked with the bidder's name, Project Name and ID NO. The City is not responsible for submissions not clearly and appropriately marked. Late submissions will be rejected and returned to bidder. A **Non-Mandatory** Pre-bid meeting will be held at the San Antonio International Airport, 9800 Airport Blvd., San Antonio, TX 78216 in Terminal "A" Mezzanine Conference Room on **Wednesday, May 20, 2015** at 9:30 AM followed by a site visit. Deadline for questions is **Friday, June 5, 2015** at 4.00 P.M.

This invitation includes the following Contract Documents:

- | | | | |
|--------|---|-----|--|
| 010 | Invitation for Bids and Contract Signature Page | ▪ | Subcontracting Waiver Request Form |
| 020 | Bid Form | 060 | Supplemental Conditions |
| 025 | Unit Pricing Form | 075 | Performance Bond |
| 030 | Contractor's Questionnaire | 076 | Payment Bond |
| 040 | Standard Instructions to Respondent | 081 | General Conditions for Construction Contracts |
| 050.01 | SBEDA Guidelines | ▪ | Heavy/Hwy Wage Decision |
| ▪ | Exception to SBEDA Requirements Request Form | ▪ | Prevailing Wage Rate and Labor Standard Provisions |
| ▪ | Subcontractor/Supplier Utilization Plan | | |

Plans, Specifications and Special Conditions may be purchased at a cost of **\$50.00** per set (tax included) from the office of **Freese and Nichols, Inc., 4040 Broadway St., Ste 600**, San Antonio, TX 78209; Phone: (210) 298-3800. No refund will be made for plan sets that are returned. Addenda will be posted on the web at www.sanantonio.gov/rfp listings along with this solicitation. Changes to Plans, Specifications and Special Conditions will be included in an addendum and may be obtained from the office of **Freese and Nichols, Inc.** Bidder understands and agrees that bidder is responsible for obtaining addenda and adhering to all requirements in addenda. City is not responsible for incorrect information obtained through other sources.

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

- | | | | |
|-----|---|---|---|
| 010 | Invitation for Bids and Contract Signature Page | ▪ | Subcontractor/Supplier Utilization Plan |
| 020 | Bid Form | ▪ | Subcontracting Waiver Request Form |
| 025 | Unit Pricing Form | ▪ | Bid Bond |
| 030 | Contractor's Questionnaire | ▪ | Signed Addenda Acknowledgement Forms |
| ▪ | Exception to SBEDA Requirements Request Form | | |

This is a Qualified Low Bid Solicitation. It is understood and agreed that the work is to be substantially completed on or before **135** or **180** calendar days, depending on award of contract for Base Bid only, or Base Bid and Alternate #1. The award of a contract, if it is to be awarded, will be made within 120 calendar days of the date specified for the public bid opening.

Small Business Economic Development Advocacy (SBEDA) Program Compliance – Respondents shall meet the subcontracting requirements as stated on Form 050.01 and on the Subcontractor/Supplier Utilization Plan posted with this solicitation on the City's website.

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

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

Official Name of Company (legal): _____

_____/_____ Signer's Name: _____

Original Signature of Person Authorized to Sign Bid/Contract
Form 010 Invitation for Bids (IFB) to Contract Signature Page

Date

(Please Print or Type)

CITY OF SAN ANTONIO

Project Name: Storm Water Outfall Repairs (Re-bid)
ID NO.: 33-00036

Date Issued: May 11, 2015

The estimated construction budget for this contract is \$836,972.00

Page 1 of 1

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BID FORM

I. BASE BID

Amount of San Antonio International Airport (SAIA) Outfall Repair Base Bid (Insert Amount in Words and Numbers):

_____ \$ _____

Amount of SAWS Water Base Bid (Insert Amount in Words and Numbers):

N/A _____ \$ _____ N/A

Amount of SAWS Sewer Base Bid (Insert Amount in Words and Numbers):

N/A _____ \$ _____ N/A

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

N/A _____ \$ _____ N/A

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

_____ \$ _____

II. ALTERNATES

Amount of each Alternates (if applicable) insert in Numbers:

Additive Alternate #1 - Stinson Municipal Airport (SMF) Outfall Repairs

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

_____ \$ _____

III. UNIT PRICES

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

IV. ALLOWANCES (if applicable) N/A

Official Name of Company (legal)

Telephone No.

Address

Fax No.

City, State and Zip Code

E-mail Address

Name of the proposed **Project Manager:** _____

Name of the proposed **Site Superintendent:** _____

ITEM SEQUENCE NO.	ITEM NO.	BID ITEM DESCRIPTION	UNIT OF MEASURE	APPROX QUANTITIES	UNIT BID PRICE	AMOUNT
BASE BID: SAN ANTONIO INTERNATIONAL AIRPORT (SAIA) OUTFALL REPAIRS						
1	COSA 100.1	MOBILIZATION	LS	1		
2	COSA 100.2	INSURANCE AND BONDING	LS	1		
3	COSA 100.3	VACUUM TRUCK OPERATIONS (SAIA OUTFALL NO. 17)	DA	30		
4	COSA 101.1	PREPARING RIGHT-OF-WAY (CLEARING BRUSH FOR ACCESS TO OUTFALLS)	LS	1		
5	COSA 103.4	REMOVE MISCELLANEOUS CONCRETE	SF	2572		
6	COSA 105.1	CHANNEL EXCAVATION (< 150 C.Y.)	CY	395		
7	COSA 107.1	EMBANKMENT	CY	305		
8	COSA 302.2	OUTFALL SECURITY GRATE FOR 36" PIPE (METAL FOR STRUCTURES)	EA	2		
9	COSA 302.2	OUTFALL SECURITY GRATE FOR 48" PIPE (METAL FOR STRUCTURES)	EA	1		
10	COSA 302.2	OUTFALL SECURITY GRATE FOR 60" PIPE (METAL FOR STRUCTURES)	EA	2		
11	COSA 302.2	OUTFALL SECURITY GRATE FOR 84" PIPE (METAL FOR STRUCTURES)	EA	1		
12	COSA 306.1	STRUCTURAL EXCAVATION	CY	457		
13	COSA 307	INSTALL WATER QUALITY SAMPLER HOLE	EA	5		
14	COSA 307.1	CONCRETE STRUCTURE (HEADWALLS COMPLETE WITH WINGWALLS AND APRON SLABS)	CY	17		
15	COSA 307.1	CONCRETE STRUCTURE (SAIA OUTFALL NO. 11 APRON SLAB)	CY	17		
16	COSA 307.1	CONCRETE STRUCTURE (SAIA OUTFALL NO. 17 MOW STRIP)	CY	4		
17	COSA 401.1	REINFORCED CONCRETE PIPE (CLASS III)(48" DIA)	LF	45		
18	COSA 401.1	REINFORCED CONCRETE PIPE (CLASS III)(84" DIA)	LF	45		
19	COSA 403.6	SPECIAL JUNCTION BOX (COMPLETE W/ MANHOLE) (5'x5'x22' Drop Structure)	LS	1		
20	COSA 403.6	SPECIAL JUNCTION BOX (COMPLETE W/ MANHOLE) (9'x9'x23' Drop Structure)	LS	1		
21	COSA 507.5	DOUBLE SWING GATE	LS	1		
22	COSA 524.1	CONCRETE STEPS	CY	8		
23	COSA 530.1	BARRICADES, SIGNS AND TRAFFIC HANDLING (CONSTRUCTION ENTRANCE SIGNS)	LS	1		
24	COSA 540.1	ROCK FILTER DAM	LF	470		
25	COSA 540.9	TEMPORARY SEDIMENT CONTROL FENCE	LF	905		
26	COSA 550.1	TRENCH EXCAVATION SAFETY PROTECTION	LF	130		
27	COSA 554.1	EROSION CONTROL MATTING (CURLEX I OR APPROVED EQUAL)	SY	5690		
28	COSA 554.1	PERMANENT TURF REINFORCEMENT MATTING (NORTH AMERICAN GREEN P550 OR APPROVED EQUAL)	SY	200		
29	COSA 801.1	TREE PROTECTION	LF	230		
30	TxDOT 356.2017	FILTER FABRIC (FABRIC UNDERSEAL)	SY	1910		
31	TxDOT 432.2023	RIPRAP (STONE PROTECTION)	SY	885		
32	TxDOT 432.2023	RIPRAP - GROUTED (STONE PROTECTION)	SY	70		
33	TxDOT 506.2016	CONSTRUCTION EXITS (INSTALL) (TY1)	EA	7		
34	TxDOT 506.2019	CONSTRUCTION EXITS (REMOVE)	EA	7		
35	TxDOT 530.2010	CONCRETE DRIVEWAY (COMMERCIAL)	SY	70		
36	SAIA T-901	SEEDING	SY	5690		
37	SAIA T-904	SODDING	SY	356		
38	SAIA T-905	TOPSOILING	SY	6046		
					TOTAL AMOUNT BASE BID	

ITEM SEQUENCE NO.	ITEM NO.	BID ITEM DESCRIPTION	UNIT OF MEASURE	APPROX QUANTITIES	UNIT BID PRICE	AMOUNT
ADDITIVE ALTERNATE #1: STINSON MUNICIPAL AIRPORT (SMF) OUTFALL REPAIRS						
1	COSA 100.1	MOBILIZATION	LS	1		
2	COSA 100.2	INSURANCE AND BONDING	LS	1		
3	COSA 101.1	PREPARING RIGHT-OF-WAY (CLEARING BRUSH FOR ACCESS TO OUTFALLS)	LS	1		
4	COSA 103.4	REMOVE MISCELLANEOUS CONCRETE	SF	218		
5	COSA 105.1	CHANNEL EXCAVATION (< 150 C.Y.)	CY	660		
6	COSA 107.1	EMBANKMENT	CY	10		
7	COSA 306.1	STRUCTURAL EXCAVATION	CY	95		
8	COSA 307	INSTALL WATER QUALITY SAMPLER HOLE	EA	2		
9	COSA 307	CORE DRILL HOLES IN SLAB (APRON REPAIR)	EA	1		
10	COSA 307.1	CONCRETE STRUCTURE (HEADWALLS COMPLETE WITH WINGWALLS AND APRON SLABS)	CY	5		
11	COSA 401.1	REINFORCED CONCRETE PIPE (CLASS III)(54" DIA)	LF	30		
12	COSA 403.6	SPECIAL JUNCTION BOX (COMPLETE W/ MANHOLE) (6'x6'x15' Drop Structure)	LS	1		
13	COSA 413.1	FLOWABLE FILL (LOW STRENGTH)	CY	4		
14	COSA 524.1	CONCRETE STEPS	CY	2		
15	COSA 530.1	BARRICADES, SIGNS AND TRAFFIC HANDLING (CONSTRUCTION ENTRANCE SIGNS)	LS	1		
16	COSA 540.1	ROCK FILTER DAM	LF	195		
17	COSA 540.7	CONSTRUCTION PERIMETER FENCE	LF	400		
18	COSA 540.9	TEMPORARY SEDIMENT CONTROL FENCE	LF	220		
19	COSA 550.1	TRENCH EXCAVATION SAFETY PROTECTION	LF	45		
20	COSA 554.1	EROSION CONTROL MATTING (CURLEX I OR APPROVED EQUAL)	SY	2170		
21	TxDOT 356.2017	FILTER FABRIC (FABRIC UNDERSEAL)	SY	430		
22	TxDOT 432.2023	RIPRAP (STONE PROTECTION)	SY	250		
23	TxDOT 506.2016	CONSTRUCTION EXITS (INSTALL) (TY1)	EA	1		
24	TxDOT 506.2019	CONSTRUCTION EXITS (REMOVE)	EA	1		
25	SAIA T-901	SEEDING	SY	2170		
26	SAIA T-905	TOPSOILING	SY	2170		
TOTAL AMOUNT ADDITIVE ALTERNATE #1						

TOTAL BASE BID AND ADDITIVE ALTERNATE #1 BID AMOUNT _____

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

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

Signed: _____ Date: _____

Title: _____

Section 030
CONTRACTOR'S QUESTIONNAIRE
STORM WATER OUTFALL REPAIRS (RE-BID)
SAN ANTONIO INTERNATIONAL AIRPORT

1. **Respondent Information:** Provide the following information regarding the Respondent.
 (NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #1.2. If Joint Venture or Partnership, attach Joint Venture or Partnership Agreement.)

Respondent Name: _____
 (NOTE: Give exact legal name as it will appear on the contract, if awarded.)
 Principal Address: _____
 City: State: Zip Code: _____
 Telephone No. _____ Fax No: _____
 e-mail address: _____

List here, any other names under which Respondent has operated within the last 10 years. (add space as needed) _____

- 1.2 **Business Structure:** Check the box that indicates the business structure of the Respondent.

