DF:bh
12/10/2015
Item No. 6

AN ORDINANCE 2015-12-10-1041

AUTHORIZING THE NEGOTIATION AND EXECUTION OF THREE ON-CALL, ONE-YEAR JOB ORDER CONTRACTS EACH FOR AN AMOUNT NOT TO EXCEED $2,000,000.00 WITH THE OPTION TO RENEW FOR ONE, ONE-YEAR EXTENSION WITH ALLBRITE CONSTRUCTORS OF TEXAS, INC., ALPHA BUILDING CORPORATION, AND TEJAS PREMIER BUILDING CONTRACTOR, INC. FOR THE CITY'S OWNER OCCUPIED REHABILITATION PROGRAM, A HOME INVESTMENT PARTNERSHIP (HOME) FUNDED PROGRAM FOR HOME REHABILITATION AND RECONSTRUCTION PROJECTS.

* * * * *

WHEREAS, the City Council has approved the use of HOME Investment Partnerships Program (HOME) funds for the City of San Antonio's Owner-Occupied Rehabilitation Program ("Program"); and

WHEREAS, the Program is designed to bring eligible homes into compliance with applicable, locally adopted housing rehabilitation standards to (i) reduce ongoing and future maintenance costs, (ii) promote energy efficiency, and (iii) preserve decent affordable owner-occupied housing by providing a deferred, forgivable loan for up to 15 years; and

WHEREAS, Job Order Contracts (JOC) is recognized as an ideal project delivery method to complete rehabilitation and reconstruction projects easily and quickly; and

WHEREAS, the City Council approved JOC as an alternative delivery method by resolution on November 2, 2006; the inaugural group of JOC Contractors were approved by Ordinance 2007-03-29-0342 on March 29, 2007, and the second group of successful applicants through Ordinance 2011-01-20-0053 on January 20, 2011; and

WHEREAS, it is the desire of the City Council to authorize the negotiation and execution of three (3) On-Call Job Order Contracts in an amount each not to exceed $2,000,000.00, for a one-year period with the option to renew for a one (1) one-year term with Allbrite Constructors of Texas, Inc., Alpha Building Corporation, and Tejas Premier Building Contractor, Inc. for eligible home rehabilitation and reconstruction projects; and

WHEREAS, City Council approval is required for projects utilizing JOC over $100,000.00; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Department of Transportation and Capital Improvement or his designee is hereby authorized to negotiate and

execute three (3) On-Call Job Order Contracts with Allbrite Constructors of Texas, Inc., Alpha Building Corporation, and Tejas Premier Building Contractor, Inc. for the home rehabilitation and reconstruction projects, in an amount each not to exceed $2,000,000.00, for a one-year period with the option to renew for a one (1) one-year term. The executed job order contracts will be in substantially the same form as the contract template attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The following financial adjustment is hereby approved:

a) Funding for this Ordinance will be identified when work orders are issued. If funding for any work order is not previously appropriated, funding will be identified and appropriated through subsequent City Council action. Payment is limited to the amounts budgeted in the HOME Program funding sources identified. All expenditures will comply with the HOME Program Budget for current and future fiscal years.

b) Payment not to exceed $2,000,000.00 per Job Order Contract, is authorized to be encumbered with a purchase order and made payable to the three (3) authorized on-call Contractors listed in this Ordinance to provide construction, renovation, and rehabilitation projects in eligible home under the Program.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 10th day of December, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**6**
Date:	12/10/2015
Time:	09:26:28 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the negotiation and execution of three On-Call, one-year Job Order Contracts each for an amount not to exceed $2,000,000.00 with the option to renew for one, one-year extension with Allbrite Constructors of Texas, Inc., Alpha Building Corporation and Tejas Premier Building Contractor, Inc. for the City's Owner Occupied Rehabilitation Program, a HOME Investment Partnership (HOME) funded program for home rehabilitation and reconstruction projects. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor	x					
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				x
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

JOB ORDER CONTRACTING AGREEMENT FOR OWNER-OCCUPIED REHABILITATION PROGRAM

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Job Order Contract Agreement (hereafter referred to as "the Agreement", "the Contract", "this Agreement" and/or "this Contract") is made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as "City") and

Allbrite Constructors of Texas, Inc.
10811 Iota Drive
San Antonio, TX 78217

a Job Order Contractor ("hereafter referred to as "JOC") (City and JOC hereafter individually referred to as "a Party" and collectively referred to as "the Parties"), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by JOC for Job Order Contracting, as set forth herein.

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ARTICLE I
Definitions

1.01. "Agreement" and/or "Contract" shall mean this Agreement and all documents and references incorporated herein. Agreement and Contract also shall include Job Orders issued to JOC, pursuant to this Agreement, and all elements incorporated into an issued Job Order.

1.02. "City" shall mean the City of San Antonio and its designated representative(s). Each issued Job Order shall state City's designated representative for the issued Job Order. Under this Agreement, when JOC is required to report or transmit information to City, JOC shall report or transmit the required information to City's designated representative for the issued Job Order.

1.03. "Effective Date" of this Agreement shall mean the effective date of the Authorizing Ordinance passed by the San Antonio City Council.

1.04. "Job Order" or "Task Order" shall mean the written agreement between City and JOC for Work to be performed under this Agreement signed by both parties.

1.05. "Liquidated Damages" shall mean the reimbursement by JOC to City to compensate City for the monetary damages suffered by City when JOC fails to meet its date for Substantial Completion, said date for Liquidated Damages defined in each issued Job Order.

1.04. "Non-Pre-Priced Items" shall mean Work items not listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.05 "Pre-Priced Items" shall mean the items listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.06 "PRIMELink" shall mean City's internet-based project management system. City shall administer the necessary software, provide training to JOC for JOC's use of PRIMELink and City shall make the PRIMELink software accessible via the Internet to JOC.

1.07. "Substantial Completion" shall mean the date on which the Work, or an agreed upon portion of it, sufficiently has been completed and City may occupy and use the Work (or a portion thereof) for its intended purposes.

1.08. "Work" shall mean all tasks required of JOC under an issued Job Order.

1.09. "Work Schedule" shall mean the scheduled number of calendar days afforded JOC to complete each task, pursuant to an issued Job Order. The Work Schedule for an assigned Job Order shall be submitted by JOC to City for City's approval, prior to beginning any Work by JOC.

ARTICLE II
Initiation of Work

2.01. **City Initiation of Work.** Pursuant to this Agreement, City shall initiate Work by issuing a request for a quote to JOC through PRIMELink. To reject the responsibilities to perform, pursuant to an issued request for a quote, JOC, within two (2) working days of its receipt of the issued request for a quote, shall notify City through PRIMELink of its acceptance or rejection of the issued request for a quote. Requests for quotes not timely accepted (within two (2) days of issuance) through PRIMELink by JOC shall be deemed by City as rejected by JOC. Upon JOC's acceptance of the issued request for a quote in PRIMELink and notification to City, JOC shall begin pricing the Scope of Work of the request for a quote issued. JOC shall, except as this Agreement or the issued Job Order otherwise expressly provides, furnish all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, bonds, insurance, subcontracts, supervision, management, reports, incidentals and quality control necessary to complete all issued Job Orders. If City concludes JOC's pricing of an issued request for a quote and any subsequent negotiation are not progressing at a satisfactory rate, City may terminate the issued request for a quote to JOC and select another JOC for the subject Job Order.

2.02. **Multiple Solicitations.** City reserves the right and JOC hereby acknowledges City may solicit price proposals on prospective Job Orders from one or more JOCs, to determine the best value proposal, on behalf of City. JOC further acknowledges if JOC prepares a pricing proposal for an issued Job Order, JOC shall not be entitled to compensation for its efforts preparing a price proposal, whether or not a Job Order is awarded to JOC.

2.03. **Project Requirements.** Each Job Order solicitation shall define, to City's best knowledge, the specific project requirements. Job Orders may pertain to the following types of work:

2.03.01. Minor construction, which may involve demolishing office space or finishing out an office space, building out a new floor plan or the like;

2.03.02. Repairs, which may involve fixing broken systems, components or subcomponents of a building, such as doors, electrical outlets, plumbing, flooring, sheetrock, air conditioning systems or the like;

2.03.03. Rehabilitation, which may involve restoring an office, floor, system or a component of a system, to restore functionality

2.03.04. Alteration, which may involve extending a wall, upgrading lighting fixtures, installing a door where one did not exist, replacing flooring or the like.

2.04. **Conformance of Work.** Work performed by JOC shall conform to the Job Order's requirements. Job Orders shall set forth the following, in coordination with City's Transportation & Capital Improvements (hereafter referred to as "TCI") Task Order Form:

2.04.1. The Contract number, along with JOC's name;
2.04.2. The Job Order number and date;

2.04.3. The Scope of Work and the applicable technical specifications and drawings;

2.04.4. The period of time for performance, including the Job Order's start date, date of Substantial Completion, Liquidated Damages, and, if required and/or requested by City, a Work Schedule;

2.04.5. The location of the Work's performance;

2.04.6. The agreed total cost to be paid JOC for the Work to be performed;

2.04.7. Submittal requirements;

2.04.8. The identity of City's authorized representative who will accept JOC's completed Work;

2.04.9. Name of JOC's representative for the issued Job Order;

2.04.10. Signatures, on behalf of the Parties, signifying the agreement reached, along with the specific terms of the Job Order; and

2.04.11. Such other information as may be necessary for JOC to perform the Work.

2.05. **Beginning Work.** JOC shall begin Work on the effective date specified in the Job Order's Notice to Proceed, issued by City. Any costs incurred by JOC for preliminary Work or for materials ordered or purchased by JOC or its Sub-Consultants or Subcontractors, prior to receipt of City's Notice to Proceed for a Job Order, shall be at JOC's risk and expense.

2.06. **Amending Issued Job Orders.** Once issued, Job Orders only may be amended by the written agreement of both Parties through the PRIMELink system.

2.07. **Job Order Minimum Value.** The minimum value for an issued Job Order shall be One Thousand Dollars and no cents ($1,000.00), unless the minimum value requirement is waived in writing by both City and JOC.

2.08. **Mutual Agreement on Job Orders.** Nothing in this Agreement requires City to issue a Job Order, or requires JOC to accept same. It is understood that both Parties mutually shall agree to any issued Job Order.

2.09. **Diligent Prosecution of Work.** JOC diligently shall prosecute all Work to completion within the time required by, listed on and agreed to on the accepted Job Order or JOC shall be subject to Liquidated Damages. The period of performance shall include allowances for mobilization, holidays, weekend days, usual inclement weather and cleanup. Claims for delay by JOC, based on such elements listed herein, shall not be accepted.

ARTICLE III.
Specification and Drawings

3.01. **Preparation of Designs and Drawings.** When necessary, City or a Design Consultant selected by City shall prepare all designs and drawings to be used by JOC in performing the Work.

3.01.01. City shall be responsible for the cost of design work, apart from any money due JOC under an issued Job Order.

3.01.02. JOC shall keep a copy of the drawings and specifications at the Work site at all times and shall give City access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications is of like effect, as if shown or mentioned in both/either. JOC shall not alter or amend the drawings and/or the provided drawings or specifications. Any alteration by JOC to the drawings and/or specifications without City's written approval shall be at JOC's own risk and expense. If City provides drawings and specifications, City shall, from time to time, furnish such detail drawings and other information as reasonably is necessary.

3.02. **City Direction.** In the City-provided drawings or specifications, when the words "directed", "required", "ordered", "designated", "prescribed" or words of like importance are used, JOC acknowledges and understands that the "direction", "requirement", "order", "designation" or "prescription" of City is intended. Similarly, JOC acknowledges and understands when the words "approved", "acceptable", "satisfactory" or words of like importance are used, those words shall mean "approved by", "acceptable to" or "satisfactory to" City, unless otherwise expressly stated in writing by City to JOC.

3.03. **Drawings and Specification Direction.** Where "as shown", "as indicated", "as detailed" or words of similar importance are used, JOC acknowledges and understands that the reference is made to the drawings and specifications which accompany the Job Order, unless otherwise stated in writing. The word "provided", as used herein, shall mean "provide complete in place". The word "furnished", as used herein, shall mean "furnished and installed."

3.04. **Shop Drawings.** Shop Drawings shall mean the drawings submitted to City and the Design Consultant by JOC showing, in detail:

3.04.1. The proposed fabrication and assembly of structural elements; and

3.04.2. The installation (i.e., form, fit and attachment details) of materials or equipment;

and

3.04.3. The construction and the detailing of elements of the Work.

3.05. **Detailed Shop Drawings.** Shop drawings shall include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data and similar materials furnished by JOC to explain – in detail – specific portions of the Work. City may duplicate, use and disclose, in any manner and for any purpose, shop drawings delivered under a Job Order and this Agreement.

3.06. **JOC Coordination of Shop Drawings.** JOC shall coordinate all shop drawings and review them for accuracy, completeness and compliance with the issued Job Order and all Contract requirements and JOC shall indicate its approval thereon. Shop drawings submitted to City without evidence of JOC's approval may be returned to JOC for resubmission. City shall indicate its written approval or disapproval of the JOC-submitted shop drawings and, if not approved as submitted, shall indicate to JOC City's reasons for its disapproval. Any Work conducted by JOC prior to receipt of City's approval of Shop Drawings shall be at JOC's sole risk. Receipt of City's written approval does not relieve JOC from responsibility for any errors or omissions in shop drawings, nor from responsibility for complying with the requirements of the Job Order and this Agreement, except as otherwise specifically provided in this Agreement.

3.07. **Shop Drawing Variations.** If shop drawings vary from the defined Job Order requirements, JOC shall describe the variations in writing to City promptly after the variation is realized. If City approves a variation, City and JOC shall modify the Job Order in writing , unless the variation is minor and does not involve a change in price or time of performance, in which case a modification is unnecessary.

3.08. **Submittal of Shop Drawings.** Upon City's request, JOC shall submit to City hard copies of shop drawings for City's written approval and one (1) digital copy of JOC's shop drawings for City's use.

3.09. **Omitted or Erroneous Drawings and Specifications.** Omissions from City-provided drawings or specifications or an erroneous description of details of the Work that manifestly are necessary for JOC to carry out the intent of the drawings and specifications or customarily are performed does not excuse JOC from performing the omitted or erroneously described details. JOC acknowledges and accepts it is JOC's responsibility to find omissions and inconsistencies in provided drawings and specifications and seek clarification from City.

3.10. **JOC Discovered Discrepancies.** JOC shall check all City-furnished drawings immediately upon receipt and promptly shall notify City of any discrepancies found. JOC acknowledges that figures marked on drawings govern in preference to scale measurements. JOC further acknowledges large scale drawings govern small scale drawings.

3.11. **Property of City.** JOC acknowledges all drawings (including as-built drawings), sketches, designs, design data, specifications, notebooks and technical and scientific data

provided to or developed by JOC under a Job Order, pursuant to this Agreement, as well as all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, are the property of City. All may be used by City without any claim by JOC for additional compensation, except for material developed by JOC prior to the issuance of or resulting from an issued Job Order.

ARTICLE IV
Permits

City or, if City elects to use a Design Consultant, its Design Consultant shall prepare the construction documents for any required licenses and/or permits for performance of the Work, pursuant to an issued Job Order. JOC shall submit the construction documents for licensing/permitting, if necessary and required. JOC acknowledges it shall obtain all required permits applicable to its Work performance under any issued Job Order. JOC further acknowledges it shall comply with all federal, state and local laws, rules and regulations applicable to performance of the Work. JOC shall include and incorporate the past-through cost(s) of any necessary permits to perform the Work, with no percentage markup applied to said permit cost(s), in JOC's submitted price proposal pursuant to an issued Job Order.

ARTICLE V
Operations, Materials and Workmanship

5.01. **New Materials.** All equipment, material and articles incorporated in the Work, pursuant to an issued Job Order and this Agreement, shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in writing by City in the issued Job Order. References in the specifications to equipment, materials, articles or patented process by trade name, make or catalog number generally establish a standard of quality and do not limit competition. If JOC intends to request a substitution of something designated by trade name, make or catalog number, JOC shall prepare a written request to City and seek City's written approval for the requested substitution, fully describing the requested substitution and stating JOC's reason(s) for its request to City. City, at its sole discretion, shall approve or reject JOC's request for a substitution.

5.02. **City Approval of Machinery and Equipment.** JOC shall obtain City's written approval of the machinery, mechanical and other equipment to be incorporated into the Work. JOC shall furnish City the name of the manufacturer, the model number and other information concerning the performance, capacity, nature and rating of the machinery, mechanical and other equipment to be incorporated. When required by the Job Order or by City, JOC also shall obtain City's written approval of the material or articles that JOC contemplates incorporating into the Work. When requesting City's written approval, JOC shall provide full information concerning the material or articles to be utilized. When directed to do so by City, JOC shall submit samples of materials and/or articles for City's approval. Machinery, equipment, material and articles that do not have the required City approvals will be installed at JOC's sole risk of rejection.

5.03. **JOC General Manager.** JOC's General Manager assigned to this Agreement shall be knowledgeable in multiple construction disciplines, including electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.

5.04. **Work Performance.** All Work, pursuant to an issued Job Order and under this Agreement, shall be performed in a skillful and workmanlike manner. JOC shall perform the Work in a timely manner and JOC's performance of the Work shall be subject to Liquidated Damages. Further, JOC shall ensure that its purchase, delivery and storage of materials and equipment do not interfere with City operations and personnel.

5.05. **Material Testing.** Unless otherwise specified in an issued Job Order, JOC accepts and acknowledges it shall be responsible for any and all required testing of materials and for all inspections of JOC's Work, prior to materials being incorporated into the Work. Any Special Inspections, if required and as defined in IBC 2003 Section 1704 Special Inspections, shall be the responsibility of and conducted by City.

5.06. **Layout of Work.** JOC shall lay out its Work in accordance with the Job Order plans and specifications and JOC is responsible for all measurements in connection therewith. JOC shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout the Work. JOC also is responsible for maintaining and preserving all control points which may be established by City.

5.07. **Superintend Work.** At all times during performance of an issued Job Order and until the Work is completed and accepted by City, JOC directly shall superintend the Work and have a competent superintendent satisfactory to City on site at all time who has authority to act on behalf of JOC. If, in City's sole opinion and upon request by JOC, an issued Job Order would not require JOC to have a competent superintendent on site at all time, City may waive this requirement and, if so determined, shall do so in writing to JOC.

5.08. **Removal and Replacement of Furniture and Equipment.** If applicable, JOC shall remove all furniture and movable office equipment from an immediate Work area that may be affected by JOC's Work. Upon completion of Work, JOC shall return the removed furniture and moveable office equipment to their original and proper place. If any of the removed items cannot be placed back in their original locations, City shall designate alternate location(s) for the items' placement.

5.09. **No Damage of Property.** JOC shall take all necessary precautions to ensure that no damage to both private or public property results from its Work or its Work-related operations. JOC shall repair or replace all items it damages at no additional cost to City. JOC also shall provide all necessary traffic control, including street blockages, traffic cones, flagmen and the like, as required for each issued Job Order. JOC's proposed traffic control methods shall be submitted in writing to City for City's written approval, prior to JOC beginning Work.

ARTICLE VI
Site Investigation and Conditions Affecting Work

6.01. **Nature and Location of Work.** JOC shall be responsible for ascertaining the nature and location of the Work, as well as the general and local conditions that might affect the Work, unless such different conditions could not, in the exercise of diligent search by JOC, have been discovered. Failure to properly ascertain discoverable items shall be at JOC's risk sole and expense. Items for which JOC is responsible to assess include, but are not limited to:

6.01.1. Conditions bearing upon transportation, disposal, handling and storage of materials;

6.01.2. The availability of labor, water, electric power and roads;

6.01.3. Uncertainties of weather, river stages, tides or similar physical conditions at the site;

6.01.4. The conformation and conditions of the ground; and

6.01.5. The character of equipment and facilities needed both preliminary to and during Work performance.

6.02. **Surface/Subsurface Materials.** JOC further is responsible for ascertaining the character, quality and quantity of surface and subsurface materials and/or obstacles that might be encountered on the Work site, unless such surface and subsurface materials or obstacles could not, in the exercise of diligent search, have been discovered. Failure properly to ascertain discoverable conditions shall be at JOC's sole risk and expense.

6.03. JOC promptly shall, before the site conditions are disturbed, give written notice to City upon JOC's discovery of:

6.03.1. Subsurface or latent physical conditions at the site differing materially from those indicated (or the site's physical conditions not addressed) in the issued Job Order;

or

6.03.2. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

6.04. **City Investigation.** City shall conduct an investigation, upon receiving written notice from JOC regarding differing or unknown physical conditions at the Work site. If City finds that the conditions materially do differ and cause an increase or decrease in JOC's cost of or the time required for performing any part of the Work, City shall make an equitable adjustment in the price to be paid to JOC and the issued Job Order shall be modified in writing to reflect said equitable adjustment.

6.05. **JOC Timely Notice.** JOC shall not be entitled to an equitable adjustment in the price of an issued Job Order unless JOC timely has given the requisite written notice to City on the physical conditions found. JOC never shall be entitled to an equitable adjustment to its price paid for an issued Job Order after final payment under the Job Order has been paid by City.

ARTICLE VII
Term

7.01. **Contract Term.** This Agreement shall be for one (1) year (hereafter referred to as the "Base Term") for an amount not to exceed two million dollars ($2,000,000.00), with the Base Term beginning on the date of City's execution of this Agreement. City shall have the right to extend this Agreement through one (1) one-year option (hereafter referred to as an "Option Year") for an amount not to exceed two million dollars ($2,000,000.00), each City-exercised option year to begin at the expiration of the Base Term or the expiration of an exercised Option Year.

7.02. **Exercise of Option Term.** If City elects to exercise its option to extend this Agreement, City shall notify JOC in writing of City's intention to exercise its option, prior to the expiration of the then-current term. City may terminate this agreement at any time, pursuant to **Article XIV** and/or **Article XV** herein, and/or City may elect, at City's sole discretion, not to exercise any available Option Year renewal with a JOC.

7.03. **Extension of Term Period.** Following the Expiration of the Base Term or the expiration of any City-exercised Option Year, the terms and conditions of this Agreement shall remain in place during the performance of Job Orders issued prior to the expiration of the Base Term or the expiration of an Option Year.

ARTICLE VIII
Compensation, Invoicing, Payment and Liquidated Damages

8.01. **Compensation.** As full consideration for JOC's satisfactory performance under an issued Job Order, City shall compensate JOC as follows:

8.01.1. **Pre-Priced Items.** To arrive at the maximum amount that shall be paid by City to JOC for Pre-Priced Items under an issued Job Order, JOC shall consult the amount shown in the then most current R.S. Means Facilities Construction Cost Data Book for the required Pre-Priced Items, multiply the amount shown by the

applicable coefficient for Pre-Priced Items, with consideration as to whether the Work is required to be performed during or outside City's normal working hours. JOC accepts and agrees that the R.S. Means amount shall be the maximum amount paid by City for Pre-Priced Items and City may negotiate any and all pricing submitted by JOC for Work to be preformed. JOC acknowledges its submitted pricing to City for Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time period may be extended by written mutual agreement between City and JOC.

8.01.2. **Non-Pre-Priced Items.** For JOC to secure Work, JOC shall reach an agreement with City with regard to the reasonable and necessary cost of labor and materials to perform the Work. The agreed upon combined cost of labor and materials shall be increased by a maximum no greater than twelve percent (12%) to cover JOC's overhead and profit. Then, to arrive at the maximum amount to be paid by City to JOC for Non-Pre-Priced items under an issued Job Order, JOC shall price out the Non-Pre-Priced items of the Work and submit its pricing, along with all supporting documentation, reflecting JOC's truthful and anticipated costs for the Non-Pre-Priced Items of the Work. Upon receipt of JOC's pricing and supporting documentation, City shall review JOC's submitted pricing and, if City so elects, negotiate JOC's submitted pricing, request additional supporting documentation regarding JOC's pricing or accept JOC's pricing for the Non-Pre-Priced Items of the Work. JOC acknowledges its submitted pricing to City for Non-Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time may be extended by written mutual agreement between City and JOC.

8.02. **Submittal of Pay Application.** At minimum, JOC shall submit a request for pay application every thirty (30) days, throughout the duration of JOC's Work. JOC may submit a request for pay application more frequently than every thirty (30) days, with City's written approval.

8.03. **Monthly Progress Payments.** City shall make progress payments, at minimum, monthly, as the Work proceeds or at more frequent intervals as determined by City, upon receipt of mathematically correct certified pay applications submitted by JOC and approved by City and, if requested by City, approved by Design Consultant, if any. For submission of its mathematically correct pay application, JOC shall use a format deemed acceptable to City and said monthly pay application shall include supporting documents reflecting a breakdown showing how JOC's Work done to the date of the submitted pay application compares to the total project scope, broken out by category of Work. A submitted pay application shall contain as much detail as City so requests, so City may determine the progress payment due and owing to JOC. In addition to payment to JOC for Work completed, City, at City's option, may authorize payment to JOC for material(s) delivered to the site and any preparatory Work performed by JOC, if JOC furnishes satisfactory evidence that it has acquired title to the material, the material shall be used to perform the Work ordered and any preparatory Work performed was in furtherance of the Work ordered. Releases of liens from JOC and each of JOC's Subcontractors and suppliers utilized to perform the Work are required as back up for the pay application certificate.

8.04. **Liquidated Damages.** In the event JOC exceeds the accepted established date for achieving Substantial Completion on an issued Job Order (with any adjustment in the agreed upon calendar days for completion of the Work – via a Change Order – due to encountered unforeseen circumstances or due to any City-requested additional Work) and City has included Liquidated Damages as an element of the issued Job Order, City may withhold payment of sums necessary to pay the estimated Liquidated Damages due City until Substantial Completion of the Work is achieved. Owner also shall be entitled, at any time, to deduct out of any sums due to JOC any or all Liquidated Damages due City. To facilitate this requirement of Liquidated Damages accrual by JOC, JOC shall populate a line item on all subsequent progress payment requests and shall begin accruing Liquidated Damages on a monthly basis, beginning on the established Substantial Completion date forward, until JOC achieves Substantial Completion of the Work

8.05. **Property of City.** All material and Work covered by a progress payment, at the time of payment by City to JOC, become the sole property of City. By accepting this condition, JOC acknowledges this provision does not:

8.05.1. relieve JOC from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or

8.05.2. waive City's right to require fulfillment of all Contract terms.

8.06. **Mathematically Correct Payment Requests.** Mathematically correct estimates of completion percentages shall be approved and certified for payment by City and shall be paid within thirty (30) days. If City finds JOC's submitted estimates to be incorrect, City shall notify JOC, through PRIMELink, as to the inconsistencies discovered and explain, with reasonable particularity, the reasons for the finding. Progress payments to JOC shall be paid after the estimate of the Work is accepted, certified and approved by City. JOC's estimates of completed Work shall be submitted electronically through PRIMELink.

8.7. **Substantial Completion Notification.** When JOC considers the Work to be complete and ready for its intended use (Substantially Complete), JOC shall notify City's Project Representative of JOC's conclusion. City then shall inspect the Work to determine the status of completion. If City finds that the Work has been reached Substantial Completion, City shall issue a Certificate of Substantial Completion. The Certificate shall itemize remaining items to be completed or corrected before final payment of the Job Order. Upon receipt of the itemized list of remaining work (hereafter referred to as the "Punch List") JOC shall promptly proceed to complete or correct items listed on the Punch List.

8.8. City shall pay JOC all unpaid amounts due under an issued and accepted Job Order, within sixty (60) days following:

8.8.1. City's issuance of a Certificate of Final Completion upon JOC's completion and/or correction of all remaining portions of the Work, inclusive of all Punch List items; and

8.8.2. JOC's presentation of a properly executed and mathematically correct final pay application; and

8.8.3. JOC's presentation of an executed Release of any and all claims JOC may have against City, arising by virtue of the issued Job Order and/or this Agreement. If JOC has assigned its right to a claim to any amount payable under an issued Job Order and/or this Agreement, a Release also may be required of JOC's assignee. JOC and/or JOC's assignee shall complete the required Release form(s) deemed acceptable to City; and

8.8.4. City's receipt of a consent from JOC's surety, if any.

8.9. **Requirement to Use PRIMELink.** All correspondences related to an issued Job Order shall be submitted by JOC to City and by City to JOC through PRIMELink, including, but not limited to, the Job Order schedule, Requests for Information, requests for Substantial Completion, requests for Final Completion, all pay applications and Release forms.

8.10. **Work Schedule.** JOC shall, upon JOC's submission of its signed Job Order, submit for approval from City a Work Schedule showing the sequence in which JOC proposes to perform the Work and the dates JOC plans on starting and finishing the stages of Work (including acquiring all required materials and equipment). JOC's submitted Work Schedule to City may be a formal computerized schedule or a progress chart in a format suitable to City, indicating the percentage of Work to be completed by specific dates. The submitted Work Schedule shall, at a minimum:

8.10.1. list the different types of Work activities or Work elements;

8.10.2. show the logical interconnections controlling what Work shall be accomplished before other Work shall begin;

8.10.3. show proposed start and finish dates or duration of each Work activity or Work Element; and

8.10.4. calculate the "weighting" or relative worth each Work activity or Work element to the total project, either as a percent or as a dollar amount.

8.11. **Failure to Submit Work Schedule.** If JOC fails to submit a Work Schedule with its acceptance of a Job Order, City may withhold its issuance of a Notice to Proceed with Work, as

well as withholding the approval of any progress payments, until JOC submits the required Work Schedule. Further, City may issue a Notice to Proceed with Work, to begin the running of the calendar days allowed for completion of JOC's Work, and immediately issue JOC a Stop Work Order, which shall keep the Job Order clock running yet prevent JOC from working on the Job Order, said Stop Work Order remaining in place until JOC furnishes City with JOC's Work Schedule.

8.12. **Work Schedule Progress Report.** Throughout the progress of the Work, JOC shall submit a Work Schedule Progress Report every thirty (30) days or more frequently, if so directed by City. The Work Schedule Progress Report shall compare the progress of the realized Work to JOC's original Work Schedule, as required and submitted pursuant to **Section 8.11** herein. If JOC falls behind its submitted City-accepted Work Schedule, absent clear and accepted reasons for falling behind its Work Schedule (to include severe weather, unforeseen conditions, emergency Work, etc.), the burden to comply with its City-approved Work Schedule solely falls on JOC to accelerate its Work progress at JOC's time and sole cost. City may require specific steps to accelerate JOC's Work progress, with which JOC shall comply without any additional cost to City. Among the specific steps City may require of JOC include, but are not limited to, requiring JOC to increase the number of shifts, increase its overtime operations, increase the number of days of Work and/or increase the amount of equipment being employed.

8.13. **Emergency Work.** If City emergency work arises, JOC accepts and agrees it shall give top priority to issued Job Orders to perform City-designated emergency work and shall allocate resources reasonably necessary to accomplish City's emergency work, according to City's schedule requirements. If JOC incurs additional costs, expenses or schedule delays on another issued Job Order as a result of performing City emergency work, City equitably shall adjust the non-emergency issued Job Order(s) to compensate JOC for its efforts in performing said City-designated emergency work.

8.14. **Work Schedule Progress.** JOC acknowledges that its failure to comply with the requirements under this **Article VIII** shall be grounds for City's determination that JOC is not prosecuting the Work with sufficient diligence to ensure timely completion of the accepted issued Job Order. Upon making such a determination, City may terminate JOC's right to proceed with the accepted issued Job Order Work or any portion thereof, according to the terms of this Agreement.

ARTICLE IX
Inspection and Acceptance

9.01. **JOC Inspection of Work.** JOC shall maintain adequate inspection of the performed Work and utilize other quality control systems, to assure proper performance of the Work. JOC shall maintain complete inspection records and immediately make those records available to City upon City's request. JOC acknowledges all Work is conducted under the general direction of City and is subject to inspection and testing by City or its designee(s) at all places and at all reasonable times before acceptance.

9.02. **City Inspection of Work.** City's inspection and testing of JOC's Work solely are for the sole benefit of City, are conducted solely for quality assurance purposes and do not:

9.02.1. relieve JOC of responsibility for providing adequate quality control measures;

9.02.2. relieve JOC of responsibility for damage to or loss of the material, prior to City's acceptance of the Work performed;

9.02.3. constitute or imply acceptance; and

9.02.4. affect the continuing rights of City after acceptance of the completed Work through an accepted and/or completed Job Order or this Agreement.

9.03. **No Release.** The presence or absence of a City inspector on JOC's Work site does not relieve JOC from any duties imposed by an issued Job Order or this Agreement. JOC acknowledges that no City inspector may change a Job Order Work requirement, change a Contract requirement or waive City's rights without a formal, written Amendment to an issued Job Order or this Agreement signed by the Parties.

9.04. **City Incurred Costs for Inspection of JOC Work.** JOC promptly shall furnish, without additional charge to City, any and all facilities, labor and material reasonably necessary to accommodate City performing safe and convenient inspections on and tests of JOC's Work. City may charge JOC for additional costs – to be deducted from any of JOC's submitted monthly pay applications – incurred by City in City's inspection or testing of JOC's Work attributed to:

9.04.1. Work not completed in a timely manner, as indicated on JOC's approved Work schedule; or

9.04.2. the inspection, re-inspection, testing and/or retesting of JOC Work that failed previous inspection or test.

9.05. **City Inspection and Testing.** City shall make an effort to minimize disruption or delay of JOC's Work incident to City's inspection and testing. Special, full size and/or performance tests shall be the responsibility of and performed by JOC, as described in the issued Job Order.

9.06. **JOC Non-Conforming Work.** JOC shall, without charge to City, replace or correct Work found by City or its representative(s) not to conform to the issued Job Order requirements, unless City consents in writing to accept the Work if accompanied by an appropriate reduction in the Job Order price to be paid by City to JOC. If City rejects JOC"s Work and/or materials used by JOC in performance of the Work, JOC promptly shall segregate and remove all City-rejected material(s) from the Work premises and correct any rejected Work.

9.07. **JOC Correcting Non-Conforming Work.** If JOC fails to promptly replace or correct rejected Work by City, City may:

9.07.1. replace or correct the Work and charge all costs incurred by City to JOC; and/or

9.07.2. terminate for default JOC's right to proceed with Work under the issued Job Order.

9.08. **Expenses Incurred Examining Non-Conforming Work.** If, before final acceptance of any Work performed, City decides to examine JOC's already completed Work by removing it or tearing it out, JOC, upon request, hereby acknowledges and agrees it promptly shall furnish all necessary facilities, labor and material to perform City's request to examine. If the Work is found to be defective or nonconforming in any material respect, JOC shall bear the full expense of City's examination and JOC's satisfactory reconstruction of the Work to bring it in to conformity. Conversely, if the examination of JOC's Work is found to be in conformance with the issued Job Order, City shall make an equitable adjustment for the cost to JOC for the additional services involved in the examination and reconstruction including, if completion was thereby delayed, extending time for JOC's performance.

9.09. **Prompt Acceptance of Work.** Unless otherwise specified in the Job Order, City shall accept Work reasonably promptly after satisfactory completion and inspection. Acceptance by City is final and conclusive, with an exception for latent defects, fraud, gross mistakes amounting to fraud and City's rights under any warranty or guarantee.

ARTICLE X
Additional Requirements

10.01. **Confinement of Operations.** JOC shall confine its operations (including storage of materials) to areas authorized or approved by City.

10.02. **Erection of Temporary Buildings.** Temporary buildings (e.g., storage sheds, shops, offices) and any associated utilities only may be erected by JOC with the written approval of City and shall be built only with labor and materials furnished by JOC without expense to City. Erected temporary buildings and utilities shall remain the property and responsibility of JOC and shall be removed by JOC at its own expense upon completion of the issued Job Order. If City consents and gives its prior written approval to JOC, said erected temporary buildings and associated utilities may be abandoned in place, not be removed by JOC and JOC shall transfer ownership of said temporary buildings to City.

10.03. **Work Site Egress/Ingress.** JOC shall use only established roadways for ingress and egress to the Work site, unless City authorizes specific temporary roadways to be built by JOC. JOC acknowledges it shall comply with all federal, state and local laws and regulations when transporting materials, in connection with an issued Job Order.

10.04. **Maintaining Clean Work Site.** JOC shall, at all times, keep the Work site (to include any utilized storage areas) free from accumulations of waste materials. Before completing its Work, JOC shall remove from the Work site all rubbish, tools, scaffolding, equipment and

materials that are not the property of City. Upon completing its Work, JOC shall leave the site in a clean and orderly condition satisfactory to City. Final cleanup is included as part of the Work and JOC acknowledges it is responsible for all construction refuse disposal containers and their removal from the Work site.

10.05. **Hazardous Materials.** If hazardous materials are not addressed in the scope of a Job Order and subsequently are found on a Work site, JOC shall cease work and notify City's authorized representative of JOC's findings. City then will assess the situation and determine whether the removal and disposal of the hazardous materials may be performed by JOC or performed by a specialty contractor. City shall coordinate the removal and disposal of said hazardous materials at City's expense. In the event JOC has the appropriate training and certifications to handle hazardous materials, City, at its sole discretion, may elect to have JOC remove and dispose of hazardous materials. If City, at its sole option, requires JOC to remove and/or dispose of discovered hazardous materials, City shall make an equitable adjustment in the agreed upon issued Job Order price, to reimburse JOC for its additional requirement to dispose of the discovered hazardous materials.

10.06. **Preservation and Protection of Structures, Equipment and Vegitation.** JOC shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs and/or grass) on or adjacent to the Work site that are not to be removed and that do not unreasonably interfere with JOC's Work. JOC only shall remove trees when specifically authorized in writing by City to do so. JOC acknowledges it financially shall be responsible to City to purchase and replace any and all trees – of a similar size – removed from a Work site that were not previously authorized in writing by City for removal. If tree limbs are broken by JOC during performance of the Work, JOC shall trim those broken limbs and branches with a clean cut and paint the cut with a tree pruning compound, as directed by City.

10.07. **Preservation and Protection of Improvements and Utilities.** JOC shall protect from damage all existing improvements and utilities at or near JOC's Work site and on adjacent property, the locations of existing improvements and utilities made known to or should be known by JOC. JOC promptly shall repair any and all damage to those existing improvements and utilities, including those that are or on the property of third parties, resulting from JOC's failure to comply with the requirements of the issued Job Order or JOC's failure to exercise reasonable care in performing JOC's Work. If JOC fails or refuses to repair damage it caused to existing improvements and/or utilities, JOC acknowledges City may perform the repair(s) for any and all damage caused and withhold payment to JOC – from any of JOC's submitted pay request – for reimbursement of any costs incurred by City in performing said repair(s).

10.08. **Training City Staff.** Upon award of a contract for Job Order Contracting, JOC, jointly with any other JOCs concurrently awarded similar contracts, shall conduct, at minimum, two

training classes with City staff to address, but not be limited to, JOC's understanding of the Job Order Contracting process, JOC's understanding and intended use of the R.S. Means Facilities Construction Cost Data Catalog, the Cost Index and JOC's intended use of the Unit Price Book, to calculate the maximum pricing allowable by City for Work to be performed. JOC's conducting and participation in said two training classes shall be at no additional cost to City

ARTICLE XI
Warranty of Work

11.01. **JOC Warranty.** In addition to any other warranty, JOC expressly shall warrant that all Work performed by JOC conforms to the issued Job Order requirements and shall be free of any defect in equipment, material and workmanship and shall be in compliance with City's specifications.

11.02. **Warranty Term.** This warranty from JOC shall run runs for one (1) year from the date of Final Acceptance of the Work on an issued Job Order. If City takes possession of any part of the Work before Final Acceptance of the whole of the Work, the warranty for the part taken prior to Final Acceptance of the whole shall run from the date of possession of the Work taken.

11.03. **Warranty Work.** JOC shall, without any additional charge to City, remedy any breach of the expressed warranty of JOC's Work. JOC further shall, also without additional charge to City, repair any damage to City's real or personal property, when that damage is the result of either JOC's failure to conform to the issued Job Order requirements or any defect of equipment, material, or workmanship furnished by or through JOC.

11.04. **Warranty Extension.** JOC shall, without any additional charge to City, restore Work damaged in fulfilling the terms and conditions of this **ARTICLE XI**. JOC's warranty, with respect to all Work repaired or replaced, shall run for one (1) year from the date of JOC's repair or replacement of Work.

11.05. **Notification of Warranty Breach.** City shall notify JOC, in writing, of any breach of JOC's warranty within a reasonable time after City's discovery of any breach of warranty.

11.06. **City's Remedy for JOC's Warranty Breach.** If JOC fails or refuses to remedy a breach of warranty within a reasonable time after receipt of written notice from City, JOC acknowledges City has the right to replace, repair or otherwise remedy the cited breach and JOC fully shall reimburse City and City shall deduct from any of JOC's submitted payment application any and all expenses incurred by City in replacing, repairing or otherwise remedying said warranty breach.

11.07. **Manufacturers/Suppliers Warranties.** With regard to warranties (both expressed and implied) from JOC's Subcontractors, manufacturers or suppliers for Work performed, pursuant to a Job Order, JOC shall:

11.07.1. Obtain all warranties required by a Job Order and supply City with copies of all warranties in place for Work performed;

11.07.2. Require all warranties for Work performed to be executed, in writing, to the benefit of City; and

11.07.3. Enforce all warranties for Work performed, to the benefit of City.

11.08 **City Enforcement of Warranties.** City may, but need not as a condition of enforcing JOC's warranty, seek to enforce warranties directly for its own benefit, with regard to any of the above warranties associated with JOC's Work.

11.09. **Pre-Existing Conditions.** City acknowledges JOC is not responsible for and does not warranty any pre-existing work, conditions or facilities that may be assigned to JOC, except as modified by the Job Order.

ARTICLE XII
Changes in Work and Price

12.01. **Changes in Work.** JOC may, at any time and without notice to any sureties, in writing and signed by both City and JOC, agree to changes in the Work within the general scope of the issued Job Order, including changes:

12.01.1. in the specifications (including drawings and designs);

12.01.2. in City-furnished facilities, equipment, materials, services or site; and/or

12.01.3. in the schedule for performance of the Work.

12.02. **Change Order Processing.** A City-requested change, via an issued Task Order, for additional work falling outside the general scope of work of the originally issued Job Order, shall be treated as an additional Job Order. If JOC concludes a City-request change in scope shall result in an additional Job Order, it shall give City prompt written notice, through PRIMELink, stating the date, circumstances and full description for the requested additional Job Order scope. In no event may JOC's written notice to City of an additional Job Order come later than thirty (30) calendar days after JOC receives City's request for a change for additional work. If any City-requested change(s) in the original scope of work causes an increase or decrease in JOC's required overhead, materials, labor cost or time required for and allotted to the performance of Work, City shall make an equitable adjustment and modify the issued original Job Order through PRIMELink.

12.03. **Change Order Pricing.** Pricing for an additional Job Order shall be determined in the same way as pricing used for the originally issued Job Order.

12.04. **JOC Time Extension Proposal.** With an additionally issued Job Order, JOC shall furnish City a detailed written proposal for any requested extension in the time period given JOC for the performance of the Work. The detailed proposal shall be submitted through PRIMELink

and shall, along with a price breakdown, furnish JOC's justification for an extension of time, if any.

12.05. **Disallowed Adjustment Requests.** No written proposal submitted by JOC for an equitable (price and/or time) adjustment shall be allowed if asserted after City issues final payment to JOC under an issued Job Order. JOC acknowledges this **ARTICLE XII** provides the exclusive mechanism by which JOC may claim an additionally issued Job Order under this Job Order Contract Agreement.

ARTICLE XIII
Suspension of Work

City may, in writing, issue an order to JOC to suspend, delay or interrupt all or any part of the Work issued through a Job Order. If City does so issue such an order, or if City's fails to act timely on an issue, thereby directly resulting in a suspension, delay or interruption in JOC's scheduled Work, City equitably shall compensate JOC for increased costs due JOC for any directly-related increase in JOC's cost of performing the Work caused by City's issued order. If compensation is due from City, JOC only may recover costs under this **ARTICLE XIII** for costs incurred by JOC within the first thirty (30) calendar days following City's issued order to suspend, delay or interrupt all or a part of JOC's Work or for costs incurred by JOC within the first thirty (30) calendar days of City failing timely to act after JOC gives City written notice of the basis for the claim.

ARTICLE XIV
Termination for Convenience of City

14.01. By delivering written notice of termination to JOC, City may terminate performance under a Job Order, in whole or in part, if City, in its sole determination, determines that terminating JOC's performance is in City's best interest. Upon receiving a notice of termination, JOC immediately shall:

14.01.1. stop all Work associated with the issued Job Order;

14.01.2. let no further subcontracts or orders for materials, services or facilities, except as necessary to complete any Work not terminated by City;

14.01.3. assign to City, as directed by City, all right, title and interest of JOC under the subcontracts, to the extent they relate to the Work terminated. City may settle JOC's Subcontractor claims and pay the amounts called for by said settlements. All settlements with JOC's Subcontractor's shall release JOC only from claims arising out of City's termination of JOC's performance, but not other claims;

14.01.4. transfer title to City of all Work performed and transfer title to all materials and supplies purchased by JOC and paid for by City; and

14.01.5 deliver to City, as directed by City:

14.01.5.1. any and all fabricated or off-the-shelf parts, Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and

14.01.5.2. completed or partially completed plans, drawings, information and other property that, if the Job Order had been completed by JOC, would be required to be furnished to City;

14.01.6. complete performance of the Work not terminated by City;

14.01.7. take any action necessary, or any action that City may direct, for the protection and preservation of the property related to this Agreement that is in the possession of JOC and which City has or may acquire an interest; and

14.01.8. use its best efforts to sell, if authorized by City, any property acquired for the Work but not yet incorporated into it, except JOC need not extend credit to any purchaser and JOC itself may purchase the property on terms agreed to by the City.

14.02. After the termination of a Job Order by City, JOC promptly shall submit a final termination settlement proposal to City in the form and with the certification prescribed by City. City need not consider and is not liable to JOC for payment for any such proposal submitted longer than ninety (90) calendar days after a Job Order termination.

14.03. If JOC and City fail to agree on the amount to be paid JOC, as a result of City's termination of a Job Order for convenience, City shall pay JOC an amount determined as follows:

14.03.1. For Work performed prior to the effective date of termination, the total (without duplication) of:

14.03.1.1. JOC's cost of the Work;

14.03.1.2. JOC's cost of settling and paying termination settlement proposals under terminated subcontracts that properly are chargeable to the terminated portion of the Contract if not included in subdivision (a) above and if not paid by City; and

14.03.1.3. A markup, including overhead and profit, pursuant to this **Article XIV**, as has been agreed upon by City and JOC for Change Orders.

14.03.2. A reasonable costs of settlement of the Work terminated, including:

14.03.2.1. accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

14.03.2.2. the termination and settlement of subcontracts (excluding the amounts of such settlements); and

14.03.2.3. Storage, transportation, and other costs actually incurred by JOC and reasonably necessary for the preservation, protection or disposition of the termination inventory.

14.04. **Spoilage.** Except for normal spoilage, except to the extent that City expressly assumed the risk of loss, JOC cannot recover from City the value, as determined by City, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to City or to a subsequent purchaser.

14.05. **Partial Termination of Job Order.** If a termination of a Job Order is partial, JOC may file a proposal with City requesting an equitable adjustment of the price(s) of the non-terminated portion of the Job Order. If granted by City, City shall issue a new Task Order reflecting the new scope of work for the non-terminated portion of the Job Order reflecting the new price to be paid for the newly defined scope of work. Any proposal filed with City by JOC for an equitable adjustment of the price(s) shall be requested by JOC within ninety (90) calendar days from the effective date of partial termination, unless extended in writing by City. City may, under the terms and conditions it prescribes and at City's sole option, make partial payments to JOC and may make payments against costs incurred by JOC of the terminated portion of the Job Order, if City believes the total of these partial payments will not exceed the amount to which JOC would have been entitled. If the total payments made by City to JOC exceed the amount finally determined to be due, JOC shall repay the excess payment made to JOC by City to City upon demand.

14.06. **Record Maintenance.** Unless otherwise provided in this Agreement or by statute, JOC shall retain and maintain all records and documents relating to both the completed and the terminated portion of a Job Order for a period of four (4) years after the settlement of an issued Job Order. This requirement on JOC includes retaining and maintaining all books and other evidence bearing on JOC's costs and expenses under an issued Job Order. JOC shall make these retained and maintained reports and documents available to City, at JOC's office, at all reasonable times and without cost to City. If approved in writing by City, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC instead of original records and documents.

ARTICLE XV
Default

15.01. It shall be deemed an event of default under an issued Job Order if JOC:

15.01.1. fails or refuses to prosecute Work, or any separable part of it, with the diligence that will ensure the Work's timely completion, after ten (10) calendar days written notice and JOC has been afforded the opportunity to cure; or

15.01.2. fails or refuses to comply with any material term of the Contract, after thirty (30) calendar days written notice JOC has been afforded the opportunity to cure.

15.02. **Uncured Default.** On an uncured default by JOC, City may terminate an issued Job Order or, at City's discretion, may terminate this entire Agreement with JOC. City may complete the Work itself or procure its completion by a substitute Contractor and City shall retain all rights and remedies available to it arising from JOC's default, as may be afforded by law or by equity.