Individual or Sole Proprietorship If checked, list Assumed Name, if any: _____
 Partnership
 Corporation If checked, check one: For-Profit Nonprofit
 Also, check one: Domestic Foreign
 Other If checked, list business structure: _____

- 1.3 **Ownership:** Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes No

- 1.4 Is Respondent authorized and/or licensed to do business in Texas?

Yes No If "Yes", list authorizations/licenses.

- 1.5 Where is the Respondent's corporate headquarters located? _____

- 1.6 **Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes No If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

- 1.7 **Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes No If "Yes", state the name of the bonding company, date, amount

of bond and reason for such cancellation or forfeiture.

1.8 **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes No

If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

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

A. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes No

B. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes No

C. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes No

D. Have you or any other member of your Firm or Team paid liquidated damages in the last three (3) years?

Yes No

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

2. EXPERIENCE AND QUALIFICATIONS

2.1 Prospective Respondents must show and document that they are responsible, qualified, capable, bondable, etc. to fulfill and abide by the specifications herein listed, and prospective respondents must have the capability and capacity in all respects to fully satisfy all of the contractual requirements described in this solicitation.

2.2 All Respondents' facilities, personnel and equipment may be subject to inspection before contract award.

- 2.3 How many years has your current organization been doing business as a construction general contractor? _____ years. If less than three years please explain on a separate page with your bid as Attachment 2.3 your organization's construction general contractor history.
- 2.4 How many years have you been doing construction-contracting work under previous business name(s)? _____ years.

2.5 **RELEVANT EXPERIENCE WITH STORM DRAIN OUTFALL PROJECTS AND AIRPORT PROJECTS:**

Bids shall be considered from responsible respondents with experience in heavy civil construction projects on or near airport runways or other facilities using the City of San Antonio construction specifications. The respondent's experience, in combination with its subcontractors' experience, should include three (3) projects within the last five (5) years which include earthwork and storm drain construction at a minimum.

Contractor should include Project Summary Sheets that demonstrate knowledge of sequencing, staging, and constructing challenges in limited areas and within creeks or streams. Project Summary Sheets should describe specific experience with installation of storm drain infrastructure including pipe installation, junction box construction, outfall construction, and erosion protection. Each Project Summary Sheet should include: project name, project scope, location, duration (start and end dates), and reference (owner name with a phone number and e-mail address). The respondents should include the said "Project Summary Sheets" as Attachment 2.5 for Section 030, Contractor's Questionnaire. Bids submitted without required experience and documentation of storm drain construction projects may be deemed non-responsive.

3. **FINANCIAL**

- 3.1 Please indicate the current limit of your BONDING CAPACITY: _____ . **This limit indication reduces your risk of forfeiting a bid bond.** Properly informing the CITY of your current capacity for BONDED work allows the determination of awards in cases where a CONTRACTOR has the low bids for multiple projects and that total amount exceeds the capacity for bonding. If this section is left blank, CONTRACTOR agrees to be fully responsible for all active bid submissions to the limit of their respective bid bonds.

- 3.2 How much work is your firm currently contracted to provide? I.E. current total amount of work in dollars from ALL sources.

\$ _____

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STANDARD INSTRUCTIONS TO RESPONDENT

Read Carefully

1. STANDARD TERMS AND CONDITIONS

1.1 By submitting this offer, the Respondent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. DISCREPANCIES AND INTERPRETATION

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

3. PREPARATION OF BIDS

Offers will be prepared in accordance with the following:

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

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

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

2. Substitute Alternate: In the case of a Substitute Alternate (these alternates appear in sets of two or more related alternates), unit prices must be submitted for all the items in the base offer separately and for all the items in one of the related substitute alternates in each set.
 - (e) Where there is an error in extension of price, the unit price shall govern.
 - (f) If a Respondent detects an error in quantities on the specifications or solicitation documents, unit price shall govern. Respondent shall notify City of such error by indicating in the comments section of the bid/pricing form or beside the item on City's proposal form or computer printout referenced in 3. (e) above. Respondent should not attempt to correct the error by inflating unit pricing.
 - (g) In the event additional or extra blank spaces remain after completion of the various forms, Contractor shall enter the terms "none" or "not applicable" on any remaining blank spaces as an indication that the Contractor has considered City requests for information on every line presented. Any blank unit prices will be tabulated and evaluated as "no cost" to the City.
 - (h) The combined total offers, for Mobilization and Preparing Right-of-Way shall not exceed ten percent (10%) of the total project offer. The 10% allowed for Mobilization and Preparing Right-of-Way will be calculated based upon the total of all offer components. An offer containing a combined total for Mobilization and Preparing Right-of-Way in excess of ten (10%) percent may be considered unbalanced and may be rejected.
 - (i) The unit price shall be inserted on the 025 Unit Pricing Form in the "UNIT BID PRICE" column. Extensions, which are the unit prices multiplied by the approximate quantities for each item, shall be inserted in figures in the amount column. Offers shall be submitted only on City's 025 Unit Pricing Form or approved computer printout sheets. Offers not so submitted will be considered nonresponsive. Conditional offers or unbalanced offers will be considered nonresponsive.
 - (j) Separated Contract: This project will be offered as a "separated contract", in accordance with a recent amendment to section 151.311 of the tax code, in order for the contractor to claim a tax exemption on the contract price of materials.

4. SUBMISSION OF OFFERS

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

- (e) Every manufacturer, supplier, vendor, contractor and others interested in doing business with the City of San Antonio **MUST FIRST** register with the City by using the City of San Antonio's **Vendor Registration Website**: <http://www.sanantonio.gov/purchasing/SAePS.aspx>.

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

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

5. REJECTION OF OFFERS

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

6. WITHDRAWAL OF OFFERS

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

7. LATE OFFERS OR MODIFICATIONS

- (a) Offers and modifications received after the time set for the offer opening (solicitation deadline) will not be considered.
- (b) Proposal amounts may not be amended or modified in any manner after the Solicitation Deadline in the published IFB/IFCSP, except as hereinafter provided.

(c) City will perform a cursory review to determine if the offers are complete as to required contents, in proper form and are properly signed. An offer that is obviously defective will not be read aloud at the bid/offer opening, nor will the offer prices included therein be publicly revealed. If a minor clerical error or omission is discovered and classified by City as a technicality which the City of San Antonio has reserved the right to waive, or applicable law allows City a right to waive, Respondent's representative shall have the opportunity to make the appropriate correction.

8. PROPOSAL GUARANTY:

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

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

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

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

9. QUALIFICATIONS OF RESPONDENT:

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

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

10. AWARD OF CONTRACT

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

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

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

- (d) Breaking of tie offers shall be in accordance with V.T.C.A. Local Government Code § 271.901.
- (e) City reserves the right to accept any items or groups of items on this offer, unless Respondent qualifies his/her offers by specific limitations (Re: Par. 5(a) (3) above).
- (g) Although the information furnished to Respondents specified the approximate quantities needed, based on the best available information where a contract is awarded on a unit price basis, payment shall be based on the actual quantities supplied. City reserves the right to delete items, prior to the awarding of the contract, and purchase said items by other means; or after the awarding of the contract, to increase or decrease the quantities offer in accordance with § 252.048 of the Texas Local Government Code. No changes shall be made without written notification of City.
- (h) Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons or their agents, who seek to contract for the sale or purchase of property, goods or services with City, shall file a completed Conflict of Interest Questionnaire, hereafter referred as (“CIQ”), with City Clerk not later than the seventh (7th) business day after the date that the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals, offers, correspondence, or another writing related to a potential agreement with City. The CIQ form is available from the Texas Ethics Commission at:

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

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

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

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

11. SITE INVESTIGATION

- (a) The submittal of an Offer by Respondent shall constitute an admission that Respondent has fully examined the location of the proposed Work and the requirements of the Work. Respondent shall be familiar with all of the Contract Documents and other City instructions including Respondent’s ability to submit inquiries to City and Design Consultant before submitting an Offer so that no Contractor misunderstanding shall exist regarding the nature and character of the Work to be performed. No allowance will be made by City for any Respondent claim that the Offer/Proposal/Bid is based upon incomplete information as to the nature and character of the site or the Work involved.
- (b) After investigating the Project site and comparing the Plans and Specifications and other Contract Documents with the existing conditions, the prospective Respondent immediately should notify Consultant of any conditions for which the requirements of labor and materials are not clear, and pose any question regarding the quantity and extent of the Work involved. Respondent inquiry notifications to City and/or Consultant must be made in writing at least eleven (11) calendar days prior to the scheduled solicitation deadline.
- (c) It is understood and acknowledged by Respondent that full and complete allowance for conditions under which the Contractor will be required to perform construction, or that will in any manner affect Work under this Contract, are included in the Respondent's Proposal and reflected in the proposed Contract sum. If a soils investigation was conducted as a potential aid to the Consultant in preparation of the Contract Plans and Specifications, this information is available to prospective respondents for review at the Project Consultant’s office and is non-refundable. Copies may be purchased from the Consultant. THIS INFORMATION IS AVAILABLE TO PROSPECTIVE RESPONDENTS

WITHOUT EXPRESS OR IMPLIED REPRESENTATION, ASSURANCE, WARRANTY OR GUARANTEE BY CITY OR CONSULTANT THAT IT IS COMPLETE OR CORRECT OR THAT IT REPRESENTS A TRUE, OR APPROXIMATELY TRUE, PICTURE OF THE SUB-SURFACE CONDITIONS TO BE ENCOUNTERED ACROSS THE PROPOSED WORK SITE. THIS INFORMATION IS SPECIFICALLY NOT PART OF THE CONTRACT DOCUMENTS. Before submitting its Offer, each Respondent may, at Respondent's own expense, make reasonable work site investigations and tests as the Respondent may deem necessary to determine his Offer for performance of the Work in accordance with the Contract Documents. Access for such investigations and tests must be reasonably coordinated with the City.

12. RESTRICTION ON COMMUNICATION

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

- (a) Questions or other communication at the pre-submittal conference are allowed.
- (b) Written questions and comments concerning this solicitation shall be sent to the consultant, ATTN: Kara Marks, Freese and Nichols, Inc., at 4040 Broadway Street, Suite 600, San Antonio, Texas 78209, Phone number: (817) 735-7217 and email address kkm@freese.com and copy to Candyce Selby, P.E., the City's Aviation Department at 457 Sandau Road, San Antonio, Texas 78216, Phone number: 210-207-3518 and email address candyce.selby@sanantonio.gov. Questions received after the stated deadline will not be answered.
- (c) Respondent and/or its agent(s) are encouraged to contact the Aviation Department's DBE Liaison Officer for assistance or clarification with issues specifically related to the DBE policy and/or completion of the required DBE forms, prior to Respondent's submittal. Point of Contact person is Lisa Brice, Phone number 210-207-3505 at email address lisa.brice@sanantonio.gov. Lisa Brice may designate other members of the Aviation staff to address DBE issues raised by Respondent. After the solicitation's closing date, no contact is permitted by Respondent to the Aviation Department, DBE Liaison Office. The City reserves the right to contact Respondent over DBE issues after the solicitation closing date.
- (d) Respondents shall provide responses to any questions asked of them by the Staff Contact Person before and after responses are received and opened.

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

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

Storm Water Outfalls at San Antonio Airport System - REBID

050.01

Solicitation and Contract Language

Exceptions to the Restrictions on Communication with City employees include:

Respondents and/or their agents are encouraged to contact the Small Business Office of the Economic Development Department for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact is Lisa Brice. Ms. Brice may be reached by telephone at (210) 207-3505 or by e-mail at lisa.brice@sanantonio.gov. *This exception to the restriction on communication does not apply, and there is no contact permitted to the Small Business Office regarding this solicitation, after the solicitation closing date.*

SBEDA Ordinance Compliance Provisions

A. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response, through a fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the S/M/WBE subcontracting goal shall render its response NON-RESPONSIVE.

Waiver Request - A Respondent may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Respondent Subcontracting Waiver Request form* (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Waiver request must fully document subcontractor unavailability despite the Respondent's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Respondent including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests will not be considered.**

Exception Request - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request form* (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification or “Certified” – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the

work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the CONTRACTOR’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract Agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY’s SBEDA Policy & Procedure Manual are in furtherance of the CITY’s efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR’s scope of work as referenced in the CITY’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or

HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative (API) to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least **seventeen percent (17%)** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA).

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. CONTRACTOR agrees to subcontract at least **two percent (2%)** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This two percent (2%) subcontracting goal will also count toward the aforementioned seventeen percent (17%) M/WBE subcontracting goal.

The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE and AABE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE and AABE Subcontractor, and documentation including a description of each M/WBE and AABE Subcontractor's scope of work and confirmation of each M/WBE and AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for M/WBE and AABE firm participation in the performance of a Commercially Useful Function

under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE and AABE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 17% and AABE Subcontracting goal of 2% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system for the month of March 2015, African-American owned firms represent approximately 2.76% of available subcontractors, Hispanic-American firms represent approximately 16.47%, Asian-American firms represent approximately 1.14%, Native American firms represent approximately 0.13%, and Women-owned firms represent approximately 4.91% of available construction subcontractors.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

Good Faith Effort Tips for SBEDA Waivers

- 1. Attend Pre-Submittal Conference:** Respondent should indicate whether they attended the relevant pre-submittal conference.
Tip: To receive credit for attending a pre-submittal conference, the attendee must be a person who will be directly involved with the project (i.e., owner, project manager, estimator, etc.). The Economic Development Department's (EDD) Small Business Office (SBO) will obtain a copy of the sign-in sheet to confirm attendance.
- 2. Subdivide the Work:** Respondent should demonstrate subdivision of the work into commercially useful disciplines or work elements that can be economically performed by certified small, minority and/or women-owned business enterprises (S/M/WBEs), when feasible. It is the respondent's responsibility to demonstrate that sufficient work was made available to S/M/WBEs to meet specified SBEDA requirements.
Tip: The work should be subdivided into categories or disciplines to allow for maximum SBE and M/WBE participation. For example:
Project Name: Annual Contract for Various Departments Lawn Maintenance
Work Elements: Grounds Maintenance – 50%
Landscaping – 20%
Irrigation System Maintenance and Repair – 10%
Litter/Removal Services – 10%
Weed and Vegetation Control – 10%
- 3. Advertise:** Respondent should advertise in general circulation, trade publications, or minority/women's business focused media for S/M/WBE subcontractors at a reasonable time prior to the bid due date. A copy of the advertisement, showing the advertisement date(s), name of publication(s), type of work and amount of work being solicited, must be provided.
Tip: A copy of the advertisement should be submitted, including the date(s) of advertisement and name of publication.
- 4. Use Public Databases and Minority/Women's Business Focused Organizations/Services:** Respondent should provide evidence of using the City's NIGP Search website, the South Central Texas Regional Certification Agency (SCTRCA), and other organizations' vendor directories/listings to solicit S/M/WBE subcontractors.
Tips: a.) Respondents may acquire a list of potential S/M/WBE subcontractors from the COSA Vendor Listing at <http://sanantonio.gov/purchasing/vendorlisting.aspx> through NIGP code search engine ; b.) SCTRCA's online listing of S/M/WBEs is available at <http://sctrca.org/>; c.) Respondents may use the services and assistance of the SBA, local chambers of commerce, S/M/WBE business associations, and other local outreach programs for locating and contacting S/M/WBEs; d.) To confirm if a potential S/M/WBE subcontractor meets the City's SBEDA program eligibility, the respondent may contact EDD's SBO; e) Contact the Small Business Office
- 5. Provide Relevant Information to Small Businesses:** Provide documentation that respondent provided S/M/WBEs with information regarding contract requirements, solicitation timing, and how to obtain plans and specifications, at a reasonable time (7-10 days) prior to the bid due date.
Tip: This documentation can include ad copies, emails, faxes or any other correspondence between respondent and S/M/WBEs indicating outreach efforts.
- 6. Directly Solicit Small Businesses:** Respondent must provide documentation of directly soliciting S/M/WBE subcontractors. Copies of emails and fax notices sent directly to SBEs and M/WBEs should be submitted. A direct solicitation may include the type of work, amount of work, and a brief specific description of the work being solicited.
Tip: Send emails or faxes to S/M/WBEs detailing the specific scope of work determined would lend to a subcontracting opportunity. Follow-up with a call to the S/M/WBEs to make sure they received your email or fax (some emails go directly to spam boxes). Document the S/M/WBE company name, contact person, phone number/email address, certifications, result of contact (left message, no answer, etc.) bid received and reason for rejection.
- 7. Offer Assistance:** Respondent must provide documentation of efforts to assist S/M/WBEs in obtaining bonding, insurance or equipment.
Tip: Submitting the offer to assist with bonding/insurance/equipment included in the ad copy, emails and/or fax correspondences during S/M/WBE outreach efforts satisfies this requirement.
- 8. Document bid and negotiation results:** Respondent should negotiate in good faith with interested S/M/WBEs. The respondent should provide documentation of all the negotiations with S/M/WBEs, unsuccessful and/or bids received but not accepted, and provide the following contact information: company name, telephone number, contact person, price bid (if applicable) and the reasoning for rejecting the bid for each unsuccessful bid.
Tip: If price was the reason for rejecting the bid, the respondent should document the price bid by both the rejected S/M/WBE and the accepted low bidder for that particular scope of work.
- 9. Follow-Up with Vendors:** Respondents must show evidence that they conducted a strong effort to include S/M/WBEs in their response.
Tip: Provide evidence that respondent attempted to reach S/M/WBEs multiple times and provide documentation of response from S/M/WBEs contacted.
- 10. Fill out SBEDA Respondent/Vendor Subcontractor Waiver Request located at <http://www.sanantonio.gov/SBO/Forms.aspx> and attach all Good Faith Effort documentation.**
*Tip: Respondents **must** submit this form with documentation or the waiver request will not be processed by the EDD SBO. As a reminder, respondents **must also** submit the Subcontractor/Supplier Utilization Plan with their response.*



Exception to SBEDA Program Requirements Request Form

RESPONDENT NAME: DATE:

SOLICITATION NAME:

API APPLIED:

1. Please check the box that best describes the reason you are requesting an Exception to the SBEDA Program requirements associated with this solicitation:

- The value of the contract is below the \$50,000 threshold for application of the SBEDA Program
- No commercially-useful subcontracting opportunities exist within the contract
- The type of contract is beyond the scope of the SBEDA Ordinance

2. Describe the rationale for your request for an Exception to SBEDA program requirements associated with this solicitation. Attach additional pages, if necessary.

3. Name and phone number of person appointed to coordinate this project.

Name:

Phone Number:

E-mail:

AFFIRMATION

I CERTIFY THAT ALL INFORMATION CONTAINED IN THIS FORM IS ACCURATE AND COMPLETE AND I UNDERSTAND THAT IF THIS REQUEST FOR EXCEPTION IS DENIED AND I FAIL TO MEET THE REQUIREMENTS OF THIS SOLICITATION, MY RESPONSE TO THIS SOLICITATION WILL BE DEEMED **NON-RESPONSIVE**.

SIGNATURE

DATE

PRINT NAME/TITLE

FOR CITY USE ONLY - ORIGINATING DEPARTMENT

DEPARTMENT:

DATE RECEIVED:

STAFF NAME:

FOR CITY USE ONLY - SBO STAFF

DATE RECEIVED:

STAFF NAME:

RECOMMENDATION: APPROVED DENIED

EDD DIRECTOR: _____

DATE OF ORIGINATING DEPARTMENT/CIMS/PGS/GSC NOTIFICATION:

Justification:



**CITY OF SAN ANTONIO
SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN**

SOLICITATION NAME: **Storm Water Outfalls at San Antonio Airport System - REBID**

RESPONDENT NAME: _____

SOLICITATION API: **Minority / Women-Owned Business Enterprise (M/WBE) Subcontracting Program and African American Business Enterprise (AABE) Subcontracting Program**

API REQUIREMENTS: Respondents must demonstrate commitment to satisfy a **seventeen percent (17%) M/WBE subcontracting goal**. Moreover, **two percent (2%)** out of the seventeen (17%) subcontracting goal is to be subcontracted to **AABE firms**. Segmented AABE goals target the participation of AABEs within select industries (Construction, Professional Services & Other Services) as identified by the availability in the Central Vendor Registry. Participation by AABE subcontractors automatically counts toward the M/WBE subcontracting goal.

Pursuant to the SBEDA Ordinance, M/WBEs and AABEs must also be certified as SBEs with the South Central Texas Regional Certification Agency (SCTRCA) and be headquartered or have a Significant Business Presence in the San Antonio Metropolitan Statistical Area to satisfy the above-stated goals.

Self-performance by M/WBE and/or AABE prime respondents does not count towards these subcontracting goals. Commitment to meet subcontracting requirements must be demonstrated by writing the **company name, SAePS vendor number of each subcontractor/supplier, dollar value or percentage of participation on the contract, and type of work to be performed****.

In the absence of a waiver granted by the Small Business Office, failure of a Respondent to commit to satisfying the M/WBE and AABE subcontracting goals shall render its response **NON-RESPONSIVE**. For further clarification, please contact Lisa Brice at (210) 207-3505.

Enter Respondent's (Prime) proposed contract participation level.

	PARTICIPATION DOLLAR AMOUNT	% LEVEL OF PARTICIPATION	CERTIFICATION TYPE AND NUMBER	TYPE OF WORK TO BE PERFORMED (BY NIGP CODE)
Prime:	\$	%		
SAePS Vendor #:			SCTRCA #:	

List ALL subcontractors/suppliers that will be utilized for the entire contract period, excluding possible extensions, renewals and/or alternates. Use additional pages if necessary.

Sub:	\$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	\$	%		
SAePS Vendor #:			SCTRCA #:	
Sub:	\$	%		
SAePS Vendor #:			SCTRCA #:	

**** Prime respondent and all subcontractors/suppliers must be registered in the City of San Antonio Electronic Procurement System (SAePS). To learn more about how to register, please call (210) 207-0118 or visit <http://www.sanantonio.gov/purchasing/saeps.aspx>.**

Sub:	\$	%	
SAePS Vendor #:			SCTRCA #:
Sub:	\$	%	
SAePS Vendor #:			SCTRCA #:
Sub:	\$	%	
SAePS Vendor #:			SCTRCA #:
Sub:	\$	%	
SAePS Vendor #:			SCTRCA #:

A. Total Prime Participation: \$ _____ % A. Total base bid amount to be kept by prime.

B. Total Sub Participation: \$ _____ % B. Total amount prime will pay to certified and non-certified subcontractors/suppliers

C. Total Certified Sub Participation: \$ _____ % C. Total amount prime will pay to certified subcontractors/suppliers per the eligibility requirements stated above

D. Total Prime & Sub Participation*: \$ _____ % D. Total prime and subcontractor(s)/supplier(s) participation must equal your base bid amount (A+B)

If a business is not certified, please call the Small Business Program Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

I HEREBY AFFIRM THAT I POSSESS DOCUMENTATION FROM ALL PROPOSED SUBCONTRACTORS/SUPPLIERS CONFIRMING THEIR INTENT TO PERFORM THE SCOPE OF WORK FOR THE PRICE INDICATED ABOVE. I FURTHER AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Print Name: _____ Sign: _____ Title: _____
Date: _____

FOR CITY USE

Action Taken: Approved _____ Denied _____

ASSISTANT DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT



Respondent/Vendor Subcontracting Waiver Request Form

COMPANY MUST SUBMIT THIS FORM WITH ITS SOLICITATION RESPONSE.

COMPANY NAME: DATE:

CONTACT PERSON: CONTACT PHONE #:

CONTACT EMAIL ADDRESS:

SOLICITATION NAME:

1. Describe the rationale for your request for a waiver to the subcontracting goals applied to this solicitation.

2. List all SBE/AABE/ABE/HABE/NABE/WBE listings or directories utilized to solicit participation for this solicitation.

3. List all contractor associations and other associations solicited for SBE/AABE/ABE/HABE/NABE/WBE referrals.

4. Indicate advertisement mediums used for soliciting bids from all SBE/AABE/ABE/HABE/NABE/WBEs.

5. List all other efforts aimed at utilizing SBE/AABE/ABE/HABE/NABE/WBE firms.

7. Please attach a copy of your company's small, minority and women-owned business policy.

8. Name and phone number of person appointed to coordinate and administer the good faith efforts of your company on this project.

9. Indicate percentage of SBE/AABE/ABE/HABE/NABE/WBE participation you can alternatively recommend.

10. List and attach documents (i.e. advertisements, emails, phone call logs) of your good faith efforts indicated in questions 2-6.

1.
2.
3.
4.
5.

11. Attach change of subcontract/supplier utilization plan request form, if requesting a waiver to an approved utilization plan for a current project.

AFFIRMATION

I CERTIFY THAT ALL INFORMATION CONTAINED IN THIS FORM IS ACCURATE AND COMPLETE, AND UNDERSTAND THAT IF THIS REQUEST FOR WAIVER IS DENIED AND I FAIL TO MEET THE REQUIREMENTS OF THIS SOLICITATION, MY RESPONSE TO THIS SOLICITATION WILL BE DEEMED **NON-RESPONSIVE**.