15.03. **Time Extension.** JOC's delay may be excused if said delay arises out of unforeseeable causes beyond JOC's control and without JOC's fault or negligence, such as acts of God or the public enemy, fires, flood, strikes or quarantine. To be excused for delay in such an event, JOC shall, within thirty (30) calendar days from the date of the beginning of delay, notify City in writing thereof. If, in the sole judgment of City, JOC's situation warrants an extension, City shall extend JOC's time for performance under an issued Job Order. City's findings are final and conclusive.

15.04. The rights and remedies of City in this **Article XV** are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE XVI
Safety

16.01. **Safety Plan.** Within fourteen (14) calendar days after award of this Agreement and before beginning any Work, JOC shall submit a safety plan to City for its approval. The safety plan shall address all aspects of JOC's safety policies and procedures, including responsibility for OSHA compliance, drug testing, trend analysis, corrective action and JOC's interface with City inspectors, establishing the safety rules and regulations to be utilized on the issued Job Order Work. This submitted safety plan by JOC shall remain in place for the duration of this Contract and any extension periods hereto and if JOC make any modifications to its safety plan submitted to City, JOC promptly shall notify City of those modifications.

16.02. **OSHA Compliance.** JOC shall be responsible for complying with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (hereafter referred to as "OSHA"), as well as all applicable state and local laws, ordinances and regulations during the performance of JOC's Work. JOC shall maintain a set of OSHA articles at the Job Order jobsite, as they apply to the Work being performed. Copies of said OSHA articles shall be provided by JOC to City upon request.

16.03. **Protective Equipment.** JOC shall furnish and enforce the use of individual protective equipment, as is needed to complete JOC's Work, including hard hats, rain gear, protective foot

wear, protective clothing, gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards and high visibility reflective safety vests.

16.04. **Safety Training.** JOC shall provide its employees, along with its Sub-Consultant and Subcontractor employees, safety training at minimum every six (6) months throughout the duration of Work, to include any necessary special training, prior to working with hazardous materials or operations, and provide proof of such employee safety training to City. JOC shall provide warning signs, barricades and verbal warnings on the Work site, as required. JOC shall inform its and its Sub-Consultant and Subcontractor employees of emergency procedures to be adhered to, in case of a fire, medical emergency or any other life-threatening situations.

16.05. **Accident Reporting.** JOC promptly shall notify City of any Work site accident involving any Job Order personnel and/or damage to any material and/or equipment. Copies of any injury reports or accident investigation reports generated by JOC or its Sub-Consultants and/or Subcontractors shall be provided to City.

16.06. **Safety Representative.** JOC shall assign, during performance of the Work, a designated safety representative to develop and monitor JOC's project Work site safety program. The name, company address and telephone number of the designated assigned individual shall be submitted to City's designated JOC Representative by JOC, along with JOC's safety policies and program procedures, within fourteen (14) calendar days of JOC receiving an issued Job Order.

16.07. **First Aid Kit.** JOC shall provide and maintain on the jobsite, at all times, at minimum one (1) completely stocked first aid kit, which shall contain all standard emergency medical supplies. JOC shall make the first aid kit available to all of JOC's employees and all employees of JOC's Subcontractors, while they are performing Work on the site, as well as making available emergency medical treatment either at the Job Order Work site or at a nearby medical facility.

16.08. **City's Approval of JOC Safety Policies.** City reserves the right to approve and monitor JOC's safety policies and program procedures, as they are applied during performance of the Work. Failure to comply with the safety policies and program procedures, once submitted to and approved by City, shall be deemed a breach of this Agreement and shall be cause for the termination of an issued Job Order and/or this Agreement.

16.09. **City's Limited Safety Personnel.** JOC acknowledges that City has limited personnel assigned to administer this Agreement and be in a position to police all of the safety requirements of this **Article XVI,** as well as acknowledging that those assigned City personnel are not fully trained in safety matters. To that end, City's imposition of these safety requirements on JOC is not an assumption by City of a duty on City to assure safety. JOC shall indemnify City for all losses, costs, liabilities and/or expenses arising out of or relating to JOC's violations of this **Article XVI.**

ARTICLE XVII
City's Use and Possession Prior to Completion

17.01. **Partial Possession.** City has the right to take possession of or to use any completed or partially completed part of the Work under an issued Job Order. Prior to taking possession of or using any part of JOC's Work, City shall furnish JOC a list of items of Work remaining to be performed or corrected on those portions of the Work which City intends to take immediate possession of or use. JOC acknowledges City's failure to list remaining Work does not relieve JOC from performing that Work. City's possession or use of any completed or partially completed part of the Work shall not be deemed City's acceptance of Work related to City's possession or use of the partially completed part of the Work.

17.02. **City's Assumption of Risk for Partial Possession.** If City takes such possession or use of any completed or partially completed part of the Work, JOC shall be relieved of the responsibility for the loss of or any damage to the Work resulting from City's possession or use. If early possession or use by City clearly delays JOC's progress or causes additional expenses to be incurred by JOC, City shall make an equitable adjustment in the issued Job Order price or JOC's time period for performance and the Job Order shall be modified in writing accordingly.

ARTICLE XVIII
Non-Exclusivity and Cooperation

JOC acknowledges this Agreement is not exclusive. City may award multiple Job Order Contract Agreements and this Agreement is not a promise of receiving issued Job Orders or of an equal share of all Job Orders issued by City. JOC shall cooperate with other JOCs awarded contracts by City and with City employees and carefully shall adapt its scheduling and Work performance to accommodate the work of other awarded JOCs. JOC shall not commit or shall not permit any act to be committed that might interfere with the performance of work by any other JOC or JOC Sub-Consultants and/or Subcontractor(s) or by any City employees.

ARTICLE XIX
Workers' Compensation

19.01. The following terms are defined as follows:

19.01.1. Certificate of Coverage (hereafter referred to as "Certificate") is defined as a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance

coverage for the person's or entity's employees providing services on a project, for the Duration of the Project.

19.01.2. Duration of the Work is defined as the time, from the beginning of Work on an issued Job Order through the time the Job Order has been completed and accepted by City, during which JOC and JOC's personnel are working on an issued Job Order.

19.01.3. Persons are defined as and shall include all persons or entities performing all or part of the Work JOC has undertaken to perform on an issued Job Order, regardless of whether that person contracted directly with JOC or whether that person has employees. Persons further shall include, without limitation, Independent Contractors, Subcontractors, leasing companies, motor carriers, owner-operators, as well as all employees of such entities or employees of any entities which furnishes persons to provide Services on an issued Job Order.

19.01.4. Services are defined as and shall include, without limitation, those Persons providing, hauling or delivering equipment or materials and/or providing labor, transportation or other Service related to and for the Duration of an issued Job Order. Services, as defined herein, shall not include activities unrelated to an issued Job Order, such as food/beverage vendors, office supply deliveries or delivery of portable toilets.

19.02. JOC shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees and Persons of JOC providing Services on an issued Job Order for the Duration of the Work. JOC shall comply with the statutory requirements and shall supply a Worker's Compensation
Statutory, with a Waiver of subrogation in favor of City

19.03. JOC shall provide the required Certificate of Workers' Compensation Coverage to City, prior to being awarded a Job Order.

19.04. If the coverage period shown on JOC's current Certificate of Coverage ends during the duration of an issued Job Order, JOC shall, prior to the end of its coverage period, file a new Certificate of Coverage with City showing that its Workers' Compensation coverage has been extended/renewed.

19.05. JOC shall obtain and provide to City, from and for each person providing Services on an issued Job Order:

19.05.1. a Certificate of Coverage, prior to that person beginning work on an issued Job Order, so City will have on file Certificates of Coverage showing coverage for all persons providing Services on the issued Job Order; and

19.05.2. no later than seven (7) calendar days after receipt by JOC, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage obtained by JOC ends during the duration of the issued Job Order.

19.06. JOC shall retain all required Certificates of Coverage for the duration of an issued Job Order and for one year thereafter City's acceptance of the Work.

19.07. JOC shall notify City in writing by certified mail or personal delivery, within ten (10) calendar days after JOC knew or should have known, of any change that materially may affect the provision of coverage of any person providing Services on an issued Job Order.

19.08. JOC shall post on each Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all Persons providing Services on an issued Job Order that the workers are required to be covered by Workers' Compensation, stating how a Person may verify said Workers' Compensation coverage and how a Person may report a lack of Workers' Compensation coverage.

19.09. JOC contractually shall require each Person with whom it contracts to provide Services on an issued Job Order to:

19.09.1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees and all Persons providing Services on an issued Job Order, for the Duration of the Work;

19.09.2. provide to JOC, prior to that Person beginning Work on an issued Job Order, a Certificate of Coverage showing that coverage is being provided for all employees of the Person providing Services on the issued Job Order, for the Duration of the Work;

19.09.3. provide JOC, prior to the end of the coverage period, a new Certificate of Coverage showing an extension or renewal of coverage, if the coverage period shown on the current Certificate of Coverage ends during the Duration of the Work;

19.09.4. obtain from every other Person with whom each Person contracts and provide to JOC:

19.09.4.1. a Certificate of Coverage, prior to the other Person beginning work on the issued Job Order; and

19.09.4.2. a new Certificate of Coverage showing an extension/renewal of coverage, prior to the end of the coverage period, if the coverage period shown on the current Certificate of Coverage ends during the duration of the issued Job Order;

19.09.5. retain all required Certificates of Coverage on file for the duration of the issued Job Order and Work for one (1) year thereafter;

19.09.6. notify City in writing by certified mail or personal delivery, within ten (10) calendar days after the Person knew or should have known of any change that materially may affect the provision of coverage of any person providing Services on the issued Job Order; and

19.09.7. contractually require each Person with whom JOC contracts to perform Work, as required by **Sections 19.09.1 through 19.09.6** herein, with the Certificates of Coverage to be provided to the Person for whom they are providing Services.

19.10. By signing this Agreement and/or providing or causing to be provided a Certificate of Coverage, JOC is representing to City that all employees of JOC who will provide Services on an issued Job Order shall be covered by Workers' Compensation Coverage for the Duration of the Work, the provided Workers' Compensation Coverage shall be based on proper reporting of classification codes and payroll amounts and all coverage agreements shall be filed with the appropriate insurance carrier or, in the case of a self-insured JOC, with the Commission's Division of Self-Insurance Regulation in Texas. JOC hereby acknowledges the providing false or misleading insurance coverage information may subject JOC to administrative penalties, criminal penalties, civil penalties or other civil or criminal actions.

19.11. JOC acknowledges its failure to comply with any of these provisions in this **Article XIX** shall be deemed a Breach of Contract by JOC and shall entitle City to terminate any issued Job Orders to JOC and declare this Agreement void if JOC fails to remedy the Breach of Contract within ten (10) calendar days after receipt of notice of a Breach of Contract from City.

ARTICLE XX
Prevailing Wages

JOC shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Buildings Wage Determination in effect at the time this JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. JOC acknowledges it shall utilize the Buildings Wage Determination when determining prevailing wages for all issued Job Orders. If JOC is required to pay the prevailing wage for a job classification not found on the cited Buildings Wage Determination, JOC shall utilize the Heavy Highway Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Heavy Highway Wage Determination job classification from City.

ARTICLE XXI
Performance Bond

21.1. **Job Order Less Than $100,000.00.** For issued Job Orders less than $100,000.00, JOC shall not be required to post a Performance Bond.

21.2. **Job Orders Greater Than $100,000.00.** For issued Job Orders with a dollar value equal to or greater than $100,000.00, JOC shall be required to post the City-required Performance Bond, which shall be written utilizing and submitted on City's Bond Form.

21.3. **Performance Bond Requirements.** City's Performance Bond requirements are as follows:

21.3.1. For all required Performance Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code to issue Performance Bonds in the full amount of the issued Job Order;

21.3.2. The Performance Bonds shall provide that the Surety indemnify the City (as the Bond's oblige) for all damages or losses resulting from JOC's (the Bond's principal's) default. The Bond(s) shall guarantee JOC's performance of all performance terms and obligations under the issued Job Order;

21.3.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bond to bind the issuing surety; and

21.3.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253, and shall be executed and delivered to City before beginning any Work on an issued Job Order.

21.4. **Performance Bond for Entire Agreement.** JOC hereby may elect to not have to post a Performance Bond for each Job Order when issued and instead provide to City, under the same requirements for Bonds outlined in this **Article XXI,** a Performance Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide both a Performance Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Performance Bond with City.

ARTICLE XXII
Payment Bond

22.1. **Job Orders Under $50,000.00.** For all issued Job Orders of $50,000.00? or less, JOC shall not be required to post a Payment Bond.

22.2. **Job Orders Over $50,000.00.** For all issued Job Orders with a dollar value equal to or greater than $50,000.00, JOC shall be required to post the City-required Payment Bonds, written utilizing and submitted on City's Bond Form.

22.3. City's Payment Bond requirements are as follows:

22.3.1. For all required Payment Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code in the full amount of the issued Job Order.

22.3.2. The Payment Bonds shall provide that the Surety indemnify the City (as the Bond's oblige) for all damages or losses resulting from JOC's (the Bond's principal's) non-payment(s) for Work performed under the issued Job Order. The Bonds further shall guarantee JOC's payment to all entities performing for Work for JOC, pursuant to an issued Job Order.

22.3.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bonds to bind the issuing surety.

22.3.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code Chapter 2253 and Texas Property Code Chapter 53.21.1 and shall be executed and delivered to City before beginning any Work on an issued Job Order.

22.4. **Payment Bond for Entire Agreement.** JOC hereby may elect to not have to post a Payment Bond for each Job Order when issued and instead provide to City, under the same requirements for Payment Bonds outlined in this **Article XXII,** a Payment Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide a Payment Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Payment Bond with City.

ARTICLE XXIII
Insurance

23.01. In addition to other insurance requirements of this Agreement, JOC shall maintain, throughout the term of this Agreement, insurance coverage written on an occurrence form, by an

insurance provider authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to City, in the following types and amounts:

23.01.1. **ERROR! BOOKMARK NOT DEFINED.**JOC's Liability Insurance: Without limiting any of the other obligations or liabilities of JOC under the Contract Documents, JOC shall purchase and maintain, during the term of this Agreement and at JOC's own expense, the minimum liability insurance coverage described below with insurance companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to City. JOC also shall require each Subcontractor performing work under an issued Job Order, at Subcontractor's own expense, to maintain levels of insurance necessary and appropriate for the Work performed during the term of the issued Job Order, said levels of insurance comply with all applicable laws. Subcontractor's liability insurance shall name JOC, City and, if applicable, the Design Consultant as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in this **Article XXIV** shall show the existence of each policy, together with copies of all policy endorsements showing City and the Design Consultant as an additional insured, and shall be delivered to City before any Work on an issued Job Order is started. JOC promptly shall furnish, upon the request of and without expense to City, a copy of each policy required, including all endorsements, which shall indicate:

23.01.1.1 Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to City;

23.01.1.2. Employer's Liability Insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee and $1,000,000 disease policy limit, with a waiver of Subrogation in favor of City; (excessive?)

23.01.1.3. Commercial General Liability Insurance, to include but not be limited to coverage for the following:

A) Personal Injury Liability;

B) Independent Contractor's Liability;

C) Products and Completed Operations; and

D) Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, fully insuring JOC's (and/or JOC's Subcontractor's) liability for injury to or death of City's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and

property damage minimum limit of $1,000,000 per occurrence, $2,000,000 annual aggregate.

If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of an issued Job Order and acceptance of Work by City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Agreement.

City shall be named as additional insured by using endorsement CG 20 26 or broader. The Commercial General Liability policy shall include coverage extended to apply to completed operations and XCU hazards.

The Products and Completed Operations coverage shall be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with City. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the issued Job Order in question.

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

23.01.1.5. Broad-Form Property Damage, to include Fire Legal Liability coverage for replacement cost of JOC's Work and improvements.

23.01.2. Five (5) calendar days prior to a suspension, cancellation or non-renewal of any required line of insurance coverage, JOC shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend JOC and its performance under an issued Job Order and this Agreement if JOC fails to provide said replacement certificate of insurance.

23.01.3. If any insurance company providing insurance coverage(s) required under the JOC Contract becomes insolvent or becomes the subject of any rehabilitation, conservatorship, liquidation or similar proceeding, JOC immediately shall procure, upon first notice to JOC or City of such occurrence and without cost to City, replacement insurance coverage before continuing the performance of the Work on an issued Job Order. Any failure of JOC to provide such replacement insurance coverage shall constitute a material breach of this Agreement.

23.02. In addition to the insurance described in **Section 24.01.1** et seq. herein, JOC shall obtain, at its expense and maintained throughout the duration of this Agreement, All-Risk Builder's Risk Insurance, if an issued Task Order involves the complete construction of a new building, or an All-Risk Installation Floater policy, if an issued Job Order involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk and include, but not be limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the issued Job Order for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the issued Task Order for the Builder's Risk policy. If an Installation Floater policy is provided, City shall be shown as a Joint Named Insured with respect to the issued Task Order. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the issued Job Order. This policy shall be in the name of JOC and naming City, Design Consultant (if applicable) and JOC's Subcontractors, as well as any JOC Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

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

23.02.2. Loss, if any, shall be adjusted with and made payable to JOC or to City and JOC as trustee for the insureds as their interests may appear.

23.03. Boiler and Machinery Insurance. If applicable, City shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by City. This insurance shall include the interests of City, JOC, JOC's Subcontractors and Sub-Subcontractors in the Work, and City and JOC shall be named insureds.

23.04. Loss of Use Insurance. City, at City's option, may purchase and maintain Loss of Use Insurance, insuring City against loss of use of City's property due to fire or other hazards, however caused.

23.05. JOC shall provide to City a Certificate of Insurance, evidencing all property insurance policies procured pursuant to this **Article XXIV** and referenced herein and all endorsements thereto, before any exposure to loss may occur.

23.06. Partial occupancy or use in accordance with **Article XVII** herein shall not commence until the insurance company/companies providing property insurance for both City and JOC have consented to such partial occupancy or use by endorsement or otherwise. City and JOC shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent, with respect to partial occupancy or use, that would cause cancellation, lapse or reduction of any insurance coverages.

23.07. Each insurance policy required of JOC by this Agreement shall contain the following clauses:

23.07.1. "The insurance provided by JOC is primary to any insurance or self-insurance maintained by the City of San Antonio."

23.07.2. "Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

23.08. Each insurance policy required by this Agreement, excepting policies for Workers' Compensation and Employer's Liability, shall contain the following clauses:

23.08.1. "The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Agreement with the City of San Antonio This policy cannot be invalidated as to City because of JOC's breach of representation, warranty, declaration or condition of this policy."

23.08.2. "This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days' prior written notice has been given to:

City Clerk, City of San Antonio City Hall/2nd Floor P. O. Box 839966 San Antonio, Texas 78283-3966 Attention: Risk Manager	**with a copy to:**	Transportation & Capital Improvements City of San Antonio P.O. Box 839966 San Antonio, Texas 78282-3966 Attention: Contract Services

ARTICLE XXIV
Release of Claims/Subrogation

The insurance requirements of this Agreement are a bargained-for allocation of risk of loss. City and JOC release each other from claims arising from injury or loss to either of them or to third parties to/for which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Agreement to maintain, whether or not the party actually has the insurance (hereafter referred to as "Covered Claims"). This Release is additional to and does not limit any other release contained in this Agreement. City and JOC, to the maximum extent allowable without causing cancellation of a required policy, waive Subrogation against each other for Covered Claims.

ARTICLE XXV
Small, Minority, & Women-Owned Business Advocacy

It is the policy of City that Small, Minority and Woman-Owned Business Enterprises have the maximum practical opportunity to participate in the performance of public contracts. In achieving that goal, JOC hereby commits to satisfy the SBEDA requirements of this Agreement, as outlined in the SBEDA Subcontractor/Supplier Utilization Plan, attached and labeled as **Exhibit B** hereto and incorporated into this Agreement.

ARTICLE XXVI
Precedence in Case of Conflict

In case of conflict between the elements of this Agreement, the elements have the following Precedence, for the purpose of construction:

A. Modifications and/or Amendments to this Agreement, if any;

B. This Agreement, including Attachments;

C. The Request for Sealed Proposals, including Attachments and addenda (if any);

D. JOC's submitted Proposal;

E. Issued Job Orders;

F. Drawings; and

G. City's Specifications.

ARTICLE XXVII
Waivers

27.01. **Non-Waiver of City's Rights.** Neither City's review, approval or acceptance of or payment for Work required under this Agreement, pursuant to an issued Job Order, waives City's rights under this Agreement or waives City's rights under any cause of action arising out of the performance of this Agreement.

27.02. **City Waiver and Subsequent JOC Breach.** City's waiver of any breach of any term, covenant, condition or agreement herein contained does not waive any subsequent breach of the same or any other term, covenant, condition or agreement.

ARTICLE XXVIII
INDEMNIFICATION

28.01 JOC covenants and agrees to **HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND** City, its elected officials, employees, officers, directors, volunteers and representatives of City, 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 JOC and of City) damage to property (other than the Work itself and including property of JOC and of City), 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, JOC, 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 JOC be liable for claims arising out of accidents resulting from the sole negligence of City, all without however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. In the event JOC and City 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 City under Texas law and without waiving any defenses of the parties under Texas law.

28.02 In addition to the above, JOC also covenants and agrees to **HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND** City, its elected officials, employees, officers, directors, volunteers and representatives of City, 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 JOC and of City) damage to property (other than the Work itself and including property of JOC and of City), but only to the extent caused by the intentional or deliberate misconduct, grossly negligent, willful acts or omissions of JOC, 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 JOC be liable for claims arising out of accidents

resulting from the sole negligence of City, all without, however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. In the event JOC and City 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 City under Texas law and without waiving any defenses of the parties under Texas law.

28.03 **INTELLECTUAL PROPERTY INDEMNIFICATION.** JOC shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against City, its elected officials, employees, officers, directors, volunteers and representatives of City, 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 JOC and its employee or its Subcontractors and their agents, servants and employees, based on any deliverable or any other materials furnished hereunder by JOC and used by either City or JOC within the scope of this Agreement (unless said infringement results directly from JOC's compliance with City's written standards or specifications). JOC does not warrant against infringement by reason of City's or Design Consultant's design of articles or their use in combination with other materials or in the operation of any process. JOC 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. JOC agrees to consult with City's City Attorney during such defense or negotiations and make good faith efforts to avoid any position adverse to the interest of City. City shall make available to JOC any deliverables and/or works made for hire by JOC necessary to the defense of JOC against any claim of infringement for the duration of JOC's legal defense.

28.04 If such infringement claim or action has occurred or, in JOC's judgment, is likely to occur, City shall allow JOC, at JOC's option and expense, (unless such infringement results directly from JOC's compliance with City's written standards or specifications or by reason of City'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 City 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 City'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 City; or

(4) if none of the foregoing alternatives is reasonably available to JOC, upon written request, City shall return the deliverable and/or materials in question to JOC and JOC shall refund all monies paid by City, with respect to such deliverable and/or materials, and accept return of same. If any such cure

provided for in this **Article XXVIII** shall fail to satisfy the third-party claimant, these actions shall not relieve JOC from its defense and indemnity obligations set forth in this Article **XXVIII**.

28.05 The indemnification obligations under this **Article XXVIII** 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 JOC 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.

ARTICLE XXIX
AUDIT OF RECORDS

JOC shall retain, maintain and contractually shall require each Sub-Consultant and Subcontractor of JOC to retain and maintain all data, books and other records (hereafter collectively referred to as "records") relating to an issued Job Order and this Agreement for a period of four (4) years after completion of an issued Job Order. JOC acknowledges City may inspect and audit all JOC records at reasonable times and, upon request, JOC shall produce all original records. If approved by City in writing, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC, its Sub-Consultants and Subcontractors instead of original records and documents. City may withhold any payment to JOC and may deduct from any money owed to JOC, if City finds the retained and maintained documentation on any issued and performed Job Order to be incomplete or erroneous.

ARTICLE XXX
THIRD-PARTY ANTITRUST VIOLATIONS

JOC hereby assigns to City any claim for overcharges resulting from antitrust violations, to the extent that such violations concern materials or services supplied by third parties to JOC toward fulfillment of the requirements of an issued Job Order and this Agreement.

ARTICLE XXXI
APPROPRIATIONS

All obligations of City under this Agreement are funded subject to the discretion of the San Antonio City Council as to whether to appropriate funding for this Agreement for any given year of its term. If the San Antonio City Council fails to appropriate money for this Agreement in an annual City of San Antonio Budget, the City may terminate this Agreement and have no further liability under it.

ARTICLE XXXII
DISPUTE RESOLUTION

32.01. **Field Level Discussions.** JOC and City agree each first will attempt to resolve disputes or disagreements arising out of an issued Job Order or from this Agreement at the field level, through discussions between the Parties' representatives. If that effort to resolve a dispute or disagreement is unsuccessful, the Director of City's Department of Transportation & Capital Improvements shall intercede and attempt to reach an amicable resolution.

32.02. **Mediation.** Before bringing any action arising out of this Agreement, including an action for declaratory relief but not an action specifically excepted below herein, the Parties, in good faith, first shall submit the unresolved dispute or disagreement to mediation. The Parties may not assert limitations, laches, waivers and estoppels, based upon their attempts to mediate.

32.03. **Waiver of Mediation Rights.** Filing suit on a claim that, under this **Article XXXII** and the terms of this Agreement, first should be mediated waives the filer's right to demand mediation. But one Party's waiver does not affect another party's right. A defendant does not waive mediation as long as, within a reasonable time after appearing, said defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this **Article XXXII**.

32.04. Any mediation conducted, pursuant to this Agreement, shall be conducted in San Antonio, Bexar County, Texas.

32.05. **Burden to Initiate Mediation.** The Party desiring relief has the burden to initiate mediation. Waiting for a Party to initiate mediation does not waive the other Party's right to it.

32.06. **Mediator Appointment.** If the Parties may agree on a mediator, they shall do so. Alternatively, either Party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court needs to consider, before appointing a mediator, are whether:

32.06.1. the copy of the Agreement before the court is authentic; and

32.06.2. the Agreement was duly signed and delivered by all Parties agreeing to be bound to mediate.

If neither of those issues cited in **Section 32.06.1** or **Section 32.06.2** herein is denied under oath, the court may appoint a mediator upon motion, without trial.

32.07. **Mediator Fees.** Mediator fees shall be borne equally by the Parties.

32.08. **Emergency Injunctive Relief.** The Parties need not mediate before going to court to seek emergency injunctive relief.

32.09. **JOC's Continued Performance of Work.** JOC shall continue to perform the Work under an issued Job Order and City shall continue to satisfy its payment obligations to JOC under an issued Job Order, pending final resolution of any dispute or disagreements between the Parties.

ARTICLE XXXIII
PROHIBITED INTERESTS IN CONTRACTS

33.01. **Prohibited Financial Interests.** The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency, such as city owned utilities. A City officer or employee has a "prohibited financial interest" in a contract with City or in the sale to the City of land, materials, supplies or service if any of the following individual(s) or entities is a party to the contract or sale:

33.01.1. a City officer or City employee; or

33.01.2. a City officer's or City employee's parent, child or spouse; or

33.01.3. a business entity in which a City officer or a City employee, or his/her parent, child or spouse owns either:

33.01.3.1. ten percent (10%) or more of the voting stock or shares of the business entity; or

33.01.3.2. ten percent (10%) or more of the fair market value of the business entity; or

33.01.4. a business entity in which any individual or entity above listed is:

33.01.4.1. a Subcontractor or Sub-Consultant of JOC on a City contract; or

33.01.4.2. a partner; or

33.01.4.3. a parent or subsidiary business entity.

33.02. JOC warrants and certifies:

33.02.1. JOC, its officers, employees and agents are neither officers nor employees of City.

33.02.2. JOC has tendered to the City a Discretionary Contracts Disclosure Statement,

in compliance with City's Ethics Code.

33.03. JOC acknowledges that City's reliance on the above warranties and certifications is reasonable.

ARTICLE XXXIV
NON-DISCRIMINATION

34.1 As a party to this Agreement with City, JOC understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, JOC shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. JOC represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Contract award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, JOC shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Subcontractors, Sub-Consultants, vendors, suppliers or commercial customers, nor shall JOC retaliate against any person for reporting instances of such discrimination. JOC shall provide equal opportunity for Subcontractors, Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector subcontracting, sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. JOC acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in the termination of an issued Job Order and/or this Agreement, the disqualification of JOC from participating in future City contracts or other sanctions. This **Article XXXIV** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. JOC's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement. JOC shall incorporate this clause into each of its Subcontractor, Sub-Consultant and supplier agreements entered into, pursuant to issued City Job Order agreements/contracts.

34.2 **JOC Outreach and Diversity Plan.** JOC acknowledges and commits, upon its execution of this Agreement, JOC shall provide City a detailed outreach and diversity plan for approval by City, to include a list of all of JOC's Subcontractors and Sub-Consultants it expects to utilize in performing issued Job Orders and JOC shall require all of its utilized Subcontractors and Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through PRIMELink. JOC commits that it shall obtain approval in writing from City

prior to adding, substituting or deleting any approved Subcontractors and/or Sub-Consultant from an issued Job Order.

ARTICLE XXXV
MISCELLANEOUS PROVISIONS

35.01. **Texas Laws Govern.** This Agreement is entered into in San Antonio, Bexar County, Texas. This Agreement's construction and the rights, remedies, duties and obligations arising under this Agreement are governed by the laws of the State Of Texas. But the Texas conflicts of law rules shall not be used to apply the laws of a jurisdiction other than Texas. Both Parties' obligations under this Agreement are performable in San Antonio, Bexar County, Texas and venue for any action arising under this Agreement only shall be in San Antonio, Bexar County, Texas.

35.02. **Invalid, Illegal or Unenforceable Clauses.** If any part of this Agreement is found invalid, illegal or unenforceable, said finding shall not affect the remaining parts of this Agreement deemed valid and enforceable and the part of this Agreement found invalid, illegal or unenforceable shall be stricken from the Agreement and the remaining pats of this Agreement shall remain in full force and effect, as if the stricken part never was contained herein.

35.03. **Inure and Assignments.** This Agreement inures to the benefit of and binds the heirs, representatives, successors and permitted assigns of the Parties hereto. This clause does not authorize any assignment not otherwise authorized.

35.04. **Full and Final Agreement.** This Agreement represents the full and final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the Parties. Both City and JOC acknowledge and agree there are no oral agreements between the Parties.

35.05. **Written Amendments.** This Agreement only may be amended by a written agreement, signed by both Parties.

35.06. **No Third Party Beneficiaries.** This Agreement only benefits the Parties, their successors and permitted assigns. This Agreement has no third party beneficiaries.

35.07. **Notices.** Notices shall be in writing and sent by certified mail, return receipt requested. Notices pertaining to a Job Order shall be addressed to the parties at their respective addresses set forth in the preamble to this Agreement and also to the addresses specified in the Job Order. Notices pertaining to this Agreement – but not to a specific Job Order – shall be sent to the addresses set forth in the preamble to this Agreement. Notice shall be deemed delivered three (3) calendar days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. A Party's address for notice shall be changed only by giving written notice to the other Party.

35.08. **Utilized Wording.** Where herein used, plural constructions include the singular and singular constructions include the plural. Whether a pronoun is masculine, feminine or neutral does not affect meaning or application of the relevant term. The words "herein," "hereof" and other similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.
35.09. **Captions and Titles.** Article and Section captions/titles used herein are for ease of reference only and do not affect the interpretation of the Articles and Sections.

35.10. **Executed Counterparts.** This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, executed counterparts constitute only one Agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all Parties.

35.11. **Additional Documents and Instruments.** The Parties shall execute and deliver such additional documents and instruments as may be necessary fully to effect the provisions hereof. But no such additional documents may alter the rights or obligations of the Parties stated in this Agreement.

35.12. **Director Authority.** The Director of Transportation & Capital Improvements, without further San Antonio City Council action, may agree to, sign and deliver, on behalf of City, all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and also may declare defaults and pursue remedies for such defaults, including termination.

ARTICLE XXXVI
PUBLIC INFORMATION

Buyer acknowledges that this Agreement is public information within the meaning of Chapter 552 of the Texas Government Code and, accordingly, may be disclosed to the public.

ARTICLE XXXVII
CONFLICT RESOLUTION BETWEEN DOCUMENTS

JOC hereby acknowledges and agrees if anything contained in any JOC-prepared proposals, submittals or any other document prepared by JOC is in conflict with the terms and conditions of this Agreement and/or in conflict with City's General Conditions for City of San Antonio Construction Contracts, which are attached hereto, incorporated herein and labeled as "**Exhibit A**", this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict(s).

IN WITNESS WHEREOF, the parties have caused their representatives to set their hands and execute this Agreement on the dates reflected below. This Agreement shall become effective on the date of the last signature hereto.

CITY OF SAN ANTONIO	**ALLBRITE CONSTRUCTORS OF TEXAS, INC.**
By:_____	By:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title: _____
Date:_____	Date:_____

This Agreement is approved as to form:

_____

San Antonio City Attorney's Office

EXHIBIT A

GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

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. For Projects not affecting City traffic, a Working Day is measured from sunrise to sundown Monday through Friday, except legal holidays, or the hours during which Contractor has been authorized and/or directed to work by Owner. For Projects affecting City traffic, a working day shall mean sunrise to sundown Monday through Saturday, except legal holidays, or hours during which Contractor has been authorized and/or directed 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"** means, unless the context clearly indicates otherwise, 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, anthophylite or actinolite, whether friable or non-friable;

(b) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(c) radon;

(d) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the

environment, or natural resources;

(e) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(f) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.;

(g) the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(h) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

1.1.17 **"NOTICE TO PROCEED (HEREIN ALSO REFERRED TO AS "WORK PROJECT AUTHORIZATION" OR "NTP")"** is a written notice given by Owner to Contractor establishing the date on which the Contract Time shall commence to run and the date on which Contractor may begin performance of its contractual obligations.

1.1.18 **"OWNER"** is defined in **Article II** herein.

1.1.19 **"OWNER DESIGNATED REPRESENTATIVE (ODR)"** means the person(s) designated by Owner to act for Owner.

1.1.20 **"PROJECT"** means the total design and construction of Work performed under the Contract Documents and may be the whole or a part of the Project and which may include construction by Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the Site of the Work shall use the term "Project," notwithstanding that the Work only may be a part of the Project.

1.1.21 **"PROJECT MANAGEMENT TEAM"** is composed of Owner, its representatives, Design Consultant and Program Manager (if any) for this Work.

1.1.22 **"SITE"** means the land(s) or area(s) (as indicated in the Contract Documents) furnished by Owner, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

1.1.23 **"SPECIAL CONDITIONS"** are terms and conditions to an Agreement that supplement and are superior to these General Conditions and grant greater authority or impose greater restrictions upon Contractor, beyond those granted or imposed in these General Conditions. City's Horizontal Special Conditions are attached hereto, made a part of these General Conditions and shall be used as applicable.

1.1.24 **"SPECIFICATIONS"** are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.

1.1.25 **"SUBSTANTIAL COMPLETION"** is the date certified by Owner and Design Consultant, in accordance with **Section 9.8** herein, when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so as to be operational and fit for the intended use by Owner.

1.1.26 **"TEMPORARY BENCH MARKS (TBM)"** are temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.

1.1.27 **"THE 3D MODEL"** is the Building Information Model prepared by Design Consultant in the format designated, approved and acceptable to Owner with databases of materials, products and systems that can be used by Contractor to prepare schedules for cost estimating, product and materials placement schedules and evaluations of crash incidences. The 3D Model, if available, may be used as a tool, however all information taken from the Model is the responsibility of Contractor and not Owner or Design Consultant.

1.1.28 **"WORK"** means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Contractor, or any Subcontractors, Sub-Subcontractors, material suppliers or any other entities for which Contractor is responsible, to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.29 **OTHER DEFINITIONS.** As used in the Contract Documents, the following additional terms have the following meanings:

1.1.29.1 "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and all other expenses necessary to complete in place and ready for operation or use;

1.1.29.2 "shall" means the mandatory action of the party of which reference is being made;

1.1.29.3 "as required" means as prescribed in the Contract Documents; and

1.1.29.4 "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes and regulations.

1.2 PRELIMINARY MATTERS

1.2.1 Upon the San Antonio City Council's passing of an Ordinance authorizing the issuance of a contract, a Notice of Award Letter shall be sent to Contractor by TCI Contract Services, notifying Contractor of the award of a contract. In its Notice of Award Letter, Contractor shall be informed of a date certain by which Contractor's bond(s) and evidence of insurance shall be delivered to TCI Contract Services.

1.2.2 **DELIVERY OF CONTACT AND BONDS.** Not later than the Pre-Construction meeting and prior to the commencement of any Work on the Project, Contractor shall deliver a fully executed Contract to Owner, along with such bonds as Contractor may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in the Contract Documents and these General Conditions and a required performance bond in the form and amount specified in the Contract Documents and these General Conditions.

1.2.3 **DELIVERY OF EVIDENCE OF INSURANCE.** Not later than the Pre-Construction meeting, and prior to the commencement of any Work under this Contract, Contractor shall deliver evidence of insurance to Owner. Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the TCI Contract Services Division, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Contractor shall be prohibited from commencing the Work and Owner shall have no duty to pay or perform under this Contract until such evidence of insurance is delivered to Owner. No officer or employee, other than Owner's Risk Management Department, shall have authority to waive this requirement.

1.2.4 **NOTICE TO PROCEED AND COMMENCEMENT OF CONTRACT TIMES.** Unless otherwise stated on the Notice to Proceed, the Contract Time shall commence to run on the date stated on the Notice to Proceed. No Work shall commence any earlier than the date stated on Notice to Proceed and no Work shall be performed by Contractor or any Subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Contractor receiving a Notice to Proceed is performed at Contractor's risk.

1.2.5 **SUBMISSION OF PROJECT SCHEDULE(S).** Prior to comment of Work (unless otherwise specified elsewhere in the Contract Documents), Contractor shall submit to the Director of TCI or his/her designee the Project schedule(s), as defined in **Section 3.10** herein, a minimum of fifteen (15) days prior to the Pre-Construction Conference.

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

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

1.3 CONTRACT DOCUMENTS

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

1.3.2 **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.** The Drawings, Specifications and other documents, including those in electronic form, prepared by Design Consultant, its Consultants or other Consultants retained by Owner for the Project, which describe the Work to be executed by Contractor (collectively referred to as the "Construction Documents") are and shall remain the property of Owner, whether the Project for which they are made is executed or not. Contractor shall be permitted to retain one record set. Neither Contractor nor any Subcontractor, sub-Subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Design Consultant or Design Consultant's Consultants. All copies of Construction Documents, except Contractor's record set, shall be returned or suitably accounted for to Design Consultant on request and upon completion of the Work. The Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant's Consultants, along with copies thereof furnished to Contractor, are for use solely with respect to this Project. The drawings, specifications or other documents are not to be used by Contractor or any Subcontractor or material or equipment supplier on other

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

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

1.3.2.2 Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially-significant Work product lost or destroyed by Contractor shall be replaced or reproduced at Contractor's non-reimbursable sole cost. In addition, Owner shall have access during normal business hours, during the duration this Contract is in effect and for four (4) years after the final completion of the Work, unless there is an ongoing dispute under the Contract, then such access period shall extend longer until final resolution of the dispute, to all of Contractor's records and documents covering reimbursable expenses, actual base hourly rates, time cards and annual salary escalation records maintained in connection with this Contract for purposes of auditing same at the sole cost of Owner. The purpose of any such audit shall be for the verification of such costs. Contractor shall not be required to keep records of, or provide access to, the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers. Nothing herein shall deny Contractor the right to retain duplicates. Refusal by Contractor to comply with the provisions hereof shall entitle Owner to withhold any payment(s) to Contractor until compliance is obtained.

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

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

(1) the dimension figures shall govern over scaled dimensions;

(2) Detailed Drawings and accompanying notations shall govern over general Drawings;

(3) Specifications shall govern over Drawings, subject to **Section 1.3.3.6** herein;

(4) General Conditions and Supplemental Conditions;

(5) Special Conditions shall govern over Specifications, Drawings and General/Supplemental Conditions; and

(6) Negotiated Special Conditions shall govern over Special Conditions.

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

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

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

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

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

1. Modifications to this Agreement signed by Contractor, Owner and Design Consultant;

2. Addenda, with those of later date(s) having precedence over those with earlier date(s);

3. Special Conditions;

4. General Conditions;

5. Special Provisions (Horizontal Projects);

6. Specifications;

7. Drawings;

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

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

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

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

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

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

ARTICLE II. OWNER

2.1 GENERAL

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

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

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER

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

2.2.2 Owner shall furnish surveys, if in existence, describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Contractor of any of its duties under the Contract Documents or these General Conditions. Information or services required of Owner by the Contract Documents shall be furnished by Owner with reasonable promptness following actual receipt of a written request from Contractor. It is incumbent upon Contractor to identify, establish and maintain a current schedule of latest dates for submittal and approval by Owner, as required in **Section 3.10** herein, including when such information or services must be delivered. If Owner delivers the information or services to Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse Owner for all extra costs incurred by holding, storage, retention or performance, including redeliveries by Owner in order to comply with the current schedule.

2.2.3 Unless otherwise provided in the Contract Documents, Contractor shall be furnished, free of charge, up to ten (10) complete sets of the Plans and Specifications by Design Consultant. Additional complete sets of Plans and Specifications, if requested by Contractor, shall be furnished at reproduction cost to Contractor.

2.2.4 Owner's personnel may, but are not required to, be present at the construction site during progress of the Work, along with Design Consultant in the performance of its duties, to verify Contractor's record of the number of workers employed on the Work site, the workers' occupational classification, the time each worker is engaged in the Work and the equipment used by the workers in the performance of the Work, for purpose of verification of Contractor's Applications for Payment and payroll records.

2.2.5 Owner shall reimburse Contractor for the necessary Project-related approvals, fees and required permits with no markup paid to Contractor for these necessary Project-related approvals, fees and required permits costs unless said costs are stipulated in the Contract Documents as a part of the Work.

2.2.6 **OWNER'S RIGHT TO STOP THE WORK.** If Contractor fails to correct Work deemed by Owner to not be in accordance with the requirements of the Contract Documents, as required by **Section 12.3** herein, fails to carry out Work in accordance with the Contract Documents or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction of Owner's rights pursuant to **Section 12.3** herein. Owner's issuance of an order to Contractor to stop the Work shall not give rise to any claim by Contractor for additional time, cost or general conditions costs.

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

ARTICLE III. CONTRACTOR

3.1 GENERAL

3.1.1 Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 Contractor shall perform the Work in a good and workmanlike manner, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

3.1.3 Contractor shall not be relieved of its obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents, either by any activities or duties of Design Consultant in Design Consultant's administration of the Contract or by tests, inspections or approvals required or performed by Owner or any person other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, Contractor carefully shall:

(1) study and compare the various Drawings and other Contract Documents relative to that portion of the Work and the information furnished by Owner;

(2) take field measurements of any existing conditions related to that portion of the Work; and

(3) observe any conditions at the Site affecting the Work.

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

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

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

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

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

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

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

3.2.3 Any design errors or omissions noted by Contractor during its review promptly shall be reported to Owner, but it is recognized that the Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain if Contact 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 five (5) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software. If Contractor's Project affects City traffic, Work shall be scheduled upon Contractor's six (6) 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, 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) Contractor intends to complete the remaining work in the sequence and time indicated.

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

3.10.10 **COMPLETION OF WORK**

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

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

(1) increasing Project work forces;

(2) increasing Project equipment or tools;

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

(4) expediting the delivery of Project materials;

(5) changing, with the approval of Owner, the schedule logic and Work sequences; or

(6) taking some other action as Contractor may proposes, if acceptable to Owner.

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

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

(1) increasing work forces and hours, to include Contractor working additional shifts of overtime;

(2) supplying additional manpower, equipment and facilities;

(3) re-sequencing the Work;

(4) expediting the fabrication and supply of materials; and/or

(5) other similar measures Owner may direct (hereafter **(1)** – **(5)** herein above 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 Contactor.

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 it's 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 pursing 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 is it shown that, through no fault of Contractor, Contractor fell behind on the approved construction schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time, Owner shall not be entitled to liquidated damages. Nothing in this **Section 4.3.11.2** shall prohibit Contractor from filing a Claim for an extension of time Contractor feels it may be owed.

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

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

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 Claims by Contractor against Owner and Claims by Owner against Contractor, including those alleging an error or omission by Design Consultant but excluding those arising under **Section 10.3** and **Section 10.5** herein, shall be referred initially to Design Consultant for consideration and recommendation to Owner.

4.4.2 An initial recommendation by Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the parties arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to Design Consultant with no recommendation having been rendered by Design Consultant.

4.4.3 Design Consultant shall review Claims and, within ten (10) work days of receipt of a Claim, take one or more of the following actions:

(1) request additional supporting data from the party making the Claim;

(2) issue an initial recommendation;

(3) suggest a compromise; or

(4) advise the parties that Design Consultant is unable to issue an initial Recommendation, due to a lack of sufficient information or conflict of interest.

4.4.4 Following receipt of Design Consultant's initial recommendation regarding a Claim, Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement is reached, either party may request mediation of the dispute, pursuant to **Section 4.5** herein.

4.4.5 If Design Consultant requests either or any party to provide a response to a Claim or to furnish additional supporting data, such requested party shall provide a response or the requested supporting data to Design Consultant, advise Design Consultant when the response or supporting data shall be furnished or advise Design Consultant that no response of supporting data shall be furnished.

4.4.6 With receipt of all information requested by Design Consultant, Design Consultant shall review the Claim and all received information within ten (10) calendar days of receipt of the information and shall take one of the following actions:

(1) issue a recommendation;

(2) suggest a compromise; or

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

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

4.4.8 **WAIVER OF LIEN.** It is understood that, by virtue of this Contract, no mechanic, contractor, material man, artisan or laborer, whether skilled or unskilled, ever shall, in any manner, have a claim or acquire any lien upon the building or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said building or any of the improvements are so erected, built or situated.

4.5 ALTERNATIVE DISPUTE RESOLUTION

4.5.1 **CONTINUATION OF WORK PENDING DISPUTE RESOLUTION.** Each party is required to continue to perform its obligations under this Contract pending the final resolution of any dispute arising out of or relating to this Contract, unless it would be impossible or impracticable under the circumstances then present.

4.5.2 **REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.** Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Contract agree that they first shall try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. Both Owner and Contractor agree that this step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with the alternative dispute resolution process contained in **Section 4.5** herein, including mediation and/or litigation. All negotiations pursuant to this **Section 4.5** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

4.5.3 **MEDIATION.** In the event that Owner and/or Contractor contend that the other has committed a material breach of this Contract, or the two parties cannot reach a resolution of a claim or dispute pursuant to **Section 4.4** herein, as a condition preceding to filing a lawsuit, either party shall request mediation of the dispute with the following requirements:

4.5.3.1 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.

4.5.3.2 In the event Owner and Contractor are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **Section 4.5** shall be deemed to have occurred.

4.5.3.3 The parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

4.6 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, Owner may administer its design and construction management through an Internet-based Project Management system (also referred to as "PRIME*Link*"). In such cases, Contractor shall conduct communication through this medium and perform all Project-related functions utilizing this management system, to include all correspondences, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders and other administrative activities. When such a management system is employed, Owner shall administer the software, provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

ARTICLE V. SUBCONTRACTORS

5.1 DEFINITION

A Subcontractor is defined and used herein as a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor, Sub-Consultant or an authorized representative of Subcontractor or Sub-Consultant. The term "Subcontractor" does not include a separate contractor or Subcontractor of a separate contractor.

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

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

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

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

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

5.2.5 All Work performed for Contractor by a Subcontractor shall be performed pursuant to an appropriate agreement between Contractor and Subcontractor which specifically binds Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

5.2.6 **SBEDA/DBE REPORTING AND AUDITING.** During the term of the contract, Contractor must report the actual payments to all SBEDA or DBE (as applicable) Subcontractors and Suppliers in the time intervals and format prescribed by Owner. Owner reserves the right, at any time during the term of this Contract, to request additional information, documentation or verification of payments made to such Subcontractors and suppliers in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of canceled checks paid to SBEDA or DBE Subcontractors and suppliers and/or confirmation inquiries directly to the SBEDA or DBE participants. Proof of payments, such as copies of canceled checks, properly must identify the Project name or Project number to substantiate a SBEDA or DBE payment for the Project.

5.2.7 **SMALL BUSINESS SUBCONTRACTOR SUBSTITUTIONS.** Reference SBEDA or DBE Requirements in Supplementary Conditions for Substitution of Subcontractors. Failure to follow such procedures is an event of default under this Contract and may be grounds for termination.

5.3 SUB-CONTRACTUAL RELATIONS

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

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

5.4.1 an assignment is effective only after termination of the Contract by Owner and only for those Subcontractor agreements which Owner accepts by notifying Subcontractor and Contractor in writing; and

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

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

ARTICLE VI. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS

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

6.1.1 Owner reserves the right to perform construction or operations related to the Project with Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under General Conditions of the Contract identical or substantially similar to these. If Contractor claims that a delay or additional cost is involved, due to such action by Owner, Contractor shall make a Claim as provided in **Section 4.3** herein.

6.1.2 When separate contracts are awarded for different portions of the Project or for other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor that executes each separate Owner-Contractor Agreement.