SIGNATURE

DATE

PRINT NAME/TITLE

FOR CITY USE ONLY

DATE RECEIVED: _____

RECOMMENDATION: APPROVED DENIED

DATE OF ORIGINATING DEPARTMENT/CMS/PGS/GSC NOTIFICATION: _____

EDD DIRECTOR: _____

JUSTIFICATION:

SUPPLEMENTAL CONDITIONS

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

Liquidated Damages

Scope of Work	Contractual Milestone	Contractual Milestone Description and Requirements	From	To	Liquidated Damages
Base Bid (SAIA)	1	Substantial Completion	NTP	135 calendar days	\$340.00 per day
	2	Final Completion	Substantial Completion	30 calendar days	\$340.00 per day
Base Bid Plus Alt #1 (SAIA and SMF)	1	Substantial Completion	NTP	180 calendar days	\$360.00 per day
	2	Final Completion	Substantial Completion	30 calendar days	\$360.00 per day

5. **The Contract Sum** - The Owner shall pay the Contractor for the proper performance of the Contract, subject to additions and deduction provided therein, the Contract sum is listed in the Purchase Order.
6. **Partial Payment** - Each month, the Owner shall make a progress payment as approved by the Owner's Representative in accordance with the General Conditions.
7. **Acceptance and Final Payment** - Final Payment shall be due on final Owner acceptance of the Project Work, provided the Contract has been completed by Contractor as provided in the General Conditions. Before issuance of the final payment, the Contractor shall submit an affidavit and reasonable additional supporting evidence if required, as satisfactory to the Director of Finance, City of San Antonio, that all labor payrolls, construction materials and supply bills, subcontractors, and other indebtedness connected with the Work have been paid in full, or that an outstanding debt is being disputed and that the corporate surety or its agent is processing the outstanding claim and is willing to defend and/or indemnify the City should the City make final Contract payment.
8. Contractor shall comply with Standard Specification 1000 in its invoicing.

PERFORMANCE BOND

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

The City of San Antonio, a municipal corporation in the State of Texas (hereafter referred to as "City") and _____, a _____ with its principal place of business located at _____ (hereafter referred to as "Contractor" or "Principal") have entered into a Contract (hereafter referred to as "the Contract") dated _____, 20__ for the STORM WATER OUTFALL REPAIRS (RE-BID) Project (hereafter referred to as "the Project"). Said Contract is incorporated by reference into this Statutory Performance Bond, pursuant to Chapter 2253 of the Texas Government Code (hereafter referred to as "this Bond").

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

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

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

THIS BOND is entered into this _____ day of _____, 20_____.

SURETY (seal)

CONTRACTOR

By: _____
(Signature)

By: _____
(Signature)

(Print Name)

(Print Name)

(Print Title)

(Print Title)

[ATTACH POWER OF ATTORNEY]

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

ATTEST: _____

ATTEST: _____

PAYMENT BOND

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

The City of San Antonio, a municipal corporation in the State of Texas (hereafter referred to as "City") and _____, a _____ with its principal place of business located at _____ (hereafter referred to as "Contractor" or "Principal") have entered into a Contract (hereafter referred to as "the Contract") dated _____, 20__ for the STORM WATER OUTFALL REPAIRS (RE-BID) Project (hereafter referred to as "the Project"). Said Contract is incorporated by reference into this Statutory Payment Bond, pursuant to Chapter 2253 of the Texas Government Code (hereafter referred to as "this Bond").

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

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

THIS BOND is entered into this _____ day of _____, 20____.

SURETY (seal)

By: _____
(Signature)

(Print Name)

(Print Title)

[ATTACH POWER OF ATTORNEY]

ATTEST: _____

CONTRACTOR

By: _____
(Signature)

(Print Name)

(Print Title)

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

ATTEST: _____

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

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

ARTICLE I. GENERAL PROVISIONS

1.1 CONTRACT DEFINITIONS

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

- 1.1.1 “**ALTERNATE**” means a variation in the Work in which Owner requires a price separate from the Base Bid. If an Alternate is accepted by Owner, the variation shall become a part of the Contract through award of the Contract and the Base Bid shall be adjusted to include the amount quoted as stated in the Notice of Award to Contractor. If an Alternate is accepted by Owner, and later deleted, Owner shall be entitled to a credit in the full value of the Alternate as priced in Contractor’s Bid Proposal.
- 1.1.2 “**AMENDMENT**” is a written modification of the Contract prepared by Owner or Design Consultant and signed by Owner and Contractor, (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Work (specifically the services) or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.
- 1.1.3 “**BASE BID**” is the price quoted for the Work before Alternates are considered.
- 1.1.4 “**CHANGE ORDER**” refer to **Article VII** herein for definition.
- 1.1.5 “**CITY COUNCIL**” means the duly elected members of the City Council of the City of San Antonio, Texas.
- 1.1.6 “**CONSTRUCTION OBSERVER/INSPECTOR** (hereafter referred to as “**COI**”) is the authorized representative of the Director of Transportation and Capital Improvements (hereafter referred to as “**TCI**”), or its designee department, assigned by Owner to observe and inspect any or all parts of the Project and the materials to be used therein. Also referred to herein as Resident Inspector.
- 1.1.7 “**CONTRACT**” means the Contract Documents which represent the entire and integrated agreement between Owner and Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only in writing by a Field Work Directive, Change Order or Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind between:

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

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

- (1) General Conditions;
- (2) Vertical and/or Horizontal specific General Conditions and Special Conditions included by Special Provisions or addenda;
- (3) Drawings;
- (4) Specifications;
- (5) addenda issued prior to the close of the solicitation period; and
- (6) other documents listed in the Contract, including Field Work Directives, Change Orders and/or Amendments;
- (7) a written order for a minor change in the Work issued by Design Consultant and/or Owner, as described in **Article VII** herein.

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

1.1.9 “**CONTRACT TIME**” means, unless otherwise provided, the period of time, including any authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. When the plural (“Contract Times”) is used, it refers to milestones designated in the Work Progress Schedule.

1.1.10 “**CONTRACTOR**” means the entity that has entered into a Contract with Owner to complete the Work. Contractor, as used herein, includes Construction Manager at Risk or other applicable entities performing work under a Contract with City.

1.1.11 “**DAY**” as used in the Contract Documents shall mean Calendar Day, unless otherwise specifically defined. A Calendar Day is a day of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated. A Working Day is a day of eleven hours, as measured from seven o’clock a.m. to six o’clock p.m. on weekdays, except legal holidays, or the hours during which Contractor has been authorized to work by Owner.

- 1.1.12 **“DEPARTMENT”** means the Department of Transportation and Capital Improvements (hereafter referred to as “TCI”), City of San Antonio, Texas or Director of TCI.
- 1.1.13 **“DESIGN CONSULTANT”** unless the context clearly indicates otherwise, means an Engineer, Architect or other Design Consultant in private practice, licensed to do work in Texas and retained for a specific project under a contractual agreement with Owner.
- 1.1.14 **“DRAWINGS”** (also referred to herein as **“Plans”**) are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of Work, generally including elevations, sections, details, schedules and diagrams.
- 1.1.15 **“FIELD WORK DIRECTIVES”** OR **“FORCE ACCOUNT”** is a written order signed by Owner directing a change in the Work prior to agreement an adjustment, if any, in the Contract Sum and/or Contract, as further defined in **Section 7.3** herein.
- 1.1.16 **“HAZARDOUS SUBSTANCE”** is defined to include the following:
- (a) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;
 - (b) any polychlorinated biphenyls (“PCBs”), or PCB-containing materials, or fluids;
 - (c) radon;
 - (d) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
 - (e) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

- (f) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.;
- (g) the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and
- (h) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

- 1.1.17 **“NOTICE TO PROCEED (HEREIN ALSO REFERRED TO AS “WORK PROJECT AUTHORIZATION” OR “NTP”)** is a written notice given by Owner to Contractor establishing the date on which the Contract Time shall commence to run and the date on which Contractor may begin performance of its contractual obligations.
- 1.1.18 **“OWNER”** is defined in **Article II** herein.
- 1.1.19 **“OWNER DESIGNATED REPRESENTATIVE (ODR)”** means the person(s) designated by Owner to act for Owner.
- 1.1.20 **“PROJECT”** means the total design and construction of Work performed under the Contract Documents and may be the whole or a part of the Project and which may include construction by Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the Site of the Work shall use the term “Project,” notwithstanding that the Work only may be a part of the Project.
- 1.1.21 **“PROJECT MANAGEMENT TEAM”** is composed of Owner, its representatives, Design Consultant and Program Manager (if any) for this Work.
- 1.1.22 **“SITE”** means the land(s) or area(s) (as indicated in the Contract Documents) furnished by Owner, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
- 1.1.23 **“SPECIAL CONDITIONS”** are terms and conditions to an Agreement that supplement and are superior to these General Conditions and grant greater authority or impose greater restrictions upon Contractor, beyond those granted or imposed in these General Conditions. City’s Horizontal Special Conditions are attached hereto, made a part of these General Conditions and shall be used as applicable.

- 1.1.24 **“SPECIFICATIONS”** are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.
- 1.1.25 **“SUBSTANTIAL COMPLETION”** is the date certified by Owner and Design Consultant, in accordance with **Section 9.8** herein, when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so as to be operational and fit for the intended use by Owner.
- 1.1.26 **“TEMPORARY BENCH MARKS (TBM)”** are temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.
- 1.1.27 **“THE 3D MODEL”** is the Building Information Model prepared by Design Consultant in the format designated, approved and acceptable to Owner with databases of materials, products and systems that can be used by Contractor to prepare schedules for cost estimating, product and materials placement schedules and evaluations of crash incidences. The 3D Model, if available, may be used as a tool, however all information taken from the Model is the responsibility of Contractor and not Owner or Design Consultant.
- 1.1.28 **“WORK”** means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Contractor, or any Subcontractors, Sub-Subcontractors, material suppliers or any other entities for which Contractor is responsible, to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.
- 1.1.29 **OTHER DEFINITIONS.** As used in the Contract Documents, the following additional terms have the following meanings:
- 1.1.29.1 “provide” means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and all other expenses necessary to complete in place and ready for operation or use;
- 1.1.29.2 “shall” means the mandatory action of the party of which reference is being made;
- 1.1.29.3 “as required” means as prescribed in the Contract Documents; and
- 1.1.29.4 “as necessary” means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes and regulations.

1.2 PRELIMINARY MATTERS

- 1.2.1 Upon the San Antonio City Council's passing of an Ordinance authorizing the issuance of a contract, a Notice of Award Letter shall be sent to Contractor by TCI Contract Services, notifying Contractor of the award of a contract. In its Notice of Award Letter, Contractor shall be informed of a date certain by which Contractor's bond(s) and evidence of insurance shall be delivered to TCI Contract Services.
- 1.2.2 **DELIVERY OF CONTACT AND BONDS.** Not later than the Pre-Construction meeting and prior to the commencement of any Work on the Project, Contractor shall deliver a fully executed Contract to Owner, along with such bonds as Contractor may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in the Contract Documents and these General Conditions and a required performance bond in the form and amount specified in the Contract Documents and these General Conditions.
- 1.2.3 **DELIVERY OF EVIDENCE OF INSURANCE.** Not later than the Pre-Construction meeting, and prior to the commencement of any Work under this Contract, Contractor shall deliver evidence of insurance to Owner. Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the TCI Contract Services Division, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Contractor shall be prohibited from commencing the Work and Owner shall have no duty to pay or perform under this Contract until such evidence of insurance is delivered to Owner. No officer or employee, other than Owner's Risk Management Department, shall have authority to waive this requirement.
- 1.2.4 **NOTICE TO PROCEED AND COMMENCEMENT OF CONTRACT TIMES.** Unless otherwise stated on the Notice to Proceed, the Contract Time shall commence to run on the date stated on the Notice to Proceed. No Work shall commence any earlier than the date stated on Notice to Proceed and no Work shall be performed by Contractor or any Subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Contractor receiving a Notice to Proceed is performed at Contractor's risk.
- 1.2.5 **SUBMISSION OF PROJECT SCHEDULE(S).** Prior to commencement of Work (unless otherwise specified elsewhere in the Contract Documents), Contractor shall submit to the Director of TCI or his/her designee the Project schedule(s), as defined in **Section 3.10** herein, a minimum of fifteen (15) days prior to the Pre-Construction Conference.