6.1.3 Owner shall provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work of Contractor and Contractor fully shall cooperate with said coordination. Contractor shall participate with other separate contractors and Owner in reviewing all construction schedules when directed by Owner to do so. Contractor shall make any revisions to its construction schedule deemed necessary after said joint review and mutual agreement. The revised construction schedules then shall constitute the schedules to be used by Contractor, separate contractors and Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when Owner and Owner's own forces perform construction or operation related to the Project, Owner shall be subject to the same obligations and to have the same rights that apply to Contractor under these General Conditions and the Contract Documents.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Contractor shall afford Owner and Owner's separate contractor(s) reasonable opportunity for the introduction and storage of materials and equipment, the performance of their activities and the coordination of Contractor's construction and operations with theirs, as required by the Contract Documents.

6.2.2 If part of Contractor's Work depends upon the construction or operations by Owner or a separate contractor for the proper execution or results, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgment that Owner's separate contractor's completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. Owner shall be responsible to Contractor for costs incurred by Contractor because of delays, improperly timed activities and damage to the Work or defective construction of Owner's separate contractor(s).

6.2.4 Contractor promptly shall remedy any damage wrongfully caused by Contractor or its Subcontractor(s) to any completed or partially completed construction or to property of Owner or Owner's separate contractor(s), as provided in **Section 10.2.5** herein.

6.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in **Section 3.14** herein.

6.3 OWNER'S RIGHT TO CLEAN UP. If a dispute arises among or between Contractor, Owner's separate contractor(s) and Owner, as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Owner may clean up and those costs shall be allocated amongst those parties responsible.

ARTICLE VII. CHANGES IN THE WORK

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished, after the execution of the Contract and without invalidating the Contract, by Change Order, Field Work Directive/Force Account or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this **Article VII** and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor; a Field Work Directive requires a directive by Owner and, if necessary, Design Consultant and may or may not be agreed to by Contractor; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by Owner.

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

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

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written modification of the Contract signed by both Owner and Contractor (and approved by City Council, if required) that authorizes an addition, deletion or revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in **Section 7.3.4** herein.

7.2.3 Acceptance of a Change Order by Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including, but not limited to impact, delay or acceleration damages arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and any extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, cost and additional time, if any. This Contract, as amended, forever releases any Claim against Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release of any Claim applies to Claims related to the cumulative impact of all Change Orders and to any Claim related to the effect of a change on unchanged Work.

7.2.4 Owner or Design Consultant shall prepare Change Orders and Field Work Directives and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which Contractor promptly shall carry out and record on the As-Built record documents.

7.2.5 Contractor and Subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by Project Specifications.

7.3 FIELD WORK DIRECTIVES

7.3.1 A Field Work Directive is a written directive signed by Owner and, if necessary, Design Consultant directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum or Contract time, or both. Owner may, by Field Work Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with any changes to the Contract Sum and/or the Contract Time to be adjusted according to the terms of this **Section 7.3**.

7.3.2 A Field Work Directive shall be used in the absence of total agreement on the terms of a Change Order. Owner shall issue a Field Work Directive to Contractor with a defined Not-To-Exceed dollar amount for the scope of Work defined.

7.3.3 Upon receipt of a Field Work Directive, Contractor promptly shall proceed with the change in the Work involved and, in writing, advise Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.4 If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as applicable:

7.3.4.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.4.2 prices, including unit prices, stated in the Contract Documents or subsequently agreed upon;

7.3.4.3 cost to be determined in a manner agreed upon by Owner and Contractor and a mutually acceptable fixed or percentage fee; or

7.3.4.4 as provided in **Section 7.3.6** herein.

7.3.5 If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall initially be determined by Design Consultant on the basis of reasonable costs and savings attributable to the change including, in case of an increase in the Contract Sum, as applicable, a reasonable allowance for overhead and profit. In such case, and also under **Section 7.3.4**.3 herein, Contractor shall keep and present, in such form as Owner may prescribe, an itemized and detailed accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Section 7.3.5** shall be limited to the following:

7.3.5.1 costs of all labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;

7.3.5.2 costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;

7.3.5.3 rental costs of all machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;

7.3.5.4 expenses incurred in accordance with Contractor's standard personnel policy for travel approved in writing by Owner in advance;

7.3.5.5 costs of premiums for all bonds and insurance, permit fees and allowable sales, use or similar taxes related to the Work;

7.3.5.6 all additional costs of supervision and field office personnel directly attributable to the change; and

7.3.5.7 all payments made by the Contractor to Subcontractors.

7.3.6 The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus Contractor's allocated percent for profit and overhead, as confirmed by Design Consultant, subject to any equitable adjustment recommended by Design Consultant and approved by Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

7.3.7 If Owner and Contractor agree with the determination made by Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

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

Directive, Owner unilaterally shall file a Change Order listing Owner's adjustments in the Contract Sum and/or Contract Time and Contractor reserves the right to file a Claim for payment and/or time, pursuant to **Section 4.4** herein.

7.4 MINOR CHANGES TO THE WORK. Owner or Design Consultant both shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Owner and Contractor. Contractor promptly shall carry out such written orders and record such changes in the As-Built drawings.

7.5 TIME REQUIRED TO PROCESS CHANGE ORDERS

7.5.1 All responses by Contractor to proposal requests from Owner or Design Consultant shall be accompanied by a complete itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow Owner and Design Consultant a minimum of thirty (30) calendar days after receipt by Owner to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in Contractor's response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution or other grounds for seeking extra compensation or additional time under the Contract Documents, without reservation or further recourse.

7.5.2 All Change Orders require written approval by either Owner or City Council or, where authorized by the state law and Owner ordinance, by Owner's City Manager or designee, pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal shall be authorized by Owner or City Council Resolution or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM SHALL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Contractor shall proceed with the work under a pending Change Order only if directed in writing to do so by Owner.

ARTICLE VIII. TIME

8.1 PROGRESS AND COMPLETION

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

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

8.1.3 For Projects not affecting City traffic and a Working Day is measured from sunrise to sundown Monday through Friday, nothing in this **Article VIII** shall be construed as prohibiting Contractor from working on Saturdays if it so desires and giving Owner at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday, Sunday and holidays so that Owner's representative may be scheduled to observe/inspect said Work and only if Contractor has performed work on the Project during the same week of the requested Saturday, Sunday or holiday.

8.1.4 On Projects affecting City traffic, Contractor shall work sunrise to sundown Monday through Saturday.

8.2 DELAYS AND EXTENSIONS OF TIME

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

8.2.2 Should Contractor be delayed solely by the act, negligence or default of Owner or Design Consultant, and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and Owner, Contractor shall receive an extension of the Contract Time equal to the verified delay or portion thereof if a written claim is made within five (5) calendar days of the act, negligence or default of Owner or Design Consultant and granted by Owner. In addition, Contractor, upon timely notice to Owner, with substantiation by Owner and Design Consultant and upon approval of Owner, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs

incurred by Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or supplier to administer their Work. Compensation for Subcontractor's and supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to the Owner-caused event. In no event shall Contractor be entitled to home office or other off-site expenses or damages.

8.2.3 Claims relating to time shall be made in accordance with applicable provisions of **Section 4.3** herein.

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

ARTICLE IX. PAYMENTS AND COMPLETION

9.1 **CONTRACT SUM.** The Contract Sum is stated in the Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by Owner to Contractor for performance of the Work under the Contract Documents. Contractor accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the San Antonio City Council. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any party to this Contract.

9.2 **SCHEDULE OF VALUES**

9.2.1 A Schedule of Values for all of the Work shall be submitted by Contractor and shall include quantities and prices of items which, when added together, equal a contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable, overhead and profit shall be included as a separate line item.

9.2.2 Before the first Application for Payment, Contractor shall submit to Owner and Design Consultant a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner and Design Consultant may require. This schedule, unless objected to by Design Consultant or Owner, shall be used as a basis for reviewing Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Contractor shall submit Applications for Payment to Owner electronically, at minimum, every thirty (30) days throughout the duration of the Project. Contractor electronically shall attach to its Application for Payment all data substantiating Contractor's right to payment as Owner or Design Consultant may require, such as copies of requisitions from Subcontractors and material suppliers reflecting retainage, if provided for in the Contract Documents, and reflecting a deduction for Liquidated Damages, if applicable. Applications for Payment shall not include requests for payment for portions of the Work which Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by Owner. If approved in advance in writing by Owner, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by Owner. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

9.3.3 Contractor warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONTRACTOR.**

9.3.4 By submission of an Application for Payment, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor; provided if any of the foregoing is not true and cannot be certified,

Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.4 PAY APPLICATION APPROVAL

9.4.1 Design Consultant shall, within ten (10) business days after receipt of Contractor's Application for Payment, either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Contractor and Owner the Design Consultant's reasons for withholding approval, as provided in **Section 9.5.1** herein.

9.4.2 The certification of an Application for Payment shall constitute a representation by Design Consultant to Owner, based on Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Design Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by Design Consultant. The issuance of a Certificate for Payment further shall constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation Design Consultant has:

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment; or

(4) made any examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT

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

9.5.1.1 Work not performed or defective ;

9.5.1.2 third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder unless security acceptable to Owner is provided by Contractor;

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

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

9.5.1.5 damage to Owner or another contractor;

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

9.5.1.7 persistent failure by Contractor to carry out the Work in accordance with the Contract Documents;

9.5.1.8 the applicable liquidated damages were not included in the Application for Payment;

9.5.1.9 billing for unapproved/unverified materials stored off Site; or

9.5.1.10 a current schedule update has not been submitted by Contractor.

9.5.2 Owner shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Section 9.5.1** herein.

9.6 PROGRESS PAYMENTS

9.6.1 After the final approval of the Application for Payment, Owner may make payment in the manner and within the time provided in the Contract Documents.

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

of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of Owner receipt of a complete and mathematically accurate Application for Payment from the Contractor, and the retainage held until Final Completion shall be five percent (5%).

9.6.3 Owner's payment of installments shall not, in any way, be deemed to be a final acceptance by Owner of any part of the Work, shall not prejudice Owner in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work herein provided.

9.6.4 Contractor shall, within ten (10) calendar days following receipt of payment from Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide Owner with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to Owner bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if Owner so requests, shall provide copies of such Subcontractor payments to Owner. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which Owner has made payment to the Contractor, Owner shall be entitled to withhold payment to Contractor to the extent necessary to protect Owner.

9.6.5 Owner and/or Design Consultant shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Owner and Design Consultant on account of portions of the Work done by such Subcontractor.

9.6.6 Neither Owner nor Design Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.

9.6.7 Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.2, Section 9.6.3** and **Section 9.6.4** herein regarding Subcontractors.

9.6.8 A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

9.6.9 Contractor shall, as a condition precedent to any obligation of Owner under this Contract, provide to Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

9.7 SUBSTANTIAL COMPLETION

9.7.1 Substantial Completion is defined as the stage in the progress of the Work when the Work – or a designated portion thereof, which Owner agrees to accept separately – sufficiently is complete, in accordance with the Contract Documents, so Owner may occupy or utilize the Work or a designated portion thereof for its intended use. In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s), Owner may withhold payment of sums necessary to pay the estimated Liquidated Damages due Owner. Owner shall be entitled, at any time, to deduct out of any sums due to Contractor any or all Liquidated Damages due Owner in accordance with the Contract between Owner and Contractor.

9.7.2 When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is Substantially Complete, Contractor shall prepare and submit to Owner and Design Consultant a preliminary comprehensive list of items to be completed or corrected prior to Final Completion and final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.7.3 Upon receipt of Contractor's list of items to be completed or corrected, Owner and Design Consultant shall make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If Owner's or Design Consultant's inspection discloses any item, whether or not it was included on Contractor's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that Owner may occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by Owner or Design Consultant. In such case, Contractor then shall submit a request for another inspection by Owner and Design Consultant to determine Substantial Completion and Contractor shall be responsible for all costs incurred and associated with re-inspection.

9.7.4 When the Work – or the designated portion thereof which Owner agrees to accept separately – is Substantially Complete, Design Consultant or Owner shall prepare a Certificate of Substantial Completion (Vertical Projects) or a Letter of Conditional Approval (Horizontal Projects) which shall:

(1) establish the date of Substantial Completion (which shall be the date on which the Work met the requirements under the Contract Documents for Substantial Completion);

(2) establish responsibilities of Owner and Contractor, as agreed to by Owner and Contractor, for security, maintenance, heat, utilities, damage to the Work and insurance; and

(3) fix the time limit by which Contractor shall complete all items on the list accompanying the Certificate.

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

9.8 PARTIAL OCCUPANCY OR USE

9.8.1 Owner may occupy or use any completed or partially completed portion of the Work at any stage of the Work when such partially completed portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer, as required under **Section 11.4.1.5** herein and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided Owner and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion of the Work to be Substantially Complete, Contractor shall prepare and submit a list of items to be completed or corrected prior to Final Completion and final payment and submit such list to Owner and Design Consultant, as provided under **Section 9.8.2** herein. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between Owner and Contractor or, if no agreement is reached, by the decision of Design Consultant.

9.8.2 Immediately prior to such partial occupancy or use, Owner, Contractor and Design Consultant collectively shall inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.8.3 Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.8.4 Upon such partial occupancy or use, and upon Substantial Completion, Owner may assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.

9.8.5 Partial occupancy or use by Owner does not constitute substantial completion and does not start any warranty period(s).

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 When all of the Work finally is completed and ready for final inspection, Contractor shall notify Owner and Design Consultant thereof in writing. Thereupon, Owner and Design Consultant shall make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the final Application for Payment may be submitted. If Owner and Design Consultant are unable to approve the final Application for Payment for reasons for which Contractor is responsible and Owner and Design Consultant are required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by Owner from the Contractor's retainage.

9.9.2 Contractor shall not be entitled to payment of retainage unless and until it submits to Owner its affidavit that the payrolls, invoices for materials and equipment, and other liabilities, to include Liquidated Damages, connected with the Work for which Owner or the Owner's property might be responsible fully have been paid or otherwise satisfied or shall be paid from final payment; releases and waivers of liens from all Subcontractors of Contractor and of any and all other parties required by Design Consultant or Owner that either are unconditional or conditional on receipt of final payment; Certificates of insurance showing continuation of required insurance coverage; such other documents as Owner may request; and consent of Surety to final payment. A Retainage Checklist shall be provided by Owner to Contractor upon request.

9.9.3 If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Design Consultant so confirms, Owner shall, upon application by Contractor and certification by Design Consultant and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Design Consultant, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

(1) Design Consultant is required to make more than one inspection to determine if Substantial Completion has been achieved by Contractor;

(2) Design Consultant is required to make more than one inspection to determine if Final Completion has been achieved by Contractor; or

(3) the Work is not substantially complete within thirty (30) calendar days after the date established for the Work's Substantial Completion in the Contract Documents.

ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.1.2 Contractor shall notify Owner immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities including, but not limited to, copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.

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

alcoholic beverages while performing the Work or while on Site or performing the Work. Contractor shall remove any of its employees or Subcontractor employees from performing the Work or from the Site any time there is suspicion of alcohol and/or drug use, possession or impairment involving such employee and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Contractor's or Subcontractor's employees only may be considered for return to work after Contractor certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Contractor shall not employ any individual, or shall not accept any Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.

10.1.4 Contractor shall comply with all applicable federal, state and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether the owner thereof has a permit for a concealed weapon.

10.1.5 Both Owner and Contractor agree that these safety and health terms are of the highest importance and that a breach or violation of any of the terms of this **Section X** by Contractor or a Subcontractor shall be a material and substantial breach of this Contract. In the event that Owner shall determine that Contractor has breached or violated the terms of this Section, then Owner shall determine, immediately upon written notice to Contractor, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until Owner is satisfied that the safety provisions hereof shall not be breached or violated thereafter. If Owner terminates the Contract as a result of such breach or violation, Owner and Contractor shall complete their obligations hereunder to one another in accordance with **Section 14.2** herein.

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

10.1.7 Notwithstanding either of the above provisions, or whether Owner exercises its rights set forth herein, Owner neither warrants nor represents to Contractor, Contractor's employees or agents, any Subcontractors or any other third party that Contractor's safety policy meets the requirements of any applicable law, code, rule or regulation, nor does Owner warrant that the proper enforcement of Contractor's policy shall insure that no accidents or injuries shall occur. In addition, any action by Owner under these provisions in no way diminishes any of Contractor's obligations under applicable law or the contract documents.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Contractor shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees performing the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or Contractor's Subcontractors or Sub-Subcontractors;

10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction; and

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

10.2.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying all owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, Contractor shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel. Prior to the use of any explosives, Contractor shall submit a written blasting plan, shall obtain Owner's approval and shall comply with Owner's requirements for such use.

10.2.5 Contractor promptly shall remedy any and all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). Contractor also shall HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND Owner, its elected officials, employees, officers, directors, volunteers and representatives of Owner, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of Contractor and of Owner) referred to in **Section 10.2.1.2** and **Section 10.2.1.3** herein, but only to the extent caused in whole or in part by the acts, omissions and/or negligence of Contractor, its agents, servants and employees, its Subcontractor(s) and its/their agents, servants and employees, anyone directly or indirectly employed by Contractor or Subcontractor and/or by any other person or entity for which Contractor or Subcontractor may be responsible under the Contract Documents in connection with the Work to be

performed, services to be rendered or materials to be furnished under this Contract including, but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without, however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of Contractor are in addition to Contractor's obligations under **Section 3.18** herein. In the event Contractor and Owner are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively, in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the parties under Texas law.

10.2.6 Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to Owner and Design Consultant.

10.2.7 Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.8 Notwithstanding the delivery of a survey or other documents by Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the property. Contractor acknowledges and accepts that the location of underground utilities (both public and private) reflected on any City-provided plans are not guaranteed and may not be completely accurate. Contractor shall locate and verify any and all utilities and associated service lines prior to beginning any Work. Contractor shall be responsible for and shall repair, at Contractor's own expense, any damage done to lines, cables, pipes and pipelines identified or not identified to Contractor.

10.3 EMERGENCIES.

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

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

10.4 PUBLIC CONVENIENCE AND SAFETY

10.4.1 Contractor shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by Owner. Sidewalks or streets shall not be obstructed, except by special permission of Owner. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances and fire alarm or police call boxes in the vicinity.

10.4.2 Owner reserves the right to remedy any neglect on the part of Contractor, in regard to public convenience and safety, which may come to Owner's attention after twenty-four (24) hours notice in writing to Contractor. In case of an emergency, Owner shall have the right immediately to remedy any neglect without notice. In either case, the cost of any work done by or for Owner to remedy Contractor's neglect shall be deducted by Owner from Contractor's Contract Sum. Contractor shall notify Owner, Owner's Traffic Control Department and Design Consultant when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be given at least forty-eight (48) hours in advance. Owner reserves the right to postpone and/or prohibit any closure or obstruction of any streets or thoroughfares, to the extent necessary for the safety and benefit of the traveling public. Contractor shall, when directed by Owner or Design Consultant, keep any street or streets in condition for unobstructed use by Owner departments. When Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

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

10.4.4 City's Office of Sustainability continues to work on City's Air Quality Control Strategies Plan in its ongoing efforts to lower emissions throughout the City, including City's Project sites. In an effort to assist City in these goals, Contractor shall strive to:

10.4.4.1 reduce fuel use by directing its employees and its Subcontractors to reduce vehicle idling, maintaining equipment utilized on the Project and replacing or repowering equipment with current technologies;

10.4.4.2 conserve electricity used to provide power to Contractor's offices and throughout the Project site, to include Project lighting, tools and Contractor's Project construction trailer; and

10.4.4.3 recycle Project site materials such as asphalt, steel, other metals and concrete.

10.4.4.4 All costs associated with Contractor's and its Sub-Consultants' and Subcontractors' acquisition and installation of emission control technology shall be considered incidental costs of the Project; as such, no additional compensation shall be provided Contractor by City.

10.5 BARRICADES, LIGHTS AND WATCHMEN. If the Work is carried on, in or adjacent to any street, alley or public place, Contractor shall, at Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, provide sufficient watchmen and take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that shall be visible at night, and shall be illuminated by lights as required under City's Barricades specifications. The term "lights," as used in this **Section 10.5**, shall mean flares, flashers or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices also shall be erected to keep vehicles from being driven on or into any Work under construction. Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and/or watchmen necessary to protect the Work. Whenever evidence is found of such damage, Owner or Design Consultant may order the damaged portion immediately removed and replaced by Contractor at Contractor's sole cost and expense. Contractor's responsibility for maintenance of barricades, signs, lights, and for providing watchmen, as required under this **Section 10.5**, shall not cease until the Project has been finally accepted by Owner.

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

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS. When existing storm sewers or drains have to be taken up or removed, Contractor shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Contractor also shall provide for all storm sewage and drainage which shall be received from these storm drains and sewers. For this purpose, Contractor shall provide and maintain, at Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. Contractor shall, at Contractor's own expense, construct such troughs, pipes or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by Design Consultant. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction shall be adequately protected.

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

10.8.1 When Contractor desires to use Owner's water in connection with the Work, Contractor shall make complete and satisfactory arrangements with the San Antonio Water Service and shall be responsible for the cost of the water Contractor uses. Where meters are required and used, the charge shall be at the regular established rate; where no meters are required and used, the charge shall be as prescribed by Owner ordinance, or where no ordinance applies, payment shall be based on estimates made by the representatives of the San Antonio Water Service.

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

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

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

10.10 ENVIRONMENTAL COMPLIANCE

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

10.10.2 In the event Contractor encounters on the Project Site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, Contractor immediately shall stop Work in the affected area and report in writing the facts of such encounter to Owner and Design Consultant. Work in the affected area shall not thereafter be resumed except by written order of Owner and written consent of Contractor, unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, Owner shall remediate the Hazardous Substance with a separate contractor or through a Change Order with Contractor. If the Hazardous Substance exists in the affected area due to the fault or negligence of Contractor or any of its Subcontractors, Contractor shall be responsible for remediating the condition at the sole expense of Contractor. If applicable, such remediation shall be in accordance with Contractor's Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by Owner only if the Project critical path is affected and Contractor is not the source of the Hazardous Substance. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of **Section 4.3** and **Article VIII** herein.

10.10.3 Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substance brought into or onto the site by Contractor or any Subcontractor or Contractor's Supplier. Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation and/or disposal, notify Owner and Design Consultant so that they may observe the activities; provided, however, that it shall be Contractor's sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities.

ARTICLE XI. INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

11.1.1.2 Commercial General Liability Insurance, Personal Injury Liability, Independent Contractor's Liability and Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (and/or Subcontractor's) liability for injury to or death of Owner's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of $1,000,000 per occurrence, $2,000,000 annual aggregate. If coverage is written on a

claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. Owner shall be named as additional insured by using endorsement CG 20 26 or broader. The general liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the Project in question.

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

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

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

11.2 PROPERTY INSURANCE

11.2.1 In addition to the insurance described in **Section 11.1** and **Section 11.4** herein, Contractor shall obtain at its expense and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, Owner shall be shown as a Joint Named Insured with respect to the Project. If a

Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be in the name of Contractor and naming Owner, Design Consultant and Subcontractors, as well as any Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

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

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

11.2.2 **BOILER AND MACHINERY INSURANCE.** If applicable, Owner shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by Owner. This insurance shall include the interests of Owner, Contractor, Subcontractors and Sub-Subcontractors in the Work, and Owner and Contractor shall be named insureds.

11.2.3 **LOSS OF USE INSURANCE.** Owner, at Owner's option, may purchase and maintain such insurance as shall insure Owner against loss of use of Owner's property due to fire or other hazards, however caused. Owner waives all rights of action against Contractor that it may now have or have in the future for loss or damage to Owner's property howsoever arising, including consequential losses due to fire or other hazards however caused.

11.2.4 Contractor shall provide to Design Consultant for delivery to Owner a Certificate of Insurance evidencing all property insurance policies procured under **Section 11.2** herein and all endorsements thereto, before any exposure to loss may occur.

11.2.5 Partial occupancy or use in accordance with **Section 9.9** herein shall not commence until the insurance company/companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.3 PERFORMANCE BOND AND PAYMENT BONDS

11.3.1 Subject to the provisions of **Section 11.3.2** herein, Contractor shall, with the execution and delivery of the Contract, furnish and file with Owner, in the amounts required in this **Article XI**, the surety bonds described in **Section 11.3.1.1** and **Section 11.3.1.2** herein, with said surety bonds in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each surety bond shall be signed by Contractor, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of **Section 11.3.3** herein and approved by Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

11.3.1.1 **PERFORMANCE BOND.** A good and sufficient bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

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

11.3.2 If the Contract Sum, including Owner-accepted Alternates and allowances, if any, is greater than $100,000, Performance and Payment Bonds equaling one hundred percent (100%) of the Contract Sum are mandatory and shall be provided by Contractor. If the Contract Sum is greater than $50,000 but less than or equal to $100,000, only a Payment Bond equaling One hundred percent (100%) of the Contract amount is mandatory; provided, however, that Contractor also may elect to furnish a Performance Bond in the same amount if Contractor so chooses. If the Contract Sum is less than or equal to $25,000, Contractor may elect not to provide Performance and Payment Bonds; provided that in such event, no money shall be paid by Owner to Contractor until Final Completion of all Work. If Contractor elects to provide Performance and Payment Bonds, the Contract Sum shall be payable to Contractor through progress payments in accordance with these General Conditions.

11.3.3 No surety shall be accepted by Owner that is in default, delinquent on any bonds or that is a party to any litigation against Owner. All bonds shall be made and executed on Owner's standard forms, shall be approved by Owner and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to Owner. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Bexar County, Texas. Each surety shall designate an agent resident in Bexar County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.

11.3.4 The person or persons, partnership, company, firm, limited liability company, association, corporation or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on Owner until:

(1) it has been approved as to form by Owner's City Attorney;

(2) it has been executed by Owner's City Manager;

(3) the performance and payment bonds and evidence of insurance have been furnished to Owner by Contractor, as required by the Contract Documents; and

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

11.3.5 The failure of Contractor to execute the Contract and deliver the required bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as Owner can assemble and deliver the Contract and by the time the Owner-scheduled Pre-Construction meeting is held shall, at Owner's option, constitute a material breach of Contractor's bid proposal and Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices for materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to Owner by reason of Contractor's failure to execute the Contract within ten (10) days and deliver bonds and insurance by the Owner-scheduled Pre-Construction meeting, the filing of a bid proposal shall constitute an acceptance of this **Section 11.3.5**. In the event Owner should re-advertise for bids, the defaulting Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this **Section 11.3**.

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

11.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

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

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

11.5.1.2 Within five (5) calendar days of a suspension, cancellation or non-renewal of any required line of insurance coverage, Contractor shall provide Owner a replacement certificate of insurance with all applicable endorsements included. Owner shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during the Contract.

11.5.1.3 The terms "Owner," "City" or "City of San Antonio" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Owner and the individual members, employees and agents thereof in their official capacities, while acting on behalf of Owner.

11.5.1.4 The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The required insurance coverage furnished by Contractor shall be the primary insurance for all purposes for the Project, as well as the primary insurance for the additional insureds named in the required policies.

11.5.1.5 All provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten with contractual liability coverage(s) sufficient to include such obligations with the applicable liability policies.

11.5.2 Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability which:

11.5.2.1 All policies must comply with the applicable requirements and special provisions of this **Article 11**.

11.5.2.2 Any policy evidenced by a Certificate of Insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and Owner's decision regarding whether any policy contains such provisions and contrary to this requirement shall be final.

11.5.2.3 All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that otherwise are acceptable to Owner.

11.5.3 Contractor agrees to the following special provisions:

11.5.3.1 Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Owner, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this **Article XI**.

11.5.3.2 Insurance companies issuing the insurance policies and Contractor shall have no recourse whatsoever against Owner for payment of any premiums or assessments for any deductibles, as all such premiums and assessments solely are the responsibility and risk of Contractor.

11.5.3.3 Approval, disapproval or failure to act by Owner, regarding any insurance supplied by Contractor or any Subcontractor(s), shall not relieve Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by Contractor's insurance company shall likewise not exonerate or relieve Contractor from liability.

11.5.3.4 Owner reserves the right to review the insurance requirements of this **Article XI** during the effective period of this Contract and to adjust insurance coverage and insurance limits when deemed necessary and prudent by Owner's Risk Management Division, based upon changes in statutory law, court decisions or the claims history of Contractor and Subcontractors. Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions. Upon request by Owner, Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage.

11.5.3.5 No special payments shall be made for any insurance policies that Contractor and Subcontractors are required to carry. Except as provided in **Section 11.5.3.4** herein, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.

11.5.3.6 Any insurance policies required under this **Article XI** may be written in combination with any of the other policies, where legally permitted, but none of the specified limits neither may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this **Article XI** be limited or circumvented by doing so.

ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK

12.1 Inspecting Work. Owner and Design Consultant shall have authority to reject Work that does not conform to the Contract Documents. Whenever Owner or Design Consultant considers it necessary or advisable, Owner and/or Design Consultant shall have authority to require inspection or testing of the Work in accordance with this **Article XII**, whether or not such Work is fabricated, installed or completed.

12.2 UNCOVERING WORK

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

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

12.3 CORRECTING WORK

12.3.1 Contractor promptly shall correct any Work rejected by Owner or Design Consultant as failing to conform to the requirements of the Contract Documents, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, along with all costs for additional testing, inspections and compensation for Design Consultant's services and expenses made necessary thereby.

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

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

12.3.2.2 one (1) year after the date for commencement of warranties established by agreement in connection with partial occupancy under **Section 9.9.1** hereto; or

12.3.2.3 the stipulated duration of any applicable special warranty required by the Contract Documents.

12.3.3 The one (1) year period, described in **Section 12.3.2.1**, **Section 12.3.2.2** and **Section 12.3.2.3** herein, shall be extended, with respect to portions of the Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual completion of the Work.

12.3.4 The obligations of Contractor under **Section 3.5** herein and this **Section 12.3** shall survive final acceptance of the Work and termination of this Contract. Owner shall give notice to Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in this **Section 12.3** does not limit the ability of Owner to require Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by Owner or Design Consultant at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one (1) year period also does not relieve Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one (1) year correction period.

12.3.5 Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

12.3.6 If Contractor fails to correct any defective or nonconforming Work within what Owner deems a reasonable time after Owner or Design Consultant gives written notice of rejection to Contractor, Owner may correct the defective or nonconforming Work in accordance with this **Section 12.3**. If Contractor promptly does not proceed with correction of any defective or nonconforming Work within a reasonable time fixed by written notice from Owner or Design Consultant, Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay the costs of removal and storage within ten (10) calendar days after written notice by Owner or Design Consultant, Owner may, upon ten (10) additional calendar days written notice, sell the materials and equipment at auction or at private sale and shall account to Contractor for the proceeds, after deducting all costs and damages that should have been borne by Contractor to correct the defective work, including all compensation for Design Consultant's services and expenses made necessary as a result of the sale, removal and storage. If the proceeds of sale do not cover the costs that Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to Contractor then or thereafter are not sufficient to cover the deficiency, Contractor shall pay the difference to Owner.

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

12.3.8 Nothing contained in this **Section 12.3** shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. The establishment of the one (1) year time period, as described in **Section 12.3.2** relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

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

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

ARTICLE XIII. COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 Final Completion Of Contract. The Contract shall be considered completed, except as provided in any warranty or maintenance stipulations, bond or by law, when all the Work has been finally completed, a final inspection is made by Owner and Design Consultant and final acceptance and final payment is made by Owner.

13.2 Warranty Fulfillment. Prior to the expiration of the specified warranty period provided for in the Contract Documents, Owner or Design Consultant shall make a detailed inspection of the Work and shall advise Contractor and Contractor's Surety of the items that require correction. Owner or Design Consultant shall make a subsequent inspection and, if the corrections have been properly performed, Owner shall issue a letter of release on the maintenance obligations to Contractor. If, for any reason, Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have properly been performed and a letter of release from Owner to Contractor is issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

13.3.1 Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by Owner for any good cause after giving seven (7) calendar days advance written notice and an opportunity to cure to Contractor, including but not limited to the following causes:

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

13.3.1.2 A reasonable belief of Owner or Design Consultant that the progress of the Work being made by Contractor is insufficient to complete the Work within the specified Contract time.

13.3.1.3 Failure or refusal of Contractor to provide sufficient and proper equipment or construction forces properly to execute the Work in a timely manner.

13.3.1.4 A reasonable belief that Contractor has abandoned the Work.

13.3.1.5 A reasonable belief that Contractor has become insolvent, bankrupt, or otherwise is financially unable to carry on the Work.

13.3.1.6 Failure or refusal on the part of Contractor to observe any material requirements of the Contract Documents or to comply with any written orders given by Owner or Design Consultant, as provided for in the Contract Documents.

13.3.1.7 Failure or refusal of Contractor promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Contractor in writing by Owner or Design Consultant.

13.3.1.8 A reasonable belief by Owner that collusion exists or has occurred for the purpose of illegally procuring the contract or a Subcontractor, or that a fraud is being perpetrated on Owner in connection with the construction of Work under the Contract.

13.3.1.9 Repeated and flagrant violation of safe working procedures.

13.3.2 When the Work or any portion of the Work is terminated for any of the causes itemized in **Section 13.3.1** herein, or for any other cause except termination for convenience pursuant to **Section 13.3.5** herein, Contractor shall, as of the date specified by Owner, immediately discontinue the Work or portion of the Work as Owner shall designate, whereupon the Surety shall, within fifteen (15) calendar days after the written Notice of Termination by Owner For Cause has been served upon Contractor and the Surety or its authorized agents, assume the obligations of Contractor for the Work or that portion of the Work which Owner has ordered Contractor to discontinue and Surety may:

13.3.2.1 perform the Work with forces employed by the surety;

13.3.2.2 with the written consent of Owner, tender a replacement Contractor to take over and perform the Work, in which event the Surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

13.3.2.3 with the written consent of Owner, tender and pay to Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work and compensate Owner for any other loss sustained as a result of Contractor's default.

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

13.3.3 The balance of the Contract Sum remaining at the time of Contractor's default and subsequent termination shall become due and payable to the Surety as the Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If the Surety does not, within the time specified in **Section 13.3.2** herein, exercise its obligation to assume the obligations of the Contract, or that portion of the Work which Owner has ordered Contractor to discontinue, then Owner shall have the power to complete the Work by contract or otherwise, as Owner may deem necessary and elect. Contractor agrees that Owner shall have the right to:

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

(2) procure other tools, equipment, labor and materials for the completion of the Work at Contractor's expense; and

(3) charge to the account of Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses.

13.3.4 All expenses incurred by Owner to complete the Work shall be deducted by Owner out of the balance of the Contract Sum remaining unpaid to or unearned by Contractor. Contractor and the Surety shall be liable to Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including, but not limited to, additional fees of Design Consultant and attorney's fees) and liquidated or actual damages incurred as a result of the termination.

13.3.5 Owner shall not be required to obtain the lowest bid for the Work of completing the Contract, as described in **Section 13.3.3** herein, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and the other damages, as provided in **Section 13.3.3** herein. In case Owner's costs and damages are less than the sum which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then Owner may pay Contractor (or the Surety, in the event of a complete Termination by Owner For Cause) the difference, provided that Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then Contractor and its Surety shall pay the amount of the excess to Owner immediately upon written notice from Owner to Contractor and/or the Surety for the excess amount owed. When only a particular part of the Work is being carried on by Owner, by contract or otherwise under the provisions of this Section, Contractor shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workers employed and provided by Owner.

13.3.6 The right to terminate this Contract for the convenience of Owner (including, but not limited to, non-appropriation of funding) expressly is retained by Owner. In the event of a termination for convenience by Owner, Owner shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Contractor. Upon Contractor's receipt of such written notice, Contractor immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Contractor shall then be paid by Owner, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred, the actual cost of all materials installed and the actual cost of all materials stored at the Project site or away from the Project site, as approved in writing by Owner but not yet paid for and which can not be returned, plus applicable overhead, profit, and actual, reasonable and documented termination costs, if any, paid by Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents up to the date of termination for convenience, less all amounts previously paid for the Work. No amount ever shall be paid to Contractor for lost or anticipated profits on any part of the Work not performed.

13.4 TEMPORARY SUSPENSION OF THE WORK

13.4.1 The Work or any portion of the Work may temporarily be suspended by Owner, for a time period not to exceed ninety (90) calendar days, immediately upon written notice to Contractor for any reason, including, but not limited to:

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

13.4.1.2 under other provisions in the Contract Documents that require or permit temporary suspension of the Work;

13.4.1.3 situations where the Work is threatened by, contributes to or causes an immediate threat to public health, safety, or security; or

13.4.1.4 other unforeseen conditions or circumstances.

13.4.2 Contractor immediately shall resume the temporarily suspended Work when ordered in writing to do so by Owner. Owner shall not, under any circumstances, be liable for any claim of Contractor arising from a temporary suspension due to a cause described in **Section 13.4.1** herein; provided, however, that in the case of a temporary suspension for any of the reasons described under **Section 13.4.1.2** through **Section 13.4.1.4** herein, where Contractor is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to Owner, Owner shall make an equitable adjustment for the following items, provided that a claim properly is made by Contractor under **Section 4.3** herein:

13.4.2.1 an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension, as determined by Owner and Design Consultant;

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

13.4.2.3 if it becomes necessary to move equipment from the Project Site and then return it to the Project Site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary and reasonable cost of these moves; provided, however, that no adjustment to the Contract Sum shall be due if said equipment is moved to another Project site of Owner.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

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

14.2 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

14.2.1 This Contract shall be governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

14.2.2 This Contract is entered into subject to and controlled by the Charter and ordinances of the City of San Antonio and all applicable laws, rules and regulations of the State of Texas and the Government of the United States of America. Contractor shall, during the performance of the Work, comply with all applicable City of San Antonio codes and ordinances, as amended, and all applicable State of Texas and Federal laws, rules and regulations, as amended.

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

14.4 WRITTEN NOTICE. Any notice, payment, statement or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by facsimile transmission, email or by mail, postage prepaid, or by overnight delivery to an officer, management level employee or other designated representative of either party. Mailed or email notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed received as of three (3) calendar days after mailing.

14.5 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

14.5.1 The duties and obligations imposed on Contractor by the Contract Documents and the rights and remedies available to Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or made available by law.

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

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

14.7 INDEPENDENT MATERIALS TESTING AND INSPECTION

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

14.8 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER. Contractor acknowledges the Charter of the City of San Antonio and its Ethics Code prohibits a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(1) a City officer or employee; his parent, child or spouse;

(2) a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity;

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

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

Pursuant to this **Article XIV**, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and/or agents are neither officers nor employees of Owner. Except with Owner's low-bid contract awards, Contractor warrants and certifies that it has tendered to Owner a Discretionary Contracts Disclosure Statement in compliance with Owner's Ethics Code. Any violation of this article shall constitute malfeasance in office and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this **Section 14.8**, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with Owner shall render a Contract voidable by the Owner's City Manager or City Council.

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

14.10 INDEPENDENT CONTRACTOR. In performing the Work under this Contract, the relationship between Owner and Contractor is that of an independent contractor. Contractor shall exercise independent judgment in performing the Work and solely is responsible for setting working hours, scheduling and/or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making Contractor an agent, servant or employee of Owner or making Contractor or any of Contractor's employees, agents or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation which Owner provides to its employees.

14.11 NON-DISCRIMINATION. As a party to this Contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless Contractor is exempted by state or federal law, or as otherwise established herein. Contractor covenants that it shall take all necessary actions to insure that, in connection with any Work under this Contract, Contractor and its Subcontractor(s) shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, either directly, indirectly or through contractual or other arrangements. Contractor also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended.

14.12 GIFTS TO PUBLIC SERVANTS

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

14.12.2 For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

14.12.3 Notwithstanding any other legal remedies, Owner may require Contractor to remove any employee of Contractor, a Subcontractor or any employee of a Subcontractor from the Project who has violated the restrictions of this **Article XIV** or any similar State or Federal law and Owner may obtain reimbursement for any expenditures made to Contractor as a result of an improper offer, an agreement to confer or the conferring of a benefit to a City of San Antonio employee or official.

ARTICLE XV. AUDIT

15.1 RIGHT TO AUDIT CONTRACTOR'S RECORDS. By execution of the Contract, Contractor grants Owner the right to audit, examine, inspect and/or copy, at Owner's election at all reasonable times during the term of this Contract and for a period of four (4) years following the completion or termination of the Work, all of Contractor's written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by an Owner designee, which may include its internal auditors or an outside representative engaged by Owner. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute, with full access allowed to authorized representatives of Owner upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

15.1.1 As used in these General Conditions, "Contractor written and electronically stored records" shall include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Contractor written and electronically stores records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in Owner's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

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

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

ARTICLE XVI.
ATTORNEY FEES

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

Special Conditions for Horizontal Projects

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

Contractor promptly shall, before such discovered conditions and/or structures are disturbed, notify Owner in writing of differing site conditions. Differing site conditions are defined as subsurface or latent physical and/or structural conditions at the Site differing materially from those indicated in the Plans, Specifications and other Contract Documents or newly discovered and previously unknown physical conditions at the Site of an unusual nature differing materially from those geophysical conditions typically encountered in the type Work being performed and generally being recognized as not indigenous to the San Antonio, Bexar County, Texas environs.

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

(1) No claim of Contractor under this **Section 3.2.5** shall be allowed unless Contractor has given the written notice called for above, prior to disturbing the discovered conditions and/or structures.

(2) No Contract adjustment shall be allowed under this **Section 3.2.5** for any effects caused on unchanged work.

3.4.7 Material Testing (Added to Section 3.4.7 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

The source of supply of each of the materials shall be approved by Owner or Design Consultant before delivery is started and, at the option of Owner, may be sampled and tested by Owner for determining compliance with the governing specifications before delivery is started. If it is found after trial that sources of supply previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, Contractor shall furnish materials from other approved sources. Only materials conforming to the requirements of the Contract documents and approved by Owner shall be used by Contractor in the work. All

materials being used by Contractor are subject to inspection or test at any time during preparation or use. Any material which has been tested and accepted at the source of supply may be subjected to a check test after delivery and all materials which, when retested, do not meet the requirements of the specifications shall be rejected. No material which, after approval, has in any way become unfit for use shall be used in the Work.

If, for any reason, Contractor selects a material which is approved for use by Owner or Design Consultant by sampling, testing or other means, and Contractor decides to change to a different material requiring additional sampling and testing by Owner for approval, Contractor shall pay for any expense incurred by Owner for such additional sampling and testing and the costs incurred by Owner shall be deducted from any money due or owed to Contractor.

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

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

7.2.5 Allowable Markups (Added to Section 7.2.5 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

7.2.5.1 Labor

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

7.2.5.2 Materials

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

7.2.5.3 Equipment

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

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

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

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

7.2.5.4 Subcontractor Markups

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

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

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

8.2.2 Standby Equipment Costs (Added to Section 8.2.2 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

For Projects not affecting City traffic and working under a five (5) day work week, with a Working Day measured from sunrise to sundown Monday through Friday, no more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty (40) hours shall be paid per week for standby time and no more than one hundred and seventy six (176) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 176, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

For Projects affecting City traffic and working under a six (6) day work week, with a Working Day measured from sunrise to sundown Monday through Saturday, no more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty eight (48) hours shall be paid per week for standby time and no more than two hundred and eight (208) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 208, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

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

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

10.12 Use of City Streets (Adds this Section 10.12 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

10.13 Maintenance of Traffic (Adds this Section 10.13 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

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

(2) maintain the Work in passable condition, including proper drainage, to accommodate traffic;

(3) provide and maintain temporary approaches and crossings of intersecting roadways in a safe and passable condition;

(4) construct and maintain necessary access to adjoining property as shown in the plans or as directed by Owner; and

(5) furnish, install and maintain traffic control devices in accordance with the Contract.

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

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

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

10.15 Incidental Work, Connections, and Passageways (Adds Section 10.15 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

(1) Contractor shall make and provide all suitable reconnections with existing improvements (generally excluding new connections with or relocation of utility services, unless specifically provided for otherwise in the Contract Documents) as are necessarily incidental to the proper completion of the Project;

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

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

(Remainder of this page intentionally left blank)

Special Conditions for Task Order Contracts

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

9.3 APPLICATION FOR PAYMENT/CONTRACTOR BILLING

9.3.1 Under an issued Task Order contract with Owner, Contractor shall not be required to submit an application for payment to Owner for materials and work performed. Instead, Owner shall calculate the accrual of materials utilized for the subject payment period and submit a request for payment from Owner on Contractor's behalf.

9.3.2 Owner, through its on-site Project Inspector, shall calculate the daily total of materials utilized by Contractor performing horizontal work through an issued Task Order contract. Inspector's daily total of utilized materials shall be confirmed daily by Contractor. Inspector also shall keep a monthly running total of work performed and materials utilized as agreed upon, for each day of Work, by Contractor.

9.3.3 Inspector, at minimum every thirty (30) days throughout the Project's duration, then shall submit, on Contractor's behalf, the agreed upon total materials utilized by Contractor for the outstanding days, up to the date of Inspector's submittal, to Owner's TCI Fiscal Department for payment to Contractor.

9.3.4 Owner's TCI Fiscal Department then shall issue payment to Contractor, within ____ days of receipt of Inspector's and Contractor's agreed upon total materials utilized, calculated at the rate for the utilized materials reflected in Contractor's Task Order contract with Owner.

9.3.5 Unless otherwise provided in the Contract Documents, payments by Owner shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by Owner. If approved in advance in writing by Owner, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by Owner. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

9.3.6 Contractor warrants, upon Owner's submittal of an Application for Payment to Contractor, all Work for which payment previously has been received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONTRACTOR.**

9.3.7 By Owner's submission of an Application for Payment on behalf of Contractor and by its concurrence with said submission, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor; provided if any of the foregoing is not true and cannot be certified, Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.4 PAYMENT APPROVAL

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

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment; or

(4) made any examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO REJECT PAYMENT TO CONTRACTOR

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

9.5.1.1 Work not performed or is defective ;

9.5.1.2 third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder, unless security acceptable to Owner is provided by Contractor;

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

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

9.5.1.5 damage to Owner or another contractor;

9.5.1.6 reasonable evidence that the Work shall not be completed within the time allotted on the issued Task Order and that the unpaid balance on the issued Task Order would not be adequate to cover actual or liquidated damages for the anticipated delay;

9.5.1.7 persistent failure by Contractor to carry out the Work in accordance with the issued Task Order and/or Contract Documents;

9.5.1.8 the applicable liquidated damages were not included in the Owner-submitted Application for Payment;

9.5.1.9 billing for unapproved/unverified materials stored off Site; or

9.5.1.10 a current schedule update has not been submitted by Contractor to Owner.

9.5.2 Owner shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Section 9.5.1** herein.

9.6 PROGRESS PAYMENTS

9.6.1 Owner's payment of installments shall not, in any way, be deemed to be a final acceptance by Owner of any part of the Work, shall not prejudice Owner in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work herein provided.

9.6.2 Contractor shall, within ten (10) calendar days following receipt of payment from Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide Owner with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to Owner bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if Owner so requests, shall provide copies of such Subcontractor payments to Owner. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which Owner has made payment to the Contractor, Owner shall be entitled to withhold payment to Contractor to the extent necessary to protect Owner.

9.6.3 Owner shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Owner shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.

9.6.5 Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.3** and **Section 9.6.4** herein regarding Subcontractors.

9.6.6 A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

9.6.7 Contractor shall, as a condition precedent to any obligation of Owner under this Contract, provide to Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 When all of the Work on an issued Task Order finally is complete and ready for final inspection, Contractor shall notify Owner in writing. Thereupon, Owner shall make final inspection of the Work and, if the Work is complete in full accordance with the issued Task Order and, pursuant to this Contract, fully has been performed, Contractor shall submit a final Application for Payment. If Owner is unable to approve the final Application for Payment for reasons for which Contractor is responsible and Owner is required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by Owner from the Contractor's final payment.

9.9.2 If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Owner so confirms, Owner shall, upon application by Contractor and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. Request for final payment by Contractor shall constitute a waiver of all claims against Owner, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

9.9.3 For all payments made through an issued Task Order contract, City shall not withhold any retainage from payments made to Contractor.

EXHIBIT B

SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

NOT APPLICABLE

EXHIBIT C

APPLICABLE WAGE DETERMINATION

General Decision Number: TX150021 01/02/2015 TX21

Superseded General Decision Number: TX20140021

State: Texas

Construction Type: Residential

Counties: Bexar, Comal and Guadalupe Counties in Texas.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories.)

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

Modification Number	Publication Date
0	01/02/2015

* SUTX1983-005 05/01/1983

	Rates	Fringes
Air Conditioning Mechanic	$ 7.25	
CARPENTER	$ 7.25	
CEMENT MASON/CONCRETE FINISHER	$ 7.46	
DRYWALL HANGER	$ 8.73	
ELECTRICIAN	$ 9.66	
IRONWORKER	$ 7.25	
LABORER	$ 7.25	
PAINTER (Including Drywall taping)	$ 8.16	
PLUMBER	$ 7.70	
ROOFER, Including Built Up, Composition and Single Ply Roofs	$ 7.25	

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

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

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

Union Rate Identifiers

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

"UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

AMENDMENT TO CONTRACT

1. There are no SBEDA requirements for this contract.

2. Insert the following funding source requirements for task orders funded by the Department of Housing and Urban Development:

The Selected Respondent acknowledges, understands, and agrees to comply with the following federal regulations as promulgated in Section 3 clause of the Housing and Urban Development Act of 1968, as amended, if applicable:

(A) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170(1)(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.

(B) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(C) Contractor agrees to send to each labor organization or representative of workers with which Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(D) Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. 135. Contractor will not subcontract with any subcontractor where Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. 135.

(E) Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. 135.

(F) Noncompliance with HUD's regulations in 24 C.F.R. 135 may result in sanctions, termination of this contract for default, and debarment or suspension from further HUD-assisted contracts.

(G) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25U.S.C.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provision of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Selected respondent acknowledges, understands, and agrees to submit a Section 3 Utilization Plan upon contract execution.

The Selected Respondent acknowledges, understands, and agrees to ensure that no person shall be subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.

The Selected Respondent acknowledges, understands, and agrees ensure that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded with HUD federal assistance.

The Selected Respondent acknowledges, understands, and agrees ensure no discrimination based on disability in federally assisted programs and shall provide that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.

The Selected Respondent acknowledges, understands, and agrees to provide HUD Form 2516 to the City prior to start of project construction for each task order

The Selected Respondent acknowledges, understands, and agrees to provide the HUD Section 3 Completion Form to the City within 30 calendar days of completion of the final task order contract.

3. Article XX (Prevailing Wages), revised to the following:

JOC shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Residential Wage Determination in effect at the time this JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. JOC acknowledges it shall utilize the Residential Wage Determination when determining prevailing wages for all issued Job Orders. If JOC is required to pay the prevailing wage for a job classification not found on the cited Residential Wage Determination, JOC shall utilize the Heavy Highway Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Heavy Highway Wage Determination job classification from City.

4. Delete Article XXV (Small, Minority, & Women-Owned Business Advocacy) in its entirety.

5. Delete Article 34.2 (JOC Outreach and Diversity Plan) in its entirety.

Attachment II

JOB ORDER CONTRACTING AGREEMENT FOR OWNER-OCCUPIED REHABILITATION PROGRAM

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Job Order Contract Agreement (hereafter referred to as "the Agreement", "the Contract", "this Agreement" and/or "this Contract") is made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as "City") and

Alpha Building Corporation
24850 Blanco Road
San Antonio, TX 78260

a Job Order Contractor ("hereafter referred to as "JOC") (City and JOC hereafter individually referred to as "a Party" and collectively referred to as "the Parties"), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by JOC for Job Order Contracting, as set forth herein.

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ARTICLE I
Definitions

1.01. "Agreement" and/or "Contract" shall mean this Agreement and all documents and references incorporated herein. Agreement and Contract also shall include Job Orders issued to JOC, pursuant to this Agreement, and all elements incorporated into an issued Job Order.

1.02. "City" shall mean the City of San Antonio and its designated representative(s). Each issued Job Order shall state City's designated representative for the issued Job Order. Under this Agreement, when JOC is required to report or transmit information to City, JOC shall report or transmit the required information to City's designated representative for the issued Job Order.

1.03. "Effective Date" of this Agreement shall mean the effective date of the Authorizing Ordinance passed by the San Antonio City Council.

1.04. "Job Order" or "Task Order" shall mean the written agreement between City and JOC for Work to be performed under this Agreement signed by both parties.

1.05. "Liquidated Damages" shall mean the reimbursement by JOC to City to compensate City for the monetary damages suffered by City when JOC fails to meet its date for Substantial Completion, said date for Liquidated Damages defined in each issued Job Order.

1.04. "Non-Pre-Priced Items" shall mean Work items not listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.05 "Pre-Priced Items" shall mean the items listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.06 "PRIMELink" shall mean City's internet-based project management system. City shall administer the necessary software, provide training to JOC for JOC's use of PRIMELink and City shall make the PRIMELink software accessible via the Internet to JOC.

1.07. "Substantial Completion" shall mean the date on which the Work, or an agreed upon portion of it, sufficiently has been completed and City may occupy and use the Work (or a portion thereof) for its intended purposes.

1.08. "Work" shall mean all tasks required of JOC under an issued Job Order.

1.09. "Work Schedule" shall mean the scheduled number of calendar days afforded JOC to complete each task, pursuant to an issued Job Order. The Work Schedule for an assigned Job Order shall be submitted by JOC to City for City's approval, prior to beginning any Work by JOC.

ARTICLE II
Initiation of Work

2.01. **City Initiation of Work.** Pursuant to this Agreement, City shall initiate Work by issuing a request for a quote to JOC through PRIMELink. To reject the responsibilities to perform, pursuant to an issued request for a quote, JOC, within two (2) working days of its receipt of the issued request for a quote, shall notify City through PRIMELink of its acceptance or rejection of the issued request for a quote. Requests for quotes not timely accepted (within two (2) days of issuance) through PRIMELink by JOC shall be deemed by City as rejected by JOC. Upon JOC's acceptance of the issued request for a quote in PRIMELink and notification to City, JOC shall begin pricing the Scope of Work of the request for a quote issued. JOC shall, except as this Agreement or the issued Job Order otherwise expressly provides, furnish all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, bonds, insurance, subcontracts, supervision, management, reports, incidentals and quality control necessary to complete all issued Job Orders. If City concludes JOC's pricing of an issued request for a quote and any subsequent negotiation are not progressing at a satisfactory rate, City may terminate the issued request for a quote to JOC and select another JOC for the subject Job Order.

2.02. **Multiple Solicitations.** City reserves the right and JOC hereby acknowledges City may solicit price proposals on prospective Job Orders from one or more JOCs, to determine the best value proposal, on behalf of City. JOC further acknowledges if JOC prepares a pricing proposal for an issued Job Order, JOC shall not be entitled to compensation for its efforts preparing a price proposal, whether or not a Job Order is awarded to JOC.

2.03. **Project Requirements.** Each Job Order solicitation shall define, to City's best knowledge, the specific project requirements. Job Orders may pertain to the following types of work:

2.03.01. Minor construction, which may involve demolishing office space or finishing out an office space, building out a new floor plan or the like;

2.03.02. Repairs, which may involve fixing broken systems, components or subcomponents of a building, such as doors, electrical outlets, plumbing, flooring, sheetrock, air conditioning systems or the like;

2.03.03. Rehabilitation, which may involve restoring an office, floor, system or a component of a system, to restore functionality

2.03.04. Alteration, which may involve extending a wall, upgrading lighting fixtures, installing a door where one did not exist, replacing flooring or the like.

2.04. **Conformance of Work.** Work performed by JOC shall conform to the Job Order's requirements. Job Orders shall set forth the following, in coordination with City's Transportation & Capital Improvements (hereafter referred to as "TCI") Task Order Form:

2.04.1. The Contract number, along with JOC's name;
2.04.2. The Job Order number and date;

2.04.3. The Scope of Work and the applicable technical specifications and drawings;

2.04.4. The period of time for performance, including the Job Order's start date, date of Substantial Completion, Liquidated Damages, and, if required and/or requested by City, a Work Schedule;

2.04.5. The location of the Work's performance;

2.04.6. The agreed total cost to be paid JOC for the Work to be performed;

2.04.7. Submittal requirements;

2.04.8. The identity of City's authorized representative who will accept JOC's completed Work;

2.04.9. Name of JOC's representative for the issued Job Order;

2.04.10. Signatures, on behalf of the Parties, signifying the agreement reached, along with the specific terms of the Job Order; and

2.04.11. Such other information as may be necessary for JOC to perform the Work.

2.05. **Beginning Work.** JOC shall begin Work on the effective date specified in the Job Order's Notice to Proceed, issued by City. Any costs incurred by JOC for preliminary Work or for materials ordered or purchased by JOC or its Sub-Consultants or Subcontractors, prior to receipt of City's Notice to Proceed for a Job Order, shall be at JOC's risk and expense.

2.06. **Amending Issued Job Orders.** Once issued, Job Orders only may be amended by the written agreement of both Parties through the PRIMELink system.

2.07. **Job Order Minimum Value.** The minimum value for an issued Job Order shall be One Thousand Dollars and no cents ($1,000.00), unless the minimum value requirement is waived in writing by both City and JOC.

2.08. **Mutual Agreement on Job Orders.** Nothing in this Agreement requires City to issue a Job Order, or requires JOC to accept same. It is understood that both Parties mutually shall agree to any issued Job Order.

2.09. **Diligent Prosecution of Work.** JOC diligently shall prosecute all Work to completion within the time required by, listed on and agreed to on the accepted Job Order or JOC shall be subject to Liquidated Damages. The period of performance shall include allowances for mobilization, holidays, weekend days, usual inclement weather and cleanup. Claims for delay by JOC, based on such elements listed herein, shall not be accepted.

ARTICLE III.
Specification and Drawings

3.01. **Preparation of Designs and Drawings.** When necessary, City or a Design Consultant selected by City shall prepare all designs and drawings to be used by JOC in performing the Work.

3.01.01. City shall be responsible for the cost of design work, apart from any money due JOC under an issued Job Order.

3.01.02. JOC shall keep a copy of the drawings and specifications at the Work site at all times and shall give City access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications is of like effect, as if shown or mentioned in both/either. JOC shall not alter or amend the drawings and/or the provided drawings or specifications. Any alteration by JOC to the drawings and/or specifications without City's written approval shall be at JOC's own risk and expense. If City provides drawings and specifications, City shall, from time to time, furnish such detail drawings and other information as reasonably is necessary.

3.02. **City Direction.** In the City-provided drawings or specifications, when the words "directed", "required", "ordered", "designated", "prescribed" or words of like importance are used, JOC acknowledges and understands that the "direction", "requirement", "order", "designation" or "prescription" of City is intended. Similarly, JOC acknowledges and understands when the words "approved", "acceptable", "satisfactory" or words of like importance are used, those words shall mean "approved by", "acceptable to" or "satisfactory to" City, unless otherwise expressly stated in writing by City to JOC.

3.03. **Drawings and Specification Direction.** Where "as shown", "as indicated", "as detailed" or words of similar importance are used, JOC acknowledges and understands that the reference is made to the drawings and specifications which accompany the Job Order, unless otherwise stated in writing. The word "provided", as used herein, shall mean "provide complete in place". The word "furnished", as used herein, shall mean "furnished and installed."

3.04. **Shop Drawings.** Shop Drawings shall mean the drawings submitted to City and the Design Consultant by JOC showing, in detail:

3.04.1. The proposed fabrication and assembly of structural elements; and

3.04.2. The installation (i.e., form, fit and attachment details) of materials or equipment;

and

3.04.3. The construction and the detailing of elements of the Work.

3.05. **Detailed Shop Drawings.** Shop drawings shall include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data and similar materials furnished by JOC to explain – in detail – specific portions of the Work. City may duplicate, use and disclose, in any manner and for any purpose, shop drawings delivered under a Job Order and this Agreement.

3.06. **JOC Coordination of Shop Drawings.** JOC shall coordinate all shop drawings and review them for accuracy, completeness and compliance with the issued Job Order and all Contract requirements and JOC shall indicate its approval thereon. Shop drawings submitted to City without evidence of JOC's approval may be returned to JOC for resubmission. City shall indicate its written approval or disapproval of the JOC-submitted shop drawings and, if not approved as submitted, shall indicate to JOC City's reasons for its disapproval. Any Work conducted by JOC prior to receipt of City's approval of Shop Drawings shall be at JOC's sole risk. Receipt of City's written approval does not relieve JOC from responsibility for any errors or omissions in shop drawings, nor from responsibility for complying with the requirements of the Job Order and this Agreement, except as otherwise specifically provided in this Agreement.

3.07. **Shop Drawing Variations.** If shop drawings vary from the defined Job Order requirements, JOC shall describe the variations in writing to City promptly after the variation is realized. If City approves a variation, City and JOC shall modify the Job Order in writing , unless the variation is minor and does not involve a change in price or time of performance, in which case a modification is unnecessary.

3.08. **Submittal of Shop Drawings.** Upon City's request, JOC shall submit to City hard copies of shop drawings for City's written approval and one (1) digital copy of JOC's shop drawings for City's use.

3.09. **Omitted or Erroneous Drawings and Specifications.** Omissions from City-provided drawings or specifications or an erroneous description of details of the Work that manifestly are necessary for JOC to carry out the intent of the drawings and specifications or customarily are performed does not excuse JOC from performing the omitted or erroneously described details. JOC acknowledges and accepts it is JOC's responsibility to find omissions and inconsistencies in provided drawings and specifications and seek clarification from City.

3.10. **JOC Discovered Discrepancies.** JOC shall check all City-furnished drawings immediately upon receipt and promptly shall notify City of any discrepancies found. JOC acknowledges that figures marked on drawings govern in preference to scale measurements. JOC further acknowledges large scale drawings govern small scale drawings.

3.11. **Property of City.** JOC acknowledges all drawings (including as-built drawings), sketches, designs, design data, specifications, notebooks and technical and scientific data

provided to or developed by JOC under a Job Order, pursuant to this Agreement, as well as all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, are the property of City. All may be used by City without any claim by JOC for additional compensation, except for material developed by JOC prior to the issuance of or resulting from an issued Job Order.

ARTICLE IV
Permits

City or, if City elects to use a Design Consultant, its Design Consultant shall prepare the construction documents for any required licenses and/or permits for performance of the Work, pursuant to an issued Job Order. JOC shall submit the construction documents for licensing/permitting, if necessary and required. JOC acknowledges it shall obtain all required permits applicable to its Work performance under any issued Job Order. JOC further acknowledges it shall comply with all federal, state and local laws, rules and regulations applicable to performance of the Work. JOC shall include and incorporate the past-through cost(s) of any necessary permits to perform the Work, with no percentage markup applied to said permit cost(s), in JOC's submitted price proposal pursuant to an issued Job Order.

ARTICLE V
Operations, Materials and Workmanship

5.01. **New Materials.** All equipment, material and articles incorporated in the Work, pursuant to an issued Job Order and this Agreement, shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in writing by City in the issued Job Order. References in the specifications to equipment, materials, articles or patented process by trade name, make or catalog number generally establish a standard of quality and do not limit competition. If JOC intends to request a substitution of something designated by trade name, make or catalog number, JOC shall prepare a written request to City and seek City's written approval for the requested substitution, fully describing the requested substitution and stating JOC's reason(s) for its request to City. City, at its sole discretion, shall approve or reject JOC's request for a substitution.

5.02. **City Approval of Machinery and Equipment.** JOC shall obtain City's written approval of the machinery, mechanical and other equipment to be incorporated into the Work. JOC shall furnish City the name of the manufacturer, the model number and other information concerning the performance, capacity, nature and rating of the machinery, mechanical and other equipment to be incorporated. When required by the Job Order or by City, JOC also shall obtain City's written approval of the material or articles that JOC contemplates incorporating into the Work. When requesting City's written approval, JOC shall provide full information concerning the material or articles to be utilized. When directed to do so by City, JOC shall submit samples of materials and/or articles for City's approval. Machinery, equipment, material and articles that do not have the required City approvals will be installed at JOC's sole risk of rejection.

5.03. **JOC General Manager.** JOC's General Manager assigned to this Agreement shall be knowledgeable in multiple construction disciplines, including electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.

5.04. **Work Performance.** All Work, pursuant to an issued Job Order and under this Agreement, shall be performed in a skillful and workmanlike manner. JOC shall perform the Work in a timely manner and JOC's performance of the Work shall be subject to Liquidated Damages. Further, JOC shall ensure that its purchase, delivery and storage of materials and equipment do not interfere with City operations and personnel.

5.05. **Material Testing.** Unless otherwise specified in an issued Job Order, JOC accepts and acknowledges it shall be responsible for any and all required testing of materials and for all inspections of JOC's Work, prior to materials being incorporated into the Work. Any Special Inspections, if required and as defined in IBC 2003 Section 1704 Special Inspections, shall be the responsibility of and conducted by City.

5.06. **Layout of Work.** JOC shall lay out its Work in accordance with the Job Order plans and specifications and JOC is responsible for all measurements in connection therewith. JOC shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout the Work. JOC also is responsible for maintaining and preserving all control points which may be established by City.

5.07. **Superintend Work.** At all times during performance of an issued Job Order and until the Work is completed and accepted by City, JOC directly shall superintend the Work and have a competent superintendent satisfactory to City on site at all time who has authority to act on behalf of JOC. If, in City's sole opinion and upon request by JOC, an issued Job Order would not require JOC to have a competent superintendent on site at all time, City may waive this requirement and, if so determined, shall do so in writing to JOC.

5.08. **Removal and Replacement of Furniture and Equipment.** If applicable, JOC shall remove all furniture and movable office equipment from an immediate Work area that may be affected by JOC's Work. Upon completion of Work, JOC shall return the removed furniture and moveable office equipment to their original and proper place. If any of the removed items cannot be placed back in their original locations, City shall designate alternate location(s) for the items' placement.

5.09. **No Damage of Property.** JOC shall take all necessary precautions to ensure that no damage to both private or public property results from its Work or its Work-related operations. JOC shall repair or replace all items it damages at no additional cost to City. JOC also shall provide all necessary traffic control, including street blockages, traffic cones, flagmen and the like, as required for each issued Job Order. JOC's proposed traffic control methods shall be submitted in writing to City for City's written approval, prior to JOC beginning Work.

ARTICLE VI
Site Investigation and Conditions Affecting Work

6.01. **Nature and Location of Work.** JOC shall be responsible for ascertaining the nature and location of the Work, as well as the general and local conditions that might affect the Work, unless such different conditions could not, in the exercise of diligent search by JOC, have been discovered. Failure to properly ascertain discoverable items shall be at JOC's risk sole and expense. Items for which JOC is responsible to assess include, but are not limited to:

6.01.1. Conditions bearing upon transportation, disposal, handling and storage of materials;

6.01.2. The availability of labor, water, electric power and roads;

6.01.3. Uncertainties of weather, river stages, tides or similar physical conditions at the site;

6.01.4. The conformation and conditions of the ground; and

6.01.5. The character of equipment and facilities needed both preliminary to and during Work performance.

6.02. **Surface/Subsurface Materials.** JOC further is responsible for ascertaining the character, quality and quantity of surface and subsurface materials and/or obstacles that might be encountered on the Work site, unless such surface and subsurface materials or obstacles could not, in the exercise of diligent search, have been discovered. Failure properly to ascertain discoverable conditions shall be at JOC's sole risk and expense.

6.03. JOC promptly shall, before the site conditions are disturbed, give written notice to City upon JOC's discovery of:

6.03.1. Subsurface or latent physical conditions at the site differing materially from those indicated (or the site's physical conditions not addressed) in the issued Job Order;

or

6.03.2. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

6.04. **City Investigation.** City shall conduct an investigation, upon receiving written notice from JOC regarding differing or unknown physical conditions at the Work site. If City finds that the conditions materially do differ and cause an increase or decrease in JOC's cost of or the time required for performing any part of the Work, City shall make an equitable adjustment in the price to be paid to JOC and the issued Job Order shall be modified in writing to reflect said equitable adjustment.

6.05. **JOC Timely Notice.** JOC shall not be entitled to an equitable adjustment in the price of an issued Job Order unless JOC timely has given the requisite written notice to City on the physical conditions found. JOC never shall be entitled to an equitable adjustment to its price paid for an issued Job Order after final payment under the Job Order has been paid by City.

ARTICLE VII
Term

7.01. **Contract Term.** This Agreement shall be for one (1) year (hereafter referred to as the "Base Term") for an amount not to exceed two million dollars ($2,000,000.00), with the Base Term beginning on the date of City's execution of this Agreement. City shall have the right to extend this Agreement through one (1) one-year option (hereafter referred to as an "Option Year") for an amount not to exceed two million dollars ($2,000,000.00), each City-exercised option year to begin at the expiration of the Base Term or the expiration of an exercised Option Year.

7.02. **Exercise of Option Term.** If City elects to exercise its option to extend this Agreement, City shall notify JOC in writing of City's intention to exercise its option, prior to the expiration of the then-current term. City may terminate this agreement at any time, pursuant to **Article XIV** and/or **Article XV** herein, and/or City may elect, at City's sole discretion, not to exercise any available Option Year renewal with a JOC.

7.03. **Extension of Term Period.** Following the Expiration of the Base Term or the expiration of any City-exercised Option Year, the terms and conditions of this Agreement shall remain in place during the performance of Job Orders issued prior to the expiration of the Base Term or the expiration of an Option Year.

ARTICLE VIII
Compensation, Invoicing, Payment and Liquidated Damages

8.01. **Compensation.** As full consideration for JOC's satisfactory performance under an issued Job Order, City shall compensate JOC as follows:

8.01.1. **Pre-Priced Items.** To arrive at the maximum amount that shall be paid by City to JOC for Pre-Priced Items under an issued Job Order, JOC shall consult the amount shown in the then most current R.S. Means Facilities Construction Cost Data Book for the required Pre-Priced Items, multiply the amount shown by the

applicable coefficient for Pre-Priced Items, with consideration as to whether the Work is required to be performed during or outside City's normal working hours. JOC accepts and agrees that the R.S. Means amount shall be the maximum amount paid by City for Pre-Priced Items and City may negotiate any and all pricing submitted by JOC for Work to be preformed. JOC acknowledges its submitted pricing to City for Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time period may be extended by written mutual agreement between City and JOC.

8.01.2. **Non-Pre-Priced Items.** For JOC to secure Work, JOC shall reach an agreement with City with regard to the reasonable and necessary cost of labor and materials to perform the Work. The agreed upon combined cost of labor and materials shall be increased by a maximum no greater than twelve percent (12%) to cover JOC's overhead and profit. Then, to arrive at the maximum amount to be paid by City to JOC for Non-Pre-Priced items under an issued Job Order, JOC shall price out the Non-Pre-Priced items of the Work and submit its pricing, along with all supporting documentation, reflecting JOC's truthful and anticipated costs for the Non-Pre-Priced Items of the Work. Upon receipt of JOC's pricing and supporting documentation, City shall review JOC's submitted pricing and, if City so elects, negotiate JOC's submitted pricing, request additional supporting documentation regarding JOC's pricing or accept JOC's pricing for the Non-Pre-Priced Items of the Work. JOC acknowledges its submitted pricing to City for Non-Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time may be extended by written mutual agreement between City and JOC.

8.02. **Submittal of Pay Application.** At minimum, JOC shall submit a request for pay application every thirty (30) days, throughout the duration of JOC's Work. JOC may submit a request for pay application more frequently than every thirty (30) days, with City's written approval.

8.03. **Monthly Progress Payments.** City shall make progress payments, at minimum, monthly, as the Work proceeds or at more frequent intervals as determined by City, upon receipt of mathematically correct certified pay applications submitted by JOC and approved by City and, if requested by City, approved by Design Consultant, if any. For submission of its mathematically correct pay application, JOC shall use a format deemed acceptable to City and said monthly pay application shall include supporting documents reflecting a breakdown showing how JOC's Work done to the date of the submitted pay application compares to the total project scope, broken out by category of Work. A submitted pay application shall contain as much detail as City so requests, so City may determine the progress payment due and owing to JOC. In addition to payment to JOC for Work completed, City, at City's option, may authorize payment to JOC for material(s) delivered to the site and any preparatory Work performed by JOC, if JOC furnishes satisfactory evidence that it has acquired title to the material, the material shall be used to perform the Work ordered and any preparatory Work performed was in furtherance of the Work ordered. Releases of liens from JOC and each of JOC's Subcontractors and suppliers utilized to perform the Work are required as back up for the pay application certificate.

8.04. **Liquidated Damages.** In the event JOC exceeds the accepted established date for achieving Substantial Completion on an issued Job Order (with any adjustment in the agreed upon calendar days for completion of the Work – via a Change Order – due to encountered unforeseen circumstances or due to any City-requested additional Work) and City has included Liquidated Damages as an element of the issued Job Order, City may withhold payment of sums necessary to pay the estimated Liquidated Damages due City until Substantial Completion of the Work is achieved. Owner also shall be entitled, at any time, to deduct out of any sums due to JOC any or all Liquidated Damages due City. To facilitate this requirement of Liquidated Damages accrual by JOC, JOC shall populate a line item on all subsequent progress payment requests and shall begin accruing Liquidated Damages on a monthly basis, beginning on the established Substantial Completion date forward, until JOC achieves Substantial Completion of the Work

8.05. **Property of City.** All material and Work covered by a progress payment, at the time of payment by City to JOC, become the sole property of City. By accepting this condition, JOC acknowledges this provision does not:

8.05.1. relieve JOC from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or

8.05.2. waive City's right to require fulfillment of all Contract terms.

8.06. **Mathematically Correct Payment Requests.** Mathematically correct estimates of completion percentages shall be approved and certified for payment by City and shall be paid within thirty (30) days. If City finds JOC's submitted estimates to be incorrect, City shall notify JOC, through PRIMELink, as to the inconsistencies discovered and explain, with reasonable particularity, the reasons for the finding. Progress payments to JOC shall be paid after the estimate of the Work is accepted, certified and approved by City. JOC's estimates of completed Work shall be submitted electronically through PRIMELink.

8.7. **Substantial Completion Notification.** When JOC considers the Work to be complete and ready for its intended use (Substantially Complete), JOC shall notify City's Project Representative of JOC's conclusion. City then shall inspect the Work to determine the status of completion. If City finds that the Work has been reached Substantial Completion, City shall issue a Certificate of Substantial Completion. The Certificate shall itemize remaining items to be completed or corrected before final payment of the Job Order. Upon receipt of the itemized list of remaining work (hereafter referred to as the "Punch List") JOC shall promptly proceed to complete or correct items listed on the Punch List.

8.8. City shall pay JOC all unpaid amounts due under an issued and accepted Job Order, within sixty (60) days following:

8.8.1. City's issuance of a Certificate of Final Completion upon JOC's completion and/or correction of all remaining portions of the Work, inclusive of all Punch List items; and

8.8.2. JOC's presentation of a properly executed and mathematically correct final pay application; and

8.8.3. JOC's presentation of an executed Release of any and all claims JOC may have against City, arising by virtue of the issued Job Order and/or this Agreement. If JOC has assigned its right to a claim to any amount payable under an issued Job Order and/or this Agreement, a Release also may be required of JOC's assignee. JOC and/or JOC's assignee shall complete the required Release form(s) deemed acceptable to City; and

8.8.4. City's receipt of a consent from JOC's surety, if any.

8.9. **Requirement to Use PRIMELink.** All correspondences related to an issued Job Order shall be submitted by JOC to City and by City to JOC through PRIMELink, including, but not limited to, the Job Order schedule, Requests for Information, requests for Substantial Completion, requests for Final Completion, all pay applications and Release forms.

8.10. **Work Schedule.** JOC shall, upon JOC's submission of its signed Job Order, submit for approval from City a Work Schedule showing the sequence in which JOC proposes to perform the Work and the dates JOC plans on starting and finishing the stages of Work (including acquiring all required materials and equipment). JOC's submitted Work Schedule to City may be a formal computerized schedule or a progress chart in a format suitable to City, indicating the percentage of Work to be completed by specific dates. The submitted Work Schedule shall, at a minimum:

8.10.1. list the different types of Work activities or Work elements;

8.10.2. show the logical interconnections controlling what Work shall be accomplished before other Work shall begin;

8.10.3. show proposed start and finish dates or duration of each Work activity or Work Element; and

8.10.4. calculate the "weighting" or relative worth each Work activity or Work element to the total project, either as a percent or as a dollar amount.

8.11. **Failure to Submit Work Schedule.** If JOC fails to submit a Work Schedule with its acceptance of a Job Order, City may withhold its issuance of a Notice to Proceed with Work, as

well as withholding the approval of any progress payments, until JOC submits the required Work Schedule. Further, City may issue a Notice to Proceed with Work, to begin the running of the calendar days allowed for completion of JOC's Work, and immediately issue JOC a Stop Work Order, which shall keep the Job Order clock running yet prevent JOC from working on the Job Order, said Stop Work Order remaining in place until JOC furnishes City with JOC's Work Schedule.

8.12. **Work Schedule Progress Report.** Throughout the progress of the Work, JOC shall submit a Work Schedule Progress Report every thirty (30) days or more frequently, if so directed by City. The Work Schedule Progress Report shall compare the progress of the realized Work to JOC's original Work Schedule, as required and submitted pursuant to **Section 8.11** herein. If JOC falls behind its submitted City-accepted Work Schedule, absent clear and accepted reasons for falling behind its Work Schedule (to include severe weather, unforeseen conditions, emergency Work, etc.), the burden to comply with its City-approved Work Schedule solely falls on JOC to accelerate its Work progress at JOC's time and sole cost. City may require specific steps to accelerate JOC's Work progress, with which JOC shall comply without any additional cost to City. Among the specific steps City may require of JOC include, but are not limited to, requiring JOC to increase the number of shifts, increase its overtime operations, increase the number of days of Work and/or increase the amount of equipment being employed.

8.13. **Emergency Work.** If City emergency work arises, JOC accepts and agrees it shall give top priority to issued Job Orders to perform City-designated emergency work and shall allocate resources reasonably necessary to accomplish City's emergency work, according to City's schedule requirements. If JOC incurs additional costs, expenses or schedule delays on another issued Job Order as a result of performing City emergency work, City equitably shall adjust the non-emergency issued Job Order(s) to compensate JOC for its efforts in performing said City-designated emergency work.

8.14. **Work Schedule Progress.** JOC acknowledges that its failure to comply with the requirements under this **Article VIII** shall be grounds for City's determination that JOC is not prosecuting the Work with sufficient diligence to ensure timely completion of the accepted issued Job Order. Upon making such a determination, City may terminate JOC's right to proceed with the accepted issued Job Order Work or any portion thereof, according to the terms of this Agreement.

ARTICLE IX
Inspection and Acceptance

9.01. **JOC Inspection of Work.** JOC shall maintain adequate inspection of the performed Work and utilize other quality control systems, to assure proper performance of the Work. JOC shall maintain complete inspection records and immediately make those records available to City upon City's request. JOC acknowledges all Work is conducted under the general direction of City and is subject to inspection and testing by City or its designee(s) at all places and at all reasonable times before acceptance.

9.02. **City Inspection of Work.** City's inspection and testing of JOC's Work solely are for the sole benefit of City, are conducted solely for quality assurance purposes and do not:

9.02.1. relieve JOC of responsibility for providing adequate quality control measures;

9.02.2. relieve JOC of responsibility for damage to or loss of the material, prior to City's acceptance of the Work performed;

9.02.3. constitute or imply acceptance; and

9.02.4. affect the continuing rights of City after acceptance of the completed Work through an accepted and/or completed Job Order or this Agreement.

9.03. **No Release.** The presence or absence of a City inspector on JOC's Work site does not relieve JOC from any duties imposed by an issued Job Order or this Agreement. JOC acknowledges that no City inspector may change a Job Order Work requirement, change a Contract requirement or waive City's rights without a formal, written Amendment to an issued Job Order or this Agreement signed by the Parties.

9.04. **City Incurred Costs for Inspection of JOC Work.** JOC promptly shall furnish, without additional charge to City, any and all facilities, labor and material reasonably necessary to accommodate City performing safe and convenient inspections on and tests of JOC's Work. City may charge JOC for additional costs – to be deducted from any of JOC's submitted monthly pay applications – incurred by City in City's inspection or testing of JOC's Work attributed to:

9.04.1. Work not completed in a timely manner, as indicated on JOC's approved Work schedule; or

9.04.2. the inspection, re-inspection, testing and/or retesting of JOC Work that failed previous inspection or test.

9.05. **City Inspection and Testing.** City shall make an effort to minimize disruption or delay of JOC's Work incident to City's inspection and testing. Special, full size and/or performance tests shall be the responsibility of and performed by JOC, as described in the issued Job Order.

9.06. **JOC Non-Conforming Work.** JOC shall, without charge to City, replace or correct Work found by City or its representative(s) not to conform to the issued Job Order requirements, unless City consents in writing to accept the Work if accompanied by an appropriate reduction in the Job Order price to be paid by City to JOC. If City rejects JOC"s Work and/or materials used by JOC in performance of the Work, JOC promptly shall segregate and remove all City-rejected material(s) from the Work premises and correct any rejected Work.

9.07. **JOC Correcting Non-Conforming Work.** If JOC fails to promptly replace or correct rejected Work by City, City may:

9.07.1. replace or correct the Work and charge all costs incurred by City to JOC; and/or

9.07.2. terminate for default JOC's right to proceed with Work under the issued Job Order.

9.08. **Expenses Incurred Examining Non-Conforming Work.** If, before final acceptance of any Work performed, City decides to examine JOC's already completed Work by removing it or tearing it out, JOC, upon request, hereby acknowledges and agrees it promptly shall furnish all necessary facilities, labor and material to perform City's request to examine. If the Work is found to be defective or nonconforming in any material respect, JOC shall bear the full expense of City's examination and JOC's satisfactory reconstruction of the Work to bring it in to conformity. Conversely, if the examination of JOC's Work is found to be in conformance with the issued Job Order, City shall make an equitable adjustment for the cost to JOC for the additional services involved in the examination and reconstruction including, if completion was thereby delayed, extending time for JOC's performance.

9.09. **Prompt Acceptance of Work.** Unless otherwise specified in the Job Order, City shall accept Work reasonably promptly after satisfactory completion and inspection. Acceptance by City is final and conclusive, with an exception for latent defects, fraud, gross mistakes amounting to fraud and City's rights under any warranty or guarantee.

ARTICLE X
Additional Requirements

10.01. **Confinement of Operations.** JOC shall confine its operations (including storage of materials) to areas authorized or approved by City.

10.02. **Erection of Temporary Buildings.** Temporary buildings (e.g., storage sheds, shops, offices) and any associated utilities only may be erected by JOC with the written approval of City and shall be built only with labor and materials furnished by JOC without expense to City. Erected temporary buildings and utilities shall remain the property and responsibility of JOC and shall be removed by JOC at its own expense upon completion of the issued Job Order. If City consents and gives its prior written approval to JOC, said erected temporary buildings and associated utilities may be abandoned in place, not be removed by JOC and JOC shall transfer ownership of said temporary buildings to City.

10.03. **Work Site Egress/Ingress.** JOC shall use only established roadways for ingress and egress to the Work site, unless City authorizes specific temporary roadways to be built by JOC. JOC acknowledges it shall comply with all federal, state and local laws and regulations when transporting materials, in connection with an issued Job Order.

10.04. **Maintaining Clean Work Site.** JOC shall, at all times, keep the Work site (to include any utilized storage areas) free from accumulations of waste materials. Before completing its Work, JOC shall remove from the Work site all rubbish, tools, scaffolding, equipment and

materials that are not the property of City. Upon completing its Work, JOC shall leave the site in a clean and orderly condition satisfactory to City. Final cleanup is included as part of the Work and JOC acknowledges it is responsible for all construction refuse disposal containers and their removal from the Work site.

10.05. **Hazardous Materials.** If hazardous materials are not addressed in the scope of a Job Order and subsequently are found on a Work site, JOC shall cease work and notify City's authorized representative of JOC's findings. City then will assess the situation and determine whether the removal and disposal of the hazardous materials may be performed by JOC or performed by a specialty contractor. City shall coordinate the removal and disposal of said hazardous materials at City's expense. In the event JOC has the appropriate training and certifications to handle hazardous materials, City, at its sole discretion, may elect to have JOC remove and dispose of hazardous materials. If City, at its sole option, requires JOC to remove and/or dispose of discovered hazardous materials, City shall make an equitable adjustment in the agreed upon issued Job Order price, to reimburse JOC for its additional requirement to dispose of the discovered hazardous materials.

10.06. **Preservation and Protection of Structures, Equipment and Vegitation.** JOC shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs and/or grass) on or adjacent to the Work site that are not to be removed and that do not unreasonably interfere with JOC's Work. JOC only shall remove trees when specifically authorized in writing by City to do so. JOC acknowledges it financially shall be responsible to City to purchase and replace any and all trees – of a similar size – removed from a Work site that were not previously authorized in writing by City for removal. If tree limbs are broken by JOC during performance of the Work, JOC shall trim those broken limbs and branches with a clean cut and paint the cut with a tree pruning compound, as directed by City.

10.07. **Preservation and Protection of Improvements and Utilities.** JOC shall protect from damage all existing improvements and utilities at or near JOC's Work site and on adjacent property, the locations of existing improvements and utilities made known to or should be known by JOC. JOC promptly shall repair any and all damage to those existing improvements and utilities, including those that are or on the property of third parties, resulting from JOC's failure to comply with the requirements of the issued Job Order or JOC's failure to exercise reasonable care in performing JOC's Work. If JOC fails or refuses to repair damage it caused to existing improvements and/or utilities, JOC acknowledges City may perform the repair(s) for any and all damage caused and withhold payment to JOC – from any of JOC's submitted pay request – for reimbursement of any costs incurred by City in performing said repair(s).

10.08. **Training City Staff.** Upon award of a contract for Job Order Contracting, JOC, jointly with any other JOCs concurrently awarded similar contracts, shall conduct, at minimum, two

training classes with City staff to address, but not be limited to, JOC's understanding of the Job Order Contracting process, JOC's understanding and intended use of the R.S. Means Facilities Construction Cost Data Catalog, the Cost Index and JOC's intended use of the Unit Price Book, to calculate the maximum pricing allowable by City for Work to be performed. JOC's conducting and participation in said two training classes shall be at no additional cost to City

ARTICLE XI
Warranty of Work

11.01. **JOC Warranty.** In addition to any other warranty, JOC expressly shall warrant that all Work performed by JOC conforms to the issued Job Order requirements and shall be free of any defect in equipment, material and workmanship and shall be in compliance with City's specifications.

11.02. **Warranty Term.** This warranty from JOC shall run runs for one (1) year from the date of Final Acceptance of the Work on an issued Job Order. If City takes possession of any part of the Work before Final Acceptance of the whole of the Work, the warranty for the part taken prior to Final Acceptance of the whole shall run from the date of possession of the Work taken.

11.03. **Warranty Work.** JOC shall, without any additional charge to City, remedy any breach of the expressed warranty of JOC's Work. JOC further shall, also without additional charge to City, repair any damage to City's real or personal property, when that damage is the result of either JOC's failure to conform to the issued Job Order requirements or any defect of equipment, material, or workmanship furnished by or through JOC.

11.04. **Warranty Extension.** JOC shall, without any additional charge to City, restore Work damaged in fulfilling the terms and conditions of this **ARTICLE XI**. JOC's warranty, with respect to all Work repaired or replaced, shall run for one (1) year from the date of JOC's repair or replacement of Work.

11.05. **Notification of Warranty Breach.** City shall notify JOC, in writing, of any breach of JOC's warranty within a reasonable time after City's discovery of any breach of warranty.

11.06. **City's Remedy for JOC's Warranty Breach.** If JOC fails or refuses to remedy a breach of warranty within a reasonable time after receipt of written notice from City, JOC acknowledges City has the right to replace, repair or otherwise remedy the cited breach and JOC fully shall reimburse City and City shall deduct from any of JOC's submitted payment application any and all expenses incurred by City in replacing, repairing or otherwise remedying said warranty breach.

11.07. **Manufacturers/Suppliers Warranties.** With regard to warranties (both expressed and implied) from JOC's Subcontractors, manufacturers or suppliers for Work performed, pursuant to a Job Order, JOC shall:

11.07.1. Obtain all warranties required by a Job Order and supply City with copies of all warranties in place for Work performed;

11.07.2. Require all warranties for Work performed to be executed, in writing, to the benefit of City; and

11.07.3. Enforce all warranties for Work performed, to the benefit of City.

11.08 **City Enforcement of Warranties.** City may, but need not as a condition of enforcing JOC's warranty, seek to enforce warranties directly for its own benefit, with regard to any of the above warranties associated with JOC's Work.

11.09. **Pre-Existing Conditions.** City acknowledges JOC is not responsible for and does not warranty any pre-existing work, conditions or facilities that may be assigned to JOC, except as modified by the Job Order.

ARTICLE XII
Changes in Work and Price

12.01. **Changes in Work.** JOC may, at any time and without notice to any sureties, in writing and signed by both City and JOC, agree to changes in the Work within the general scope of the issued Job Order, including changes:

12.01.1. in the specifications (including drawings and designs);

12.01.2. in City-furnished facilities, equipment, materials, services or site; and/or

12.01.3. in the schedule for performance of the Work.

12.02. **Change Order Processing.** A City-requested change, via an issued Task Order, for additional work falling outside the general scope of work of the originally issued Job Order, shall be treated as an additional Job Order. If JOC concludes a City-request change in scope shall result in an additional Job Order, it shall give City prompt written notice, through PRIMELink, stating the date, circumstances and full description for the requested additional Job Order scope. In no event may JOC's written notice to City of an additional Job Order come later than thirty (30) calendar days after JOC receives City's request for a change for additional work. If any City-requested change(s) in the original scope of work causes an increase or decrease in JOC's required overhead, materials, labor cost or time required for and allotted to the performance of Work, City shall make an equitable adjustment and modify the issued original Job Order through PRIMELink.

12.03. **Change Order Pricing.** Pricing for an additional Job Order shall be determined in the same way as pricing used for the originally issued Job Order.

12.04. **JOC Time Extension Proposal.** With an additionally issued Job Order, JOC shall furnish City a detailed written proposal for any requested extension in the time period given JOC for the performance of the Work. The detailed proposal shall be submitted through PRIMELink

and shall, along with a price breakdown, furnish JOC's justification for an extension of time, if any.

12.05. **Disallowed Adjustment Requests.** No written proposal submitted by JOC for an equitable (price and/or time) adjustment shall be allowed if asserted after City issues final payment to JOC under an issued Job Order. JOC acknowledges this **ARTICLE XII** provides the exclusive mechanism by which JOC may claim an additionally issued Job Order under this Job Order Contract Agreement.

ARTICLE XIII
Suspension of Work

City may, in writing, issue an order to JOC to suspend, delay or interrupt all or any part of the Work issued through a Job Order. If City does so issue such an order, or if City's fails to act timely on an issue, thereby directly resulting in a suspension, delay or interruption in JOC's scheduled Work, City equitably shall compensate JOC for increased costs due JOC for any directly-related increase in JOC's cost of performing the Work caused by City's issued order. If compensation is due from City, JOC only may recover costs under this **ARTICLE XIII** for costs incurred by JOC within the first thirty (30) calendar days following City's issued order to suspend, delay or interrupt all or a part of JOC's Work or for costs incurred by JOC within the first thirty (30) calendar days of City failing timely to act after JOC gives City written notice of the basis for the claim.

ARTICLE XIV
Termination for Convenience of City

14.01. By delivering written notice of termination to JOC, City may terminate performance under a Job Order, in whole or in part, if City, in its sole determination, determines that terminating JOC's performance is in City's best interest. Upon receiving a notice of termination, JOC immediately shall:

14.01.1. stop all Work associated with the issued Job Order;

14.01.2. let no further subcontracts or orders for materials, services or facilities, except as necessary to complete any Work not terminated by City;

14.01.3. assign to City, as directed by City, all right, title and interest of JOC under the subcontracts, to the extent they relate to the Work terminated. City may settle JOC's Subcontractor claims and pay the amounts called for by said settlements. All settlements with JOC's Subcontractor's shall release JOC only from claims arising out of City's termination of JOC's performance, but not other claims;

14.01.4. transfer title to City of all Work performed and transfer title to all materials and supplies purchased by JOC and paid for by City; and

14.01.5 deliver to City, as directed by City:

14.01.5.1. any and all fabricated or off-the-shelf parts, Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and

14.01.5.2. completed or partially completed plans, drawings, information and other property that, if the Job Order had been completed by JOC, would be required to be furnished to City;

14.01.6. complete performance of the Work not terminated by City;

14.01.7. take any action necessary, or any action that City may direct, for the protection and preservation of the property related to this Agreement that is in the possession of JOC and which City has or may acquire an interest; and

14.01.8. use its best efforts to sell, if authorized by City, any property acquired for the Work but not yet incorporated into it, except JOC need not extend credit to any purchaser and JOC itself may purchase the property on terms agreed to by the City.

14.02. After the termination of a Job Order by City, JOC promptly shall submit a final termination settlement proposal to City in the form and with the certification prescribed by City. City need not consider and is not liable to JOC for payment for any such proposal submitted longer than ninety (90) calendar days after a Job Order termination.

14.03. If JOC and City fail to agree on the amount to be paid JOC, as a result of City's termination of a Job Order for convenience, City shall pay JOC an amount determined as follows:

14.03.1. For Work performed prior to the effective date of termination, the total (without duplication) of:

14.03.1.1. JOC's cost of the Work;

14.03.1.2. JOC's cost of settling and paying termination settlement proposals under terminated subcontracts that properly are chargeable to the terminated portion of the Contract if not included in subdivision (a) above and if not paid by City; and

14.03.1.3. A markup, including overhead and profit, pursuant to this **Article XIV**, as has been agreed upon by City and JOC for Change Orders.

14.03.2. A reasonable costs of settlement of the Work terminated, including:

14.03.2.1. accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

14.03.2.2. the termination and settlement of subcontracts (excluding the amounts of such settlements); and

14.03.2.3. Storage, transportation, and other costs actually incurred by JOC and reasonably necessary for the preservation, protection or disposition of the termination inventory.

14.04. **Spoilage.** Except for normal spoilage, except to the extent that City expressly assumed the risk of loss, JOC cannot recover from City the value, as determined by City, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to City or to a subsequent purchaser.

14.05. **Partial Termination of Job Order.** If a termination of a Job Order is partial, JOC may file a proposal with City requesting an equitable adjustment of the price(s) of the non-terminated portion of the Job Order. If granted by City, City shall issue a new Task Order reflecting the new scope of work for the non-terminated portion of the Job Order reflecting the new price to be paid for the newly defined scope of work. Any proposal filed with City by JOC for an equitable adjustment of the price(s) shall be requested by JOC within ninety (90) calendar days from the effective date of partial termination, unless extended in writing by City. City may, under the terms and conditions it prescribes and at City's sole option, make partial payments to JOC and may make payments against costs incurred by JOC of the terminated portion of the Job Order, if City believes the total of these partial payments will not exceed the amount to which JOC would have been entitled. If the total payments made by City to JOC exceed the amount finally determined to be due, JOC shall repay the excess payment made to JOC by City to City upon demand.

14.06. **Record Maintenance.** Unless otherwise provided in this Agreement or by statute, JOC shall retain and maintain all records and documents relating to both the completed and the terminated portion of a Job Order for a period of four (4) years after the settlement of an issued Job Order. This requirement on JOC includes retaining and maintaining all books and other evidence bearing on JOC's costs and expenses under an issued Job Order. JOC shall make these retained and maintained reports and documents available to City, at JOC's office, at all reasonable times and without cost to City. If approved in writing by City, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC instead of original records and documents.

ARTICLE XV
Default

15.01. It shall be deemed an event of default under an issued Job Order if JOC:

15.01.1. fails or refuses to prosecute Work, or any separable part of it, with the diligence that will ensure the Work's timely completion, after ten (10) calendar days written notice and JOC has been afforded the opportunity to cure; or

15.01.2. fails or refuses to comply with any material term of the Contract, after thirty (30) calendar days written notice JOC has been afforded the opportunity to cure.

15.02. **Uncured Default.** On an uncured default by JOC, City may terminate an issued Job Order or, at City's discretion, may terminate this entire Agreement with JOC. City may complete the Work itself or procure its completion by a substitute Contractor and City shall retain all rights and remedies available to it arising from JOC's default, as may be afforded by law or by equity.

15.03. **Time Extension.** JOC's delay may be excused if said delay arises out of unforeseeable causes beyond JOC's control and without JOC's fault or negligence, such as acts of God or the public enemy, fires, flood, strikes or quarantine. To be excused for delay in such an event, JOC shall, within thirty (30) calendar days from the date of the beginning of delay, notify City in writing thereof. If, in the sole judgment of City, JOC's situation warrants an extension, City shall extend JOC's time for performance under an issued Job Order. City's findings are final and conclusive.

15.04. The rights and remedies of City in this **Article XV** are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE XVI
Safety

16.01. **Safety Plan.** Within fourteen (14) calendar days after award of this Agreement and before beginning any Work, JOC shall submit a safety plan to City for its approval. The safety plan shall address all aspects of JOC's safety policies and procedures, including responsibility for OSHA compliance, drug testing, trend analysis, corrective action and JOC's interface with City inspectors, establishing the safety rules and regulations to be utilized on the issued Job Order Work. This submitted safety plan by JOC shall remain in place for the duration of this Contract and any extension periods hereto and if JOC make any modifications to its safety plan submitted to City, JOC promptly shall notify City of those modifications.

16.02. **OSHA Compliance.** JOC shall be responsible for complying with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (hereafter referred to as "OSHA"), as well as all applicable state and local laws, ordinances and regulations during the performance of JOC's Work. JOC shall maintain a set of OSHA articles at the Job Order jobsite, as they apply to the Work being performed. Copies of said OSHA articles shall be provided by JOC to City upon request.

16.03. **Protective Equipment.** JOC shall furnish and enforce the use of individual protective equipment, as is needed to complete JOC's Work, including hard hats, rain gear, protective foot

wear, protective clothing, gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards and high visibility reflective safety vests.

16.04. **Safety Training.** JOC shall provide its employees, along with its Sub-Consultant and Subcontractor employees, safety training at minimum every six (6) months throughout the duration of Work, to include any necessary special training, prior to working with hazardous materials or operations, and provide proof of such employee safety training to City. JOC shall provide warning signs, barricades and verbal warnings on the Work site, as required. JOC shall inform its and its Sub-Consultant and Subcontractor employees of emergency procedures to be adhered to, in case of a fire, medical emergency or any other life-threatening situations.

16.05. **Accident Reporting.** JOC promptly shall notify City of any Work site accident involving any Job Order personnel and/or damage to any material and/or equipment. Copies of any injury reports or accident investigation reports generated by JOC or its Sub-Consultants and/or Subcontractors shall be provided to City.

16.06. **Safety Representative.** JOC shall assign, during performance of the Work, a designated safety representative to develop and monitor JOC's project Work site safety program. The name, company address and telephone number of the designated assigned individual shall be submitted to City's designated JOC Representative by JOC, along with JOC's safety policies and program procedures, within fourteen (14) calendar days of JOC receiving an issued Job Order.