- 1.2.6 **PRE-CONSTRUCTION CONFERENCE.** Before Contractor commences any Work on the Project, a Pre-Construction Conference attended by Contractor, Design Consultant, Owner's Designated Representative(s) and others, as appropriate, shall be held to establish a working understanding among the parties as to the Work and discuss, at minimum: the Project Schedule(s) referenced in this **Article 1**; the procedures for handling Shop Drawings and other submittals; the processing of Applications for Payment; and Contractor maintaining required records. The Notice to Proceed may be issued at the Pre-Construction Conference or issued by Owner at any time at Owner's discretion. Said issuance of the Notice to Proceed shall not be unreasonably withheld by Owner.
- 1.2.7 Payments for services, goods, work, equipment and materials are contingent upon and subject to the availability and appropriation of funds and the sale of future City of San Antonio Certificates of Obligation and/or General Obligation Bonds in accordance with adopted budgets. In the event funds are not available, appropriated or encumbered to fund a Project, then, at City's discretion, this Agreement may be terminated immediately with no additional liability to City.

1.3 CONTRACT DOCUMENTS

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

projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. Any such use without written authorization shall be at the sole risk and liability of Contractor. Contractor, Subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant's Consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant's Consultants. Submittal or distribution to meet official regulatory requirements or for other purposes, in connection with this Project, is not to be construed as publication.

- 1.3.2.1 All of Contractor's non-proprietary, documentary Work product, including reports and correspondence to Owner, prepared pursuant to this Contract, shall be the property of Owner and, upon completion of this Contract and upon written request by Owner, promptly shall be delivered to Owner in a reasonably organized form, without restriction on its future use by Owner. For the avoidance of doubt, documentary Work product does not include privileged communications, proprietary information and documents used to prepare Contractor's Bid Proposal.
- 1.3.2.2 Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially-significant Work product lost or destroyed by Contractor shall be replaced or reproduced at Contractor's non-reimbursable sole cost. In addition, Owner shall have access during normal business hours, during the duration this Contract is in effect and for four (4) years after the final completion of the Work, unless there is an ongoing dispute under the Contract, then such access period shall extend longer until final resolution of the dispute, to all of Contractor's records and documents covering reimbursable expenses, actual base hourly rates, time cards and annual salary escalation records maintained in connection with this Contract for purposes of auditing same at the sole cost of Owner. The purpose of any such audit shall be for the verification of such costs. Contractor shall not be required to keep records of, or provide access to, the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers. Nothing herein shall deny Contractor the right to retain duplicates. Refusal by Contractor to comply with the provisions hereof shall entitle Owner to withhold any payment(s) to Contractor until compliance is obtained.
- 1.3.2.3 All of Contractor's documentary Work product shall be maintained within Contractor's San Antonio offices, unless otherwise authorized by Owner. After expiration of this Contract, Contractor's documents may be archived in the Contractor's central record storage facility but shall remain accessible to Owner for the four (4) year period cited in **Section 1.3.22** herein.

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

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

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

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

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

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

1.3.3.4 The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows, with the highest authority listed herein as "1" and in descending order:

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

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

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

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

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

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

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

ARTICLE II. OWNER

2.1 GENERAL

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

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

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER

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

- 2.2.2 Owner shall furnish surveys, if in existence, describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Contractor of any of its duties under the Contract Documents or these General Conditions. Information or services required of Owner by the Contract Documents shall be furnished by Owner with reasonable promptness following actual receipt of a written request from Contractor. It is incumbent upon Contractor to identify, establish and maintain a current schedule of latest dates for submittal and approval by Owner, as required in **Section 3.10** herein, including when such information or services must be delivered. If Owner delivers the information or services to Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse Owner for all extra costs incurred by holding, storage, retention or performance, including redeliveries by Owner in order to comply with the current schedule.
- 2.2.3 Unless otherwise provided in the Contract Documents, Contractor shall be furnished, free of charge, up to **ten (10) complete sets** of the Plans and Specifications by Design Consultant. Additional complete sets of Plans and Specifications, if requested by Contractor, shall be furnished at reproduction cost to Contractor.
- 2.2.4 Owner's personnel may, but are not required to, be present at the construction site during progress of the Work, along with Design Consultant in the performance of its duties, to verify Contractor's record of the number of workers employed on the Work site, the workers' occupational classification, the time each worker is engaged in the Work and the equipment used by the workers in the performance of the Work, for purpose of verification of Contractor's Applications for Payment and payroll records.
- 2.2.5 Owner shall reimburse Contractor for the necessary Project-related approvals, fees and required permits with no markup paid to Contractor for these necessary Project-related approvals, fees and required permits costs unless said costs are stipulated in the Contract Documents as a part of the Work.
- 2.2.6 **OWNER'S RIGHT TO STOP THE WORK.** If Contractor fails to correct Work deemed by Owner to not be in accordance with the requirements of the Contract Documents, as required by **Section 12.3** herein, fails to carry out Work in accordance with the Contract Documents or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction of Owner's rights pursuant to **Section 12.3** herein. Owner's issuance of an order to Contractor to stop the Work shall not give rise to any claim by Contractor for additional time, cost or general conditions costs.

- 2.2.7 **OWNER’S RIGHT TO CARRY OUT THE WORK.** If Contractor defaults, neglects or fails to carry out the Work in accordance with the Contract Documents and fails, within a three (3) work-day period after receipt of written notice from Owner, to commence and continue correction of such default, neglect or failure with diligence and promptness, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies, neglect or failure. In such case, an appropriate Change Order may be issued deducting from payments then or thereafter due Contractor reflecting the reasonable cost of correcting such deficiencies, neglect or failure of Contractor, including all of Owner’s incurred expenses and compensation for Design Consultant’s additional services made necessary by such default, neglect or failure of Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts for the Work performed, Contractor shall pay the difference to Owner.

ARTICLE III. CONTRACTOR

3.1 GENERAL

- 3.1.1 Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means the Contractor or the Contractor’s authorized representative.
- 3.1.2 Contractor shall perform the Work in a good and workmanlike manner, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.
- 3.1.3 Contractor shall not be relieved of its obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents, either by any activities or duties of Design Consultant in Design Consultant’s administration of the Contract or by tests, inspections or approvals required or performed by Owner or any person other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

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

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

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

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

- 3.2.3 Any design errors or omissions noted by Contractor during its review promptly shall be reported to Owner, but it is recognized that the Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain if Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to Contractor promptly shall be reported both to Owner and Design Consultant.
- 3.2.4 If Contractor believes additional cost or time is involved because of clarifications or instructions issued by Design Consultant, in response to the Contractor's Notices or Requests for Information, Contractor shall make Claims as provided in **Section 4.3.6** and **Section 4.3.7** herein. If Contractor fails to perform the obligations of **Section 3.2.1** and **Section 3.2.2** herein, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had performed such obligations. Contractor shall not be liable to Owner or Design Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents, unless Contractor recognized or should have recognized such error, inconsistency, omission or differences and knowingly failed to report it to Owner and Design Consultant, as required by this **Section 3.2.4**.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.1 Contractor shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a reasonably prudent Contractor, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor solely shall be responsible for the means, methods, techniques, sequences, procedures and coordination of all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods and/or techniques, Contractor then shall evaluate the jobsite safety thereof and, except as stated herein below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If, upon its evaluation, Contractor determines such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give timely written notice to Owner and Design Consultant and Contractor shall not proceed with that portion of the Work without further written instructions from Owner. Sequencing and procedures shall be coordinated and agreed upon by Owner, Design Consultant and Contractor.
- 3.3.2 Contractor shall be responsible to Owner for the acts and omissions of Contractor's agents and employees, Subcontractors and their agents and employees and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors.

- 3.3.3 Contractor shall be responsible for inspection of portions of Work already performed, to determine which such portion are in proper condition to receive subsequent Work.
- 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq.
- 3.3.5 It is understood and agreed the relationship of Contractor to Owner shall be of an independent contractor. Nothing contained or inferable in the Contract documents shall be read, deemed or construed to make Contractor the agent, servant or employee of Owner or create any partnership, joint venture or other association between Owner and Contractor. Any direction or instruction by Owner, in respect of the Work, shall relate to the results the Owner desires to obtain from the Work and shall in no way affect Contractor's independent contractor status, as described herein.
- 3.3.6 Contractor shall review Subcontractor(s) written safety programs, procedures and precautions in connection with performance of the Work. However, Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations and ordinances, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this **Section 3.4.6** are not intended to impose upon Contractor any additional obligations Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations or statutes pertaining to the Occupational Safety and Health Administration.

3.4 LABOR AND MATERIALS

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

3.4.2 **PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.** The Provisions of Chapter 2258 of the Texas Government Code, and the “Wage and Labor Standard Provisions” amended in City of San Antonio Ordinance 2008-11-20-1045, expressly are made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this Contract shall be obtained by Contractor from the City of San Antonio’s Labor Compliance Office and included in Contractor’s Project bid package, prior to Contractor bidding of the Project and such schedule shall become a part hereof. Contractor shall forfeit, as a penalty to Owner, sixty dollars (\$60.00) for each laborer, worker or mechanic employed for each calendar day, or portion thereof, in which such laborer, worker or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Contractor or any Subcontractor employed on the project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Contractor from its obligation under any federal or state law, regarding the wages to be paid to or hours worked by laborers, workers or mechanics, insofar as applicable to the work to be performed hereunder. Contractor, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Contractor agrees it shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This Contract provision shall be included in its entirety in all Subcontractor agreement entered into by the Contractor or any Subcontractor employed on the project.

3.4.3 **SUBSTITUTIONS**

3.4.3.1 Contractor’s proposed substitutions and alternates may be rejected by Owner without explanation and shall be considered by Owner only under one or more of the following conditions:

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

3.4.3.2 Contractor shall submit to Owner and Design Consultant:

- (a) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures and other like information necessary for a complete evaluation of the substitution;
- (b) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and to the Work, in the event the substitution is acceptable to Owner;
- (c) the adjustment, if any, in the Contract Sum;
- (d) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and
- (e) in the event of a substitution under **Section 3.4.2.1** herein, an affidavit stating:
 - (1) Contractor's proposed substitution conforms to and meets all the requirements of the pertinent Specifications and requirements shown on the Drawings; and
 - (2) Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by Design Consultant.

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

3.4.3.3 In the event of a substitution submittal under this **Section 3.4.3**, and whether or not any such proposed substitution is accepted by Owner or Design Consultant, Contractor shall reimburse Owner, at Owner's reasonable discretion, for any fees incurred and charged by Design Consultant or other Consultants for evaluating each proposed substitute.

3.4.3.4 Except as otherwise stipulated in the Contract Documents or required for safety or protection of persons or the Work or property at the Site or adjacent thereto, no Work shall be allowed by Owner between the hours of 10:00 p.m. and 6:00 a.m. of the following calendar day, unless directed by the ODR or requested in writing by Contractor and approved by Owner.

- 3.4.4 Contractor shall, at all times, enforce strict discipline and good order among persons working on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the assigned work. Contractor shall be liable for and responsible to Owner for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone who Contractor may allow to perform any Work on the Project and their respective officers, agents, employees, and Consultants who Contractor may allow to come on the job site, with the exception of Owner or Owner's Designee. Owner, at any time, for any reason or for no reason, may direct Contractor to remove any employee, Subcontractor, material supplier or anyone else from the Project and Contractor promptly shall comply with Owner's direction. In addition, if Contractor receives written notice from Owner complaining about any Subcontractor, employee or anyone who is a hindrance to the proper or timely execution of the Work, Contractor shall remedy such complaint without delay to the Project and at no additional cost to Owner. This provision shall be included in all contracts between Contractor and all Subcontractors of all tiers.
- 3.4.5 Contractor recognizes and acknowledges that the Project Site is a public facility representing the City of San Antonio. As such, Contractor shall prohibit the possession or use of alcohol, controlled substances, tobacco and any prohibited weapons on the Project Site and shall require appropriate dress of Contractor's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Contractor or any Subcontractor, employees or Consultants of Owner or of any visitor to the Project site, by Contractor, employee(s) of Contractor, a Subcontractor or an employee of Subcontractor strictly is forbidden. Any person, Contractor, employee of Contractor, Subcontractor or employee of Subcontractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Contractor and/or City, including the removal and exclusion of the violating person(s) or employee(s) of Contractor or Subcontractor from the Project Site and, if City so elects, termination from the Project.
- 3.4.6 Contractor only shall employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project.
- 3.4.7 All materials and installed equipment shall be as specified in the Contract Documents, and if not specified, shall be of good quality and shall be new, except as otherwise provided in the Contract Documents. If required by Owner or Design Consultant, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment installed. Contractor may make substitutions only with the consent of Owner, after Contractor's compliance with **Section 3.4.2** herein.