16.07. **First Aid Kit.** JOC shall provide and maintain on the jobsite, at all times, at minimum one (1) completely stocked first aid kit, which shall contain all standard emergency medical supplies. JOC shall make the first aid kit available to all of JOC's employees and all employees of JOC's Subcontractors, while they are performing Work on the site, as well as making available emergency medical treatment either at the Job Order Work site or at a nearby medical facility.

16.08. **City's Approval of JOC Safety Policies.** City reserves the right to approve and monitor JOC's safety policies and program procedures, as they are applied during performance of the Work. Failure to comply with the safety policies and program procedures, once submitted to and approved by City, shall be deemed a breach of this Agreement and shall be cause for the termination of an issued Job Order and/or this Agreement.

16.09. **City's Limited Safety Personnel.** JOC acknowledges that City has limited personnel assigned to administer this Agreement and be in a position to police all of the safety requirements of this **Article XVI,** as well as acknowledging that those assigned City personnel are not fully trained in safety matters. To that end, City's imposition of these safety requirements on JOC is not an assumption by City of a duty on City to assure safety. JOC shall indemnify City for all losses, costs, liabilities and/or expenses arising out of or relating to JOC's violations of this **Article XVI**.

ARTICLE XVII
City's Use and Possession Prior to Completion

17.01. **Partial Possession.** City has the right to take possession of or to use any completed or partially completed part of the Work under an issued Job Order. Prior to taking possession of or using any part of JOC's Work, City shall furnish JOC a list of items of Work remaining to be performed or corrected on those portions of the Work which City intends to take immediate possession of or use. JOC acknowledges City's failure to list remaining Work does not relieve JOC from performing that Work. City's possession or use of any completed or partially completed part of the Work shall not be deemed City's acceptance of Work related to City's possession or use of the partially completed part of the Work.

17.02. **City's Assumption of Risk for Partial Possession.** If City takes such possession or use of any completed or partially completed part of the Work, JOC shall be relieved of the responsibility for the loss of or any damage to the Work resulting from City's possession or use. If early possession or use by City clearly delays JOC's progress or causes additional expenses to be incurred by JOC, City shall make an equitable adjustment in the issued Job Order price or JOC's time period for performance and the Job Order shall be modified in writing accordingly.

ARTICLE XVIII
Non-Exclusivity and Cooperation

JOC acknowledges this Agreement is not exclusive. City may award multiple Job Order Contract Agreements and this Agreement is not a promise of receiving issued Job Orders or of an equal share of all Job Orders issued by City. JOC shall cooperate with other JOCs awarded contracts by City and with City employees and carefully shall adapt its scheduling and Work performance to accommodate the work of other awarded JOCs. JOC shall not commit or shall not permit any act to be committed that might interfere with the performance of work by any other JOC or JOC Sub-Consultants and/or Subcontractor(s) or by any City employees.

ARTICLE XIX
Workers' Compensation

19.01. The following terms are defined as follows:

19.01.1. Certificate of Coverage (hereafter referred to as "Certificate") is defined as a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance

coverage for the person's or entity's employees providing services on a project, for the Duration of the Project.

19.01.2. Duration of the Work is defined as the time, from the beginning of Work on an issued Job Order through the time the Job Order has been completed and accepted by City, during which JOC and JOC's personnel are working on an issued Job Order.

19.01.3. Persons are defined as and shall include all persons or entities performing all or part of the Work JOC has undertaken to perform on an issued Job Order, regardless of whether that person contracted directly with JOC or whether that person has employees. Persons further shall include, without limitation, Independent Contractors, Subcontractors, leasing companies, motor carriers, owner-operators, as well as all employees of such entities or employees of any entities which furnishes persons to provide Services on an issued Job Order.

19.01.4. Services are defined as and shall include, without limitation, those Persons providing, hauling or delivering equipment or materials and/or providing labor, transportation or other Service related to and for the Duration of an issued Job Order. Services, as defined herein, shall not include activities unrelated to an issued Job Order, such as food/beverage vendors, office supply deliveries or delivery of portable toilets.

19.02. JOC shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees and Persons of JOC providing Services on an issued Job Order for the Duration of the Work. JOC shall comply with the statutory requirements and shall supply a Worker's Compensation
Statutory, with a Waiver of subrogation in favor of City

19.03. JOC shall provide the required Certificate of Workers' Compensation Coverage to City, prior to being awarded a Job Order.

19.04. If the coverage period shown on JOC's current Certificate of Coverage ends during the duration of an issued Job Order, JOC shall, prior to the end of its coverage period, file a new Certificate of Coverage with City showing that its Workers' Compensation coverage has been extended/renewed.

19.05. JOC shall obtain and provide to City, from and for each person providing Services on an issued Job Order:

19.05.1. a Certificate of Coverage, prior to that person beginning work on an issued Job Order, so City will have on file Certificates of Coverage showing coverage for all persons providing Services on the issued Job Order; and

19.05.2. no later than seven (7) calendar days after receipt by JOC, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage obtained by JOC ends during the duration of the issued Job Order.

19.06. JOC shall retain all required Certificates of Coverage for the duration of an issued Job Order and for one year thereafter City's acceptance of the Work.

19.07. JOC shall notify City in writing by certified mail or personal delivery, within ten (10) calendar days after JOC knew or should have known, of any change that materially may affect the provision of coverage of any person providing Services on an issued Job Order.

19.08. JOC shall post on each Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all Persons providing Services on an issued Job Order that the workers are required to be covered by Workers' Compensation, stating how a Person may verify said Workers' Compensation coverage and how a Person may report a lack of Workers' Compensation coverage.

19.09. JOC contractually shall require each Person with whom it contracts to provide Services on an issued Job Order to:

19.09.1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees and all Persons providing Services on an issued Job Order, for the Duration of the Work;

19.09.2. provide to JOC, prior to that Person beginning Work on an issued Job Order, a Certificate of Coverage showing that coverage is being provided for all employees of the Person providing Services on the issued Job Order, for the Duration of the Work;

19.09.3. provide JOC, prior to the end of the coverage period, a new Certificate of Coverage showing an extension or renewal of coverage, if the coverage period shown on the current Certificate of Coverage ends during the Duration of the Work;

19.09.4. obtain from every other Person with whom each Person contracts and provide to JOC:

19.09.4.1. a Certificate of Coverage, prior to the other Person beginning work on the issued Job Order; and

19.09.4.2. a new Certificate of Coverage showing an extension/renewal of coverage, prior to the end of the coverage period, if the coverage period shown on the current Certificate of Coverage ends during the duration of the issued Job Order;

19.09.5. retain all required Certificates of Coverage on file for the duration of the issued Job Order and Work for one (1) year thereafter;

19.09.6. notify City in writing by certified mail or personal delivery, within ten (10) calendar days after the Person knew or should have known of any change that materially may affect the provision of coverage of any person providing Services on the issued Job Order; and

19.09.7. contractually require each Person with whom JOC contracts to perform Work, as required by **Sections 19.09.1 through 19.09.6** herein, with the Certificates of Coverage to be provided to the Person for whom they are providing Services.

19.10. By signing this Agreement and/or providing or causing to be provided a Certificate of Coverage, JOC is representing to City that all employees of JOC who will provide Services on an issued Job Order shall be covered by Workers' Compensation Coverage for the Duration of the Work, the provided Workers' Compensation Coverage shall be based on proper reporting of classification codes and payroll amounts and all coverage agreements shall be filed with the appropriate insurance carrier or, in the case of a self-insured JOC, with the Commission's Division of Self-Insurance Regulation in Texas. JOC hereby acknowledges the providing false or misleading insurance coverage information may subject JOC to administrative penalties, criminal penalties, civil penalties or other civil or criminal actions.

19.11. JOC acknowledges its failure to comply with any of these provisions in this **Article XIX** shall be deemed a Breach of Contract by JOC and shall entitle City to terminate any issued Job Orders to JOC and declare this Agreement void if JOC fails to remedy the Breach of Contract within ten (10) calendar days after receipt of notice of a Breach of Contract from City.

ARTICLE XX
Prevailing Wages

JOC shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Buildings Wage Determination in effect at the time this JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. JOC acknowledges it shall utilize the Buildings Wage Determination when determining prevailing wages for all issued Job Orders. If JOC is required to pay the prevailing wage for a job classification not found on the cited Buildings Wage Determination, JOC shall utilize the Heavy Highway Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Heavy Highway Wage Determination job classification from City.

ARTICLE XXI
Performance Bond

21.1. **Job Order Less Than $100,000.00.** For issued Job Orders less than $100,000.00, JOC shall not be required to post a Performance Bond.

21.2. **Job Orders Greater Than $100,000.00.** For issued Job Orders with a dollar value equal to or greater than $100,000.00, JOC shall be required to post the City-required Performance Bond, which shall be written utilizing and submitted on City's Bond Form.

21.3. **Performance Bond Requirements.** City's Performance Bond requirements are as follows:

21.3.1. For all required Performance Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code to issue Performance Bonds in the full amount of the issued Job Order;

21.3.2. The Performance Bonds shall provide that the Surety indemnify the City (as the Bond's oblige) for all damages or losses resulting from JOC's (the Bond's principal's) default. The Bond(s) shall guarantee JOC's performance of all performance terms and obligations under the issued Job Order;

21.3.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bond to bind the issuing surety; and

21.3.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253, and shall be executed and delivered to City before beginning any Work on an issued Job Order.

21.4. **Performance Bond for Entire Agreement.** JOC hereby may elect to not have to post a Performance Bond for each Job Order when issued and instead provide to City, under the same requirements for Bonds outlined in this **Article XXI,** a Performance Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide both a Performance Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Performance Bond with City.

ARTICLE XXII
Payment Bond

22.1. **Job Orders Under $50,000.00.** For all issued Job Orders of $50,000.00? or less, JOC shall not be required to post a Payment Bond.

22.2. **Job Orders Over $50,000.00.** For all issued Job Orders with a dollar value equal to or greater than $50,000.00, JOC shall be required to post the City-required Payment Bonds, written utilizing and submitted on City's Bond Form.

22.3. City's Payment Bond requirements are as follows:

22.3.1. For all required Payment Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code in the full amount of the issued Job Order.

22.3.2. The Payment Bonds shall provide that the Surety indemnify the City (as the Bond's oblige) for all damages or losses resulting from JOC's (the Bond's principal's) non-payment(s) for Work performed under the issued Job Order. The Bonds further shall guarantee JOC's payment to all entities performing for Work for JOC, pursuant to an issued Job Order.

22.3.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bonds to bind the issuing surety.

22.3.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code Chapter 2253 and Texas Property Code Chapter 53.21.1 and shall be executed and delivered to City before beginning any Work on an issued Job Order.

22.4. **Payment Bond for Entire Agreement.** JOC hereby may elect to not have to post a Payment Bond for each Job Order when issued and instead provide to City, under the same requirements for Payment Bonds outlined in this **Article XXII,** a Payment Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide a Payment Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Payment Bond with City.

ARTICLE XXIII
Insurance

23.01. In addition to other insurance requirements of this Agreement, JOC shall maintain, throughout the term of this Agreement, insurance coverage written on an occurrence form, by an

insurance provider authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to City, in the following types and amounts:

23.01.1. **ERROR! BOOKMARK NOT DEFINED.**JOC's Liability Insurance: Without limiting any of the other obligations or liabilities of JOC under the Contract Documents, JOC shall purchase and maintain, during the term of this Agreement and at JOC's own expense, the minimum liability insurance coverage described below with insurance companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to City. JOC also shall require each Subcontractor performing work under an issued Job Order, at Subcontractor's own expense, to maintain levels of insurance necessary and appropriate for the Work performed during the term of the issued Job Order, said levels of insurance comply with all applicable laws. Subcontractor's liability insurance shall name JOC, City and, if applicable, the Design Consultant as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in this **Article XXIV** shall show the existence of each policy, together with copies of all policy endorsements showing City and the Design Consultant as an additional insured, and shall be delivered to City before any Work on an issued Job Order is started. JOC promptly shall furnish, upon the request of and without expense to City, a copy of each policy required, including all endorsements, which shall indicate:

23.01.1.1 Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to City;

23.01.1.2. Employer's Liability Insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee and $1,000,000 disease policy limit, with a waiver of Subrogation in favor of City; (excessive?)

23.01.1.3. Commercial General Liability Insurance, to include but not be limited to coverage for the following:

A) Personal Injury Liability;

B) Independent Contractor's Liability;

C) Products and Completed Operations; and

D) Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, fully insuring JOC's (and/or JOC's Subcontractor's) liability for injury to or death of City's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and

property damage minimum limit of $1,000,000 per occurrence, $2,000,000 annual aggregate.

If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of an issued Job Order and acceptance of Work by City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Agreement.

City shall be named as additional insured by using endorsement CG 20 26 or broader. The Commercial General Liability policy shall include coverage extended to apply to completed operations and XCU hazards.

The Products and Completed Operations coverage shall be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with City. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the issued Job Order in question.

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

23.01.1.5. Broad-Form Property Damage, to include Fire Legal Liability coverage for replacement cost of JOC's Work and improvements.

23.01.2. Five (5) calendar days prior to a suspension, cancellation or non-renewal of any required line of insurance coverage, JOC shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend JOC and its performance under an issued Job Order and this Agreement if JOC fails to provide said replacement certificate of insurance.

23.01.3. If any insurance company providing insurance coverage(s) required under the JOC Contract becomes insolvent or becomes the subject of any rehabilitation, conservatorship, liquidation or similar proceeding, JOC immediately shall procure, upon first notice to JOC or City of such occurrence and without cost to City, replacement insurance coverage before continuing the performance of the Work on an issued Job Order. Any failure of JOC to provide such replacement insurance coverage shall constitute a material breach of this Agreement.

23.02. In addition to the insurance described in **Section 24.01.1** et seq. herein, JOC shall obtain, at its expense and maintained throughout the duration of this Agreement, All-Risk Builder's Risk Insurance, if an issued Task Order involves the complete construction of a new building, or an All-Risk Installation Floater policy, if an issued Job Order involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk and include, but not be limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the issued Job Order for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the issued Task Order for the Builder's Risk policy. If an Installation Floater policy is provided, City shall be shown as a Joint Named Insured with respect to the issued Task Order. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the issued Job Order. This policy shall be in the name of JOC and naming City, Design Consultant (if applicable) and JOC's Subcontractors, as well as any JOC Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

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

23.02.2. Loss, if any, shall be adjusted with and made payable to JOC or to City and JOC as trustee for the insureds as their interests may appear.

23.03. Boiler and Machinery Insurance. If applicable, City shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by City. This insurance shall include the interests of City, JOC, JOC's Subcontractors and Sub-Subcontractors in the Work, and City and JOC shall be named insureds.

23.04. Loss of Use Insurance. City, at City's option, may purchase and maintain Loss of Use Insurance, insuring City against loss of use of City's property due to fire or other hazards, however caused.

23.05. JOC shall provide to City a Certificate of Insurance, evidencing all property insurance policies procured pursuant to this **Article XXIV** and referenced herein and all endorsements thereto, before any exposure to loss may occur.

23.06. Partial occupancy or use in accordance with **Article XVII** herein shall not commence until the insurance company/companies providing property insurance for both City and JOC have consented to such partial occupancy or use by endorsement or otherwise. City and JOC shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent, with respect to partial occupancy or use, that would cause cancellation, lapse or reduction of any insurance coverages.

23.07. Each insurance policy required of JOC by this Agreement shall contain the following clauses:

23.07.1. "The insurance provided by JOC is primary to any insurance or self-insurance maintained by the City of San Antonio."

23.07.2. "Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

23.08. Each insurance policy required by this Agreement, excepting policies for Workers' Compensation and Employer's Liability, shall contain the following clauses:

23.08.1. "The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Agreement with the City of San Antonio This policy cannot be invalidated as to City because of JOC's breach of representation, warranty, declaration or condition of this policy."

23.08.2. "This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days' prior written notice has been given to:

City Clerk, City of San Antonio City Hall/2nd Floor P. O. Box 839966 San Antonio, Texas 78283-3966 Attention: Risk Manager	**with a copy to:**	Transportation & Capital Improvements City of San Antonio P.O. Box 839966 San Antonio, Texas 78282-3966 Attention: Contract Services

ARTICLE XXIV
Release of Claims/Subrogation

The insurance requirements of this Agreement are a bargained-for allocation of risk of loss. City and JOC release each other from claims arising from injury or loss to either of them or to third parties to/for which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Agreement to maintain, whether or not the party actually has the insurance (hereafter referred to as "Covered Claims"). This Release is additional to and does not limit any other release contained in this Agreement. City and JOC, to the maximum extent allowable without causing cancellation of a required policy, waive Subrogation against each other for Covered Claims.

ARTICLE XXV
Small, Minority, & Women-Owned Business Advocacy

It is the policy of City that Small, Minority and Woman-Owned Business Enterprises have the maximum practical opportunity to participate in the performance of public contracts. In achieving that goal, JOC hereby commits to satisfy the SBEDA requirements of this Agreement, as outlined in the SBEDA Subcontractor/Supplier Utilization Plan, attached and labeled as **Exhibit B** hereto and incorporated into this Agreement.

ARTICLE XXVI
Precedence in Case of Conflict

In case of conflict between the elements of this Agreement, the elements have the following Precedence, for the purpose of construction:

A. Modifications and/or Amendments to this Agreement, if any;

B. This Agreement, including Attachments;

C. The Request for Sealed Proposals, including Attachments and addenda (if any);

D. JOC's submitted Proposal;

E. Issued Job Orders;

F. Drawings; and

G. City's Specifications.

ARTICLE XXVII
Waivers

27.01. **Non-Waiver of City's Rights.** Neither City's review, approval or acceptance of or payment for Work required under this Agreement, pursuant to an issued Job Order, waives City's rights under this Agreement or waives City's rights under any cause of action arising out of the performance of this Agreement.

27.02. **City Waiver and Subsequent JOC Breach.** City's waiver of any breach of any term, covenant, condition or agreement herein contained does not waive any subsequent breach of the same or any other term, covenant, condition or agreement.

ARTICLE XXVIII
INDEMNIFICATION

28.01 JOC covenants and agrees to **HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND** City, its elected officials, employees, officers, directors, volunteers and representatives of City, 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 JOC and of City) damage to property (other than the Work itself and including property of JOC and of City), 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, JOC, 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 JOC be liable for claims arising out of accidents resulting from the sole negligence of City, all without however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. In the event JOC and City 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 City under Texas law and without waiving any defenses of the parties under Texas law.

28.02 In addition to the above, JOC also covenants and agrees to **HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND** City, its elected officials, employees, officers, directors, volunteers and representatives of City, 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 JOC and of City) damage to property (other than the Work itself and including property of JOC and of City), but only to the extent caused by the intentional or deliberate misconduct, grossly negligent, willful acts or omissions of JOC, 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 JOC be liable for claims arising out of accidents

resulting from the sole negligence of City, all without, however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. In the event JOC and City 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 City under Texas law and without waiving any defenses of the parties under Texas law.

28.03 **INTELLECTUAL PROPERTY INDEMNIFICATION.** JOC shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against City, its elected officials, employees, officers, directors, volunteers and representatives of City, 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 JOC and its employee or its Subcontractors and their agents, servants and employees, based on any deliverable or any other materials furnished hereunder by JOC and used by either City or JOC within the scope of this Agreement (unless said infringement results directly from JOC's compliance with City's written standards or specifications). JOC does not warrant against infringement by reason of City's or Design Consultant's design of articles or their use in combination with other materials or in the operation of any process. JOC 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. JOC agrees to consult with City's City Attorney during such defense or negotiations and make good faith efforts to avoid any position adverse to the interest of City. City shall make available to JOC any deliverables and/or works made for hire by JOC necessary to the defense of JOC against any claim of infringement for the duration of JOC's legal defense.

28.04 If such infringement claim or action has occurred or, in JOC's judgment, is likely to occur, City shall allow JOC, at JOC's option and expense, (unless such infringement results directly from JOC's compliance with City's written standards or specifications or by reason of City'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 City 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 City'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 City; or

(4) if none of the foregoing alternatives is reasonably available to JOC, upon written request, City shall return the deliverable and/or materials in question to JOC and JOC shall refund all monies paid by City, with respect to such deliverable and/or materials, and accept return of same. If any such cure

provided for in this **Article XXVIII** shall fail to satisfy the third-party claimant, these actions shall not relieve JOC from its defense and indemnity obligations set forth in this Article **XXVIII**.

28.05 The indemnification obligations under this **Article XXVIII** 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 JOC 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.

ARTICLE XXIX
AUDIT OF RECORDS

JOC shall retain, maintain and contractually shall require each Sub-Consultant and Subcontractor of JOC to retain and maintain all data, books and other records (hereafter collectively referred to as "records") relating to an issued Job Order and this Agreement for a period of four (4) years after completion of an issued Job Order. JOC acknowledges City may inspect and audit all JOC records at reasonable times and, upon request, JOC shall produce all original records. If approved by City in writing, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC, its Sub-Consultants and Subcontractors instead of original records and documents. City may withhold any payment to JOC and may deduct from any money owed to JOC, if City finds the retained and maintained documentation on any issued and performed Job Order to be incomplete or erroneous.

ARTICLE XXX
THIRD-PARTY ANTITRUST VIOLATIONS

JOC hereby assigns to City any claim for overcharges resulting from antitrust violations, to the extent that such violations concern materials or services supplied by third parties to JOC toward fulfillment of the requirements of an issued Job Order and this Agreement.

ARTICLE XXXI
APPROPRIATIONS

All obligations of City under this Agreement are funded subject to the discretion of the San Antonio City Council as to whether to appropriate funding for this Agreement for any given year of its term. If the San Antonio City Council fails to appropriate money for this Agreement in an annual City of San Antonio Budget, the City may terminate this Agreement and have no further liability under it.

ARTICLE XXXII
DISPUTE RESOLUTION

32.01. **Field Level Discussions.** JOC and City agree each first will attempt to resolve disputes or disagreements arising out of an issued Job Order or from this Agreement at the field level, through discussions between the Parties' representatives. If that effort to resolve a dispute or disagreement is unsuccessful, the Director of City's Department of Transportation & Capital Improvements shall intercede and attempt to reach an amicable resolution.

32.02. **Mediation.** Before bringing any action arising out of this Agreement, including an action for declaratory relief but not an action specifically excepted below herein, the Parties, in good faith, first shall submit the unresolved dispute or disagreement to mediation. The Parties may not assert limitations, laches, waivers and estoppels, based upon their attempts to mediate.

32.03. **Waiver of Mediation Rights.** Filing suit on a claim that, under this **Article XXXII** and the terms of this Agreement, first should be mediated waives the filer's right to demand mediation. But one Party's waiver does not affect another party's right. A defendant does not waive mediation as long as, within a reasonable time after appearing, said defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this **Article XXXII**.

32.04. Any mediation conducted, pursuant to this Agreement, shall be conducted in San Antonio, Bexar County, Texas.

32.05. **Burden to Initiate Mediation.** The Party desiring relief has the burden to initiate mediation. Waiting for a Party to initiate mediation does not waive the other Party's right to it.

32.06. **Mediator Appointment.** If the Parties may agree on a mediator, they shall do so. Alternatively, either Party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court needs to consider, before appointing a mediator, are whether:

32.06.1. the copy of the Agreement before the court is authentic; and

32.06.2. the Agreement was duly signed and delivered by all Parties agreeing to be bound to mediate.

If neither of those issues cited in **Section 32.06.1** or **Section 32.06.2** herein is denied under oath, the court may appoint a mediator upon motion, without trial.

32.07. **Mediator Fees.** Mediator fees shall be borne equally by the Parties.

32.08. **Emergency Injunctive Relief.** The Parties need not mediate before going to court to seek emergency injunctive relief.

32.09. **JOC's Continued Performance of Work.** JOC shall continue to perform the Work under an issued Job Order and City shall continue to satisfy its payment obligations to JOC under an issued Job Order, pending final resolution of any dispute or disagreements between the Parties.

ARTICLE XXXIII
PROHIBITED INTERESTS IN CONTRACTS

33.01. **Prohibited Financial Interests.** The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency, such as city owned utilities. A City officer or employee has a "prohibited financial interest" in a contract with City or in the sale to the City of land, materials, supplies or service if any of the following individual(s) or entities is a party to the contract or sale:

33.01.1. a City officer or City employee; or

33.01.2. a City officer's or City employee's parent, child or spouse; or

33.01.3. a business entity in which a City officer or a City employee, or his/her parent, child or spouse owns either:

33.01.3.1. ten percent (10%) or more of the voting stock or shares of the business entity; or

33.01.3.2. ten percent (10%) or more of the fair market value of the business entity; or

33.01.4. a business entity in which any individual or entity above listed is:

33.01.4.1. a Subcontractor or Sub-Consultant of JOC on a City contract; or

33.01.4.2. a partner; or

33.01.4.3. a parent or subsidiary business entity.

33.02. JOC warrants and certifies:

33.02.1. JOC, its officers, employees and agents are neither officers nor employees of City.

33.02.2. JOC has tendered to the City a Discretionary Contracts Disclosure Statement,

in compliance with City's Ethics Code.

33.03. JOC acknowledges that City's reliance on the above warranties and certifications is reasonable.

ARTICLE XXXIV
NON-DISCRIMINATION

34.1 As a party to this Agreement with City, JOC understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, JOC shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. JOC represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Contract award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, JOC shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Subcontractors, Sub-Consultants, vendors, suppliers or commercial customers, nor shall JOC retaliate against any person for reporting instances of such discrimination. JOC shall provide equal opportunity for Subcontractors, Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector subcontracting, sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. JOC acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in the termination of an issued Job Order and/or this Agreement, the disqualification of JOC from participating in future City contracts or other sanctions. This **Article XXXIV** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. JOC's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement. JOC shall incorporate this clause into each of its Subcontractor, Sub-Consultant and supplier agreements entered into, pursuant to issued City Job Order agreements/contracts.

34.2 **JOC Outreach and Diversity Plan.** JOC acknowledges and commits, upon its execution of this Agreement, JOC shall provide City a detailed outreach and diversity plan for approval by City, to include a list of all of JOC's Subcontractors and Sub-Consultants it expects to utilize in performing issued Job Orders and JOC shall require all of its utilized Subcontractors and Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through PRIMELink. JOC commits that it shall obtain approval in writing from City

prior to adding, substituting or deleting any approved Subcontractors and/or Sub-Consultant from an issued Job Order.

ARTICLE XXXV
MISCELLANEOUS PROVISIONS

35.01. **Texas Laws Govern.** This Agreement is entered into in San Antonio, Bexar County, Texas. This Agreement's construction and the rights, remedies, duties and obligations arising under this Agreement are governed by the laws of the State Of Texas. But the Texas conflicts of law rules shall not be used to apply the laws of a jurisdiction other than Texas. Both Parties' obligations under this Agreement are performable in San Antonio, Bexar County, Texas and venue for any action arising under this Agreement only shall be in San Antonio, Bexar County, Texas.

35.02. **Invalid, Illegal or Unenforceable Clauses.** If any part of this Agreement is found invalid, illegal or unenforceable, said finding shall not affect the remaining parts of this Agreement deemed valid and enforceable and the part of this Agreement found invalid, illegal or unenforceable shall be stricken from the Agreement and the remaining pats of this Agreement shall remain in full force and effect, as if the stricken part never was contained herein.

35.03. **Inure and Assignments.** This Agreement inures to the benefit of and binds the heirs, representatives, successors and permitted assigns of the Parties hereto. This clause does not authorize any assignment not otherwise authorized.

35.04. **Full and Final Agreement.** This Agreement represents the full and final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the Parties. Both City and JOC acknowledge and agree there are no oral agreements between the Parties.

35.05. **Written Amendments.** This Agreement only may be amended by a written agreement, signed by both Parties.

35.06. **No Third Party Beneficiaries.** This Agreement only benefits the Parties, their successors and permitted assigns. This Agreement has no third party beneficiaries.

35.07. **Notices.** Notices shall be in writing and sent by certified mail, return receipt requested. Notices pertaining to a Job Order shall be addressed to the parties at their respective addresses set forth in the preamble to this Agreement and also to the addresses specified in the Job Order. Notices pertaining to this Agreement – but not to a specific Job Order – shall be sent to the addresses set forth in the preamble to this Agreement. Notice shall be deemed delivered three (3) calendar days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. A Party's address for notice shall be changed only by giving written notice to the other Party.

35.08. **Utilized Wording.** Where herein used, plural constructions include the singular and singular constructions include the plural. Whether a pronoun is masculine, feminine or neutral does not affect meaning or application of the relevant term. The words "herein," "hereof" and other similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.
35.09. **Captions and Titles.** Article and Section captions/titles used herein are for ease of reference only and do not affect the interpretation of the Articles and Sections.

35.10. **Executed Counterparts.** This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, executed counterparts constitute only one Agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all Parties.

35.11. **Additional Documents and Instruments.** The Parties shall execute and deliver such additional documents and instruments as may be necessary fully to effect the provisions hereof. But no such additional documents may alter the rights or obligations of the Parties stated in this Agreement.

35.12. **Director Authority.** The Director of Transportation & Capital Improvements, without further San Antonio City Council action, may agree to, sign and deliver, on behalf of City, all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and also may declare defaults and pursue remedies for such defaults, including termination.

ARTICLE XXXVI
PUBLIC INFORMATION

Buyer acknowledges that this Agreement is public information within the meaning of Chapter 552 of the Texas Government Code and, accordingly, may be disclosed to the public.

ARTICLE XXXVII
CONFLICT RESOLUTION BETWEEN DOCUMENTS

JOC hereby acknowledges and agrees if anything contained in any JOC-prepared proposals, submittals or any other document prepared by JOC is in conflict with the terms and conditions of this Agreement and/or in conflict with City's General Conditions for City of San Antonio Construction Contracts, which are attached hereto, incorporated herein and labeled as "**Exhibit A**", this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict(s).

IN WITNESS WHEREOF, the parties have caused their representatives to set their hands and execute this Agreement on the dates reflected below. This Agreement shall become effective on the date of the last signature hereto.

CITY OF SAN ANTONIO	**ALPHA BUILDING CORPORATION**
By:_____	By:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title: _____
Date:_____	Date:_____

This Agreement is approved as to form:

_____

San Antonio City Attorney's Office

EXHIBIT A

GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

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. For Projects not affecting City traffic, a Working Day is measured from sunrise to sundown Monday through Friday, except legal holidays, or the hours during which Contractor has been authorized and/or directed to work by Owner. For Projects affecting City traffic, a working day shall mean sunrise to sundown Monday through Saturday, except legal holidays, or hours during which Contractor has been authorized and/or directed 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"** means, unless the context clearly indicates otherwise, 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, anthophylite or actinolite, whether friable or non-friable;

(b) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(c) radon;

(d) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the

environment, or natural resources;

(e) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(f) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.;

(g) the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(h) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

1.1.17 **"NOTICE TO PROCEED (HEREIN ALSO REFERRED TO AS "WORK PROJECT AUTHORIZATION" OR "NTP")"** is a written notice given by Owner to Contractor establishing the date on which the Contract Time shall commence to run and the date on which Contractor may begin performance of its contractual obligations.

1.1.18 **"OWNER"** is defined in **Article II** herein.

1.1.19 **"OWNER DESIGNATED REPRESENTATIVE (ODR)"** means the person(s) designated by Owner to act for Owner.

1.1.20 **"PROJECT"** means the total design and construction of Work performed under the Contract Documents and may be the whole or a part of the Project and which may include construction by Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the Site of the Work shall use the term "Project," notwithstanding that the Work only may be a part of the Project.

1.1.21 **"PROJECT MANAGEMENT TEAM"** is composed of Owner, its representatives, Design Consultant and Program Manager (if any) for this Work.

1.1.22 **"SITE"** means the land(s) or area(s) (as indicated in the Contract Documents) furnished by Owner, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

1.1.23 **"SPECIAL CONDITIONS"** are terms and conditions to an Agreement that supplement and are superior to these General Conditions and grant greater authority or impose greater restrictions upon Contractor, beyond those granted or imposed in these General Conditions. City's Horizontal Special Conditions are attached hereto, made a part of these General Conditions and shall be used as applicable.

1.1.24 **"SPECIFICATIONS"** are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.

1.1.25 **"SUBSTANTIAL COMPLETION"** is the date certified by Owner and Design Consultant, in accordance with **Section 9.8** herein, when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so as to be operational and fit for the intended use by Owner.

1.1.26 **"TEMPORARY BENCH MARKS (TBM)"** are temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.

1.1.27 **"THE 3D MODEL"** is the Building Information Model prepared by Design Consultant in the format designated, approved and acceptable to Owner with databases of materials, products and systems that can be used by Contractor to prepare schedules for cost estimating, product and materials placement schedules and evaluations of crash incidences. The 3D Model, if available, may be used as a tool, however all information taken from the Model is the responsibility of Contractor and not Owner or Design Consultant.

1.1.28 **"WORK"** means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Contractor, or any Subcontractors, Sub-Subcontractors, material suppliers or any other entities for which Contractor is responsible, to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.29 **OTHER DEFINITIONS.** As used in the Contract Documents, the following additional terms have the following meanings:

1.1.29.1 "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and all other expenses necessary to complete in place and ready for operation or use;

1.1.29.2 "shall" means the mandatory action of the party of which reference is being made;

1.1.29.3 "as required" means as prescribed in the Contract Documents; and

1.1.29.4 "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes and regulations.

1.2 PRELIMINARY MATTERS

1.2.1 Upon the San Antonio City Council's passing of an Ordinance authorizing the issuance of a contract, a Notice of Award Letter shall be sent to Contractor by TCI Contract Services, notifying Contractor of the award of a contract. In its Notice of Award Letter, Contractor shall be informed of a date certain by which Contractor's bond(s) and evidence of insurance shall be delivered to TCI Contract Services.

1.2.2 **DELIVERY OF CONTACT AND BONDS.** Not later than the Pre-Construction meeting and prior to the commencement of any Work on the Project, Contractor shall deliver a fully executed Contract to Owner, along with such bonds as Contractor may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in the Contract Documents and these General Conditions and a required performance bond in the form and amount specified in the Contract Documents and these General Conditions.

1.2.3 **DELIVERY OF EVIDENCE OF INSURANCE.** Not later than the Pre-Construction meeting, and prior to the commencement of any Work under this Contract, Contractor shall deliver evidence of insurance to Owner. Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the TCI Contract Services Division, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Contractor shall be prohibited from commencing the Work and Owner shall have no duty to pay or perform under this Contract until such evidence of insurance is delivered to Owner. No officer or employee, other than Owner's Risk Management Department, shall have authority to waive this requirement.

1.2.4 **NOTICE TO PROCEED AND COMMENCEMENT OF CONTRACT TIMES.** Unless otherwise stated on the Notice to Proceed, the Contract Time shall commence to run on the date stated on the Notice to Proceed. No Work shall commence any earlier than the date stated on Notice to Proceed and no Work shall be performed by Contractor or any Subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Contractor receiving a Notice to Proceed is performed at Contractor's risk.

1.2.5 **SUBMISSION OF PROJECT SCHEDULE(S).** Prior to comment of Work (unless otherwise specified elsewhere in the Contract Documents), Contractor shall submit to the Director of TCI or his/her designee the Project schedule(s), as defined in **Section 3.10** herein, a minimum of fifteen (15) days prior to the Pre-Construction Conference.

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

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

1.3 CONTRACT DOCUMENTS

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

1.3.2 **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.** The Drawings, Specifications and other documents, including those in electronic form, prepared by Design Consultant, its Consultants or other Consultants retained by Owner for the Project, which describe the Work to be executed by Contractor (collectively referred to as the "Construction Documents") are and shall remain the property of Owner, whether the Project for which they are made is executed or not. Contractor shall be permitted to retain one record set. Neither Contractor nor any Subcontractor, sub-Subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Design Consultant or Design Consultant's Consultants. All copies of Construction Documents, except Contractor's record set, shall be returned or suitably accounted for to Design Consultant on request and upon completion of the Work. The Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant's Consultants, along with copies thereof furnished to Contractor, are for use solely with respect to this Project. The drawings, specifications or other documents are not to be used by Contractor or any Subcontractor or material or equipment supplier on other

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

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

1.3.2.2 Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially-significant Work product lost or destroyed by Contractor shall be replaced or reproduced at Contractor's non-reimbursable sole cost. In addition, Owner shall have access during normal business hours, during the duration this Contract is in effect and for four (4) years after the final completion of the Work, unless there is an ongoing dispute under the Contract, then such access period shall extend longer until final resolution of the dispute, to all of Contractor's records and documents covering reimbursable expenses, actual base hourly rates, time cards and annual salary escalation records maintained in connection with this Contract for purposes of auditing same at the sole cost of Owner. The purpose of any such audit shall be for the verification of such costs. Contractor shall not be required to keep records of, or provide access to, the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers. Nothing herein shall deny Contractor the right to retain duplicates. Refusal by Contractor to comply with the provisions hereof shall entitle Owner to withhold any payment(s) to Contractor until compliance is obtained.

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

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

(1) the dimension figures shall govern over scaled dimensions;

(2) Detailed Drawings and accompanying notations shall govern over general Drawings;

(3) Specifications shall govern over Drawings, subject to **Section 1.3.3.6** herein;

(4) General Conditions and Supplemental Conditions;

(5) Special Conditions shall govern over Specifications, Drawings and General/Supplemental Conditions; and

(6) Negotiated Special Conditions shall govern over Special Conditions.

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

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

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

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

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

1. Modifications to this Agreement signed by Contractor, Owner and Design Consultant;

2. Addenda, with those of later date(s) having precedence over those with earlier date(s);

3. Special Conditions;

4. General Conditions;

5. Special Provisions (Horizontal Projects);

6. Specifications;

7. Drawings;

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

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

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

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

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

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

ARTICLE II. OWNER

2.1 GENERAL

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

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

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER

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

2.2.2 Owner shall furnish surveys, if in existence, describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Contractor of any of its duties under the Contract Documents or these General Conditions. Information or services required of Owner by the Contract Documents shall be furnished by Owner with reasonable promptness following actual receipt of a written request from Contractor. It is incumbent upon Contractor to identify, establish and maintain a current schedule of latest dates for submittal and approval by Owner, as required in **Section 3.10** herein, including when such information or services must be delivered. If Owner delivers the information or services to Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse Owner for all extra costs incurred by holding, storage, retention or performance, including redeliveries by Owner in order to comply with the current schedule.

2.2.3 Unless otherwise provided in the Contract Documents, Contractor shall be furnished, free of charge, up to ten (10) complete sets of the Plans and Specifications by Design Consultant. Additional complete sets of Plans and Specifications, if requested by Contractor, shall be furnished at reproduction cost to Contractor.

2.2.4 Owner's personnel may, but are not required to, be present at the construction site during progress of the Work, along with Design Consultant in the performance of its duties, to verify Contractor's record of the number of workers employed on the Work site, the workers' occupational classification, the time each worker is engaged in the Work and the equipment used by the workers in the performance of the Work, for purpose of verification of Contractor's Applications for Payment and payroll records.

2.2.5 Owner shall reimburse Contractor for the necessary Project-related approvals, fees and required permits with no markup paid to Contractor for these necessary Project-related approvals, fees and required permits costs unless said costs are stipulated in the Contract Documents as a part of the Work.

2.2.6 **OWNER'S RIGHT TO STOP THE WORK.** If Contractor fails to correct Work deemed by Owner to not be in accordance with the requirements of the Contract Documents, as required by **Section 12.3** herein, fails to carry out Work in accordance with the Contract Documents or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction of Owner's rights pursuant to **Section 12.3** herein. Owner's issuance of an order to Contractor to stop the Work shall not give rise to any claim by Contractor for additional time, cost or general conditions costs.

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

ARTICLE III. CONTRACTOR

3.1 GENERAL

3.1.1 Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 Contractor shall perform the Work in a good and workmanlike manner, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

3.1.3 Contractor shall not be relieved of its obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents, either by any activities or duties of Design Consultant in Design Consultant's administration of the Contract or by tests, inspections or approvals required or performed by Owner or any person other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, Contractor carefully shall:

(1) study and compare the various Drawings and other Contract Documents relative to that portion of the Work and the information furnished by Owner;

(2) take field measurements of any existing conditions related to that portion of the Work; and

(3) observe any conditions at the Site affecting the Work.

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

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

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

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

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

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

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

3.2.3 Any design errors or omissions noted by Contractor during its review promptly shall be reported to Owner, but it is recognized that the Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain if Contact 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 five (5) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software. If Contractor's Project affects City traffic, Work shall be scheduled upon Contractor's six (6) 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, 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) Contractor intends to complete the remaining work in the sequence and time indicated.

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

3.10.10 **COMPLETION OF WORK**

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

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

(1) increasing Project work forces;

(2) increasing Project equipment or tools;

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

(4) expediting the delivery of Project materials;

(5) changing, with the approval of Owner, the schedule logic and Work sequences; or

(6) taking some other action as Contractor may proposes, if acceptable to Owner.

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

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

(1) increasing work forces and hours, to include Contractor working additional shifts of overtime;

(2) supplying additional manpower, equipment and facilities;

(3) re-sequencing the Work;

(4) expediting the fabrication and supply of materials; and/or

(5) other similar measures Owner may direct (hereafter **(1)** – **(5)** herein above 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 Contactor.

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 it's 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.

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 pursing 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 is it shown that, through no fault of Contractor, Contractor fell behind on the approved construction schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time, Owner shall not be entitled to liquidated damages. Nothing in this **Section 4.3.11.2** shall prohibit Contractor from filing a Claim for an extension of time Contractor feels it may be owed.

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

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

4.4 Resolution of Claims and Disputes

4.4.1 Claims by Contractor against Owner and Claims by Owner against Contractor, including those alleging an error or omission by Design Consultant but excluding those arising under **Section 10.3** and **Section 10.5** herein, shall be referred initially to Design Consultant for consideration and recommendation to Owner.

4.4.2 An initial recommendation by Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the parties arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to Design Consultant with no recommendation having been rendered by Design Consultant.

4.4.3 Design Consultant shall review Claims and, within ten (10) work days of receipt of a Claim, take one or more of the following actions:

(1) request additional supporting data from the party making the Claim;

(2) issue an initial recommendation;

(3) suggest a compromise; or

(4) advise the parties that Design Consultant is unable to issue an initial Recommendation, due to a lack of sufficient information or conflict of interest.

4.4.4 Following receipt of Design Consultant's initial recommendation regarding a Claim, Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement is reached, either party may request mediation of the dispute, pursuant to **Section 4.5** herein.

4.4.5 If Design Consultant requests either or any party to provide a response to a Claim or to furnish additional supporting data, such requested party shall provide a response or the requested supporting data to Design Consultant, advise Design Consultant when the response or supporting data shall be furnished or advise Design Consultant that no response of supporting data shall be furnished.

4.4.6 With receipt of all information requested by Design Consultant, Design Consultant shall review the Claim and all received information within ten (10) calendar days of receipt of the information and shall take one of the following actions:

(1) issue a recommendation;

(2) suggest a compromise; or

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

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

4.4.8 **WAIVER OF LIEN.** It is understood that, by virtue of this Contract, no mechanic, contractor, material man, artisan or laborer, whether skilled or unskilled, ever shall, in any manner, have a claim or acquire any lien upon the building or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said building or any of the improvements are so erected, built or situated.

4.5 ALTERNATIVE DISPUTE RESOLUTION

4.5.1 **CONTINUATION OF WORK PENDING DISPUTE RESOLUTION.** Each party is required to continue to perform its obligations under this Contract pending the final resolution of any dispute arising out of or relating to this Contract, unless it would be impossible or impracticable under the circumstances then present.

4.5.2 **REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.** Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Contract agree that they first shall try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. Both Owner and Contractor agree that this step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with the alternative dispute resolution process contained in **Section 4.5** herein, including mediation and/or litigation. All negotiations pursuant to this **Section 4.5** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

4.5.3 **MEDIATION.** In the event that Owner and/or Contractor contend that the other has committed a material breach of this Contract, or the two parties cannot reach a resolution of a claim or dispute pursuant to **Section 4.4** herein, as a condition preceding to filing a lawsuit, either party shall request mediation of the dispute with the following requirements:

4.5.3.1 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.

4.5.3.2 In the event Owner and Contractor are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **Section 4.5** shall be deemed to have occurred.

4.5.3.3 The parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

4.6 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, Owner may administer its design and construction management through an Internet-based Project Management system (also referred to as "PRIME*Link*"). In such cases, Contractor shall conduct communication through this medium and perform all Project-related functions utilizing this management system, to include all correspondences, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders and other administrative activities. When such a management system is employed, Owner shall administer the software, provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

ARTICLE V. SUBCONTRACTORS

5.1 DEFINITION

A Subcontractor is defined and used herein as a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor, Sub-Consultant or an authorized representative of Subcontractor or Sub-Consultant. The term "Subcontractor" does not include a separate contractor or Subcontractor of a separate contractor.

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

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

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

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

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

5.2.5 All Work performed for Contractor by a Subcontractor shall be performed pursuant to an appropriate agreement between Contractor and Subcontractor which specifically binds Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

5.2.6 **SBEDA/DBE REPORTING AND AUDITING.** During the term of the contract, Contractor must report the actual payments to all SBEDA or DBE (as applicable) Subcontractors and Suppliers in the time intervals and format prescribed by Owner. Owner reserves the right, at any time during the term of this Contract, to request additional information, documentation or verification of payments made to such Subcontractors and suppliers in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of canceled checks paid to SBEDA or DBE Subcontractors and suppliers and/or confirmation inquiries directly to the SBEDA or DBE participants. Proof of payments, such as copies of canceled checks, properly must identify the Project name or Project number to substantiate a SBEDA or DBE payment for the Project.

5.2.7 **SMALL BUSINESS SUBCONTRACTOR SUBSTITUTIONS.** Reference SBEDA or DBE Requirements in Supplementary Conditions for Substitution of Subcontractors. Failure to follow such procedures is an event of default under this Contract and may be grounds for termination.

5.3 SUB-CONTRACTUAL RELATIONS

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

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

5.4.1 an assignment is effective only after termination of the Contract by Owner and only for those Subcontractor agreements which Owner accepts by notifying Subcontractor and Contractor in writing; and

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

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

ARTICLE VI. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS

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

6.1.1 Owner reserves the right to perform construction or operations related to the Project with Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under General Conditions of the Contract identical or substantially similar to these. If Contractor claims that a delay or additional cost is involved, due to such action by Owner, Contractor shall make a Claim as provided in **Section 4.3** herein.

6.1.2 When separate contracts are awarded for different portions of the Project or for other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor that executes each separate Owner-Contractor Agreement.

6.1.3 Owner shall provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work of Contractor and Contractor fully shall cooperate with said coordination. Contractor shall participate with other separate contractors and Owner in reviewing all construction schedules when directed by Owner to do so. Contractor shall make any revisions to its construction schedule deemed necessary after said joint review and mutual agreement. The revised construction schedules then shall constitute the schedules to be used by Contractor, separate contractors and Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when Owner and Owner's own forces perform construction or operation related to the Project, Owner shall be subject to the same obligations and to have the same rights that apply to Contractor under these General Conditions and the Contract Documents.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Contractor shall afford Owner and Owner's separate contractor(s) reasonable opportunity for the introduction and storage of materials and equipment, the performance of their activities and the coordination of Contractor's construction and operations with theirs, as required by the Contract Documents.

6.2.2 If part of Contractor's Work depends upon the construction or operations by Owner or a separate contractor for the proper execution or results, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgment that Owner's separate contractor's completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. Owner shall be responsible to Contractor for costs incurred by Contractor because of delays, improperly timed activities and damage to the Work or defective construction of Owner's separate contractor(s).

6.2.4 Contractor promptly shall remedy any damage wrongfully caused by Contractor or its Subcontractor(s) to any completed or partially completed construction or to property of Owner or Owner's separate contractor(s), as provided in **Section 10.2.5** herein.

6.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in **Section 3.14** herein.

6.3 OWNER'S RIGHT TO CLEAN UP. If a dispute arises among or between Contractor, Owner's separate contractor(s) and Owner, as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Owner may clean up and those costs shall be allocated amongst those parties responsible.

ARTICLE VII. CHANGES IN THE WORK

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished, after the execution of the Contract and without invalidating the Contract, by Change Order, Field Work Directive/Force Account or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this **Article VII** and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor; a Field Work Directive requires a directive by Owner and, if necessary, Design Consultant and may or may not be agreed to by Contractor; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by Owner.

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

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

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written modification of the Contract signed by both Owner and Contractor (and approved by City Council, if required) that authorizes an addition, deletion or revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in **Section 7.3.4** herein.

7.2.3 Acceptance of a Change Order by Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including, but not limited to impact, delay or acceleration damages arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and any extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, cost and additional time, if any. This Contract, as amended, forever releases any Claim against Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release of any Claim applies to Claims related to the cumulative impact of all Change Orders and to any Claim related to the effect of a change on unchanged Work.

7.2.4 Owner or Design Consultant shall prepare Change Orders and Field Work Directives and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which Contractor promptly shall carry out and record on the As-Built record documents.

7.2.5 Contractor and Subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by Project Specifications.

7.3 FIELD WORK DIRECTIVES

7.3.1 A Field Work Directive is a written directive signed by Owner and, if necessary, Design Consultant directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum or Contract time, or both. Owner may, by Field Work Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with any changes to the Contract Sum and/or the Contract Time to be adjusted according to the terms of this **Section 7.3**.

7.3.2 A Field Work Directive shall be used in the absence of total agreement on the terms of a Change Order. Owner shall issue a Field Work Directive to Contractor with a defined Not-To-Exceed dollar amount for the scope of Work defined.

7.3.3 Upon receipt of a Field Work Directive, Contractor promptly shall proceed with the change in the Work involved and, in writing, advise Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.4 If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as applicable:

7.3.4.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.4.2 prices, including unit prices, stated in the Contract Documents or subsequently agreed upon;

7.3.4.3 cost to be determined in a manner agreed upon by Owner and Contractor and a mutually acceptable fixed or percentage fee; or

7.3.4.4 as provided in **Section 7.3.6** herein.

7.3.5 If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall initially be determined by Design Consultant on the basis of reasonable costs and savings attributable to the change including, in case of an increase in the Contract Sum, as applicable, a reasonable allowance for overhead and profit. In such case, and also under **Section 7.3.4.**3 herein, Contractor shall keep and present, in such form as Owner may prescribe, an itemized and detailed accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Section 7.3.5** shall be limited to the following:

7.3.5.1 costs of all labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;

7.3.5.2 costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;

7.3.5.3 rental costs of all machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;

7.3.5.4 expenses incurred in accordance with Contractor's standard personnel policy for travel approved in writing by Owner in advance;

7.3.5.5 costs of premiums for all bonds and insurance, permit fees and allowable sales, use or similar taxes related to the Work;

7.3.5.6 all additional costs of supervision and field office personnel directly attributable to the change; and

7.3.5.7 all payments made by the Contractor to Subcontractors.

7.3.6 The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus Contractor's allocated percent for profit and overhead, as confirmed by Design Consultant, subject to any equitable adjustment recommended by Design Consultant and approved by Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

7.3.7 If Owner and Contractor agree with the determination made by Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

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

Directive, Owner unilaterally shall file a Change Order listing Owner's adjustments in the Contract Sum and/or Contract Time and Contractor reserves the right to file a Claim for payment and/or time, pursuant to **Section 4.4** herein.

7.4 MINOR CHANGES TO THE WORK. Owner or Design Consultant both shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Owner and Contractor. Contractor promptly shall carry out such written orders and record such changes in the As-Built drawings.

7.5 TIME REQUIRED TO PROCESS CHANGE ORDERS

7.5.1 All responses by Contractor to proposal requests from Owner or Design Consultant shall be accompanied by a complete itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow Owner and Design Consultant a minimum of thirty (30) calendar days after receipt by Owner to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in Contractor's response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution or other grounds for seeking extra compensation or additional time under the Contract Documents, without reservation or further recourse.

7.5.2 All Change Orders require written approval by either Owner or City Council or, where authorized by the state law and Owner ordinance, by Owner's City Manager or designee, pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal shall be authorized by Owner or City Council Resolution or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM SHALL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Contractor shall proceed with the work under a pending Change Order only if directed in writing to do so by Owner.

ARTICLE VIII. TIME

8.1 PROGRESS AND COMPLETION

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

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

8.1.3 For Projects not affecting City traffic and a Working Day is measured from sunrise to sundown Monday through Friday, nothing in this **Article VIII** shall be construed as prohibiting Contractor from working on Saturdays if it so desires and giving Owner at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday, Sunday and holidays so that Owner's representative may be scheduled to observe/inspect said Work and only if Contractor has performed work on the Project during the same week of the requested Saturday, Sunday or holiday.

8.1.4 On Projects affecting City traffic, Contractor shall work sunrise to sundown Monday through Saturday.

8.2 DELAYS AND EXTENSIONS OF TIME

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

8.2.2 Should Contractor be delayed solely by the act, negligence or default of Owner or Design Consultant, and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and Owner, Contractor shall receive an extension of the Contract Time equal to the verified delay or portion thereof if a written claim is made within five (5) calendar days of the act, negligence or default of Owner or Design Consultant and granted by Owner. In addition, Contractor, upon timely notice to Owner, with substantiation by Owner and Design Consultant and upon approval of Owner, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs

incurred by Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or supplier to administer their Work. Compensation for Subcontractor's and supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to the Owner-caused event. In no event shall Contractor be entitled to home office or other off-site expenses or damages.

8.2.3 Claims relating to time shall be made in accordance with applicable provisions of **Section 4.3** herein.

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

ARTICLE IX. PAYMENTS AND COMPLETION

9.1 CONTRACT SUM. The Contract Sum is stated in the Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by Owner to Contractor for performance of the Work under the Contract Documents. Contractor accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the San Antonio City Council. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any party to this Contract.

9.2 SCHEDULE OF VALUES

9.2.1 A Schedule of Values for all of the Work shall be submitted by Contractor and shall include quantities and prices of items which, when added together, equal a contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable, overhead and profit shall be included as a separate line item.

9.2.2 Before the first Application for Payment, Contractor shall submit to Owner and Design Consultant a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner and Design Consultant may require. This schedule, unless objected to by Design Consultant or Owner, shall be used as a basis for reviewing Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Contractor shall submit Applications for Payment to Owner electronically, at minimum, every thirty (30) days throughout the duration of the Project. Contractor electronically shall attach to its Application for Payment all data substantiating Contractor's right to payment as Owner or Design Consultant may require, such as copies of requisitions from Subcontractors and material suppliers reflecting retainage, if provided for in the Contract Documents, and reflecting a deduction for Liquidated Damages, if applicable. Applications for Payment shall not include requests for payment for portions of the Work which Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by Owner. If approved in advance in writing by Owner, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by Owner. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

9.3.3 Contractor warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONTRACTOR.**

9.3.4 By submission of an Application for Payment, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor; provided if any of the foregoing is not true and cannot be certified,

Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.4 PAY APPLICATION APPROVAL

9.4.1 Design Consultant shall, within ten (10) business days after receipt of Contractor's Application for Payment, either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Contractor and Owner the Design Consultant's reasons for withholding approval, as provided in **Section 9.5.1** herein.

9.4.2 The certification of an Application for Payment shall constitute a representation by Design Consultant to Owner, based on Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Design Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by Design Consultant. The issuance of a Certificate for Payment further shall constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation Design Consultant has:

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment; or

(4) made any examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT

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

9.5.1.1 Work not performed or defective ;

9.5.1.2 third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder unless security acceptable to Owner is provided by Contractor;

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

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

9.5.1.5 damage to Owner or another contractor;

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

9.5.1.7 persistent failure by Contractor to carry out the Work in accordance with the Contract Documents;

9.5.1.8 the applicable liquidated damages were not included in the Application for Payment;

9.5.1.9 billing for unapproved/unverified materials stored off Site; or

9.5.1.10 a current schedule update has not been submitted by Contractor.

9.5.2 Owner shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Section 9.5.1** herein.

9.6 PROGRESS PAYMENTS

9.6.1 After the final approval of the Application for Payment, Owner may make payment in the manner and within the time provided in the Contract Documents.

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

of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of Owner receipt of a complete and mathematically accurate Application for Payment from the Contractor, and the retainage held until Final Completion shall be five percent (5%).

9.6.3 Owner's payment of installments shall not, in any way, be deemed to be a final acceptance by Owner of any part of the Work, shall not prejudice Owner in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work herein provided.

9.6.4 Contractor shall, within ten (10) calendar days following receipt of payment from Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide Owner with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to Owner bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if Owner so requests, shall provide copies of such Subcontractor payments to Owner. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which Owner has made payment to the Contractor, Owner shall be entitled to withhold payment to Contractor to the extent necessary to protect Owner.

9.6.5 Owner and/or Design Consultant shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Owner and Design Consultant on account of portions of the Work done by such Subcontractor.

9.6.6 Neither Owner nor Design Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.

9.6.7 Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.2, Section 9.6.3** and **Section 9.6.4** herein regarding Subcontractors.

9.6.8 A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

9.6.9 Contractor shall, as a condition precedent to any obligation of Owner under this Contract, provide to Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

9.7 SUBSTANTIAL COMPLETION

9.7.1 Substantial Completion is defined as the stage in the progress of the Work when the Work – or a designated portion thereof, which Owner agrees to accept separately – sufficiently is complete, in accordance with the Contract Documents, so Owner may occupy or utilize the Work or a designated portion thereof for its intended use. In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s), Owner may withhold payment of sums necessary to pay the estimated Liquidated Damages due Owner. Owner shall be entitled, at any time, to deduct out of any sums due to Contractor any or all Liquidated Damages due Owner in accordance with the Contract between Owner and Contractor.

9.7.2 When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is Substantially Complete, Contractor shall prepare and submit to Owner and Design Consultant a preliminary comprehensive list of items to be completed or corrected prior to Final Completion and final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.7.3 Upon receipt of Contractor's list of items to be completed or corrected, Owner and Design Consultant shall make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If Owner's or Design Consultant's inspection discloses any item, whether or not it was included on Contractor's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that Owner may occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by Owner or Design Consultant. In such case, Contractor then shall submit a request for another inspection by Owner and Design Consultant to determine Substantial Completion and Contractor shall be responsible for all costs incurred and associated with re-inspection.

9.7.4 When the Work – or the designated portion thereof which Owner agrees to accept separately – is Substantially Complete, Design Consultant or Owner shall prepare a Certificate of Substantial Completion (Vertical Projects) or a Letter of Conditional Approval (Horizontal Projects) which shall:

(1) establish the date of Substantial Completion (which shall be the date on which the Work met the requirements under the Contract Documents for Substantial Completion);

(2) establish responsibilities of Owner and Contractor, as agreed to by Owner and Contractor, for security, maintenance, heat, utilities, damage to the Work and insurance; and

(3) fix the time limit by which Contractor shall complete all items on the list accompanying the Certificate.

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

9.8 PARTIAL OCCUPANCY OR USE

9.8.1 Owner may occupy or use any completed or partially completed portion of the Work at any stage of the Work when such partially completed portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer, as required under **Section 11.4.1.5** herein and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided Owner and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion of the Work to be Substantially Complete, Contractor shall prepare and submit a list of items to be completed or corrected prior to Final Completion and final payment and submit such list to Owner and Design Consultant, as provided under **Section 9.8.2** herein. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between Owner and Contractor or, if no agreement is reached, by the decision of Design Consultant.

9.8.2 Immediately prior to such partial occupancy or use, Owner, Contractor and Design Consultant collectively shall inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.8.3 Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.8.4 Upon such partial occupancy or use, and upon Substantial Completion, Owner may assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.

9.8.5 Partial occupancy or use by Owner does not constitute substantial completion and does not start any warranty period(s).

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 When all of the Work finally is completed and ready for final inspection, Contractor shall notify Owner and Design Consultant thereof in writing. Thereupon, Owner and Design Consultant shall make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the final Application for Payment may be submitted. If Owner and Design Consultant are unable to approve the final Application for Payment for reasons for which Contractor is responsible and Owner and Design Consultant are required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by Owner from the Contractor's retainage.

9.9.2 Contractor shall not be entitled to payment of retainage unless and until it submits to Owner its affidavit that the payrolls, invoices for materials and equipment, and other liabilities, to include Liquidated Damages, connected with the Work for which Owner or the Owner's property might be responsible fully have been paid or otherwise satisfied or shall be paid from final payment; releases and waivers of liens from all Subcontractors of Contractor and of any and all other parties required by Design Consultant or Owner that either are unconditional or conditional on receipt of final payment; Certificates of insurance showing continuation of required insurance coverage; such other documents as Owner may request; and consent of Surety to final payment. A Retainage Checklist shall be provided by Owner to Contractor upon request.

9.9.3 If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Design Consultant so confirms, Owner shall, upon application by Contractor and certification by Design Consultant and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Design Consultant, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

(1) Design Consultant is required to make more than one inspection to determine if Substantial Completion has been achieved by Contractor;

(2) Design Consultant is required to make more than one inspection to determine if Final Completion has been achieved by Contractor; or

(3) the Work is not substantially complete within thirty (30) calendar days after the date established for the Work's Substantial Completion in the Contract Documents.

ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.1.2 Contractor shall notify Owner immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities including, but not limited to, copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.

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

alcoholic beverages while performing the Work or while on Site or performing the Work. Contractor shall remove any of its employees or Subcontractor employees from performing the Work or from the Site any time there is suspicion of alcohol and/or drug use, possession or impairment involving such employee and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Contractor's or Subcontractor's employees only may be considered for return to work after Contractor certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Contractor shall not employ any individual, or shall not accept any Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.

10.1.4 Contractor shall comply with all applicable federal, state and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether the owner thereof has a permit for a concealed weapon.

10.1.5 Both Owner and Contractor agree that these safety and health terms are of the highest importance and that a breach or violation of any of the terms of this **Section X** by Contractor or a Subcontractor shall be a material and substantial breach of this Contract. In the event that Owner shall determine that Contractor has breached or violated the terms of this Section, then Owner shall determine, immediately upon written notice to Contractor, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until Owner is satisfied that the safety provisions hereof shall not be breached or violated thereafter. If Owner terminates the Contract as a result of such breach or violation, Owner and Contractor shall complete their obligations hereunder to one another in accordance with **Section 14.2** herein.

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

10.1.7 Notwithstanding either of the above provisions, or whether Owner exercises its rights set forth herein, Owner neither warrants nor represents to Contractor, Contractor's employees or agents, any Subcontractors or any other third party that Contractor's safety policy meets the requirements of any applicable law, code, rule or regulation, nor does Owner warrant that the proper enforcement of Contractor's policy shall insure that no accidents or injuries shall occur. In addition, any action by Owner under these provisions in no way diminishes any of Contractor's obligations under applicable law or the contract documents.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Contractor shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees performing the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or Contractor's Subcontractors or Sub-Subcontractors;

10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction; and

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

10.2.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying all owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, Contractor shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel. Prior to the use of any explosives, Contractor shall submit a written blasting plan, shall obtain Owner's approval and shall comply with Owner's requirements for such use.

10.2.5 Contractor promptly shall remedy any and all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). Contractor also shall HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND Owner, its elected officials, employees, officers, directors, volunteers and representatives of Owner, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of Contractor and of Owner) referred to in **Section 10.2.1.2** and **Section 10.2.1.3** herein, but only to the extent caused in whole or in part by the acts, omissions and/or negligence of Contractor, its agents, servants and employees, its Subcontractor(s) and its/their agents, servants and employees, anyone directly or indirectly employed by Contractor or Subcontractor and/or by any other person or entity for which Contractor or Subcontractor may be responsible under the Contract Documents in connection with the Work to be

performed, services to be rendered or materials to be furnished under this Contract including, but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without, however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of Contractor are in addition to Contractor's obligations under **Section 3.18** herein. In the event Contractor and Owner are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively, in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the parties under Texas law.

10.2.6 Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to Owner and Design Consultant.

10.2.7 Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.8 Notwithstanding the delivery of a survey or other documents by Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the property. Contractor acknowledges and accepts that the location of underground utilities (both public and private) reflected on any City-provided plans are not guaranteed and may not be completely accurate. Contractor shall locate and verify any and all utilities and associated service lines prior to beginning any Work. Contractor shall be responsible for and shall repair, at Contractor's own expense, any damage done to lines, cables, pipes and pipelines identified or not identified to Contractor.

10.3 EMERGENCIES.

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

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

10.4 PUBLIC CONVENIENCE AND SAFETY

10.4.1 Contractor shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by Owner. Sidewalks or streets shall not be obstructed, except by special permission of Owner. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances and fire alarm or police call boxes in the vicinity.

10.4.2 Owner reserves the right to remedy any neglect on the part of Contractor, in regard to public convenience and safety, which may come to Owner's attention after twenty-four (24) hours notice in writing to Contractor. In case of an emergency, Owner shall have the right immediately to remedy any neglect without notice. In either case, the cost of any work done by or for Owner to remedy Contractor's neglect shall be deducted by Owner from Contractor's Contract Sum. Contractor shall notify Owner, Owner's Traffic Control Department and Design Consultant when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be given at least forty-eight (48) hours in advance. Owner reserves the right to postpone and/or prohibit any closure or obstruction of any streets or thoroughfares, to the extent necessary for the safety and benefit of the traveling public. Contractor shall, when directed by Owner or Design Consultant, keep any street or streets in condition for unobstructed use by Owner departments. When Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

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

10.4.4 City's Office of Sustainability continues to work on City's Air Quality Control Strategies Plan in its ongoing efforts to lower emissions throughout the City, including City's Project sites. In an effort to assist City in these goals, Contractor shall strive to:

10.4.4.1 reduce fuel use by directing its employees and its Subcontractors to reduce vehicle idling, maintaining equipment utilized on the Project and replacing or repowering equipment with current technologies;

10.4.4.2 conserve electricity used to provide power to Contractor's offices and throughout the Project site, to include Project lighting, tools and Contractor's Project construction trailer; and

10.4.4.3 recycle Project site materials such as asphalt, steel, other metals and concrete.

10.4.4.4 All costs associated with Contractor's and its Sub-Consultants' and Subcontractors' acquisition and installation of emission control technology shall be considered incidental costs of the Project; as such, no additional compensation shall be provided Contractor by City.

10.5 BARRICADES, LIGHTS AND WATCHMEN. If the Work is carried on, in or adjacent to any street, alley or public place, Contractor shall, at Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, provide sufficient watchmen and take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that shall be visible at night, and shall be illuminated by lights as required under City's Barricades specifications. The term "lights," as used in this **Section 10.5**, shall mean flares, flashers or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices also shall be erected to keep vehicles from being driven on or into any Work under construction. Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and/or watchmen necessary to protect the Work. Whenever evidence is found of such damage, Owner or Design Consultant may order the damaged portion immediately removed and replaced by Contractor at Contractor's sole cost and expense. Contractor's responsibility for maintenance of barricades, signs, lights, and for providing watchmen, as required under this **Section 10.5**, shall not cease until the Project has been finally accepted by Owner.

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

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS. When existing storm sewers or drains have to be taken up or removed, Contractor shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Contractor also shall provide for all storm sewage and drainage which shall be received from these storm drains and sewers. For this purpose, Contractor shall provide and maintain, at Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. Contractor shall, at Contractor's own expense, construct such troughs, pipes or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by Design Consultant. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction shall be adequately protected.

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

10.8.1 When Contractor desires to use Owner's water in connection with the Work, Contractor shall make complete and satisfactory arrangements with the San Antonio Water Service and shall be responsible for the cost of the water Contractor uses. Where meters are required and used, the charge shall be at the regular established rate; where no meters are required and used, the charge shall be as prescribed by Owner ordinance, or where no ordinance applies, payment shall be based on estimates made by the representatives of the San Antonio Water Service.

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

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

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

10.10 ENVIRONMENTAL COMPLIANCE

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

10.10.2 In the event Contractor encounters on the Project Site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, Contractor immediately shall stop Work in the affected area and report in writing the facts of such encounter to Owner and Design Consultant. Work in the affected area shall not thereafter be resumed except by written order of Owner and written consent of Contractor, unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, Owner shall remediate the Hazardous Substance with a separate contractor or through a Change Order with Contractor. If the Hazardous Substance exists in the affected area due to the fault or negligence of Contractor or any of its Subcontractors, Contractor shall be responsible for remediating the condition at the sole expense of Contractor. If applicable, such remediation shall be in accordance with Contractor's Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by Owner only if the Project critical path is affected and Contractor is not the source of the Hazardous Substance. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of **Section 4.3** and **Article VIII** herein.

10.10.3 Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substance brought into or onto the site by Contractor or any Subcontractor or Contractor's Supplier. Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation and/or disposal, notify Owner and Design Consultant so that they may observe the activities; provided, however, that it shall be Contractor's sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities.

ARTICLE XI. INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

11.1.1.2 Commercial General Liability Insurance, Personal Injury Liability, Independent Contractor's Liability and Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (and/or Subcontractor's) liability for injury to or death of Owner's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of $1,000,000 per occurrence, $2,000,000 annual aggregate. If coverage is written on a

claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. Owner shall be named as additional insured by using endorsement CG 20 26 or broader. The general liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the Project in question.

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

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

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

11.2 PROPERTY INSURANCE

11.2.1 In addition to the insurance described in **Section 11.1** and **Section 11.4** herein, Contractor shall obtain at its expense and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, Owner shall be shown as a Joint Named Insured with respect to the Project. If a

Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be in the name of Contractor and naming Owner, Design Consultant and Subcontractors, as well as any Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

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

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

11.2.2 **BOILER AND MACHINERY INSURANCE.** If applicable, Owner shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by Owner. This insurance shall include the interests of Owner, Contractor, Subcontractors and Sub-Subcontractors in the Work, and Owner and Contractor shall be named insureds.

11.2.3 **LOSS OF USE INSURANCE.** Owner, at Owner's option, may purchase and maintain such insurance as shall insure Owner against loss of use of Owner's property due to fire or other hazards, however caused. Owner waives all rights of action against Contractor that it may now have or have in the future for loss or damage to Owner's property howsoever arising, including consequential losses due to fire or other hazards however caused.

11.2.4 Contractor shall provide to Design Consultant for delivery to Owner a Certificate of Insurance evidencing all property insurance policies procured under **Section 11.2** herein and all endorsements thereto, before any exposure to loss may occur.

11.2.5 Partial occupancy or use in accordance with **Section 9.9** herein shall not commence until the insurance company/companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.3 PERFORMANCE BOND AND PAYMENT BONDS

11.3.1 Subject to the provisions of **Section 11.3.2** herein, Contractor shall, with the execution and delivery of the Contract, furnish and file with Owner, in the amounts required in this **Article XI**, the surety bonds described in **Section 11.3.1.1** and **Section 11.3.1.2** herein, with said surety bonds in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each surety bond shall be signed by Contractor, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of **Section 11.3.3** herein and approved by Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

11.3.1.1 **PERFORMANCE BOND**. A good and sufficient bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

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

11.3.2 If the Contract Sum, including Owner-accepted Alternates and allowances, if any, is greater than $100,000, Performance and Payment Bonds equaling one hundred percent (100%) of the Contract Sum are mandatory and shall be provided by Contractor. If the Contract Sum is greater than $50,000 but less than or equal to $100,000, only a Payment Bond equaling One hundred percent (100%) of the Contract amount is mandatory; provided, however, that Contractor also may elect to furnish a Performance Bond in the same amount if Contractor so chooses. If the Contract Sum is less than or equal to $25,000, Contractor may elect not to provide Performance and Payment Bonds; provided that in such event, no money shall be paid by Owner to Contractor until Final Completion of all Work. If Contractor elects to provide Performance and Payment Bonds, the Contract Sum shall be payable to Contractor through progress payments in accordance with these General Conditions.

11.3.3 No surety shall be accepted by Owner that is in default, delinquent on any bonds or that is a party to any litigation against Owner. All bonds shall be made and executed on Owner's standard forms, shall be approved by Owner and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to Owner. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Bexar County, Texas. Each surety shall designate an agent resident in Bexar County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.

11.3.4 The person or persons, partnership, company, firm, limited liability company, association, corporation or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on Owner until:

(1) it has been approved as to form by Owner's City Attorney;

(2) it has been executed by Owner's City Manager;

(3) the performance and payment bonds and evidence of insurance have been furnished to Owner by Contractor, as required by the Contract Documents; and

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

11.3.5 The failure of Contractor to execute the Contract and deliver the required bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as Owner can assemble and deliver the Contract and by the time the Owner-scheduled Pre-Construction meeting is held shall, at Owner's option, constitute a material breach of Contractor's bid proposal and Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices for materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to Owner by reason of Contractor's failure to execute the Contract within ten (10) days and deliver bonds and insurance by the Owner-scheduled Pre-Construction meeting, the filing of a bid proposal shall constitute an acceptance of this **Section 11.3.5**. In the event Owner should re-advertise for bids, the defaulting Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this **Section 11.3**.

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

11.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

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

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

11.5.1.2 Within five (5) calendar days of a suspension, cancellation or non-renewal of any required line of insurance coverage, Contractor shall provide Owner a replacement certificate of insurance with all applicable endorsements included. Owner shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during the Contract.

11.5.1.3 The terms "Owner," "City" or "City of San Antonio" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Owner and the individual members, employees and agents thereof in their official capacities, while acting on behalf of Owner.

11.5.1.4 The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The required insurance coverage furnished by Contractor shall be the primary insurance for all purposes for the Project, as well as the primary insurance for the additional insureds named in the required policies.

11.5.1.5 All provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten with contractual liability coverage(s) sufficient to include such obligations with the applicable liability policies.

11.5.2 Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability which:

11.5.2.1 All policies must comply with the applicable requirements and special provisions of this **Article 11**.

11.5.2.2 Any policy evidenced by a Certificate of Insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and Owner's decision regarding whether any policy contains such provisions and contrary to this requirement shall be final.

11.5.2.3 All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that otherwise are acceptable to Owner.

11.5.3 Contractor agrees to the following special provisions:

11.5.3.1 Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Owner, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this **Article XI**.

11.5.3.2 Insurance companies issuing the insurance policies and Contractor shall have no recourse whatsoever against Owner for payment of any premiums or assessments for any deductibles, as all such premiums and assessments solely are the responsibility and risk of Contractor.

11.5.3.3 Approval, disapproval or failure to act by Owner, regarding any insurance supplied by Contractor or any Subcontractor(s), shall not relieve Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by Contractor's insurance company shall likewise not exonerate or relieve Contractor from liability.

11.5.3.4 Owner reserves the right to review the insurance requirements of this **Article XI** during the effective period of this Contract and to adjust insurance coverage and insurance limits when deemed necessary and prudent by Owner's Risk Management Division, based upon changes in statutory law, court decisions or the claims history of Contractor and Subcontractors. Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions. Upon request by Owner, Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage.

11.5.3.5 No special payments shall be made for any insurance policies that Contractor and Subcontractors are required to carry. Except as provided in **Section 11.5.3.4** herein, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.

11.5.3.6 Any insurance policies required under this **Article XI** may be written in combination with any of the other policies, where legally permitted, but none of the specified limits neither may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this **Article XI** be limited or circumvented by doing so.

ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK

12.1 Inspecting Work. Owner and Design Consultant shall have authority to reject Work that does not conform to the Contract Documents. Whenever Owner or Design Consultant considers it necessary or advisable, Owner and/or Design Consultant shall have authority to require inspection or testing of the Work in accordance with this **Article XII**, whether or not such Work is fabricated, installed or completed.

12.2 UNCOVERING WORK

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

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

12.3 CORRECTING WORK

12.3.1 Contractor promptly shall correct any Work rejected by Owner or Design Consultant as failing to conform to the requirements of the Contract Documents, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, along with all costs for additional testing, inspections and compensation for Design Consultant's services and expenses made necessary thereby.

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

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

12.3.2.2 one (1) year after the date for commencement of warranties established by agreement in connection with partial occupancy under **Section 9.9.1** hereto; or

12.3.2.3 the stipulated duration of any applicable special warranty required by the Contract Documents.

12.3.3 The one (1) year period, described in **Section 12.3.2.1**, **Section 12.3.2.2** and **Section 12.3.2.3** herein, shall be extended, with respect to portions of the Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual completion of the Work.

12.3.4 The obligations of Contractor under **Section 3.5** herein and this **Section 12.3** shall survive final acceptance of the Work and termination of this Contract. Owner shall give notice to Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in this **Section 12.3** does not limit the ability of Owner to require Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by Owner or Design Consultant at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one (1) year period also does not relieve Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one (1) year correction period.

12.3.5 Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

12.3.6 If Contractor fails to correct any defective or nonconforming Work within what Owner deems a reasonable time after Owner or Design Consultant gives written notice of rejection to Contractor, Owner may correct the defective or nonconforming Work in accordance with this **Section 12.3**. If Contractor promptly does not proceed with correction of any defective or nonconforming Work within a reasonable time fixed by written notice from Owner or Design Consultant, Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay the costs of removal and storage within ten (10) calendar days after written notice by Owner or Design Consultant, Owner may, upon ten (10) additional calendar days written notice, sell the materials and equipment at auction or at private sale and shall account to Contractor for the proceeds, after deducting all costs and damages that should have been borne by Contractor to correct the defective work, including all compensation for Design Consultant's services and expenses made necessary as a result of the sale, removal and storage. If the proceeds of sale do not cover the costs that Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to Contractor then or thereafter are not sufficient to cover the deficiency, Contractor shall pay the difference to Owner.

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

12.3.8 Nothing contained in this **Section 12.3** shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. The establishment of the one (1) year time period, as described in **Section 12.3.2** relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

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

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

ARTICLE XIII. COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 Final Completion Of Contract. The Contract shall be considered completed, except as provided in any warranty or maintenance stipulations, bond or by law, when all the Work has been finally completed, a final inspection is made by Owner and Design Consultant and final acceptance and final payment is made by Owner.

13.2 Warranty Fulfillment. Prior to the expiration of the specified warranty period provided for in the Contract Documents, Owner or Design Consultant shall make a detailed inspection of the Work and shall advise Contractor and Contractor's Surety of the items that require correction. Owner or Design Consultant shall make a subsequent inspection and, if the corrections have been properly performed, Owner shall issue a letter of release on the maintenance obligations to Contractor. If, for any reason, Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have properly been performed and a letter of release from Owner to Contractor is issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

13.3.1 Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by Owner for any good cause after giving seven (7) calendar days advance written notice and an opportunity to cure to Contractor, including but not limited to the following causes:

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

13.3.1.2 A reasonable belief of Owner or Design Consultant that the progress of the Work being made by Contractor is insufficient to complete the Work within the specified Contract time.

13.3.1.3 Failure or refusal of Contractor to provide sufficient and proper equipment or construction forces properly to execute the Work in a timely manner.

13.3.1.4 A reasonable belief that Contractor has abandoned the Work.

13.3.1.5 A reasonable belief that Contractor has become insolvent, bankrupt, or otherwise is financially unable to carry on the Work.

13.3.1.6 Failure or refusal on the part of Contractor to observe any material requirements of the Contract Documents or to comply with any written orders given by Owner or Design Consultant, as provided for in the Contract Documents.

13.3.1.7 Failure or refusal of Contractor promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Contractor in writing by Owner or Design Consultant.

13.3.1.8 A reasonable belief by Owner that collusion exists or has occurred for the purpose of illegally procuring the contract or a Subcontractor, or that a fraud is being perpetrated on Owner in connection with the construction of Work under the Contract.

13.3.1.9 Repeated and flagrant violation of safe working procedures.

13.3.2 When the Work or any portion of the Work is terminated for any of the causes itemized in **Section 13.3.1** herein, or for any other cause except termination for convenience pursuant to **Section 13.3.5** herein, Contractor shall, as of the date specified by Owner, immediately discontinue the Work or portion of the Work as Owner shall designate, whereupon the Surety shall, within fifteen (15) calendar days after the written Notice of Termination by Owner For Cause has been served upon Contractor and the Surety or its authorized agents, assume the obligations of Contractor for the Work or that portion of the Work which Owner has ordered Contractor to discontinue and Surety may:

13.3.2.1 perform the Work with forces employed by the surety;

13.3.2.2 with the written consent of Owner, tender a replacement Contractor to take over and perform the Work, in which event the Surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

13.3.2.3 with the written consent of Owner, tender and pay to Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work and compensate Owner for any other loss sustained as a result of Contractor's default.

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

13.3.3 The balance of the Contract Sum remaining at the time of Contractor's default and subsequent termination shall become due and payable to the Surety as the Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If the Surety does not, within the time specified in **Section 13.3.2** herein, exercise its obligation to assume the obligations of the Contract, or that portion of the Work which Owner has ordered Contractor to discontinue, then Owner shall have the power to complete the Work by contract or otherwise, as Owner may deem necessary and elect. Contractor agrees that Owner shall have the right to:

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

(2) procure other tools, equipment, labor and materials for the completion of the Work at Contractor's expense; and

(3) charge to the account of Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses.

13.3.4 All expenses incurred by Owner to complete the Work shall be deducted by Owner out of the balance of the Contract Sum remaining unpaid to or unearned by Contractor. Contractor and the Surety shall be liable to Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including, but not limited to, additional fees of Design Consultant and attorney's fees) and liquidated or actual damages incurred as a result of the termination.

13.3.5 Owner shall not be required to obtain the lowest bid for the Work of completing the Contract, as described in **Section 13.3.3** herein, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and the other damages, as provided in **Section 13.3.3** herein. In case Owner's costs and damages are less than the sum which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then Owner may pay Contractor (or the Surety, in the event of a complete Termination by Owner For Cause) the difference, provided that Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then Contractor and its Surety shall pay the amount of the excess to Owner immediately upon written notice from Owner to Contractor and/or the Surety for the excess amount owed. When only a particular part of the Work is being carried on by Owner, by contract or otherwise under the provisions of this Section, Contractor shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workers employed and provided by Owner.

13.3.6 The right to terminate this Contract for the convenience of Owner (including, but not limited to, non-appropriation of funding) expressly is retained by Owner. In the event of a termination for convenience by Owner, Owner shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Contractor. Upon Contractor's receipt of such written notice, Contractor immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Contractor shall then be paid by Owner, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred, the actual cost of all materials installed and the actual cost of all materials stored at the Project site or away from the Project site, as approved in writing by Owner but not yet paid for and which can not be returned, plus applicable overhead, profit, and actual, reasonable and documented termination costs, if any, paid by Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents up to the date of termination for convenience, less all amounts previously paid for the Work. No amount ever shall be paid to Contractor for lost or anticipated profits on any part of the Work not performed.

13.4 TEMPORARY SUSPENSION OF THE WORK

13.4.1 The Work or any portion of the Work may temporarily be suspended by Owner, for a time period not to exceed ninety (90) calendar days, immediately upon written notice to Contractor for any reason, including, but not limited to:

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

13.4.1.2 under other provisions in the Contract Documents that require or permit temporary suspension of the Work;

13.4.1.3 situations where the Work is threatened by, contributes to or causes an immediate threat to public health, safety, or security; or

13.4.1.4 other unforeseen conditions or circumstances.

13.4.2 Contractor immediately shall resume the temporarily suspended Work when ordered in writing to do so by Owner. Owner shall not, under any circumstances, be liable for any claim of Contractor arising from a temporary suspension due to a cause described in **Section 13.4.1** herein; provided, however, that in the case of a temporary suspension for any of the reasons described under **Section 13.4.1.2** through **Section 13.4.1.4** herein, where Contractor is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to Owner, Owner shall make an equitable adjustment for the following items, provided that a claim properly is made by Contractor under **Section 4.3** herein:

13.4.2.1 an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension, as determined by Owner and Design Consultant;

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

13.4.2.3 if it becomes necessary to move equipment from the Project Site and then return it to the Project Site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary and reasonable cost of these moves; provided, however, that no adjustment to the Contract Sum shall be due if said equipment is moved to another Project site of Owner.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

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

14.2 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

14.2.1 This Contract shall be governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

14.2.2 This Contract is entered into subject to and controlled by the Charter and ordinances of the City of San Antonio and all applicable laws, rules and regulations of the State of Texas and the Government of the United States of America. Contractor shall, during the performance of the Work, comply with all applicable City of San Antonio codes and ordinances, as amended, and all applicable State of Texas and Federal laws, rules and regulations, as amended.

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

14.4 WRITTEN NOTICE. Any notice, payment, statement or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by facsimile transmission, email or by mail, postage prepaid, or by overnight delivery to an officer, management level employee or other designated representative of either party. Mailed or email notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed received as of three (3) calendar days after mailing.

14.5 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

14.5.1 The duties and obligations imposed on Contractor by the Contract Documents and the rights and remedies available to Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or made available by law.

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

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

14.7 INDEPENDENT MATERIALS TESTING AND INSPECTION

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

14.8 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER. Contractor acknowledges the Charter of the City of San Antonio and its Ethics Code prohibits a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(1) a City officer or employee; his parent, child or spouse;

(2) a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity;

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

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

Pursuant to this **Article XIV**, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and/or agents are neither officers nor employees of Owner. Except with Owner's low-bid contract awards, Contractor warrants and certifies that it has tendered to Owner a Discretionary Contracts Disclosure Statement in compliance with Owner's Ethics Code. Any violation of this article shall constitute malfeasance in office and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this **Section 14.8**, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with Owner shall render a Contract voidable by the Owner's City Manager or City Council.

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

14.10 INDEPENDENT CONTRACTOR. In performing the Work under this Contract, the relationship between Owner and Contractor is that of an independent contractor. Contractor shall exercise independent judgment in performing the Work and solely is responsible for setting working hours, scheduling and/or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making Contractor an agent, servant or employee of Owner or making Contractor or any of Contractor's employees, agents or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation which Owner provides to its employees.

14.11 NON-DISCRIMINATION. As a party to this Contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless Contractor is exempted by state or federal law, or as otherwise established herein. Contractor covenants that it shall take all necessary actions to insure that, in connection with any Work under this Contract, Contractor and its Subcontractor(s) shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, either directly, indirectly or through contractual or other arrangements. Contractor also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended.

14.12 GIFTS TO PUBLIC SERVANTS

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

14.12.2 For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

14.12.3 Notwithstanding any other legal remedies, Owner may require Contractor to remove any employee of Contractor, a Subcontractor or any employee of a Subcontractor from the Project who has violated the restrictions of this **Article XIV** or any similar State or Federal law and Owner may obtain reimbursement for any expenditures made to Contractor as a result of an improper offer, an agreement to confer or the conferring of a benefit to a City of San Antonio employee or official.

ARTICLE XV. AUDIT

15.1 RIGHT TO AUDIT CONTRACTOR'S RECORDS. By execution of the Contract, Contractor grants Owner the right to audit, examine, inspect and/or copy, at Owner's election at all reasonable times during the term of this Contract and for a period of four (4) years following the completion or termination of the Work, all of Contractor's written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by an Owner designee, which may include its internal auditors or an outside representative engaged by Owner. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute, with full access allowed to authorized representatives of Owner upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

15.1.1 As used in these General Conditions, "Contractor written and electronically stored records" shall include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Contractor written and electronically stores records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in Owner's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

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

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

ARTICLE XVI.
ATTORNEY FEES

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

Special Conditions for Horizontal Projects

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

Contractor promptly shall, before such discovered conditions and/or structures are disturbed, notify Owner in writing of differing site conditions. Differing site conditions are defined as subsurface or latent physical and/or structural conditions at the Site differing materially from those indicated in the Plans, Specifications and other Contract Documents or newly discovered and previously unknown physical conditions at the Site of an unusual nature differing materially from those geophysical conditions typically encountered in the type Work being performed and generally being recognized as not indigenous to the San Antonio, Bexar County, Texas environs.

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

(1) No claim of Contractor under this **Section 3.2.5** shall be allowed unless Contractor has given the written notice called for above, prior to disturbing the discovered conditions and/or structures.

(2) No Contract adjustment shall be allowed under this **Section 3.2.5** for any effects caused on unchanged work.

3.4.7 Material Testing (Added to Section 3.4.7 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

The source of supply of each of the materials shall be approved by Owner or Design Consultant before delivery is started and, at the option of Owner, may be sampled and tested by Owner for determining compliance with the governing specifications before delivery is started. If it is found after trial that sources of supply previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, Contractor shall furnish materials from other approved sources. Only materials conforming to the requirements of the Contract documents and approved by Owner shall be used by Contractor in the work. All

materials being used by Contractor are subject to inspection or test at any time during preparation or use. Any material which has been tested and accepted at the source of supply may be subjected to a check test after delivery and all materials which, when retested, do not meet the requirements of the specifications shall be rejected. No material which, after approval, has in any way become unfit for use shall be used in the Work.

If, for any reason, Contractor selects a material which is approved for use by Owner or Design Consultant by sampling, testing or other means, and Contractor decides to change to a different material requiring additional sampling and testing by Owner for approval, Contractor shall pay for any expense incurred by Owner for such additional sampling and testing and the costs incurred by Owner shall be deducted from any money due or owed to Contractor.

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

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

7.2.5 Allowable Markups (Added to Section 7.2.5 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

7.2.5.1 Labor

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

7.2.5.2 Materials

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

7.2.5.3 Equipment

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

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

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

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

7.2.5.4 Subcontractor Markups

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

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

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

8.2.2 Standby Equipment Costs (Added to Section 8.2.2 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

For Projects not affecting City traffic and working under a five (5) day work week, with a Working Day measured from sunrise to sundown Monday through Friday, no more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty (40) hours shall be paid per week for standby time and no more than one hundred and seventy six (176) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 176, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

For Projects affecting City traffic and working under a six (6) day work week, with a Working Day measured from sunrise to sundown Monday through Saturday, no more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty eight (48) hours shall be paid per week for standby time and no more than two hundred and eight (208) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 208, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

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

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

10.12 Use of City Streets (Adds this Section 10.12 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

10.13 Maintenance of Traffic (Adds this Section 10.13 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

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

(2) maintain the Work in passable condition, including proper drainage, to accommodate traffic;

(3) provide and maintain temporary approaches and crossings of intersecting roadways in a safe and passable condition;

(4) construct and maintain necessary access to adjoining property as shown in the plans or as directed by Owner; and

(5) furnish, install and maintain traffic control devices in accordance with the Contract.

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

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

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

10.15 Incidental Work, Connections, and Passageways (Adds Section 10.15 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

(1) Contractor shall make and provide all suitable reconnections with existing improvements (generally excluding new connections with or relocation of utility services, unless specifically provided for otherwise in the Contract Documents) as are necessarily incidental to the proper completion of the Project;

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

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

(Remainder of this page intentionally left blank)

Special Conditions for Task Order Contracts

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

9.3 APPLICATION FOR PAYMENT/CONTRACTOR BILLING

9.3.1 Under an issued Task Order contract with Owner, Contractor shall not be required to submit an application for payment to Owner for materials and work performed. Instead, Owner shall calculate the accrual of materials utilized for the subject payment period and submit a request for payment from Owner on Contractor's behalf.

9.3.2 Owner, through its on-site Project Inspector, shall calculate the daily total of materials utilized by Contractor performing horizontal work through an issued Task Order contract. Inspector's daily total of utilized materials shall be confirmed daily by Contractor. Inspector also shall keep a monthly running total of work performed and materials utilized as agreed upon, for each day of Work, by Contractor.

9.3.3 Inspector, at minimum every thirty (30) days throughout the Project's duration, then shall submit, on Contractor's behalf, the agreed upon total materials utilized by Contractor for the outstanding days, up to the date of Inspector's submittal, to Owner's TCI Fiscal Department for payment to Contractor.

9.3.4 Owner's TCI Fiscal Department then shall issue payment to Contractor, within ____ days of receipt of Inspector's and Contractor's agreed upon total materials utilized, calculated at the rate for the utilized materials reflected in Contractor's Task Order contract with Owner.

9.3.5 Unless otherwise provided in the Contract Documents, payments by Owner shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by Owner. If approved in advance in writing by Owner, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by Owner. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

9.3.6 Contractor warrants, upon Owner's submittal of an Application for Payment to Contractor, all Work for which payment previously has been received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONTRACTOR.**

9.3.7 By Owner's submission of an Application for Payment on behalf of Contractor and by its concurrence with said submission, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor; provided if any of the foregoing is not true and cannot be certified, Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.4 PAYMENT APPROVAL

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

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment; or

(4) made any examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO REJECT PAYMENT TO CONTRACTOR

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

9.5.1.1 Work not performed or is defective ;

9.5.1.2 third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder, unless security acceptable to Owner is provided by Contractor;

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

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

9.5.1.5 damage to Owner or another contractor;

9.5.1.6 reasonable evidence that the Work shall not be completed within the time allotted on the issued Task Order and that the unpaid balance on the issued Task Order would not be adequate to cover actual or liquidated damages for the anticipated delay;

9.5.1.7 persistent failure by Contractor to carry out the Work in accordance with the issued Task Order and/or Contract Documents;

9.5.1.8 the applicable liquidated damages were not included in the Owner-submitted Application for Payment;

9.5.1.9 billing for unapproved/unverified materials stored off Site; or

9.5.1.10 a current schedule update has not been submitted by Contractor to Owner.

9.5.2 Owner shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Section 9.5.1** herein.

9.6 PROGRESS PAYMENTS

9.6.1 Owner's payment of installments shall not, in any way, be deemed to be a final acceptance by Owner of any part of the Work, shall not prejudice Owner in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work herein provided.

9.6.2 Contractor shall, within ten (10) calendar days following receipt of payment from Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide Owner with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to Owner bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if Owner so requests, shall provide copies of such Subcontractor payments to Owner. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which Owner has made payment to the Contractor, Owner shall be entitled to withhold payment to Contractor to the extent necessary to protect Owner.

9.6.3 Owner shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Owner shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.

9.6.5 Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.3** and **Section 9.6.4** herein regarding Subcontractors.

9.6.6 A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

9.6.7 Contractor shall, as a condition precedent to any obligation of Owner under this Contract, provide to Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 When all of the Work on an issued Task Order finally is complete and ready for final inspection, Contractor shall notify Owner in writing. Thereupon, Owner shall make final inspection of the Work and, if the Work is complete in full accordance with the issued Task Order and, pursuant to this Contract, fully has been performed, Contractor shall submit a final Application for Payment. If Owner is unable to approve the final Application for Payment for reasons for which Contractor is responsible and Owner is required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by Owner from the Contractor's final payment.

9.9.2 If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Owner so confirms, Owner shall, upon application by Contractor and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. Request for final payment by Contractor shall constitute a waiver of all claims against Owner, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

9.9.3 For all payments made through an issued Task Order contract, City shall not withhold any retainage from payments made to Contractor.

EXHIBIT B

SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

NOT APPLICABLE

EXHIBIT C

APPLICABLE WAGE DETERMINATION

General Decision Number: TX150021 01/02/2015 TX21

Superseded General Decision Number: TX20140021

State: Texas

Construction Type: Residential

Counties: Bexar, Comal and Guadalupe Counties in Texas.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories.)

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

Modification Number	Publication Date
0	01/02/2015

* SUTX1983-005 05/01/1983

	Rates	Fringes
Air Conditioning Mechanic	$ 7.25	
CARPENTER	$ 7.25	
CEMENT MASON/CONCRETE FINISHER	$ 7.46	
DRYWALL HANGER	$ 8.73	
ELECTRICIAN	$ 9.66	
IRONWORKER	$ 7.25	
LABORER	$ 7.25	
PAINTER (Including Drywall taping)	$ 8.16	
PLUMBER	$ 7.70	
ROOFER, Including Built Up, Composition and Single Ply Roofs	$ 7.25	

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

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

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

Union Rate Identifiers

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

"UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

AMENDMENT TO CONTRACT

1. There are no SBEDA requirements for this contract.

2. Insert the following funding source requirements for task orders funded by the Department of Housing and Urban Development:

The Selected Respondent acknowledges, understands, and agrees to comply with the following federal regulations as promulgated in Section 3 clause of the Housing and Urban Development Act of 1968, as amended, if applicable:

(A) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170(1)(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.

(B) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(C) Contractor agrees to send to each labor organization or representative of workers with which Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(D) Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. 135. Contractor will not subcontract with any subcontractor where Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. 135.

(E) Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. 135.

(F) Noncompliance with HUD's regulations in 24 C.F.R. 135 may result in sanctions, termination of this contract for default, and debarment or suspension from further HUD-assisted contracts.

(G) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25U.S.C.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provision of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Selected respondent acknowledges, understands, and agrees to submit a Section 3 Utilization Plan upon contract execution.

The Selected Respondent acknowledges, understands, and agrees to ensure that no person shall be subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.

The Selected Respondent acknowledges, understands, and agrees ensure that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded with HUD federal assistance.

The Selected Respondent acknowledges, understands, and agrees ensure no discrimination based on disability in federally assisted programs and shall provide that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.

The Selected Respondent acknowledges, understands, and agrees to provide HUD Form 2516 to the City prior to start of project construction for each task order

The Selected Respondent acknowledges, understands, and agrees to provide the HUD Section 3 Completion Form to the City within 30 calendar days of completion of the final task order contract.

3. Article XX (Prevailing Wages), revised to the following:

JOC shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Residential Wage Determination in effect at the time this JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. JOC acknowledges it shall utilize the Residential Wage Determination when determining prevailing wages for all issued Job Orders. If JOC is required to pay the prevailing wage for a job classification not found on the cited Residential Wage Determination, JOC shall utilize the Heavy Highway Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Heavy Highway Wage Determination job classification from City.

4. Delete Article XXV (Small, Minority, & Women-Owned Business Advocacy) in its entirety.

5. Delete Article 34.2 (JOC Outreach and Diversity Plan) in its entirety.

Attachment III

JOB ORDER CONTRACTING AGREEMENT FOR OWNER-OCCUPIED REHABILITATION PROGRAM

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Job Order Contract Agreement (hereafter referred to as "the Agreement", "the Contract", "this Agreement" and/or "this Contract") is made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as "City") and

Tejas Premier Building Contractor, Inc.
1711 S. Laredo
San Antonio, TX 78207

a Job Order Contractor ("hereafter referred to as "JOC") (City and JOC hereafter individually referred to as "a Party" and collectively referred to as "the Parties"), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by JOC for Job Order Contracting, as set forth herein.

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ARTICLE I
Definitions

1.01. "Agreement" and/or "Contract" shall mean this Agreement and all documents and references incorporated herein. Agreement and Contract also shall include Job Orders issued to JOC, pursuant to this Agreement, and all elements incorporated into an issued Job Order.

1.02. "City" shall mean the City of San Antonio and its designated representative(s). Each issued Job Order shall state City's designated representative for the issued Job Order. Under this Agreement, when JOC is required to report or transmit information to City, JOC shall report or transmit the required information to City's designated representative for the issued Job Order.