- 3.4.8 All materials shall be shipped, stored and handled in a manner which shall protect and ensure their condition at the time of incorporation in the Work. After installation, all materials shall be properly protected against damage to ensure they are in the condition as required by **Section 3.5.1** herein when the Work is Substantially Completed or Owner takes over use and occupancy, whichever is earlier.
- 3.4.9 Contractor shall procure and furnish to Owner all guarantees, warranties, spares and maintenance manuals called for by the Specifications or which normally are provided by a manufacturer. The maintenance manual shall include a catalog for any equipment, materials, supplies or parts used in the inspection, calibration, maintenance or repair of the equipment and items in the catalog shall be readily available for purchase.
- 3.4.10 During construction of the Work and for four (4) years after final completion or longer if, during the duration of this Contract or during the four (4) years after the final completion of the Work, a dispute between any parties to this Project exists, Contractor shall retain and shall require all Subcontractors to retain for inspection and audit by Owner all books, accounts, reports, files, time cards, material invoices, payrolls and evidence of all other direct or indirect costs related to the bidding and performance of this Work. Upon request by Owner, a legible copy or the original of any or all such records shall be produced by Contractor at the administrative office of Owner. To the extent that it requests copies of such documents, Owner shall reimburse Contractor and its Subcontractors for copying costs. Contractor shall not be required to keep records of or provide access to the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers.

3.5 WARRANTY

- 3.5.1 Contractor warrants to Owner materials and equipment furnished and installed under the Contract shall be of good quality and new, unless otherwise required or permitted by the Contract Documents, the Work shall be free from defects not inherent in the quality required or permitted and the Work shall conform to the requirements of the Contract Documents. Work not conforming to this warranty and these requirements, including substitutions not properly approved and authorized by Owner, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by Owner's failure to promptly notify Contractor. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 3.5.2 A right of action by Owner for any breach of Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Contract at law or in equity, regarding any defective Work.

- 3.5.3 The warranty provided in **Section 3.5.1** herein shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Such warranty shall be interpreted to require Contractor, upon written timely demand by Owner, to replace defective materials and equipment and re-execute any defective Work disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the applicable Work or, in the event of a latent defect, within one (1) year after discovery thereof by Owner.
- 3.5.4 All warranties shall be assignable by Owner. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.
- 3.5.5 Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law or by manufacturer, all warranties shall be at minimum for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to Owner. Owner and Contractor acknowledge that the Project may involve construction work on more than one (1) building or section of infrastructure of Owner's. While the entire Project will have a single date for Substantial Completion of the Work, each building, section of infrastructure or approved phase of each section of infrastructure may have its own separate and independent date of Substantial Completion or Final Completion.
- 3.5.6 If separate dates for Substantial Completion and Final Completion are granted by Owner as a result of Owner electing partially to occupy areas prior to the Project's date for Substantial Completion, Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion and, if Owner accepts partial occupancy of those completed areas, the dates upon which the one (1) year warranty on each building, phase or section of infrastructure that achieved Substantial Completion shall expire. If separate dates are granted, Contractor agrees to provide notice of the warranty expiration date(s) to Owner and Design Consultant at least one (1) month prior to the expiration of the one (1) year warranty period on each building, section of infrastructure or each phase of the section of infrastructure which has achieved Substantial Completion.
- 3.5.7 Prior to termination of any one (1) year warranty period, Contractor shall accompany Owner and Design Consultant on re-inspection of the building, section of infrastructure or phase of the section of infrastructure and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building, section of infrastructure or phase of the section of infrastructure observed and/or reported during the re-inspection.

- 3.5.8 For extended warranties required by the Contract Documents, Owner shall notify Contractor of deficiencies and Contractor shall start remedying these defects within seven (7) calendar days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by Owner and Design Consultant, even though such prosecution may extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date and conduct the required walk through with Owner, Contractor's warranty obligations described in this **Section 3.5.5** shall continue until such inspection is conducted and any deficiencies found in the inspection is corrected.
- 3.5.9 Warranties shall become effective on a date established by Owner in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment and those occurrences addressed in **Section 3.5.4** herein. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to Final Completion shall become effective on the later of the date the Work is completed or corrected and accepted by Owner and Design Consultant or the date of final completion of the Work.
- 3.5.10 Neither final payment nor compliance by Contractor with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve Contractor or its sureties of liability, with respect to any warranties or responsibility for faulty materials and workmanship. Contractor warrants that the Work shall conform to the requirements of the Contract Documents.
- 3.5.11 Contractor agrees to assign to Owner, at the time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties, provided that such assignment shall contain a reservation of Contractor's right also to enforce the manufacturer's warranties. As a condition precedent to final payment, Contractor shall prepare a notebook with reference tabs and submit three (3) copies of the notebook to Owner that includes a complete set of warranties from Subcontractors, manufacturers or suppliers, as appropriate, and executed by and between Contractor and Owner, as required under this Agreement, with a specified warranty commencement date, as required by the Contract Documents. Copies of the complete set of warranties from Subcontractors, manufacturers and/or suppliers, as appropriate, executed by Contractor as required by the Contract Documents, with and between Owner and Contractor. A specified warranty commencement date, as required by the Contract Documents, also shall be submitted to Owner in an electronic format (PDF) on a Compact Disc (CD).

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

3.6 TAXES. Contractor shall not include in the Contract Sum or any modification thereto any amount for sales, use or similar taxes for which Owner is exempt. Upon request by Contractor, Owner shall provide Contractor with a tax exemption certificate or other documentation necessary to establish Owner's exemption from such taxes.

3.7 PERMITS, FEES AND NOTICES

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

3.7.2 Contractor shall comply with and give all notices required by law, ordinance, rule, regulations and lawful orders of public authorities applicable to performance of the Work.

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

3.7.4 If Contractor performs Work knowing Work is contrary to laws, statutes, ordinances, building codes and rules and regulations, without such notice to and approval from Owner and Design Consultant, Contractor shall assume sole responsibility for performing such Work and shall bear all costs attributable to correct such Work.

- 3.7.5 Contractor also shall assist Owner in obtaining all permits and approvals and, at Owner's request, pay all fees and expenses, if any, associated with TPDES regulations of the Texas Commission on Environmental Quality, as well as local authorities, if applicable, which require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for a Project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the Project Site. However, any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. It shall be Contractor's responsibility to prepare and submit the permit approval documentation provided by the regulatory agencies prior to beginning any Work.

3.8 ALLOWANCES

- 3.8.1 Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as Owner may direct, but Contractor shall not be required to employ persons or entities to whom Contractor has reasonable objection.
- 3.8.2 Unless otherwise provided in the Contract Documents:
- 3.8.2.1 Allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- 3.8.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses, contemplated for stated allowance, shall be included in the allowances;
- 3.8.2.3 Whenever actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect both the difference between actual costs and the allowances under **Section 3.8.2.1** herein and all changes in Contractor's costs under **Section 3.8.2.2** herein.
- 3.8.3 Materials and equipment under an allowance shall be selected by Owner within such time as is reasonably specified by Contractor as necessary to avoid any delay in the Work.

3.9 SUPERINTENDENT/KEY PERSONNEL

- 3.9.1 At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who is able to communicate fluently in English, along with any necessary assistant(s) who is/are satisfactory to Owner. Any superintendent designee shall be identified in writing to Owner promptly after Owner issues written Notice to Proceed. The superintendent shall represent Contractor at all time and all directions given to the superintendent shall be binding on Contractor. The designated superintendent shall not be replaced without written notice to and the approval of Owner, which approval shall not be unreasonably withheld, except with good reason (including any termination or disability of the superintendent) or under extraordinary circumstances. The superintendent may not be employed on any other project prior to Final Completion of the Work without the approval of Owner, which approval shall not be unreasonably withheld.
- 3.9.2 Contractor shall furnish a list to Design Consultant and Owner of all Architects, Engineers, Consultants, Sub-Consultants, job-site superintendents, Subcontractors and suppliers involved in the Project construction. Design Consultant also shall provide said information to Owner.
- 3.9.2.1 Owner, upon the showing of good and reasonable cause, may reject or require removal of any Architect, Engineer, Consultant, sub-Consultant, job superintendent, employee of the Contractor, Subcontractor or sub-Subcontractor and/or supplier involved in the Project.
- 3.9.2.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to remove from the Project any employee(s) Owner, at its sole discretion, deems incompetent, careless, insubordinate, unnecessary or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, sub-Subcontractors and their employees.
- 3.9.2.3 Owner reserves the right to utilize one or more of its employees or Consultants to function in the capacity of Owner's Inspector, whose primary function shall be daily inspections, checking pay requests or construction timelines and the verification of the storage of supplies and materials.
- 3.9.2.4 Contractor shall not change any key personnel or key Subcontractors without the prior written consent of Owner, which consent shall not be unreasonably withheld. In the event key personnel leaves Contractor's employment, such key personnel's replacement shall be subject to Owner's reasonable approval.

3.10 CONTRACTOR'S PROJECT SCHEDULES

- 3.10.1 **PROJECT SCHEDULE METHOD.** Contractor shall create and maintain a Critical Path Method (hereafter referred to as "CPM") Project Schedule, showing the manner of execution of Work which Contractor intends to follow, in order to complete the Project within the allotted time. The Project Schedule shall employ computerized CPM for the planning, scheduling and reporting of Work, as described in this **Section 3.10**. Contractor shall create and maintain the Project Schedule using project management scheduling software compatible with Owner's project management scheduling software. The observance of the requirements herein is an essential part of the Work to be performed under the Contract.
- 3.10.2 **SCHEDULING PERSONNEL.** Unless otherwise indicated in writing by Owner, Contractor shall provide an individual, who shall be referred to hereafter as "Scheduler", to create and maintain the Project Schedule. Scheduler shall be proficient in CPM analysis, possess sufficient experience to be able to perform required tasks on the specified software and able to prepare and interpret reports from the software. Scheduler shall be made available for discussion or meetings when requested by Owner.
- 3.10.3 **PROJECT SCHEDULE SUBMISSION**
- 3.10.3.1 Unless indicated otherwise, Contractor shall submit Project Schedule(s) for the Work in relation to the entire Project to Owner and Design Consultant at least fifteen (15) calendar days prior to the pre-construction conference.
- 3.10.3.2 All Project Schedule submittals shall be in the electronic form to include PDF plots of the schedule, a PDF plot defining the Critical Path and two week look-ahead, and include the native compatible scheduling file format. Contractor shall submit the schedule to Owner and Design Consultant via electronic mail, CD-Rom or any other electronic format acceptable to Owner.
- 3.10.3.3 This initial schedule shall indicate the dates for starting and completing the various aspects/phases required to complete the Work, including mobilization, procurement, installation, testing, inspection and acceptance of all the Work of the Contract, including any contractually mandated milestone dates. The Project Schedule shall not exceed the time limits set forth in the Contract Documents. Contractor shall organize the Project Schedule and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

- 3.10.3.4 The Project Schedule shall show the order in which Contractor proposes to carry out the Work in accordance with the final approved phasing plan, if any, and the anticipated start and completion dates of each phase of the Work. The Project Schedule shall be in the form of a time scaled work progress chart, to indicate the percentage of Work scheduled for completion at various critical milestones.
- 3.10.3.5 Contractor shall maintain a schedule of Shop Drawings and Sample Submittals and each submitted Shop Drawing and Sample Submittal shall list each required submittal and the expected time(s) for submitting, reviewing and processing such submittal.
- 3.10.3.6 Owner shall review the Project Schedule within fifteen (15) calendar days for compliance with the specifications and notify Contractor of its acceptability.
- 3.10.4 **PROJECT SCHEDULE SEQUENCING.** The Project Schedule shall show the sequence and interdependence of activities required for complete performance of the Work. Contractor shall be responsible for assuring all Work sequences are logical and show a coordinated plan of Work in accordance with the sequence of work outlined in the plans. The purpose of Owner requiring the Project Schedule shall be to:
- 3.10.4.1 Ensure adequate planning during the execution and progress of the Work in accordance with the allowable number of calendar days and all milestones;
- 3.10.4.2 Assure coordination of the efforts of Contractor, Owner, utilities and others that may be involved in the Project and those activities are included in the Schedule highlighting coordination points with others;
- 3.10.4.3 Assist Contractor and Owner in monitoring the progress of the Work and evaluating proposed changes to the Contract; and
- 3.10.4.4 Assist Owner in administering the Contract time requirements.
- 3.10.5 **PROJECT SCHEDULE ACTIVITIES.** Contractor shall provide Owner a legend for all abbreviations used. The activities shall be coded so that organized plots of the Project Schedule may be produced. Typical activity coding includes traffic control phase, location and work type. Contractor shall show an estimated production rate per working day for each Work activity. Activity durations shall be based on production rates shown. Each activity on the Project Schedule shall include:
- 3.10.5.1 An activity number utilizing an alphanumeric designation system that is agreeable to Owner;

- 3.10.5.2 A concise description of the Work represented by the activity; and
- 3.10.5.3 Activity durations in whole work days, with a maximum of twenty (20) work days. Durations greater than twenty (20) work days may be used for non-construction activities (mobilization, submittal preparation, curing, etc.), and other activities mutually agreeable between Owner and Contractor.