1.03. "Effective Date" of this Agreement shall mean the effective date of the Authorizing Ordinance passed by the San Antonio City Council.

1.04. "Job Order" or "Task Order" shall mean the written agreement between City and JOC for Work to be performed under this Agreement signed by both parties.

1.05. "Liquidated Damages" shall mean the reimbursement by JOC to City to compensate City for the monetary damages suffered by City when JOC fails to meet its date for Substantial Completion, said date for Liquidated Damages defined in each issued Job Order.

1.04. "Non-Pre-Priced Items" shall mean Work items not listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.05 "Pre-Priced Items" shall mean the items listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.06 "PRIMELink" shall mean City's internet-based project management system. City shall administer the necessary software, provide training to JOC for JOC's use of PRIMELink and City shall make the PRIMELink software accessible via the Internet to JOC.

1.07. "Substantial Completion" shall mean the date on which the Work, or an agreed upon portion of it, sufficiently has been completed and City may occupy and use the Work (or a portion thereof) for its intended purposes.

1.08. "Work" shall mean all tasks required of JOC under an issued Job Order.

1.09. "Work Schedule" shall mean the scheduled number of calendar days afforded JOC to complete each task, pursuant to an issued Job Order. The Work Schedule for an assigned Job Order shall be submitted by JOC to City for City's approval, prior to beginning any Work by JOC.

ARTICLE II
Initiation of Work

2.01. **City Initiation of Work.** Pursuant to this Agreement, City shall initiate Work by issuing a request for a quote to JOC through PRIMELink. To reject the responsibilities to perform, pursuant to an issued request for a quote, JOC, within two (2) working days of its receipt of the issued request for a quote, shall notify City through PRIMELink of its acceptance or rejection of the issued request for a quote. Requests for quotes not timely accepted (within two (2) days of issuance) through PRIMELink by JOC shall be deemed by City as rejected by JOC. Upon JOC's acceptance of the issued request for a quote in PRIMELink and notification to City, JOC shall begin pricing the Scope of Work of the request for a quote issued. JOC shall, except as this Agreement or the issued Job Order otherwise expressly provides, furnish all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, bonds, insurance, subcontracts, supervision, management, reports, incidentals and quality control necessary to complete all issued Job Orders. If City concludes JOC's pricing of an issued request for a quote and any subsequent negotiation are not progressing at a satisfactory rate, City may terminate the issued request for a quote to JOC and select another JOC for the subject Job Order.

2.02. **Multiple Solicitations.** City reserves the right and JOC hereby acknowledges City may solicit price proposals on prospective Job Orders from one or more JOCs, to determine the best value proposal, on behalf of City. JOC further acknowledges if JOC prepares a pricing proposal for an issued Job Order, JOC shall not be entitled to compensation for its efforts preparing a price proposal, whether or not a Job Order is awarded to JOC.

2.03. **Project Requirements.** Each Job Order solicitation shall define, to City's best knowledge, the specific project requirements. Job Orders may pertain to the following types of work:

2.03.01. Minor construction, which may involve demolishing office space or finishing out an office space, building out a new floor plan or the like;

2.03.02. Repairs, which may involve fixing broken systems, components or subcomponents of a building, such as doors, electrical outlets, plumbing, flooring, sheetrock, air conditioning systems or the like;

2.03.03. Rehabilitation, which may involve restoring an office, floor, system or a component of a system, to restore functionality

2.03.04. Alteration, which may involve extending a wall, upgrading lighting fixtures, installing a door where one did not exist, replacing flooring or the like.

2.04. **Conformance of Work.** Work performed by JOC shall conform to the Job Order's requirements. Job Orders shall set forth the following, in coordination with City's Transportation & Capital Improvements (hereafter referred to as "TCI") Task Order Form:

2.04.1. The Contract number, along with JOC's name;
2.04.2. The Job Order number and date;

2.04.3. The Scope of Work and the applicable technical specifications and drawings;

2.04.4. The period of time for performance, including the Job Order's start date, date of Substantial Completion, Liquidated Damages, and, if required and/or requested by City, a Work Schedule;

2.04.5. The location of the Work's performance;

2.04.6. The agreed total cost to be paid JOC for the Work to be performed;

2.04.7. Submittal requirements;

2.04.8. The identity of City's authorized representative who will accept JOC's completed Work;

2.04.9. Name of JOC's representative for the issued Job Order;

2.04.10. Signatures, on behalf of the Parties, signifying the agreement reached, along with the specific terms of the Job Order; and

2.04.11. Such other information as may be necessary for JOC to perform the Work.

2.05. **Beginning Work.** JOC shall begin Work on the effective date specified in the Job Order's Notice to Proceed, issued by City. Any costs incurred by JOC for preliminary Work or for materials ordered or purchased by JOC or its Sub-Consultants or Subcontractors, prior to receipt of City's Notice to Proceed for a Job Order, shall be at JOC's risk and expense.

2.06. **Amending Issued Job Orders.** Once issued, Job Orders only may be amended by the written agreement of both Parties through the PRIMELink system.

2.07. **Job Order Minimum Value.** The minimum value for an issued Job Order shall be One Thousand Dollars and no cents ($1,000.00), unless the minimum value requirement is waived in writing by both City and JOC.

2.08. **Mutual Agreement on Job Orders.** Nothing in this Agreement requires City to issue a Job Order, or requires JOC to accept same. It is understood that both Parties mutually shall agree to any issued Job Order.

2.09. **Diligent Prosecution of Work.** JOC diligently shall prosecute all Work to completion within the time required by, listed on and agreed to on the accepted Job Order or JOC shall be subject to Liquidated Damages. The period of performance shall include allowances for mobilization, holidays, weekend days, usual inclement weather and cleanup. Claims for delay by JOC, based on such elements listed herein, shall not be accepted.

ARTICLE III.
Specification and Drawings

3.01. **Preparation of Designs and Drawings.** When necessary, City or a Design Consultant selected by City shall prepare all designs and drawings to be used by JOC in performing the Work.

3.01.01. City shall be responsible for the cost of design work, apart from any money due JOC under an issued Job Order.

3.01.02. JOC shall keep a copy of the drawings and specifications at the Work site at all times and shall give City access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications is of like effect, as if shown or mentioned in both/either. JOC shall not alter or amend the drawings and/or the provided drawings or specifications. Any alteration by JOC to the drawings and/or specifications without City's written approval shall be at JOC's own risk and expense. If City provides drawings and specifications, City shall, from time to time, furnish such detail drawings and other information as reasonably is necessary.

3.02. **City Direction.** In the City-provided drawings or specifications, when the words "directed", "required", "ordered", "designated", "prescribed" or words of like importance are used, JOC acknowledges and understands that the "direction", "requirement", "order", "designation" or "prescription" of City is intended. Similarly, JOC acknowledges and understands when the words "approved", "acceptable", "satisfactory" or words of like importance are used, those words shall mean "approved by", "acceptable to" or "satisfactory to" City, unless otherwise expressly stated in writing by City to JOC.

3.03. **Drawings and Specification Direction.** Where "as shown", "as indicated", "as detailed" or words of similar importance are used, JOC acknowledges and understands that the reference is made to the drawings and specifications which accompany the Job Order, unless otherwise stated in writing. The word "provided", as used herein, shall mean "provide complete in place". The word "furnished", as used herein, shall mean "furnished and installed."

3.04. **Shop Drawings.** Shop Drawings shall mean the drawings submitted to City and the Design Consultant by JOC showing, in detail:

3.04.1. The proposed fabrication and assembly of structural elements; and

3.04.2. The installation (i.e., form, fit and attachment details) of materials or equipment;

and

3.04.3. The construction and the detailing of elements of the Work.

3.05. **Detailed Shop Drawings.** Shop drawings shall include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data and similar materials furnished by JOC to explain – in detail – specific portions of the Work. City may duplicate, use and disclose, in any manner and for any purpose, shop drawings delivered under a Job Order and this Agreement.

3.06. **JOC Coordination of Shop Drawings.** JOC shall coordinate all shop drawings and review them for accuracy, completeness and compliance with the issued Job Order and all Contract requirements and JOC shall indicate its approval thereon. Shop drawings submitted to City without evidence of JOC's approval may be returned to JOC for resubmission. City shall indicate its written approval or disapproval of the JOC-submitted shop drawings and, if not approved as submitted, shall indicate to JOC City's reasons for its disapproval. Any Work conducted by JOC prior to receipt of City's approval of Shop Drawings shall be at JOC's sole risk. Receipt of City's written approval does not relieve JOC from responsibility for any errors or omissions in shop drawings, nor from responsibility for complying with the requirements of the Job Order and this Agreement, except as otherwise specifically provided in this Agreement.

3.07. **Shop Drawing Variations.** If shop drawings vary from the defined Job Order requirements, JOC shall describe the variations in writing to City promptly after the variation is realized. If City approves a variation, City and JOC shall modify the Job Order in writing , unless the variation is minor and does not involve a change in price or time of performance, in which case a modification is unnecessary.

3.08. **Submittal of Shop Drawings.** Upon City's request, JOC shall submit to City hard copies of shop drawings for City's written approval and one (1) digital copy of JOC's shop drawings for City's use.

3.09. **Omitted or Erroneous Drawings and Specifications.** Omissions from City-provided drawings or specifications or an erroneous description of details of the Work that manifestly are necessary for JOC to carry out the intent of the drawings and specifications or customarily are performed does not excuse JOC from performing the omitted or erroneously described details. JOC acknowledges and accepts it is JOC's responsibility to find omissions and inconsistencies in provided drawings and specifications and seek clarification from City.

3.10. **JOC Discovered Discrepancies.** JOC shall check all City-furnished drawings immediately upon receipt and promptly shall notify City of any discrepancies found. JOC acknowledges that figures marked on drawings govern in preference to scale measurements. JOC further acknowledges large scale drawings govern small scale drawings.

3.11. **Property of City.** JOC acknowledges all drawings (including as-built drawings), sketches, designs, design data, specifications, notebooks and technical and scientific data

provided to or developed by JOC under a Job Order, pursuant to this Agreement, as well as all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, are the property of City. All may be used by City without any claim by JOC for additional compensation, except for material developed by JOC prior to the issuance of or resulting from an issued Job Order.

ARTICLE IV
Permits

City or, if City elects to use a Design Consultant, its Design Consultant shall prepare the construction documents for any required licenses and/or permits for performance of the Work, pursuant to an issued Job Order. JOC shall submit the construction documents for licensing/permitting, if necessary and required. JOC acknowledges it shall obtain all required permits applicable to its Work performance under any issued Job Order. JOC further acknowledges it shall comply with all federal, state and local laws, rules and regulations applicable to performance of the Work. JOC shall include and incorporate the past-through cost(s) of any necessary permits to perform the Work, with no percentage markup applied to said permit cost(s), in JOC's submitted price proposal pursuant to an issued Job Order.

ARTICLE V
Operations, Materials and Workmanship

5.01. **New Materials.** All equipment, material and articles incorporated in the Work, pursuant to an issued Job Order and this Agreement, shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in writing by City in the issued Job Order. References in the specifications to equipment, materials, articles or patented process by trade name, make or catalog number generally establish a standard of quality and do not limit competition. If JOC intends to request a substitution of something designated by trade name, make or catalog number, JOC shall prepare a written request to City and seek City's written approval for the requested substitution, fully describing the requested substitution and stating JOC's reason(s) for its request to City. City, at its sole discretion, shall approve or reject JOC's request for a substitution.

5.02. **City Approval of Machinery and Equipment.** JOC shall obtain City's written approval of the machinery, mechanical and other equipment to be incorporated into the Work. JOC shall furnish City the name of the manufacturer, the model number and other information concerning the performance, capacity, nature and rating of the machinery, mechanical and other equipment to be incorporated. When required by the Job Order or by City, JOC also shall obtain City's written approval of the material or articles that JOC contemplates incorporating into the Work. When requesting City's written approval, JOC shall provide full information concerning the material or articles to be utilized. When directed to do so by City, JOC shall submit samples of materials and/or articles for City's approval. Machinery, equipment, material and articles that do not have the required City approvals will be installed at JOC's sole risk of rejection.

5.03. **JOC General Manager.** JOC's General Manager assigned to this Agreement shall be knowledgeable in multiple construction disciplines, including electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.

5.04. **Work Performance.** All Work, pursuant to an issued Job Order and under this Agreement, shall be performed in a skillful and workmanlike manner. JOC shall perform the Work in a timely manner and JOC's performance of the Work shall be subject to Liquidated Damages. Further, JOC shall ensure that its purchase, delivery and storage of materials and equipment do not interfere with City operations and personnel.

5.05. **Material Testing.** Unless otherwise specified in an issued Job Order, JOC accepts and acknowledges it shall be responsible for any and all required testing of materials and for all inspections of JOC's Work, prior to materials being incorporated into the Work. Any Special Inspections, if required and as defined in IBC 2003 Section 1704 Special Inspections, shall be the responsibility of and conducted by City.

5.06. **Layout of Work.** JOC shall lay out its Work in accordance with the Job Order plans and specifications and JOC is responsible for all measurements in connection therewith. JOC shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout the Work. JOC also is responsible for maintaining and preserving all control points which may be established by City.

5.07. **Superintend Work.** At all times during performance of an issued Job Order and until the Work is completed and accepted by City, JOC directly shall superintend the Work and have a competent superintendent satisfactory to City on site at all time who has authority to act on behalf of JOC. If, in City's sole opinion and upon request by JOC, an issued Job Order would not require JOC to have a competent superintendent on site at all time, City may waive this requirement and, if so determined, shall do so in writing to JOC.

5.08. **Removal and Replacement of Furniture and Equipment.** If applicable, JOC shall remove all furniture and movable office equipment from an immediate Work area that may be affected by JOC's Work. Upon completion of Work, JOC shall return the removed furniture and moveable office equipment to their original and proper place. If any of the removed items cannot be placed back in their original locations, City shall designate alternate location(s) for the items' placement.

5.09. **No Damage of Property.** JOC shall take all necessary precautions to ensure that no damage to both private or public property results from its Work or its Work-related operations. JOC shall repair or replace all items it damages at no additional cost to City. JOC also shall provide all necessary traffic control, including street blockages, traffic cones, flagmen and the like, as required for each issued Job Order. JOC's proposed traffic control methods shall be submitted in writing to City for City's written approval, prior to JOC beginning Work.

ARTICLE VI
Site Investigation and Conditions Affecting Work

6.01. **Nature and Location of Work.** JOC shall be responsible for ascertaining the nature and location of the Work, as well as the general and local conditions that might affect the Work, unless such different conditions could not, in the exercise of diligent search by JOC, have been discovered. Failure to properly ascertain discoverable items shall be at JOC's risk sole and expense. Items for which JOC is responsible to assess include, but are not limited to:

6.01.1. Conditions bearing upon transportation, disposal, handling and storage of materials;

6.01.2. The availability of labor, water, electric power and roads;

6.01.3. Uncertainties of weather, river stages, tides or similar physical conditions at the site;

6.01.4. The conformation and conditions of the ground; and

6.01.5. The character of equipment and facilities needed both preliminary to and during Work performance.

6.02. **Surface/Subsurface Materials.** JOC further is responsible for ascertaining the character, quality and quantity of surface and subsurface materials and/or obstacles that might be encountered on the Work site, unless such surface and subsurface materials or obstacles could not, in the exercise of diligent search, have been discovered. Failure properly to ascertain discoverable conditions shall be at JOC's sole risk and expense.

6.03. JOC promptly shall, before the site conditions are disturbed, give written notice to City upon JOC's discovery of:

6.03.1. Subsurface or latent physical conditions at the site differing materially from those indicated (or the site's physical conditions not addressed) in the issued Job Order;

or

6.03.2. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

6.04. **City Investigation.** City shall conduct an investigation, upon receiving written notice from JOC regarding differing or unknown physical conditions at the Work site. If City finds that the conditions materially do differ and cause an increase or decrease in JOC's cost of or the time required for performing any part of the Work, City shall make an equitable adjustment in the price to be paid to JOC and the issued Job Order shall be modified in writing to reflect said equitable adjustment.

6.05. **JOC Timely Notice.** JOC shall not be entitled to an equitable adjustment in the price of an issued Job Order unless JOC timely has given the requisite written notice to City on the physical conditions found. JOC never shall be entitled to an equitable adjustment to its price paid for an issued Job Order after final payment under the Job Order has been paid by City.

ARTICLE VII
Term

7.01. **Contract Term.** This Agreement shall be for one (1) year (hereafter referred to as the "Base Term") for an amount not to exceed two million dollars ($2,000,000.00), with the Base Term beginning on the date of City's execution of this Agreement. City shall have the right to extend this Agreement through one (1) one-year option (hereafter referred to as an "Option Year") for an amount not to exceed two million dollars ($2,000,000.00), each City-exercised option year to begin at the expiration of the Base Term or the expiration of an exercised Option Year.

7.02. **Exercise of Option Term.** If City elects to exercise its option to extend this Agreement, City shall notify JOC in writing of City's intention to exercise its option, prior to the expiration of the then-current term. City may terminate this agreement at any time, pursuant to **Article XIV** and/or **Article XV** herein, and/or City may elect, at City's sole discretion, not to exercise any available Option Year renewal with a JOC.

7.03. **Extension of Term Period.** Following the Expiration of the Base Term or the expiration of any City-exercised Option Year, the terms and conditions of this Agreement shall remain in place during the performance of Job Orders issued prior to the expiration of the Base Term or the expiration of an Option Year.

ARTICLE VIII
Compensation, Invoicing, Payment and Liquidated Damages

8.01. **Compensation.** As full consideration for JOC's satisfactory performance under an issued Job Order, City shall compensate JOC as follows:

8.01.1. **Pre-Priced Items.** To arrive at the maximum amount that shall be paid by City to JOC for Pre-Priced Items under an issued Job Order, JOC shall consult the amount shown in the then most current R.S. Means Facilities Construction Cost Data Book for the required Pre-Priced Items, multiply the amount shown by the

applicable coefficient for Pre-Priced Items, with consideration as to whether the Work is required to be performed during or outside City's normal working hours. JOC accepts and agrees that the R.S. Means amount shall be the maximum amount paid by City for Pre-Priced Items and City may negotiate any and all pricing submitted by JOC for Work to be preformed. JOC acknowledges its submitted pricing to City for Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time period may be extended by written mutual agreement between City and JOC.

8.01.2. **Non-Pre-Priced Items.** For JOC to secure Work, JOC shall reach an agreement with City with regard to the reasonable and necessary cost of labor and materials to perform the Work. The agreed upon combined cost of labor and materials shall be increased by a maximum no greater than twelve percent (12%) to cover JOC's overhead and profit. Then, to arrive at the maximum amount to be paid by City to JOC for Non-Pre-Priced items under an issued Job Order, JOC shall price out the Non-Pre-Priced items of the Work and submit its pricing, along with all supporting documentation, reflecting JOC's truthful and anticipated costs for the Non-Pre-Priced Items of the Work. Upon receipt of JOC's pricing and supporting documentation, City shall review JOC's submitted pricing and, if City so elects, negotiate JOC's submitted pricing, request additional supporting documentation regarding JOC's pricing or accept JOC's pricing for the Non-Pre-Priced Items of the Work. JOC acknowledges its submitted pricing to City for Non-Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time may be extended by written mutual agreement between City and JOC.

8.02. **Submittal of Pay Application.** At minimum, JOC shall submit a request for pay application every thirty (30) days, throughout the duration of JOC's Work. JOC may submit a request for pay application more frequently than every thirty (30) days, with City's written approval.

8.03. **Monthly Progress Payments.** City shall make progress payments, at minimum, monthly, as the Work proceeds or at more frequent intervals as determined by City, upon receipt of mathematically correct certified pay applications submitted by JOC and approved by City and, if requested by City, approved by Design Consultant, if any. For submission of its mathematically correct pay application, JOC shall use a format deemed acceptable to City and said monthly pay application shall include supporting documents reflecting a breakdown showing how JOC's Work done to the date of the submitted pay application compares to the total project scope, broken out by category of Work. A submitted pay application shall contain as much detail as City so requests, so City may determine the progress payment due and owing to JOC. In addition to payment to JOC for Work completed, City, at City's option, may authorize payment to JOC for material(s) delivered to the site and any preparatory Work performed by JOC, if JOC furnishes satisfactory evidence that it has acquired title to the material, the material shall be used to perform the Work ordered and any preparatory Work performed was in furtherance of the Work ordered. Releases of liens from JOC and each of JOC's Subcontractors and suppliers utilized to perform the Work are required as back up for the pay application certificate.

8.04. **Liquidated Damages.** In the event JOC exceeds the accepted established date for achieving Substantial Completion on an issued Job Order (with any adjustment in the agreed upon calendar days for completion of the Work – via a Change Order – due to encountered unforeseen circumstances or due to any City-requested additional Work) and City has included Liquidated Damages as an element of the issued Job Order, City may withhold payment of sums necessary to pay the estimated Liquidated Damages due City until Substantial Completion of the Work is achieved. Owner also shall be entitled, at any time, to deduct out of any sums due to JOC any or all Liquidated Damages due City. To facilitate this requirement of Liquidated Damages accrual by JOC, JOC shall populate a line item on all subsequent progress payment requests and shall begin accruing Liquidated Damages on a monthly basis, beginning on the established Substantial Completion date forward, until JOC achieves Substantial Completion of the Work

8.05. **Property of City.** All material and Work covered by a progress payment, at the time of payment by City to JOC, become the sole property of City. By accepting this condition, JOC acknowledges this provision does not:

8.05.1. relieve JOC from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or

8.05.2. waive City's right to require fulfillment of all Contract terms.

8.06. **Mathematically Correct Payment Requests.** Mathematically correct estimates of completion percentages shall be approved and certified for payment by City and shall be paid within thirty (30) days. If City finds JOC's submitted estimates to be incorrect, City shall notify JOC, through PRIMELink, as to the inconsistencies discovered and explain, with reasonable particularity, the reasons for the finding. Progress payments to JOC shall be paid after the estimate of the Work is accepted, certified and approved by City. JOC's estimates of completed Work shall be submitted electronically through PRIMELink.

8.7. **Substantial Completion Notification.** When JOC considers the Work to be complete and ready for its intended use (Substantially Complete), JOC shall notify City's Project Representative of JOC's conclusion. City then shall inspect the Work to determine the status of completion. If City finds that the Work has been reached Substantial Completion, City shall issue a Certificate of Substantial Completion. The Certificate shall itemize remaining items to be completed or corrected before final payment of the Job Order. Upon receipt of the itemized list of remaining work (hereafter referred to as the "Punch List") JOC shall promptly proceed to complete or correct items listed on the Punch List.

8.8. City shall pay JOC all unpaid amounts due under an issued and accepted Job Order, within sixty (60) days following:

8.8.1. City's issuance of a Certificate of Final Completion upon JOC's completion and/or correction of all remaining portions of the Work, inclusive of all Punch List items; and

8.8.2. JOC's presentation of a properly executed and mathematically correct final pay application; and

8.8.3. JOC's presentation of an executed Release of any and all claims JOC may have against City, arising by virtue of the issued Job Order and/or this Agreement. If JOC has assigned its right to a claim to any amount payable under an issued Job Order and/or this Agreement, a Release also may be required of JOC's assignee. JOC and/or JOC's assignee shall complete the required Release form(s) deemed acceptable to City; and

8.8.4. City's receipt of a consent from JOC's surety, if any.

8.9. **Requirement to Use PRIMELink.** All correspondences related to an issued Job Order shall be submitted by JOC to City and by City to JOC through PRIMELink, including, but not limited to, the Job Order schedule, Requests for Information, requests for Substantial Completion, requests for Final Completion, all pay applications and Release forms.

8.10. **Work Schedule.** JOC shall, upon JOC's submission of its signed Job Order, submit for approval from City a Work Schedule showing the sequence in which JOC proposes to perform the Work and the dates JOC plans on starting and finishing the stages of Work (including acquiring all required materials and equipment). JOC's submitted Work Schedule to City may be a formal computerized schedule or a progress chart in a format suitable to City, indicating the percentage of Work to be completed by specific dates. The submitted Work Schedule shall, at a minimum:

8.10.1. list the different types of Work activities or Work elements;

8.10.2. show the logical interconnections controlling what Work shall be accomplished before other Work shall begin;

8.10.3. show proposed start and finish dates or duration of each Work activity or Work Element; and

8.10.4. calculate the "weighting" or relative worth each Work activity or Work element to the total project, either as a percent or as a dollar amount.

8.11. **Failure to Submit Work Schedule.** If JOC fails to submit a Work Schedule with its acceptance of a Job Order, City may withhold its issuance of a Notice to Proceed with Work, as

well as withholding the approval of any progress payments, until JOC submits the required Work Schedule. Further, City may issue a Notice to Proceed with Work, to begin the running of the calendar days allowed for completion of JOC's Work, and immediately issue JOC a Stop Work Order, which shall keep the Job Order clock running yet prevent JOC from working on the Job Order, said Stop Work Order remaining in place until JOC furnishes City with JOC's Work Schedule.

8.12. **Work Schedule Progress Report.** Throughout the progress of the Work, JOC shall submit a Work Schedule Progress Report every thirty (30) days or more frequently, if so directed by City. The Work Schedule Progress Report shall compare the progress of the realized Work to JOC's original Work Schedule, as required and submitted pursuant to **Section 8.11** herein. If JOC falls behind its submitted City-accepted Work Schedule, absent clear and accepted reasons for falling behind its Work Schedule (to include severe weather, unforeseen conditions, emergency Work, etc.), the burden to comply with its City-approved Work Schedule solely falls on JOC to accelerate its Work progress at JOC's time and sole cost. City may require specific steps to accelerate JOC's Work progress, with which JOC shall comply without any additional cost to City. Among the specific steps City may require of JOC include, but are not limited to, requiring JOC to increase the number of shifts, increase its overtime operations, increase the number of days of Work and/or increase the amount of equipment being employed.

8.13. **Emergency Work.** If City emergency work arises, JOC accepts and agrees it shall give top priority to issued Job Orders to perform City-designated emergency work and shall allocate resources reasonably necessary to accomplish City's emergency work, according to City's schedule requirements. If JOC incurs additional costs, expenses or schedule delays on another issued Job Order as a result of performing City emergency work, City equitably shall adjust the non-emergency issued Job Order(s) to compensate JOC for its efforts in performing said City-designated emergency work.

8.14. **Work Schedule Progress.** JOC acknowledges that its failure to comply with the requirements under this **Article VIII** shall be grounds for City's determination that JOC is not prosecuting the Work with sufficient diligence to ensure timely completion of the accepted issued Job Order. Upon making such a determination, City may terminate JOC's right to proceed with the accepted issued Job Order Work or any portion thereof, according to the terms of this Agreement.

ARTICLE IX
Inspection and Acceptance

9.01. **JOC Inspection of Work.** JOC shall maintain adequate inspection of the performed Work and utilize other quality control systems, to assure proper performance of the Work. JOC shall maintain complete inspection records and immediately make those records available to City upon City's request. JOC acknowledges all Work is conducted under the general direction of City and is subject to inspection and testing by City or its designee(s) at all places and at all reasonable times before acceptance.

9.02. **City Inspection of Work.** City's inspection and testing of JOC's Work solely are for the sole benefit of City, are conducted solely for quality assurance purposes and do not:

9.02.1. relieve JOC of responsibility for providing adequate quality control measures;

9.02.2. relieve JOC of responsibility for damage to or loss of the material, prior to City's acceptance of the Work performed;

9.02.3. constitute or imply acceptance; and

9.02.4. affect the continuing rights of City after acceptance of the completed Work through an accepted and/or completed Job Order or this Agreement.

9.03. **No Release.** The presence or absence of a City inspector on JOC's Work site does not relieve JOC from any duties imposed by an issued Job Order or this Agreement. JOC acknowledges that no City inspector may change a Job Order Work requirement, change a Contract requirement or waive City's rights without a formal, written Amendment to an issued Job Order or this Agreement signed by the Parties.

9.04. **City Incurred Costs for Inspection of JOC Work.** JOC promptly shall furnish, without additional charge to City, any and all facilities, labor and material reasonably necessary to accommodate City performing safe and convenient inspections on and tests of JOC's Work. City may charge JOC for additional costs – to be deducted from any of JOC's submitted monthly pay applications – incurred by City in City's inspection or testing of JOC's Work attributed to:

9.04.1. Work not completed in a timely manner, as indicated on JOC's approved Work schedule; or

9.04.2. the inspection, re-inspection, testing and/or retesting of JOC Work that failed previous inspection or test.

9.05. **City Inspection and Testing.** City shall make an effort to minimize disruption or delay of JOC's Work incident to City's inspection and testing. Special, full size and/or performance tests shall be the responsibility of and performed by JOC, as described in the issued Job Order.

9.06. **JOC Non-Conforming Work.** JOC shall, without charge to City, replace or correct Work found by City or its representative(s) not to conform to the issued Job Order requirements, unless City consents in writing to accept the Work if accompanied by an appropriate reduction in the Job Order price to be paid by City to JOC. If City rejects JOC"s Work and/or materials used by JOC in performance of the Work, JOC promptly shall segregate and remove all City-rejected material(s) from the Work premises and correct any rejected Work.

9.07. **JOC Correcting Non-Conforming Work.** If JOC fails to promptly replace or correct rejected Work by City, City may:

9.07.1. replace or correct the Work and charge all costs incurred by City to JOC; and/or

9.07.2. terminate for default JOC's right to proceed with Work under the issued Job Order.

9.08. **Expenses Incurred Examining Non-Conforming Work.** If, before final acceptance of any Work performed, City decides to examine JOC's already completed Work by removing it or tearing it out, JOC, upon request, hereby acknowledges and agrees it promptly shall furnish all necessary facilities, labor and material to perform City's request to examine. If the Work is found to be defective or nonconforming in any material respect, JOC shall bear the full expense of City's examination and JOC's satisfactory reconstruction of the Work to bring it in to conformity. Conversely, if the examination of JOC's Work is found to be in conformance with the issued Job Order, City shall make an equitable adjustment for the cost to JOC for the additional services involved in the examination and reconstruction including, if completion was thereby delayed, extending time for JOC's performance.

9.09. **Prompt Acceptance of Work.** Unless otherwise specified in the Job Order, City shall accept Work reasonably promptly after satisfactory completion and inspection. Acceptance by City is final and conclusive, with an exception for latent defects, fraud, gross mistakes amounting to fraud and City's rights under any warranty or guarantee.

ARTICLE X
Additional Requirements

10.01. **Confinement of Operations.** JOC shall confine its operations (including storage of materials) to areas authorized or approved by City.

10.02. **Erection of Temporary Buildings.** Temporary buildings (e.g., storage sheds, shops, offices) and any associated utilities only may be erected by JOC with the written approval of City and shall be built only with labor and materials furnished by JOC without expense to City. Erected temporary buildings and utilities shall remain the property and responsibility of JOC and shall be removed by JOC at its own expense upon completion of the issued Job Order. If City consents and gives its prior written approval to JOC, said erected temporary buildings and associated utilities may be abandoned in place, not be removed by JOC and JOC shall transfer ownership of said temporary buildings to City.

10.03. **Work Site Egress/Ingress.** JOC shall use only established roadways for ingress and egress to the Work site, unless City authorizes specific temporary roadways to be built by JOC. JOC acknowledges it shall comply with all federal, state and local laws and regulations when transporting materials, in connection with an issued Job Order.

10.04. **Maintaining Clean Work Site.** JOC shall, at all times, keep the Work site (to include any utilized storage areas) free from accumulations of waste materials. Before completing its Work, JOC shall remove from the Work site all rubbish, tools, scaffolding, equipment and

materials that are not the property of City. Upon completing its Work, JOC shall leave the site in a clean and orderly condition satisfactory to City. Final cleanup is included as part of the Work and JOC acknowledges it is responsible for all construction refuse disposal containers and their removal from the Work site.

10.05. **Hazardous Materials.** If hazardous materials are not addressed in the scope of a Job Order and subsequently are found on a Work site, JOC shall cease work and notify City's authorized representative of JOC's findings. City then will assess the situation and determine whether the removal and disposal of the hazardous materials may be performed by JOC or performed by a specialty contractor. City shall coordinate the removal and disposal of said hazardous materials at City's expense. In the event JOC has the appropriate training and certifications to handle hazardous materials, City, at its sole discretion, may elect to have JOC remove and dispose of hazardous materials. If City, at its sole option, requires JOC to remove and/or dispose of discovered hazardous materials, City shall make an equitable adjustment in the agreed upon issued Job Order price, to reimburse JOC for its additional requirement to dispose of the discovered hazardous materials.

10.06. **Preservation and Protection of Structures, Equipment and Vegitation.** JOC shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs and/or grass) on or adjacent to the Work site that are not to be removed and that do not unreasonably interfere with JOC's Work. JOC only shall remove trees when specifically authorized in writing by City to do so. JOC acknowledges it financially shall be responsible to City to purchase and replace any and all trees – of a similar size – removed from a Work site that were not previously authorized in writing by City for removal. If tree limbs are broken by JOC during performance of the Work, JOC shall trim those broken limbs and branches with a clean cut and paint the cut with a tree pruning compound, as directed by City.

10.07. **Preservation and Protection of Improvements and Utilities.** JOC shall protect from damage all existing improvements and utilities at or near JOC's Work site and on adjacent property, the locations of existing improvements and utilities made known to or should be known by JOC. JOC promptly shall repair any and all damage to those existing improvements and utilities, including those that are or on the property of third parties, resulting from JOC's failure to comply with the requirements of the issued Job Order or JOC's failure to exercise reasonable care in performing JOC's Work. If JOC fails or refuses to repair damage it caused to existing improvements and/or utilities, JOC acknowledges City may perform the repair(s) for any and all damage caused and withhold payment to JOC – from any of JOC's submitted pay request – for reimbursement of any costs incurred by City in performing said repair(s).

10.08. **Training City Staff.** Upon award of a contract for Job Order Contracting, JOC, jointly with any other JOCs concurrently awarded similar contracts, shall conduct, at minimum, two

training classes with City staff to address, but not be limited to, JOC's understanding of the Job Order Contracting process, JOC's understanding and intended use of the R.S. Means Facilities Construction Cost Data Catalog, the Cost Index and JOC's intended use of the Unit Price Book, to calculate the maximum pricing allowable by City for Work to be performed. JOC's conducting and participation in said two training classes shall be at no additional cost to City

ARTICLE XI
Warranty of Work

11.01. **JOC Warranty.** In addition to any other warranty, JOC expressly shall warrant that all Work performed by JOC conforms to the issued Job Order requirements and shall be free of any defect in equipment, material and workmanship and shall be in compliance with City's specifications.

11.02. **Warranty Term.** This warranty from JOC shall run runs for one (1) year from the date of Final Acceptance of the Work on an issued Job Order. If City takes possession of any part of the Work before Final Acceptance of the whole of the Work, the warranty for the part taken prior to Final Acceptance of the whole shall run from the date of possession of the Work taken.

11.03. **Warranty Work.** JOC shall, without any additional charge to City, remedy any breach of the expressed warranty of JOC's Work. JOC further shall, also without additional charge to City, repair any damage to City's real or personal property, when that damage is the result of either JOC's failure to conform to the issued Job Order requirements or any defect of equipment, material, or workmanship furnished by or through JOC.

11.04. **Warranty Extension.** JOC shall, without any additional charge to City, restore Work damaged in fulfilling the terms and conditions of this **ARTICLE XI**. JOC's warranty, with respect to all Work repaired or replaced, shall run for one (1) year from the date of JOC's repair or replacement of Work.

11.05. **Notification of Warranty Breach.** City shall notify JOC, in writing, of any breach of JOC's warranty within a reasonable time after City's discovery of any breach of warranty.

11.06. **City's Remedy for JOC's Warranty Breach.** If JOC fails or refuses to remedy a breach of warranty within a reasonable time after receipt of written notice from City, JOC acknowledges City has the right to replace, repair or otherwise remedy the cited breach and JOC fully shall reimburse City and City shall deduct from any of JOC's submitted payment application any and all expenses incurred by City in replacing, repairing or otherwise remedying said warranty breach.

11.07. **Manufacturers/Suppliers Warranties.** With regard to warranties (both expressed and implied) from JOC's Subcontractors, manufacturers or suppliers for Work performed, pursuant to a Job Order, JOC shall:

11.07.1. Obtain all warranties required by a Job Order and supply City with copies of all warranties in place for Work performed;

11.07.2. Require all warranties for Work performed to be executed, in writing, to the benefit of City; and

11.07.3. Enforce all warranties for Work performed, to the benefit of City.

11.08 **City Enforcement of Warranties.** City may, but need not as a condition of enforcing JOC's warranty, seek to enforce warranties directly for its own benefit, with regard to any of the above warranties associated with JOC's Work.

11.09. **Pre-Existing Conditions.** City acknowledges JOC is not responsible for and does not warranty any pre-existing work, conditions or facilities that may be assigned to JOC, except as modified by the Job Order.

ARTICLE XII
Changes in Work and Price

12.01. **Changes in Work.** JOC may, at any time and without notice to any sureties, in writing and signed by both City and JOC, agree to changes in the Work within the general scope of the issued Job Order, including changes:

12.01.1. in the specifications (including drawings and designs);

12.01.2. in City-furnished facilities, equipment, materials, services or site; and/or

12.01.3. in the schedule for performance of the Work.

12.02. **Change Order Processing.** A City-requested change, via an issued Task Order, for additional work falling outside the general scope of work of the originally issued Job Order, shall be treated as an additional Job Order. If JOC concludes a City-request change in scope shall result in an additional Job Order, it shall give City prompt written notice, through PRIMELink, stating the date, circumstances and full description for the requested additional Job Order scope. In no event may JOC's written notice to City of an additional Job Order come later than thirty (30) calendar days after JOC receives City's request for a change for additional work. If any City-requested change(s) in the original scope of work causes an increase or decrease in JOC's required overhead, materials, labor cost or time required for and allotted to the performance of Work, City shall make an equitable adjustment and modify the issued original Job Order through PRIMELink.

12.03. **Change Order Pricing.** Pricing for an additional Job Order shall be determined in the same way as pricing used for the originally issued Job Order.

12.04. **JOC Time Extension Proposal.** With an additionally issued Job Order, JOC shall furnish City a detailed written proposal for any requested extension in the time period given JOC for the performance of the Work. The detailed proposal shall be submitted through PRIMELink

and shall, along with a price breakdown, furnish JOC's justification for an extension of time, if any.

12.05. **Disallowed Adjustment Requests.** No written proposal submitted by JOC for an equitable (price and/or time) adjustment shall be allowed if asserted after City issues final payment to JOC under an issued Job Order. JOC acknowledges this **ARTICLE XII** provides the exclusive mechanism by which JOC may claim an additionally issued Job Order under this Job Order Contract Agreement.

ARTICLE XIII
Suspension of Work

City may, in writing, issue an order to JOC to suspend, delay or interrupt all or any part of the Work issued through a Job Order. If City does so issue such an order, or if City's fails to act timely on an issue, thereby directly resulting in a suspension, delay or interruption in JOC's scheduled Work, City equitably shall compensate JOC for increased costs due JOC for any directly-related increase in JOC's cost of performing the Work caused by City's issued order. If compensation is due from City, JOC only may recover costs under this **ARTICLE XIII** for costs incurred by JOC within the first thirty (30) calendar days following City's issued order to suspend, delay or interrupt all or a part of JOC's Work or for costs incurred by JOC within the first thirty (30) calendar days of City failing timely to act after JOC gives City written notice of the basis for the claim.

ARTICLE XIV
Termination for Convenience of City

14.01. By delivering written notice of termination to JOC, City may terminate performance under a Job Order, in whole or in part, if City, in its sole determination, determines that terminating JOC's performance is in City's best interest. Upon receiving a notice of termination, JOC immediately shall:

14.01.1. stop all Work associated with the issued Job Order;

14.01.2. let no further subcontracts or orders for materials, services or facilities, except as necessary to complete any Work not terminated by City;

14.01.3. assign to City, as directed by City, all right, title and interest of JOC under the subcontracts, to the extent they relate to the Work terminated. City may settle JOC's Subcontractor claims and pay the amounts called for by said settlements. All settlements with JOC's Subcontractor's shall release JOC only from claims arising out of City's termination of JOC's performance, but not other claims;

14.01.4. transfer title to City of all Work performed and transfer title to all materials and supplies purchased by JOC and paid for by City; and

14.01.5 deliver to City, as directed by City:

14.01.5.1. any and all fabricated or off-the-shelf parts, Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and

14.01.5.2. completed or partially completed plans, drawings, information and other property that, if the Job Order had been completed by JOC, would be required to be furnished to City;

14.01.6. complete performance of the Work not terminated by City;

14.01.7. take any action necessary, or any action that City may direct, for the protection and preservation of the property related to this Agreement that is in the possession of JOC and which City has or may acquire an interest; and

14.01.8. use its best efforts to sell, if authorized by City, any property acquired for the Work but not yet incorporated into it, except JOC need not extend credit to any purchaser and JOC itself may purchase the property on terms agreed to by the City.

14.02. After the termination of a Job Order by City, JOC promptly shall submit a final termination settlement proposal to City in the form and with the certification prescribed by City. City need not consider and is not liable to JOC for payment for any such proposal submitted longer than ninety (90) calendar days after a Job Order termination.

14.03. If JOC and City fail to agree on the amount to be paid JOC, as a result of City's termination of a Job Order for convenience, City shall pay JOC an amount determined as follows:

14.03.1. For Work performed prior to the effective date of termination, the total (without duplication) of:

14.03.1.1. JOC's cost of the Work;

14.03.1.2. JOC's cost of settling and paying termination settlement proposals under terminated subcontracts that properly are chargeable to the terminated portion of the Contract if not included in subdivision (a) above and if not paid by City; and

14.03.1.3. A markup, including overhead and profit, pursuant to this **Article XIV**, as has been agreed upon by City and JOC for Change Orders.

14.03.2. A reasonable costs of settlement of the Work terminated, including:

14.03.2.1. accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

14.03.2.2. the termination and settlement of subcontracts (excluding the amounts of such settlements); and

14.03.2.3. Storage, transportation, and other costs actually incurred by JOC and reasonably necessary for the preservation, protection or disposition of the termination inventory.

14.04. **Spoilage.** Except for normal spoilage, except to the extent that City expressly assumed the risk of loss, JOC cannot recover from City the value, as determined by City, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to City or to a subsequent purchaser.

14.05. **Partial Termination of Job Order.** If a termination of a Job Order is partial, JOC may file a proposal with City requesting an equitable adjustment of the price(s) of the non-terminated portion of the Job Order. If granted by City, City shall issue a new Task Order reflecting the new scope of work for the non-terminated portion of the Job Order reflecting the new price to be paid for the newly defined scope of work. Any proposal filed with City by JOC for an equitable adjustment of the price(s) shall be requested by JOC within ninety (90) calendar days from the effective date of partial termination, unless extended in writing by City. City may, under the terms and conditions it prescribes and at City's sole option, make partial payments to JOC and may make payments against costs incurred by JOC of the terminated portion of the Job Order, if City believes the total of these partial payments will not exceed the amount to which JOC would have been entitled. If the total payments made by City to JOC exceed the amount finally determined to be due, JOC shall repay the excess payment made to JOC by City to City upon demand.

14.06. **Record Maintenance.** Unless otherwise provided in this Agreement or by statute, JOC shall retain and maintain all records and documents relating to both the completed and the terminated portion of a Job Order for a period of four (4) years after the settlement of an issued Job Order. This requirement on JOC includes retaining and maintaining all books and other evidence bearing on JOC's costs and expenses under an issued Job Order. JOC shall make these retained and maintained reports and documents available to City, at JOC's office, at all reasonable times and without cost to City. If approved in writing by City, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC instead of original records and documents.

ARTICLE XV
Default

15.01. It shall be deemed an event of default under an issued Job Order if JOC:

15.01.1. fails or refuses to prosecute Work, or any separable part of it, with the diligence that will ensure the Work's timely completion, after ten (10) calendar days written notice and JOC has been afforded the opportunity to cure; or

15.01.2. fails or refuses to comply with any material term of the Contract, after thirty (30) calendar days written notice JOC has been afforded the opportunity to cure.

15.02. **Uncured Default.** On an uncured default by JOC, City may terminate an issued Job Order or, at City's discretion, may terminate this entire Agreement with JOC. City may complete the Work itself or procure its completion by a substitute Contractor and City shall retain all rights and remedies available to it arising from JOC's default, as may be afforded by law or by equity.

15.03. **Time Extension.** JOC's delay may be excused if said delay arises out of unforeseeable causes beyond JOC's control and without JOC's fault or negligence, such as acts of God or the public enemy, fires, flood, strikes or quarantine. To be excused for delay in such an event, JOC shall, within thirty (30) calendar days from the date of the beginning of delay, notify City in writing thereof. If, in the sole judgment of City, JOC's situation warrants an extension, City shall extend JOC's time for performance under an issued Job Order. City's findings are final and conclusive.

15.04. The rights and remedies of City in this **Article XV** are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE XVI
Safety

16.01. **Safety Plan.** Within fourteen (14) calendar days after award of this Agreement and before beginning any Work, JOC shall submit a safety plan to City for its approval. The safety plan shall address all aspects of JOC's safety policies and procedures, including responsibility for OSHA compliance, drug testing, trend analysis, corrective action and JOC's interface with City inspectors, establishing the safety rules and regulations to be utilized on the issued Job Order Work. This submitted safety plan by JOC shall remain in place for the duration of this Contract and any extension periods hereto and if JOC make any modifications to its safety plan submitted to City, JOC promptly shall notify City of those modifications.

16.02. **OSHA Compliance.** JOC shall be responsible for complying with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (hereafter referred to as "OSHA"), as well as all applicable state and local laws, ordinances and regulations during the performance of JOC's Work. JOC shall maintain a set of OSHA articles at the Job Order jobsite, as they apply to the Work being performed. Copies of said OSHA articles shall be provided by JOC to City upon request.

16.03. **Protective Equipment.** JOC shall furnish and enforce the use of individual protective equipment, as is needed to complete JOC's Work, including hard hats, rain gear, protective foot

wear, protective clothing, gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards and high visibility reflective safety vests.

16.04. **Safety Training.** JOC shall provide its employees, along with its Sub-Consultant and Subcontractor employees, safety training at minimum every six (6) months throughout the duration of Work, to include any necessary special training, prior to working with hazardous materials or operations, and provide proof of such employee safety training to City. JOC shall provide warning signs, barricades and verbal warnings on the Work site, as required. JOC shall inform its and its Sub-Consultant and Subcontractor employees of emergency procedures to be adhered to, in case of a fire, medical emergency or any other life-threatening situations.

16.05. **Accident Reporting.** JOC promptly shall notify City of any Work site accident involving any Job Order personnel and/or damage to any material and/or equipment. Copies of any injury reports or accident investigation reports generated by JOC or its Sub-Consultants and/or Subcontractors shall be provided to City.

16.06. **Safety Representative.** JOC shall assign, during performance of the Work, a designated safety representative to develop and monitor JOC's project Work site safety program. The name, company address and telephone number of the designated assigned individual shall be submitted to City's designated JOC Representative by JOC, along with JOC's safety policies and program procedures, within fourteen (14) calendar days of JOC receiving an issued Job Order.

16.07. **First Aid Kit.** JOC shall provide and maintain on the jobsite, at all times, at minimum one (1) completely stocked first aid kit, which shall contain all standard emergency medical supplies. JOC shall make the first aid kit available to all of JOC's employees and all employees of JOC's Subcontractors, while they are performing Work on the site, as well as making available emergency medical treatment either at the Job Order Work site or at a nearby medical facility.

16.08. **City's Approval of JOC Safety Policies.** City reserves the right to approve and monitor JOC's safety policies and program procedures, as they are applied during performance of the Work. Failure to comply with the safety policies and program procedures, once submitted to and approved by City, shall be deemed a breach of this Agreement and shall be cause for the termination of an issued Job Order and/or this Agreement.

16.09. **City's Limited Safety Personnel.** JOC acknowledges that City has limited personnel assigned to administer this Agreement and be in a position to police all of the safety requirements of this **Article XVI,** as well as acknowledging that those assigned City personnel are not fully trained in safety matters. To that end, City's imposition of these safety requirements on JOC is not an assumption by City of a duty on City to assure safety. JOC shall indemnify City for all losses, costs, liabilities and/or expenses arising out of or relating to JOC's violations of this **Article XVI**.

ARTICLE XVII
City's Use and Possession Prior to Completion

17.01. **Partial Possession.** City has the right to take possession of or to use any completed or partially completed part of the Work under an issued Job Order. Prior to taking possession of or using any part of JOC's Work, City shall furnish JOC a list of items of Work remaining to be performed or corrected on those portions of the Work which City intends to take immediate possession of or use. JOC acknowledges City's failure to list remaining Work does not relieve JOC from performing that Work. City's possession or use of any completed or partially completed part of the Work shall not be deemed City's acceptance of Work related to City's possession or use of the partially completed part of the Work.

17.02. **City's Assumption of Risk for Partial Possession.** If City takes such possession or use of any completed or partially completed part of the Work, JOC shall be relieved of the responsibility for the loss of or any damage to the Work resulting from City's possession or use. If early possession or use by City clearly delays JOC's progress or causes additional expenses to be incurred by JOC, City shall make an equitable adjustment in the issued Job Order price or JOC's time period for performance and the Job Order shall be modified in writing accordingly.