3.10.6 **PROJECT SCHEDULE WORK DURATION AND RESOURCES**

- 3.10.6.1 The Project Schedule layout shall be grouped by Project and then by Work Breakdown Structure (hereafter referred to as “WBS”) for organizational purposes.
- 3.10.6.2 The original and remaining Work duration shall be displayed. The grouping band shall, by default, report Work days planned. One additional level of effort activity shall be added to the schedule as a “time calculator” with a seven (7) day calendar without holidays reflected. The calculation of days should be reflected in the appropriate duration columns.
- 3.10.6.3 Work shall be scheduled based upon Contractor’s standard five (5) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software.
- 3.10.6.4 Assign working calendars for the days Contractor plans to work. Contractor shall designate all twelve (12) Owner holidays as non-working days (holidays). For dates beyond the then-current calendar year, Contractor shall assume Owner holidays are the same as the current calendar year.
- 3.10.6.5 Seasonal weather conditions shall be considered and included in the Project Schedule for all work influenced by temperature and/or precipitation. Seasonal weather conditions shall be determined by an assessment of average historical climatic conditions. Average historical weather data is available through the National Oceanic and Atmospheric Administration (hereafter referred to as “NOAA”). These effects shall be simulated through the use of work calendars for each major work type (i.e., earthwork, concrete paving, structures, asphalt, drainage, etc.). Project and work calendars should be updated each month to show days actually able to work on the various work activities.
- 3.10.6.6 Only Owner-responsible delays in activities that affect milestone dates or the Contract completion date, as determined by CPM analysis, shall be considered for a time extension.

3.10.7 **PROJECT SCHEDULE - OTHER REQUIREMENTS.** The Project Schedule shall:

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

3.10.8 **PROJECT SCHEDULE JOINT REVIEW AND ACCEPTANCE**

- 3.10.8.1 The Project Schedule and successive updates or revisions thereof are for Contractor's use in managing the Work. The Project Schedule is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's acceptance of a Schedule and Schedule updates or revisions constitutes Owner's agreement to coordinate its own activities with Contractor's activities, as shown on the schedule.
- 3.10.8.2 Within fifteen (15) calendar days of receipt of Contractor's proposed Project Schedule, Owner shall evaluate the Schedule for compliance with this specification and notify Contractor of its findings. If Owner requests a revision or justification, Contractor shall provide satisfaction to Owner within seven (7) calendar days. If Contractor submits a Project Schedule for acceptance, based on a sequence of work not shown in the plans, Contractor shall notify Owner in writing of said sequence of work, separate from the Schedule submittal.

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

3.10.9 **PROJECT SCHEDULE UPDATES AND REVISIONS**

- 3.10.9.1 The Project Schedule shall be updated monthly, at a minimum, to reflect progress to date and current plans for completing the Work. A paper and an electronic copy of the update shall be submitted to Owner and Design Consultant as directed. Owner has no duty to make progress payments to Contractor unless Contractor's payment application accompanied by the updated Project Schedule. The anticipated date of Substantial Completion shall show all extensions of time granted through Change Order(s) as of the date of the update.

- 3.10.9.2 The Project Schedule update shall be submitted no later than the date the pay application is submitted.
- 3.10.9.3 Contractor shall meet with Owner each month, at a scheduled Project Schedule update meeting, to review actual progress made through the data date of the schedule update, as determined by Owner. The review of progress shall include dates of activities actually started and/or completed, the percentage of Work completed, the remaining duration of each activity started and/or completed and the amount of Work still to complete, with an analysis of the relationship between the remaining duration of the activity and the quantity of material to install over that given period of time with a citation of past productivity.
- 3.10.9.4 The monthly Schedule Update shall include a progress narrative, explaining the Project's progress, identifying all progress made out of sequence, defining the Critical Path, identification of any potential delays, and other relevant data. A Project Schedule Narrative template shall be required for the narrative. Upon request, Owner shall supply said template to Contractor.
- 3.10.9.5 Each Schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by Contractor, Owner and Design Consultant. The Project Schedule layout shall be grouped first by Project then by WBS. The layout shall include the following columns:
- (1) Activity ID
 - (2) Activity Description
 - (3) Original Durations
 - (4) Remaining Durations
 - (5) Early Start and Early Finish Dates
 - (6) Late Start and Late Finish Dates
 - (7) Total Float
 - (8) Performance Percent Complete
 - (9) Display logic and target bars in the Gantt bar chart view
- 3.10.9.6 Each schedule shall include activities representing manufacturing, fabrication or ordering lead time for materials, equipment or other items for which Design Consultant is required to review submittals, shop drawings, product data or samples.

- 3.10.9.7 Each schedule, other than the initial schedule, shall:
- (1) indicate the activities, or portions thereof, which have been completed;
 - (2) reflect the actual time for completion of such activities; and
 - (3) reflect any changes to the sequence or planned duration of all activities.
- 3.10.9.8 If any updated schedule exceeds the time limits set forth in the Contract Documents for Substantial Completion of the Work, Contractor shall include, along with its updated schedule, a statement of the reasons for the anticipated delay in achieving Substantial Completion of the Work and Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If Contractor asserts that the failure of Owner or Design Consultant to provide requested and required information to Contractor as the reason for anticipated delay in completion, Contractor also shall specify what information has been requested and is required from Owner or Design Consultant.
- 3.10.9.9 Neither Owner nor Contractor shall have exclusive ownership of float time in the schedule and all float time shall inure to the benefit of the Project.
- 3.10.9.10 Submission of any schedule under this Contract constitutes a representation by Contractor that, as of the date of the submittal:
- (1) the schedule represents the sequence in which Contractor intends to prosecute the remaining Work;
 - (2) the schedule represents the actual sequence and duration used to prosecute the completed Work;
 - (3) to the best of its knowledge and belief, Contractor is able to complete the remaining Work in the sequence and time indicated; and
 - (4) that Contractor intends to complete the remaining work in the sequence and time indicated.

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

3.10.10 COMPLETION OF WORK

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

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

- (1) increasing Project work forces;
- (2) increasing Project equipment or tools;
- (3) increasing the hours of work or number of shifts per day;
- (4) expediting the delivery of Project materials;
- (5) changing, with the approval of Owner, the schedule logic and Work sequences; or
- (6) taking some other action as Contractor may propose, if acceptable to Owner.

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

3.10.10.4 Should Owner deem Contractor's plan of action inadequate to achieve the desired acceleration to bring the Work back on the Project Schedule and achieve Substantial Completion on time, Owner shall have the right to order Contractor, at Contractor's sole expense, to take any corrective measures Owner deems necessary to expedite the progress of Work including, without limitations:

- (1) increasing work forces and hours, to include Contractor working additional shifts of overtime;
- (2) supplying additional manpower, equipment and facilities;
- (3) re-sequencing the Work;
- (4) expediting the fabrication and supply of materials; and/or
- (5) other similar measures Owner may direct (hereafter **(1) – (5)** herein collectively referred to as "Extraordinary Measures").

Such Extraordinary Measures Owner directs shall continue until the progress of the Work complies with the Milestone required by the Contract Documents.

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

3.10.10.6 Owner may exercise the rights furnished pursuant to this **Section 3.10.5** as frequently as Owner deems necessary to ensure Contractor's performance of the Work is in compliance with any milestone date or completion date(s) set forth in the Contract Documents.

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

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

3.10.11 PROJECT SCHEDULE TIME IMPACT ANALYSIS

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

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

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

- (1) Establish the status of the Project before the impact using the most recent Project Schedule Update prior to the impact occurrence.
- (2) Predict the effect of the impact on the most recent Project Schedule Update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.
- (3) Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing and mitigation efforts.
- (4) Compare the status of the work prior to the impact (**#1 above**) to the prediction of the effect of the impact (**#2 above**), and to the status of the work during and after the effects of the impact are over (**#3 above**). Note that if an impact causes a lack of access to a portion of the Project, the effects of the impact may extend to include a reasonable period for remobilization.

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

3.11 DOCUMENTS AND SAMPLES AT THE SITE

- 3.11.1 Contractor shall maintain, on Site and for Owner's use, one record copy of the Drawings, Specifications, Addenda, Change Orders and other Amendments, in good order and currently marked, to record field changes and selections made during construction, along with one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These record copies also shall be available to Design Consultant and shall be delivered to Design Consultant for submittal to Owner upon completion of the Work.
- 3.11.2 Contractor shall at all times maintain job records including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries and job meeting minutes applicable to the Project. Contractor shall make such reports and records available for inspection by Owner, Design Consultant and/or their respective agents, during normal business hours if requested by Owner.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 3.12.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared and furnished by Contractor or its agents, manufacturers, suppliers or distributors and which illustrate and detail some portion of the Work.
- 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.
- 3.12.3 Samples are physical samples of materials, equipment or workmanship that are representative of some portion of the Work, furnished by the Contractor to Owner to assist Owner and Design Consultant in the establishment of workmanship and quality standards by which the Work shall be judged.

- 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittals is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Design Consultant is subject to the limitations of **Section 4.2.8** herein. Informational submittals, upon which Design Consultant is not expected to take responsive action, may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Design Consultant without action.
- 3.12.5 Contractor shall review for compliance with the Contract Documents, approve and submit to Design Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by Design Consultant without action.
- 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that it has determined and verified materials, field measurements and filed construction criteria related thereto, or shall do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 3.12.7 Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal and review has been approved by Design Consultant. Design Consultant shall review and return such submittals within ten (10) calendar days or within a reasonable period so as to not delay the project.
- 3.12.8 The Work shall be in accordance with approved submittals, except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Design Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor specifically has informed Design Consultant in writing of such deviation at the time of submittal and:
- (1) Design Consultant has given written approval in the specific deviation as a minor change in the Work; or
 - (2) a Change Order or Field Work Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Design Consultant's approval thereof.

- 3.12.9 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Design Consultant on previous submittals. In the absence of such written notice, Design Consultant's approval of a resubmission shall not apply to such revisions.
- 3.12.10 Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services specifically are required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment specifically are required of Contractor by the Contract Documents, Owner and Design Consultant shall specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly Texas-licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Design Consultant. Owner and Design Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Design Consultant have specified to Contractor all performance and design criteria that such services must satisfy. Pursuant to this **Section 3.12.10**, Design Consultant shall review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Documents. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

- 3.13.1 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- 3.13.2 Contractor shall not load nor permit any part of any structure to be loaded in any manner that shall endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that shall endanger it.

- 3.13.3 Contractor shall abide by all applicable rules and regulations of Owner with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by Owner.
- 3.13.4 Contractor shall provide access to residents and businesses affected by the construction of this Project to the greatest extent possible, including providing temporary base and asphalt as needed.
- 3.13.5 Contractor shall erect and maintain on Site a Project Bulletin Board, accessible to all Contractor and Subcontractor employees, upon which Contractor shall post and maintain, throughout the Project's duration, all employment and safety information required by law and Contractor shall include information listing Contractor's bonding and insurance agencies/providers, to include agency contact names, address and telephone numbers.
- 3.13.6 As applicable, Owner shall have appropriate Temporary Bench Marks (hereafter referred to as "TBM") and a baseline (for both horizontal and vertical projects, as applicable) established. As of the date of the Notice To Proceed, it shall be Contractor's responsibility to protect, preserve and reestablish (if required) the TBM and/or baseline. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5".
- 3.13.7 As applicable, Contractor shall layout its work from an established baseline and TBM indicated on the drawings and shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout any part of the work. Contractor shall provide cut sheets to Owner's inspector at minimum seven (7) calendar days prior to construction of street and drainage work. Contractor shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for SAWS Work, if present. Contractor shall provide cut sheets for improvements where Sewer profiles are provided for various phases of the project and cut sheets for Water profiles, if applicable. Contractor shall provide staking and preparation of cut sheets after receiving notice to proceed from Owner. If present, Contractor shall provide SAWS with cut sheets at minimum (7) calendar days prior to commence of SAWS work. Contractor shall be responsible for maintaining and preserving a baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, Contractor shall replace them at its own expense. At the end of construction of the Project, Contractor shall provide Owner a grade certificate prepared by a Registered Professional Land Surveyor. This certificate shall state that the infrastructure is constructed in accordance to the construction documents or as approved by Owner and the Engineer of Record, which is noted on the record plan set.

3.14 CUTTING AND PATCHING

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

3.15 CLEANING UP

- 3.15.1 During the progress of the Work, Contractor shall keep the Project Site and surrounding area including, but not limited to, creeks, drainage channels, easements and private property free from accumulations of waste materials, rubbish and other debris resulting from the Work. As applicable, Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. If Contractor fails to clean up as provided in the Contract Documents, Owner may elect to do so and all costs incurred by Owner shall be paid by Contractor.
- 3.15.2 Prior to Substantial Completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project Site clean and ready for occupancy by Owner. As applicable, Contractor shall clean, sweep, mop, brush and polish, to Owner's satisfaction, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. Contractor shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If Contractor fails to clean up the premises as provided in the Contract Documents, Owner may elect to do so and all costs incurred by Owner shall be paid by Contractor.

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

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

3.18 INDEMNITY PROVISIONS

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

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

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

the defense of Contractor against any claim of infringement for the duration of Contractor's legal defense.

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

- (1) procure for Owner the right to continue using said deliverable and/or materials;
- (2) modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect Owner's intended use of the deliverable and/or materials as contemplated hereunder);
- (3) replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to Owner; or
- (4) if none of the foregoing alternatives is reasonably available to Contractor, upon written request, Owner shall return the deliverable and/or materials in question to Contractor and Contractor shall refund all monies paid by Owner, with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this **Section 3.18** shall fail to satisfy the third-party claimant, these actions shall not relieve Contractor from its defense and indemnity obligations set forth in this **Section 3.18**.

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

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

3.18.7 **OTHER PROVISIONS REGARDING INDEMNITY**

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

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

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

3.18.8 **DEFENSE COUNSEL.** Owner shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify Owner, unless such right is expressly waived by Owner in writing. Contractor shall retain Owner-approved defense counsel within ten (10) calendar days of Owner's written notice that Owner is invoking its right to Indemnification under this Contract. If Contractor fails to retain counsel within such time period, Owner shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by Owner. Owner also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

- 3.19.1 is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
 - 3.19.2 is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
 - 3.19.3 is authorized to do business in the State of Texas and properly is licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work and the site of the Project;
 - 3.19.4 is acting within its duly authorized powers to execute this Contract and execute the performance and obligations thereof; and
 - 3.19.5 had directed its duly authorized representative(s) to visit the Site of the Work, familiarize itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.
- 3.20 **BUSINESS STANDARDS.** Contractor, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees, Subcontractors and agents in their relations with Owner's employees, Consultants, agents, representatives, vendors, Subcontractors, other third parties and those relating to the placement and administration of purchase orders and subcontracts.

ARTICLE IV. ADMINISTRATION OF THE CONTRACT

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

4.2 ROLES IN ADMINISTRATION OF THE CONTRACT

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

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

Design Consultant only shall have authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified in writing by Owner in accordance with other provisions of the Contract Documents.

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

4.2.3 Neither Design Consultant nor Owner shall have control over, charge of nor be responsible for the construction means, methods or techniques, or for the safety precautions, quality control program and other programs in connection with the Work, since these solely are Contractor's rights and responsibilities under the Contract Documents. Sequencing and procedures shall be coordinated and agreed upon by Owner, Design Consultant and Contractor and shall remain the responsibility of Contractor for implementation.

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

- 4.2.5 Owner and Contractor shall endeavor to communicate with each other directly, through Design Consultant and/or through the ODR about matters arising out of or relating to the Contract. Communications by and with Design Consultant's Consultants shall be through Design Consultant. Communications by Owner and Design Consultant with Contractor's employees Subcontractors and material suppliers shall be through Contractor. All communications by and with Owner's separate contractors shall be through Owner.
- 4.2.6 Design Consultant shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Design Consultant shall perform these reviews in a timely fashion so as to not delay the Work. Design Consultant promptly shall respond to submittals such as Shop Drawings, Product Data and Samples pursuant to the procedures set forth in the Project Specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. Design Consultant's review of Contractor's submittals shall not relieve the Contractor of the obligations under **Sections 3.3, 3.5 and 3.12** herein. Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Design Consultant, any construction means, methods, techniques, sequences or procedures. Design Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.2.7 Upon written request of Owner or Contractor, Design Consultant shall issue its interpretation of the requirements of the plans and specifications. Design Consultant's response to such requests shall be made in writing within a time limit agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of Design Consultant shall be furnished in compliance with this **Section 4.2**, then no delay shall be recognized on account of any failure by Design Consultant to furnish such interpretations except for actual substantiated delays, for which Contractor is not responsible, occurring more than fifteen (15) calendar days after written request is made for the interpretations.
- 4.2.8 Interpretations and decisions of Design Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.
- 4.2.9 Design Consultant's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by Owner.

4.3 CLAIMS AND DISPUTES

- 4.3.1 **DEFINITION.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief, with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. Except as contemplated by **Section 8.2** herein, every Claim of Contractor, whether for additional compensation, additional time or other relief including, but not limited to, claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Contractor by his/her signature) of Contractor, verifying the truth and accuracy of the Claim. The responsibility to substantiate a Claim shall rest with the party making the Claim.
- 4.3.2 **TIME LIMIT ON CLAIMS.** Except for those Claims resulting from unusually severe weather, as addressed in **Section 4.3.6** herein, Contractor Claims must be initiated within fifteen (15) calendar days after occurrence of the event giving rise to such Claim. Claims by Contractor must be submitted by written notice to both Owner and Design Consultant. Claims by Owner must be submitted by written notice to Contractor. Failure by Contractor to submit written notice of the claim within fifteen (15) calendar days shall constitute a waiver of such claim.
- 4.3.3 **CONTINUING CONTRACT PERFORMANCE.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in **Sections 4.5.1, Section 9.7.1** and **Article 14** herein, Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make payments in accordance with the Contract Documents.
- 4.3.4 **CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS.** If conditions are encountered at the Site which either are subsurface or are otherwise concealed physical conditions which were not known to Contractor and which differ materially from those indicated in the Contract Documents or in the reports of investigations and tests of subsurface and latent physical conditions provided by Owner to Contractor prior to the preparation by Contractor of its Bid, as referred to above, or are unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents in the general vicinity of the Project site, then Contractor promptly shall notify Owner and Design Consultant of such conditions before conditions are disturbed, and in no event more than three (3) workdays after first observation of the conditions. Upon notification by Contractor, Design Consultant promptly shall investigate such conditions and report its findings to Owner. If Owner and Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to **Section 4.5** herein.

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

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

4.3.6 **CLAIMS FOR ADDITIONAL TIME**

4.3.6.1 If Contractor wishes to make Claim for an increase in the Contract Time, written notice, as required in this **Section 4.3**, shall be given. Contractor's Claim shall include an estimate of probable impact of delay on progress of the Work in accordance with **Section 3.10.11** herein. In the case of a continuing delay, only one Claim is necessary.

4.3.6.2 Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site, as determined from climatological data set forth by National Weather Service and which affects the Project's critical path. Contractor shall bear the entire economic risk of all weather delays and disruptions. Contractor shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. With regard to Vertical projects with Owner, requests for an extension of time, pursuant to this **Section 4.3.6**, shall be submitted to Owner and Design Consultant not later than the fifteenth (15th) calendar day of the month following the month during which the delays or disruptions occurred and shall include documentation and all details reasonably available, demonstrating the nature and duration of the delays or disruptions and their effect on the critical path of the Schedule. With regard to Horizontal projects with Owner, upon Contractor reaching Substantial Completion, Owner and

Contractor shall look back at the entire duration of the calendar day Project and review the totality of what Contractor claims were unusually severe weather disruptions. If the Project was delayed or disrupted due to unusually severe weather in excess of that normally experienced over the entire duration of the Project, Contractor may make a Claim for an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site, as determined from climatological data set forth by National Weather Service and which affects the Project's critical path. Any time extension granted to Contractor for either Vertical or Horizontal projects under **Section 4.3.6** shall be non-compensatory.

- 4.3.7 **INJURY OR DAMAGE TO PERSON OR PROPERTY.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party or an act or omission of others for whose acts such other party legally is responsible (including, with respect to Owner, the acts or omissions of Owner's separate contractors), written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) calendar days after the discovery of the injury or damage. The written notice shall provide sufficient detail to enable the other party to investigate the injury or damage.
- 4.3.8 **CHANGE IN UNIT PRICES.** As applicable, if unit prices are stated in the Contract Documents or subsequently agreed upon by Owner and Contractor and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive so that application of such unit prices to quantities of Work proposed shall cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted.
- 4.3.9 **CLAIMS FOR CONSEQUENTIAL DAMAGES.** Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply both to Claims by Contractor and to Claims by Owner:
- 4.3.9.1 No consequential, indirect, incidental, punitive or exemplary damages shall be allowed, whether or not foreseeable, regardless of whether based on breach of contract, tort (including negligence), indemnity, strict liability or other bases of liability.
- 4.3.9.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, on estimated losses of labor efficiency, on a comparison of planned manloading to actual manloading or on any other similar analysis that is used to show total cost or other damages.

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

4.3.9.4 The maximum amount of any recovery for delay, to the extent damages for delay are not otherwise disallowed by the terms of the Contract Documents, shall be as is provided in **Article VIII** herein.

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

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

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

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

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

(1) Contractor shall:

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

- (2) Contractor shall have reviewed the Claim of the Subcontractor prior to its submittal to Owner and independently shall have evaluated such Claim in good faith to determine the extent to which the Claim is believed in good faith to be valid. Contractor shall inform Owner that Contractor has made a review, evaluation, and determination that the Claim is made in good faith and is believed to be valid.
- (3) Subcontractor making the Claim to Contractor shall certify to both Contractor and Owner that it has compiled, reviewed and evaluated the merits of such Claim and that the Claim is believed in good faith by Subcontractor to be valid. A copy of the certification by Subcontractor shall be included by Contractor in the Claim submittal materials.

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

4.3.10.4 Receipt and review of a Claim by Owner under this **Section 4.3** shall not be construed as a waiver of any defenses to the Claim available to Owner under the Contract Documents or at law.

4.3.11 **OWNER'S RIGHT TO ORDER ACCELERATION AND TO DENY CLAIMED AND APPROPRIATE TIME EXTENSIONS, IN WHOLE OR IN PART.** Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, shall apply:

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

4.3.11.2 In the event Owner agrees that Contractor is entitled to an extension of Contract Time and Contractor properly has initiated a Claim for a time extension in accordance with **Section 4.3(a)** herein, Owner shall have the right, in Owner's sole discretion, to deny any portion of Contractor's Claim for an extension of Contract Time and order Contractor to exercise its commercially reasonable efforts to achieve Substantial Completion on or before the date that would have been required, but for the existence of the event giving rise to the Claim, by giving written notice to Contractor provided within fourteen (14) calendar days after receipt of Contractor's Claim. If Owner denies Contractor's claim for an extension of Contract Time under this **Section 4.3.11**, either in whole or in part, Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then-existing Scheduled Completion Date. If, after initiating good faith acceleration efforts and it is shown that, through no fault of Contractor, Contractor fell behind on the approved construction schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time, Owner shall not be entitled to liquidated damages. Nothing in this **Section 4.3.11.2** shall prohibit Contractor from filing a Claim for an extension of time Contractor feels it may be owed.

4.3.11.3 If Owner orders Contractor to accelerate the Work under **Section 4.3.11.2** herein, and Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents for an amount of time that would have justified approval by Owner if not for the need and right to complete the Project within the stipulated period, Contractor may initiate a Claim for schedule recovery or acceleration costs, pursuant to **Section 4.3.1** herein. Any resulting Claim for these costs properly initiated by Contractor under **Section 4.3.1** herein shall be limited to those reasonable and documented direct costs of labor, materials, equipment and supervision solely and directly attributable to the actual recovery or acceleration activity necessary for Contractor to bring the Work back within the then existing approved construction schedule. These direct costs of Contractor include, but are not limited to, the premium portion of overtime pay for additional crew, shift, or equipment costs, if requested in advance by Contractor and approved in writing by Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, profit and field overhead, not to exceed the markups permitted by this Contract, shall be allowed on the claimed costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING, BUT NOT LIMITED TO, HOME OFFICE OVERHEAD) OR ANY OTHER COSTS SHALL BE ALLOWED ON ANY ACCELERATION CLAIM.** Owner shall not be liable for any costs related to an acceleration claim other than those described in this **Section 4.3.11**.