ARTICLE XVIII
Non-Exclusivity and Cooperation

JOC acknowledges this Agreement is not exclusive. City may award multiple Job Order Contract Agreements and this Agreement is not a promise of receiving issued Job Orders or of an equal share of all Job Orders issued by City. JOC shall cooperate with other JOCs awarded contracts by City and with City employees and carefully shall adapt its scheduling and Work performance to accommodate the work of other awarded JOCs. JOC shall not commit or shall not permit any act to be committed that might interfere with the performance of work by any other JOC or JOC Sub-Consultants and/or Subcontractor(s) or by any City employees.

ARTICLE XIX
Workers' Compensation

19.01. The following terms are defined as follows:

19.01.1. Certificate of Coverage (hereafter referred to as "Certificate") is defined as a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance

coverage for the person's or entity's employees providing services on a project, for the Duration of the Project.

19.01.2. Duration of the Work is defined as the time, from the beginning of Work on an issued Job Order through the time the Job Order has been completed and accepted by City, during which JOC and JOC's personnel are working on an issued Job Order.

19.01.3. Persons are defined as and shall include all persons or entities performing all or part of the Work JOC has undertaken to perform on an issued Job Order, regardless of whether that person contracted directly with JOC or whether that person has employees. Persons further shall include, without limitation, Independent Contractors, Subcontractors, leasing companies, motor carriers, owner-operators, as well as all employees of such entities or employees of any entities which furnishes persons to provide Services on an issued Job Order.

19.01.4. Services are defined as and shall include, without limitation, those Persons providing, hauling or delivering equipment or materials and/or providing labor, transportation or other Service related to and for the Duration of an issued Job Order. Services, as defined herein, shall not include activities unrelated to an issued Job Order, such as food/beverage vendors, office supply deliveries or delivery of portable toilets.

19.02. JOC shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees and Persons of JOC providing Services on an issued Job Order for the Duration of the Work. JOC shall comply with the statutory requirements and shall supply a Worker's Compensation
Statutory, with a Waiver of subrogation in favor of City

19.03. JOC shall provide the required Certificate of Workers' Compensation Coverage to City, prior to being awarded a Job Order.

19.04. If the coverage period shown on JOC's current Certificate of Coverage ends during the duration of an issued Job Order, JOC shall, prior to the end of its coverage period, file a new Certificate of Coverage with City showing that its Workers' Compensation coverage has been extended/renewed.

19.05. JOC shall obtain and provide to City, from and for each person providing Services on an issued Job Order:

19.05.1. a Certificate of Coverage, prior to that person beginning work on an issued Job Order, so City will have on file Certificates of Coverage showing coverage for all persons providing Services on the issued Job Order; and

19.05.2. no later than seven (7) calendar days after receipt by JOC, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage obtained by JOC ends during the duration of the issued Job Order.

19.06. JOC shall retain all required Certificates of Coverage for the duration of an issued Job Order and for one year thereafter City's acceptance of the Work.

19.07. JOC shall notify City in writing by certified mail or personal delivery, within ten (10) calendar days after JOC knew or should have known, of any change that materially may affect the provision of coverage of any person providing Services on an issued Job Order.

19.08. JOC shall post on each Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all Persons providing Services on an issued Job Order that the workers are required to be covered by Workers' Compensation, stating how a Person may verify said Workers' Compensation coverage and how a Person may report a lack of Workers' Compensation coverage.

19.09. JOC contractually shall require each Person with whom it contracts to provide Services on an issued Job Order to:

19.09.1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees and all Persons providing Services on an issued Job Order, for the Duration of the Work;

19.09.2. provide to JOC, prior to that Person beginning Work on an issued Job Order, a Certificate of Coverage showing that coverage is being provided for all employees of the Person providing Services on the issued Job Order, for the Duration of the Work;

19.09.3. provide JOC, prior to the end of the coverage period, a new Certificate of Coverage showing an extension or renewal of coverage, if the coverage period shown on the current Certificate of Coverage ends during the Duration of the Work;

19.09.4. obtain from every other Person with whom each Person contracts and provide to JOC:

19.09.4.1. a Certificate of Coverage, prior to the other Person beginning work on the issued Job Order; and

19.09.4.2. a new Certificate of Coverage showing an extension/renewal of coverage, prior to the end of the coverage period, if the coverage period shown on the current Certificate of Coverage ends during the duration of the issued Job Order;

19.09.5. retain all required Certificates of Coverage on file for the duration of the issued Job Order and Work for one (1) year thereafter;

19.09.6. notify City in writing by certified mail or personal delivery, within ten (10) calendar days after the Person knew or should have known of any change that materially may affect the provision of coverage of any person providing Services on the issued Job Order; and

19.09.7. contractually require each Person with whom JOC contracts to perform Work, as required by **Sections 19.09.1 through 19.09.6** herein, with the Certificates of Coverage to be provided to the Person for whom they are providing Services.

19.10. By signing this Agreement and/or providing or causing to be provided a Certificate of Coverage, JOC is representing to City that all employees of JOC who will provide Services on an issued Job Order shall be covered by Workers' Compensation Coverage for the Duration of the Work, the provided Workers' Compensation Coverage shall be based on proper reporting of classification codes and payroll amounts and all coverage agreements shall be filed with the appropriate insurance carrier or, in the case of a self-insured JOC, with the Commission's Division of Self-Insurance Regulation in Texas. JOC hereby acknowledges the providing false or misleading insurance coverage information may subject JOC to administrative penalties, criminal penalties, civil penalties or other civil or criminal actions.

19.11. JOC acknowledges its failure to comply with any of these provisions in this **Article XIX** shall be deemed a Breach of Contract by JOC and shall entitle City to terminate any issued Job Orders to JOC and declare this Agreement void if JOC fails to remedy the Breach of Contract within ten (10) calendar days after receipt of notice of a Breach of Contract from City.

ARTICLE XX
Prevailing Wages

JOC shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Buildings Wage Determination in effect at the time this JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. JOC acknowledges it shall utilize the Buildings Wage Determination when determining prevailing wages for all issued Job Orders. If JOC is required to pay the prevailing wage for a job classification not found on the cited Buildings Wage Determination, JOC shall utilize the Heavy Highway Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Heavy Highway Wage Determination job classification from City.

ARTICLE XXI
Performance Bond

21.1. **Job Order Less Than $100,000.00.** For issued Job Orders less than $100,000.00, JOC shall not be required to post a Performance Bond.

21.2. **Job Orders Greater Than $100,000.00.** For issued Job Orders with a dollar value equal to or greater than $100,000.00, JOC shall be required to post the City-required Performance Bond, which shall be written utilizing and submitted on City's Bond Form.

21.3. **Performance Bond Requirements.** City's Performance Bond requirements are as follows:

21.3.1. For all required Performance Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code to issue Performance Bonds in the full amount of the issued Job Order;

21.3.2. The Performance Bonds shall provide that the Surety indemnify the City (as the Bond's oblige) for all damages or losses resulting from JOC's (the Bond's principal's) default. The Bond(s) shall guarantee JOC's performance of all performance terms and obligations under the issued Job Order;

21.3.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bond to bind the issuing surety; and

21.3.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253, and shall be executed and delivered to City before beginning any Work on an issued Job Order.

21.4. **Performance Bond for Entire Agreement.** JOC hereby may elect to not have to post a Performance Bond for each Job Order when issued and instead provide to City, under the same requirements for Bonds outlined in this **Article XXI,** a Performance Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide both a Performance Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Performance Bond with City.

ARTICLE XXII
Payment Bond

22.1. **Job Orders Under $50,000.00.** For all issued Job Orders of $50,000.00? or less, JOC shall not be required to post a Payment Bond.

22.2. **Job Orders Over $50,000.00.** For all issued Job Orders with a dollar value equal to or greater than $50,000.00, JOC shall be required to post the City-required Payment Bonds, written utilizing and submitted on City's Bond Form.

22.3. City's Payment Bond requirements are as follows:

22.3.1. For all required Payment Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code in the full amount of the issued Job Order.

22.3.2. The Payment Bonds shall provide that the Surety indemnify the City (as the Bond's oblige) for all damages or losses resulting from JOC's (the Bond's principal's) non-payment(s) for Work performed under the issued Job Order. The Bonds further shall guarantee JOC's payment to all entities performing for Work for JOC, pursuant to an issued Job Order.

22.3.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bonds to bind the issuing surety.

22.3.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code Chapter 2253 and Texas Property Code Chapter 53.21.1 and shall be executed and delivered to City before beginning any Work on an issued Job Order.

22.4. **Payment Bond for Entire Agreement.** JOC hereby may elect to not have to post a Payment Bond for each Job Order when issued and instead provide to City, under the same requirements for Payment Bonds outlined in this **Article XXII,** a Payment Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide a Payment Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Payment Bond with City.

ARTICLE XXIII
Insurance

23.01. In addition to other insurance requirements of this Agreement, JOC shall maintain, throughout the term of this Agreement, insurance coverage written on an occurrence form, by an

insurance provider authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to City, in the following types and amounts:

23.01.1. **ERROR! BOOKMARK NOT DEFINED.**JOC's Liability Insurance: Without limiting any of the other obligations or liabilities of JOC under the Contract Documents, JOC shall purchase and maintain, during the term of this Agreement and at JOC's own expense, the minimum liability insurance coverage described below with insurance companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to City. JOC also shall require each Subcontractor performing work under an issued Job Order, at Subcontractor's own expense, to maintain levels of insurance necessary and appropriate for the Work performed during the term of the issued Job Order, said levels of insurance comply with all applicable laws. Subcontractor's liability insurance shall name JOC, City and, if applicable, the Design Consultant as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in this **Article XXIV** shall show the existence of each policy, together with copies of all policy endorsements showing City and the Design Consultant as an additional insured, and shall be delivered to City before any Work on an issued Job Order is started. JOC promptly shall furnish, upon the request of and without expense to City, a copy of each policy required, including all endorsements, which shall indicate:

23.01.1.1 Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to City;

23.01.1.2. Employer's Liability Insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee and $1,000,000 disease policy limit, with a waiver of Subrogation in favor of City; (excessive?)

23.01.1.3. Commercial General Liability Insurance, to include but not be limited to coverage for the following:

A) Personal Injury Liability;

B) Independent Contractor's Liability;

C) Products and Completed Operations; and

D) Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, fully insuring JOC's (and/or JOC's Subcontractor's) liability for injury to or death of City's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and

property damage minimum limit of $1,000,000 per occurrence, $2,000,000 annual aggregate.

If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of an issued Job Order and acceptance of Work by City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Agreement.

City shall be named as additional insured by using endorsement CG 20 26 or broader. The Commercial General Liability policy shall include coverage extended to apply to completed operations and XCU hazards.

The Products and Completed Operations coverage shall be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with City. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the issued Job Order in question.

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

23.01.1.5. Broad-Form Property Damage, to include Fire Legal Liability coverage for replacement cost of JOC's Work and improvements.

23.01.2. Five (5) calendar days prior to a suspension, cancellation or non-renewal of any required line of insurance coverage, JOC shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend JOC and its performance under an issued Job Order and this Agreement if JOC fails to provide said replacement certificate of insurance.

23.01.3. If any insurance company providing insurance coverage(s) required under the JOC Contract becomes insolvent or becomes the subject of any rehabilitation, conservatorship, liquidation or similar proceeding, JOC immediately shall procure, upon first notice to JOC or City of such occurrence and without cost to City, replacement insurance coverage before continuing the performance of the Work on an issued Job Order. Any failure of JOC to provide such replacement insurance coverage shall constitute a material breach of this Agreement.

23.02. In addition to the insurance described in **Section 24.01.1** et seq. herein, JOC shall obtain, at its expense and maintained throughout the duration of this Agreement, All-Risk Builder's Risk Insurance, if an issued Task Order involves the complete construction of a new building, or an All-Risk Installation Floater policy, if an issued Job Order involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk and include, but not be limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the issued Job Order for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the issued Task Order for the Builder's Risk policy. If an Installation Floater policy is provided, City shall be shown as a Joint Named Insured with respect to the issued Task Order. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the issued Job Order. This policy shall be in the name of JOC and naming City, Design Consultant (if applicable) and JOC's Subcontractors, as well as any JOC Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

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

23.02.2. Loss, if any, shall be adjusted with and made payable to JOC or to City and JOC as trustee for the insureds as their interests may appear.

23.03. Boiler and Machinery Insurance. If applicable, City shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by City. This insurance shall include the interests of City, JOC, JOC's Subcontractors and Sub-Subcontractors in the Work, and City and JOC shall be named insureds.

23.04. Loss of Use Insurance. City, at City's option, may purchase and maintain Loss of Use Insurance, insuring City against loss of use of City's property due to fire or other hazards, however caused.

23.05. JOC shall provide to City a Certificate of Insurance, evidencing all property insurance policies procured pursuant to this **Article XXIV** and referenced herein and all endorsements thereto, before any exposure to loss may occur.

23.06. Partial occupancy or use in accordance with **Article XVII** herein shall not commence until the insurance company/companies providing property insurance for both City and JOC have consented to such partial occupancy or use by endorsement or otherwise. City and JOC shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent, with respect to partial occupancy or use, that would cause cancellation, lapse or reduction of any insurance coverages.

23.07. Each insurance policy required of JOC by this Agreement shall contain the following clauses:

23.07.1. "The insurance provided by JOC is primary to any insurance or self-insurance maintained by the City of San Antonio."

23.07.2. "Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

23.08. Each insurance policy required by this Agreement, excepting policies for Workers' Compensation and Employer's Liability, shall contain the following clauses:

23.08.1. "The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Agreement with the City of San Antonio This policy cannot be invalidated as to City because of JOC's breach of representation, warranty, declaration or condition of this policy."

23.08.2. "This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days' prior written notice has been given to:

City Clerk, City of San Antonio City Hall/2nd Floor P. O. Box 839966 San Antonio, Texas 78283-3966 Attention: Risk Manager	**with a copy to:**	Transportation & Capital Improvements City of San Antonio P.O. Box 839966 San Antonio, Texas 78282-3966 Attention: Contract Services

ARTICLE XXIV
Release of Claims/Subrogation

The insurance requirements of this Agreement are a bargained-for allocation of risk of loss. City and JOC release each other from claims arising from injury or loss to either of them or to third parties to/for which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Agreement to maintain, whether or not the party actually has the insurance (hereafter referred to as "Covered Claims"). This Release is additional to and does not limit any other release contained in this Agreement. City and JOC, to the maximum extent allowable without causing cancellation of a required policy, waive Subrogation against each other for Covered Claims.

ARTICLE XXV
Small, Minority, & Women-Owned Business Advocacy

It is the policy of City that Small, Minority and Woman-Owned Business Enterprises have the maximum practical opportunity to participate in the performance of public contracts. In achieving that goal, JOC hereby commits to satisfy the SBEDA requirements of this Agreement, as outlined in the SBEDA Subcontractor/Supplier Utilization Plan, attached and labeled as **Exhibit B** hereto and incorporated into this Agreement.

ARTICLE XXVI
Precedence in Case of Conflict

In case of conflict between the elements of this Agreement, the elements have the following Precedence, for the purpose of construction:

A. Modifications and/or Amendments to this Agreement, if any;

B. This Agreement, including Attachments;

C. The Request for Sealed Proposals, including Attachments and addenda (if any);

D. JOC's submitted Proposal;

E. Issued Job Orders;

F. Drawings; and

G. City's Specifications.

ARTICLE XXVII
Waivers

27.01. **Non-Waiver of City's Rights.** Neither City's review, approval or acceptance of or payment for Work required under this Agreement, pursuant to an issued Job Order, waives City's rights under this Agreement or waives City's rights under any cause of action arising out of the performance of this Agreement.

27.02. **City Waiver and Subsequent JOC Breach.** City's waiver of any breach of any term, covenant, condition or agreement herein contained does not waive any subsequent breach of the same or any other term, covenant, condition or agreement.

ARTICLE XXVIII
INDEMNIFICATION

28.01 JOC covenants and agrees to **HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND** City, its elected officials, employees, officers, directors, volunteers and representatives of City, 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 JOC and of City) damage to property (other than the Work itself and including property of JOC and of City), 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, JOC, 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 JOC be liable for claims arising out of accidents resulting from the sole negligence of City, all without however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. In the event JOC and City 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 City under Texas law and without waiving any defenses of the parties under Texas law.

28.02 In addition to the above, JOC also covenants and agrees to **HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND** City, its elected officials, employees, officers, directors, volunteers and representatives of City, 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 JOC and of City) damage to property (other than the Work itself and including property of JOC and of City), but only to the extent caused by the intentional or deliberate misconduct, grossly negligent, willful acts or omissions of JOC, 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 JOC be liable for claims arising out of accidents

resulting from the sole negligence of City, all without, however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. In the event JOC and City 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 City under Texas law and without waiving any defenses of the parties under Texas law.

28.03 **INTELLECTUAL PROPERTY INDEMNIFICATION.** JOC shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against City, its elected officials, employees, officers, directors, volunteers and representatives of City, 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 JOC and its employee or its Subcontractors and their agents, servants and employees, based on any deliverable or any other materials furnished hereunder by JOC and used by either City or JOC within the scope of this Agreement (unless said infringement results directly from JOC's compliance with City's written standards or specifications). JOC does not warrant against infringement by reason of City's or Design Consultant's design of articles or their use in combination with other materials or in the operation of any process. JOC 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. JOC agrees to consult with City's City Attorney during such defense or negotiations and make good faith efforts to avoid any position adverse to the interest of City. City shall make available to JOC any deliverables and/or works made for hire by JOC necessary to the defense of JOC against any claim of infringement for the duration of JOC's legal defense.

28.04 If such infringement claim or action has occurred or, in JOC's judgment, is likely to occur, City shall allow JOC, at JOC's option and expense, (unless such infringement results directly from JOC's compliance with City's written standards or specifications or by reason of City'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 City 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 City'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 City; or

(4) if none of the foregoing alternatives is reasonably available to JOC, upon written request, City shall return the deliverable and/or materials in question to JOC and JOC shall refund all monies paid by City, with respect to such deliverable and/or materials, and accept return of same. If any such cure

provided for in this **Article XXVIII** shall fail to satisfy the third-party claimant, these actions shall not relieve JOC from its defense and indemnity obligations set forth in this Article **XXVIII**.

28.05 The indemnification obligations under this **Article XXVIII** 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 JOC 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.

ARTICLE XXIX
AUDIT OF RECORDS

JOC shall retain, maintain and contractually shall require each Sub-Consultant and Subcontractor of JOC to retain and maintain all data, books and other records (hereafter collectively referred to as "records") relating to an issued Job Order and this Agreement for a period of four (4) years after completion of an issued Job Order. JOC acknowledges City may inspect and audit all JOC records at reasonable times and, upon request, JOC shall produce all original records. If approved by City in writing, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC, its Sub-Consultants and Subcontractors instead of original records and documents. City may withhold any payment to JOC and may deduct from any money owed to JOC, if City finds the retained and maintained documentation on any issued and performed Job Order to be incomplete or erroneous.

ARTICLE XXX
THIRD-PARTY ANTITRUST VIOLATIONS

JOC hereby assigns to City any claim for overcharges resulting from antitrust violations, to the extent that such violations concern materials or services supplied by third parties to JOC toward fulfillment of the requirements of an issued Job Order and this Agreement.

ARTICLE XXXI
APPROPRIATIONS

All obligations of City under this Agreement are funded subject to the discretion of the San Antonio City Council as to whether to appropriate funding for this Agreement for any given year of its term. If the San Antonio City Council fails to appropriate money for this Agreement in an annual City of San Antonio Budget, the City may terminate this Agreement and have no further liability under it.

ARTICLE XXXII
DISPUTE RESOLUTION

32.01. **Field Level Discussions.** JOC and City agree each first will attempt to resolve disputes or disagreements arising out of an issued Job Order or from this Agreement at the field level, through discussions between the Parties' representatives. If that effort to resolve a dispute or disagreement is unsuccessful, the Director of City's Department of Transportation & Capital Improvements shall intercede and attempt to reach an amicable resolution.

32.02. **Mediation.** Before bringing any action arising out of this Agreement, including an action for declaratory relief but not an action specifically excepted below herein, the Parties, in good faith, first shall submit the unresolved dispute or disagreement to mediation. The Parties may not assert limitations, laches, waivers and estoppels, based upon their attempts to mediate.

32.03. **Waiver of Mediation Rights.** Filing suit on a claim that, under this **Article XXXII** and the terms of this Agreement, first should be mediated waives the filer's right to demand mediation. But one Party's waiver does not affect another party's right. A defendant does not waive mediation as long as, within a reasonable time after appearing, said defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this **Article XXXII**.

32.04. Any mediation conducted, pursuant to this Agreement, shall be conducted in San Antonio, Bexar County, Texas.

32.05. **Burden to Initiate Mediation.** The Party desiring relief has the burden to initiate mediation. Waiting for a Party to initiate mediation does not waive the other Party's right to it.

32.06. **Mediator Appointment.** If the Parties may agree on a mediator, they shall do so. Alternatively, either Party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court needs to consider, before appointing a mediator, are whether:

32.06.1. the copy of the Agreement before the court is authentic; and

32.06.2. the Agreement was duly signed and delivered by all Parties agreeing to be bound to mediate.

If neither of those issues cited in **Section 32.06.1** or **Section 32.06.2** herein is denied under oath, the court may appoint a mediator upon motion, without trial.

32.07. **Mediator Fees.** Mediator fees shall be borne equally by the Parties.

32.08. **Emergency Injunctive Relief.** The Parties need not mediate before going to court to seek emergency injunctive relief.

32.09. **JOC's Continued Performance of Work.** JOC shall continue to perform the Work under an issued Job Order and City shall continue to satisfy its payment obligations to JOC under an issued Job Order, pending final resolution of any dispute or disagreements between the Parties.

ARTICLE XXXIII
PROHIBITED INTERESTS IN CONTRACTS

33.01. **Prohibited Financial Interests.** The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency, such as city owned utilities. A City officer or employee has a "prohibited financial interest" in a contract with City or in the sale to the City of land, materials, supplies or service if any of the following individual(s) or entities is a party to the contract or sale:

33.01.1. a City officer or City employee; or

33.01.2. a City officer's or City employee's parent, child or spouse; or

33.01.3. a business entity in which a City officer or a City employee, or his/her parent, child or spouse owns either:

33.01.3.1. ten percent (10%) or more of the voting stock or shares of the business entity; or

33.01.3.2. ten percent (10%) or more of the fair market value of the business entity; or

33.01.4. a business entity in which any individual or entity above listed is:

33.01.4.1. a Subcontractor or Sub-Consultant of JOC on a City contract; or

33.01.4.2. a partner; or

33.01.4.3. a parent or subsidiary business entity.

33.02. JOC warrants and certifies:

33.02.1. JOC, its officers, employees and agents are neither officers nor employees of City.

33.02.2. JOC has tendered to the City a Discretionary Contracts Disclosure Statement,

in compliance with City's Ethics Code.

33.03. JOC acknowledges that City's reliance on the above warranties and certifications is reasonable.

ARTICLE XXXIV
NON-DISCRIMINATION

34.1 As a party to this Agreement with City, JOC understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, JOC shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. JOC represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Contract award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, JOC shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Subcontractors, Sub-Consultants, vendors, suppliers or commercial customers, nor shall JOC retaliate against any person for reporting instances of such discrimination. JOC shall provide equal opportunity for Subcontractors, Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector subcontracting, sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. JOC acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in the termination of an issued Job Order and/or this Agreement, the disqualification of JOC from participating in future City contracts or other sanctions. This **Article XXXIV** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. JOC's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement. JOC shall incorporate this clause into each of its Subcontractor, Sub-Consultant and supplier agreements entered into, pursuant to issued City Job Order agreements/contracts.

34.2 **JOC Outreach and Diversity Plan.** JOC acknowledges and commits, upon its execution of this Agreement, JOC shall provide City a detailed outreach and diversity plan for approval by City, to include a list of all of JOC's Subcontractors and Sub-Consultants it expects to utilize in performing issued Job Orders and JOC shall require all of its utilized Subcontractors and Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through PRIMELink. JOC commits that it shall obtain approval in writing from City

prior to adding, substituting or deleting any approved Subcontractors and/or Sub-Consultant from an issued Job Order.

ARTICLE XXXV
MISCELLANEOUS PROVISIONS

35.01. **Texas Laws Govern.** This Agreement is entered into in San Antonio, Bexar County, Texas. This Agreement's construction and the rights, remedies, duties and obligations arising under this Agreement are governed by the laws of the State Of Texas. But the Texas conflicts of law rules shall not be used to apply the laws of a jurisdiction other than Texas. Both Parties' obligations under this Agreement are performable in San Antonio, Bexar County, Texas and venue for any action arising under this Agreement only shall be in San Antonio, Bexar County, Texas.

35.02. **Invalid, Illegal or Unenforceable Clauses.** If any part of this Agreement is found invalid, illegal or unenforceable, said finding shall not affect the remaining parts of this Agreement deemed valid and enforceable and the part of this Agreement found invalid, illegal or unenforceable shall be stricken from the Agreement and the remaining pats of this Agreement shall remain in full force and effect, as if the stricken part never was contained herein.

35.03. **Inure and Assignments.** This Agreement inures to the benefit of and binds the heirs, representatives, successors and permitted assigns of the Parties hereto. This clause does not authorize any assignment not otherwise authorized.

35.04. **Full and Final Agreement.** This Agreement represents the full and final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the Parties. Both City and JOC acknowledge and agree there are no oral agreements between the Parties.

35.05. **Written Amendments.** This Agreement only may be amended by a written agreement, signed by both Parties.

35.06. **No Third Party Beneficiaries.** This Agreement only benefits the Parties, their successors and permitted assigns. This Agreement has no third party beneficiaries.

35.07. **Notices.** Notices shall be in writing and sent by certified mail, return receipt requested. Notices pertaining to a Job Order shall be addressed to the parties at their respective addresses set forth in the preamble to this Agreement and also to the addresses specified in the Job Order. Notices pertaining to this Agreement – but not to a specific Job Order – shall be sent to the addresses set forth in the preamble to this Agreement. Notice shall be deemed delivered three (3) calendar days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. A Party's address for notice shall be changed only by giving written notice to the other Party.

35.08. **Utilized Wording.** Where herein used, plural constructions include the singular and singular constructions include the plural. Whether a pronoun is masculine, feminine or neutral does not affect meaning or application of the relevant term. The words "herein," "hereof" and other similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.
35.09. **Captions and Titles.** Article and Section captions/titles used herein are for ease of reference only and do not affect the interpretation of the Articles and Sections.

35.10. **Executed Counterparts.** This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, executed counterparts constitute only one Agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all Parties.

35.11. **Additional Documents and Instruments.** The Parties shall execute and deliver such additional documents and instruments as may be necessary fully to effect the provisions hereof. But no such additional documents may alter the rights or obligations of the Parties stated in this Agreement.

35.12. **Director Authority.** The Director of Transportation & Capital Improvements, without further San Antonio City Council action, may agree to, sign and deliver, on behalf of City, all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and also may declare defaults and pursue remedies for such defaults, including termination.

ARTICLE XXXVI
PUBLIC INFORMATION

Buyer acknowledges that this Agreement is public information within the meaning of Chapter 552 of the Texas Government Code and, accordingly, may be disclosed to the public.

ARTICLE XXXVII
CONFLICT RESOLUTION BETWEEN DOCUMENTS

JOC hereby acknowledges and agrees if anything contained in any JOC-prepared proposals, submittals or any other document prepared by JOC is in conflict with the terms and conditions of this Agreement and/or in conflict with City's General Conditions for City of San Antonio Construction Contracts, which are attached hereto, incorporated herein and labeled as "**Exhibit A**", this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict(s).

IN WITNESS WHEREOF, the parties have caused their representatives to set their hands and execute this Agreement on the dates reflected below. This Agreement shall become effective on the date of the last signature hereto.

CITY OF SAN ANTONIO	**TEJAS PREMIER BUILDING CONTRACTOR, INC.**
By:_____	By:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title: _____
Date:_____	Date:_____

This Agreement is approved as to form:

_____

San Antonio City Attorney's Office

EXHIBIT A

GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

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. For Projects not affecting City traffic, a Working Day is measured from sunrise to sundown Monday through Friday, except legal holidays, or the hours during which Contractor has been authorized and/or directed to work by Owner. For Projects affecting City traffic, a working day shall mean sunrise to sundown Monday through Saturday, except legal holidays, or hours during which Contractor has been authorized and/or directed 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"** means, unless the context clearly indicates otherwise, 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, anthophylite or actinolite, whether friable or non-friable;

(b) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

(c) radon;

(d) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the

environment, or natural resources;

(e) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(f) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.;

(g) the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

(h) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

1.1.17 **"NOTICE TO PROCEED (HEREIN ALSO REFERRED TO AS "WORK PROJECT AUTHORIZATION" OR "NTP")"** is a written notice given by Owner to Contractor establishing the date on which the Contract Time shall commence to run and the date on which Contractor may begin performance of its contractual obligations.

1.1.18 **"OWNER"** is defined in **Article II** herein.

1.1.19 **"OWNER DESIGNATED REPRESENTATIVE (ODR)"** means the person(s) designated by Owner to act for Owner.

1.1.20 **"PROJECT"** means the total design and construction of Work performed under the Contract Documents and may be the whole or a part of the Project and which may include construction by Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the Site of the Work shall use the term "Project," notwithstanding that the Work only may be a part of the Project.

1.1.21 **"PROJECT MANAGEMENT TEAM"** is composed of Owner, its representatives, Design Consultant and Program Manager (if any) for this Work.

1.1.22 **"SITE"** means the land(s) or area(s) (as indicated in the Contract Documents) furnished by Owner, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

1.1.23 **"SPECIAL CONDITIONS"** are terms and conditions to an Agreement that supplement and are superior to these General Conditions and grant greater authority or impose greater restrictions upon Contractor, beyond those granted or imposed in these General Conditions. City's Horizontal Special Conditions are attached hereto, made a part of these General Conditions and shall be used as applicable.

1.1.24 **"SPECIFICATIONS"** are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.

1.1.25 **"SUBSTANTIAL COMPLETION"** is the date certified by Owner and Design Consultant, in accordance with **Section 9.8** herein, when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so as to be operational and fit for the intended use by Owner.

1.1.26 **"TEMPORARY BENCH MARKS (TBM)"** are temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.

1.1.27 **"THE 3D MODEL"** is the Building Information Model prepared by Design Consultant in the format designated, approved and acceptable to Owner with databases of materials, products and systems that can be used by Contractor to prepare schedules for cost estimating, product and materials placement schedules and evaluations of crash incidences. The 3D Model, if available, may be used as a tool, however all information taken from the Model is the responsibility of Contractor and not Owner or Design Consultant.

1.1.28 **"WORK"** means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Contractor, or any Subcontractors, Sub-Subcontractors, material suppliers or any other entities for which Contractor is responsible, to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.29 **OTHER DEFINITIONS.** As used in the Contract Documents, the following additional terms have the following meanings:

1.1.29.1 "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and all other expenses necessary to complete in place and ready for operation or use;

1.1.29.2 "shall" means the mandatory action of the party of which reference is being made;

1.1.29.3 "as required" means as prescribed in the Contract Documents; and

1.1.29.4 "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes and regulations.

1.2 PRELIMINARY MATTERS

1.2.1 Upon the San Antonio City Council's passing of an Ordinance authorizing the issuance of a contract, a Notice of Award Letter shall be sent to Contractor by TCI Contract Services, notifying Contractor of the award of a contract. In its Notice of Award Letter, Contractor shall be informed of a date certain by which Contractor's bond(s) and evidence of insurance shall be delivered to TCI Contract Services.

1.2.2 **DELIVERY OF CONTACT AND BONDS.** Not later than the Pre-Construction meeting and prior to the commencement of any Work on the Project, Contractor shall deliver a fully executed Contract to Owner, along with such bonds as Contractor may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in the Contract Documents and these General Conditions and a required performance bond in the form and amount specified in the Contract Documents and these General Conditions.

1.2.3 **DELIVERY OF EVIDENCE OF INSURANCE.** Not later than the Pre-Construction meeting, and prior to the commencement of any Work under this Contract, Contractor shall deliver evidence of insurance to Owner. Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the TCI Contract Services Division, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Contractor shall be prohibited from commencing the Work and Owner shall have no duty to pay or perform under this Contract until such evidence of insurance is delivered to Owner. No officer or employee, other than Owner's Risk Management Department, shall have authority to waive this requirement.

1.2.4 **NOTICE TO PROCEED AND COMMENCEMENT OF CONTRACT TIMES.** Unless otherwise stated on the Notice to Proceed, the Contract Time shall commence to run on the date stated on the Notice to Proceed. No Work shall commence any earlier than the date stated on Notice to Proceed and no Work shall be performed by Contractor or any Subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Contractor receiving a Notice to Proceed is performed at Contractor's risk.

1.2.5 **SUBMISSION OF PROJECT SCHEDULE(S).** Prior to comment of Work (unless otherwise specified elsewhere in the Contract Documents), Contractor shall submit to the Director of TCI or his/her designee the Project schedule(s), as defined in **Section 3.10** herein, a minimum of fifteen (15) days prior to the Pre-Construction Conference.

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

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

1.3 CONTRACT DOCUMENTS

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

1.3.2 **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.** The Drawings, Specifications and other documents, including those in electronic form, prepared by Design Consultant, its Consultants or other Consultants retained by Owner for the Project, which describe the Work to be executed by Contractor (collectively referred to as the "Construction Documents") are and shall remain the property of Owner, whether the Project for which they are made is executed or not. Contractor shall be permitted to retain one record set. Neither Contractor nor any Subcontractor, sub-Subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Design Consultant or Design Consultant's Consultants. All copies of Construction Documents, except Contractor's record set, shall be returned or suitably accounted for to Design Consultant on request and upon completion of the Work. The Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant's Consultants, along with copies thereof furnished to Contractor, are for use solely with respect to this Project. The drawings, specifications or other documents are not to be used by Contractor or any Subcontractor or material or equipment supplier on other

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

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

1.3.2.2 Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially-significant Work product lost or destroyed by Contractor shall be replaced or reproduced at Contractor's non-reimbursable sole cost. In addition, Owner shall have access during normal business hours, during the duration this Contract is in effect and for four (4) years after the final completion of the Work, unless there is an ongoing dispute under the Contract, then such access period shall extend longer until final resolution of the dispute, to all of Contractor's records and documents covering reimbursable expenses, actual base hourly rates, time cards and annual salary escalation records maintained in connection with this Contract for purposes of auditing same at the sole cost of Owner. The purpose of any such audit shall be for the verification of such costs. Contractor shall not be required to keep records of, or provide access to, the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers. Nothing herein shall deny Contractor the right to retain duplicates. Refusal by Contractor to comply with the provisions hereof shall entitle Owner to withhold any payment(s) to Contractor until compliance is obtained.

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

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

(1) the dimension figures shall govern over scaled dimensions;

(2) Detailed Drawings and accompanying notations shall govern over general Drawings;

(3) Specifications shall govern over Drawings, subject to **Section 1.3.3.6** herein;

(4) General Conditions and Supplemental Conditions;

(5) Special Conditions shall govern over Specifications, Drawings and General/Supplemental Conditions; and

(6) Negotiated Special Conditions shall govern over Special Conditions.

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

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

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

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

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

1. Modifications to this Agreement signed by Contractor, Owner and Design Consultant;

2. Addenda, with those of later date(s) having precedence over those with earlier date(s);

3. Special Conditions;

4. General Conditions;

5. Special Provisions (Horizontal Projects);

6. Specifications;

7. Drawings;

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

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

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

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

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

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

ARTICLE II. OWNER

2.1 GENERAL

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

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

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER

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

2.2.2 Owner shall furnish surveys, if in existence, describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Contractor of any of its duties under the Contract Documents or these General Conditions. Information or services required of Owner by the Contract Documents shall be furnished by Owner with reasonable promptness following actual receipt of a written request from Contractor. It is incumbent upon Contractor to identify, establish and maintain a current schedule of latest dates for submittal and approval by Owner, as required in **Section 3.10** herein, including when such information or services must be delivered. If Owner delivers the information or services to Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse Owner for all extra costs incurred by holding, storage, retention or performance, including redeliveries by Owner in order to comply with the current schedule.

2.2.3 Unless otherwise provided in the Contract Documents, Contractor shall be furnished, free of charge, up to ten (10) complete sets of the Plans and Specifications by Design Consultant. Additional complete sets of Plans and Specifications, if requested by Contractor, shall be furnished at reproduction cost to Contractor.

2.2.4 Owner's personnel may, but are not required to, be present at the construction site during progress of the Work, along with Design Consultant in the performance of its duties, to verify Contractor's record of the number of workers employed on the Work site, the workers' occupational classification, the time each worker is engaged in the Work and the equipment used by the workers in the performance of the Work, for purpose of verification of Contractor's Applications for Payment and payroll records.

2.2.5 Owner shall reimburse Contractor for the necessary Project-related approvals, fees and required permits with no markup paid to Contractor for these necessary Project-related approvals, fees and required permits costs unless said costs are stipulated in the Contract Documents as a part of the Work.

2.2.6 **OWNER'S RIGHT TO STOP THE WORK.** If Contractor fails to correct Work deemed by Owner to not be in accordance with the requirements of the Contract Documents, as required by **Section 12.3** herein, fails to carry out Work in accordance with the Contract Documents or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction of Owner's rights pursuant to **Section 12.3** herein. Owner's issuance of an order to Contractor to stop the Work shall not give rise to any claim by Contractor for additional time, cost or general conditions costs.

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

ARTICLE III. CONTRACTOR

3.1 GENERAL

3.1.1 Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 Contractor shall perform the Work in a good and workmanlike manner, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

3.1.3 Contractor shall not be relieved of its obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents, either by any activities or duties of Design Consultant in Design Consultant's administration of the Contract or by tests, inspections or approvals required or performed by Owner or any person other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, Contractor carefully shall:

(1) study and compare the various Drawings and other Contract Documents relative to that portion of the Work and the information furnished by Owner;

(2) take field measurements of any existing conditions related to that portion of the Work; and

(3) observe any conditions at the Site affecting the Work.

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

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

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

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

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

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

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

3.2.3 Any design errors or omissions noted by Contractor during its review promptly shall be reported to Owner, but it is recognized that the Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain if Contact 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 five (5) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software. If Contractor's Project affects City traffic, Work shall be scheduled upon Contractor's six (6) 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, 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) Contractor intends to complete the remaining work in the sequence and time indicated.

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

3.10.10 **COMPLETION OF WORK**

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

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

(1) increasing Project work forces;

(2) increasing Project equipment or tools;

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

(4) expediting the delivery of Project materials;

(5) changing, with the approval of Owner, the schedule logic and Work sequences; or

(6) taking some other action as Contractor may proposes, if acceptable to Owner.

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

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

(1) increasing work forces and hours, to include Contractor working additional shifts of overtime;

(2) supplying additional manpower, equipment and facilities;

(3) re-sequencing the Work;

(4) expediting the fabrication and supply of materials; and/or

(5) other similar measures Owner may direct (hereafter **(1)** – **(5)** herein above 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 Contactor.

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 it's 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 pursing 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 is it shown that, through no fault of Contractor, Contractor fell behind on the approved construction schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time, Owner shall not be entitled to liquidated damages. Nothing in this **Section 4.3.11.2** shall prohibit Contractor from filing a Claim for an extension of time Contractor feels it may be owed.

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

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

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 Claims by Contractor against Owner and Claims by Owner against Contractor, including those alleging an error or omission by Design Consultant but excluding those arising under **Section 10.3** and **Section 10.5** herein, shall be referred initially to Design Consultant for consideration and recommendation to Owner.

4.4.2 An initial recommendation by Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the parties arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to Design Consultant with no recommendation having been rendered by Design Consultant.

4.4.3 Design Consultant shall review Claims and, within ten (10) work days of receipt of a Claim, take one or more of the following actions:

(1) request additional supporting data from the party making the Claim;

(2) issue an initial recommendation;

(3) suggest a compromise; or

(4) advise the parties that Design Consultant is unable to issue an initial Recommendation, due to a lack of sufficient information or conflict of interest.

4.4.4 Following receipt of Design Consultant's initial recommendation regarding a Claim, Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement is reached, either party may request mediation of the dispute, pursuant to **Section 4.5** herein.

4.4.5 If Design Consultant requests either or any party to provide a response to a Claim or to furnish additional supporting data, such requested party shall provide a response or the requested supporting data to Design Consultant, advise Design Consultant when the response or supporting data shall be furnished or advise Design Consultant that no response of supporting data shall be furnished.

4.4.6 With receipt of all information requested by Design Consultant, Design Consultant shall review the Claim and all received information within ten (10) calendar days of receipt of the information and shall take one of the following actions:

(1) issue a recommendation;

(2) suggest a compromise; or

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

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

4.4.8 **WAIVER OF LIEN.** It is understood that, by virtue of this Contract, no mechanic, contractor, material man, artisan or laborer, whether skilled or unskilled, ever shall, in any manner, have a claim or acquire any lien upon the building or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said building or any of the improvements are so erected, built or situated.

4.5 ALTERNATIVE DISPUTE RESOLUTION

4.5.1 **CONTINUATION OF WORK PENDING DISPUTE RESOLUTION.** Each party is required to continue to perform its obligations under this Contract pending the final resolution of any dispute arising out of or relating to this Contract, unless it would be impossible or impracticable under the circumstances then present.

4.5.2 **REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.** Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Contract agree that they first shall try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. Both Owner and Contractor agree that this step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with the alternative dispute resolution process contained in **Section 4.5** herein, including mediation and/or litigation. All negotiations pursuant to this **Section 4.5** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

4.5.3 **MEDIATION.** In the event that Owner and/or Contractor contend that the other has committed a material breach of this Contract, or the two parties cannot reach a resolution of a claim or dispute pursuant to **Section 4.4** herein, as a condition preceding to filing a lawsuit, either party shall request mediation of the dispute with the following requirements:

4.5.3.1 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.

4.5.3.2 In the event Owner and Contractor are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **Section 4.5** shall be deemed to have occurred.

4.5.3.3 The parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

4.6 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS. At its option, Owner may administer its design and construction management through an Internet-based Project Management system (also referred to as "PRIME*Link*"). In such cases, Contractor shall conduct communication through this medium and perform all Project-related functions utilizing this management system, to include all correspondences, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders and other administrative activities. When such a management system is employed, Owner shall administer the software, provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

ARTICLE V. SUBCONTRACTORS

5.1 DEFINITION

A Subcontractor is defined and used herein as a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor, Sub-Consultant or an authorized representative of Subcontractor or Sub-Consultant. The term "Subcontractor" does not include a separate contractor or Subcontractor of a separate contractor.

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

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

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

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

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

5.2.5 All Work performed for Contractor by a Subcontractor shall be performed pursuant to an appropriate agreement between Contractor and Subcontractor which specifically binds Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

5.2.6 **SBEDA/DBE REPORTING AND AUDITING.** During the term of the contract, Contractor must report the actual payments to all SBEDA or DBE (as applicable) Subcontractors and Suppliers in the time intervals and format prescribed by Owner. Owner reserves the right, at any time during the term of this Contract, to request additional information, documentation or verification of payments made to such Subcontractors and suppliers in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of canceled checks paid to SBEDA or DBE Subcontractors and suppliers and/or confirmation inquiries directly to the SBEDA or DBE participants. Proof of payments, such as copies of canceled checks, properly must identify the Project name or Project number to substantiate a SBEDA or DBE payment for the Project.

5.2.7 **SMALL BUSINESS SUBCONTRACTOR SUBSTITUTIONS.** Reference SBEDA or DBE Requirements in Supplementary Conditions for Substitution of Subcontractors. Failure to follow such procedures is an event of default under this Contract and may be grounds for termination.

5.3 SUB-CONTRACTUAL RELATIONS

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

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

5.4.1 an assignment is effective only after termination of the Contract by Owner and only for those Subcontractor agreements which Owner accepts by notifying Subcontractor and Contractor in writing; and

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

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

ARTICLE VI. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS

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

6.1.1 Owner reserves the right to perform construction or operations related to the Project with Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under General Conditions of the Contract identical or substantially similar to these. If Contractor claims that a delay or additional cost is involved, due to such action by Owner, Contractor shall make a Claim as provided in **Section 4.3** herein.

6.1.2 When separate contracts are awarded for different portions of the Project or for other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor that executes each separate Owner-Contractor Agreement.

6.1.3 Owner shall provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work of Contractor and Contractor fully shall cooperate with said coordination. Contractor shall participate with other separate contractors and Owner in reviewing all construction schedules when directed by Owner to do so. Contractor shall make any revisions to its construction schedule deemed necessary after said joint review and mutual agreement. The revised construction schedules then shall constitute the schedules to be used by Contractor, separate contractors and Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when Owner and Owner's own forces perform construction or operation related to the Project, Owner shall be subject to the same obligations and to have the same rights that apply to Contractor under these General Conditions and the Contract Documents.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Contractor shall afford Owner and Owner's separate contractor(s) reasonable opportunity for the introduction and storage of materials and equipment, the performance of their activities and the coordination of Contractor's construction and operations with theirs, as required by the Contract Documents.

6.2.2 If part of Contractor's Work depends upon the construction or operations by Owner or a separate contractor for the proper execution or results, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgment that Owner's separate contractor's completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. Owner shall be responsible to Contractor for costs incurred by Contractor because of delays, improperly timed activities and damage to the Work or defective construction of Owner's separate contractor(s).

6.2.4 Contractor promptly shall remedy any damage wrongfully caused by Contractor or its Subcontractor(s) to any completed or partially completed construction or to property of Owner or Owner's separate contractor(s), as provided in **Section 10.2.5** herein.

6.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in **Section 3.14** herein.

6.3 OWNER'S RIGHT TO CLEAN UP. If a dispute arises among or between Contractor, Owner's separate contractor(s) and Owner, as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Owner may clean up and those costs shall be allocated amongst those parties responsible.

ARTICLE VII. CHANGES IN THE WORK

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished, after the execution of the Contract and without invalidating the Contract, by Change Order, Field Work Directive/Force Account or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this **Article VII** and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor; a Field Work Directive requires a directive by Owner and, if necessary, Design Consultant and may or may not be agreed to by Contractor; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by Owner.

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

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

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written modification of the Contract signed by both Owner and Contractor (and approved by City Council, if required) that authorizes an addition, deletion or revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in **Section 7.3.4** herein.

7.2.3 Acceptance of a Change Order by Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including, but not limited to impact, delay or acceleration damages arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and any extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, cost and additional time, if any. This Contract, as amended, forever releases any Claim against Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release of any Claim applies to Claims related to the cumulative impact of all Change Orders and to any Claim related to the effect of a change on unchanged Work.

7.2.4 Owner or Design Consultant shall prepare Change Orders and Field Work Directives and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which Contractor promptly shall carry out and record on the As-Built record documents.

7.2.5 Contractor and Subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by Project Specifications.

7.3 FIELD WORK DIRECTIVES

7.3.1 A Field Work Directive is a written directive signed by Owner and, if necessary, Design Consultant directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum or Contract time, or both. Owner may, by Field Work Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with any changes to the Contract Sum and/or the Contract Time to be adjusted according to the terms of this **Section 7.3**.

7.3.2 A Field Work Directive shall be used in the absence of total agreement on the terms of a Change Order. Owner shall issue a Field Work Directive to Contractor with a defined Not-To-Exceed dollar amount for the scope of Work defined.

7.3.3 Upon receipt of a Field Work Directive, Contractor promptly shall proceed with the change in the Work involved and, in writing, advise Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.4 If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as applicable:

7.3.4.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.4.2 prices, including unit prices, stated in the Contract Documents or subsequently agreed upon;

7.3.4.3 cost to be determined in a manner agreed upon by Owner and Contractor and a mutually acceptable fixed or percentage fee; or

7.3.4.4 as provided in **Section 7.3.6** herein.

7.3.5 If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall initially be determined by Design Consultant on the basis of reasonable costs and savings attributable to the change including, in case of an increase in the Contract Sum, as applicable, a reasonable allowance for overhead and profit. In such case, and also under **Section 7.3.4.**3 herein, Contractor shall keep and present, in such form as Owner may prescribe, an itemized and detailed accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Section 7.3.5** shall be limited to the following:

7.3.5.1 costs of all labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;

7.3.5.2 costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;

7.3.5.3 rental costs of all machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;

7.3.5.4 expenses incurred in accordance with Contractor's standard personnel policy for travel approved in writing by Owner in advance;

7.3.5.5 costs of premiums for all bonds and insurance, permit fees and allowable sales, use or similar taxes related to the Work;

7.3.5.6 all additional costs of supervision and field office personnel directly attributable to the change; and

7.3.5.7 all payments made by the Contractor to Subcontractors.

7.3.6 The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus Contractor's allocated percent for profit and overhead, as confirmed by Design Consultant, subject to any equitable adjustment recommended by Design Consultant and approved by Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

7.3.7 If Owner and Contractor agree with the determination made by Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

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

Directive, Owner unilaterally shall file a Change Order listing Owner's adjustments in the Contract Sum and/or Contract Time and Contractor reserves the right to file a Claim for payment and/or time, pursuant to **Section 4.4** herein.

7.4 MINOR CHANGES TO THE WORK. Owner or Design Consultant both shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Owner and Contractor. Contractor promptly shall carry out such written orders and record such changes in the As-Built drawings.

7.5 TIME REQUIRED TO PROCESS CHANGE ORDERS

7.5.1 All responses by Contractor to proposal requests from Owner or Design Consultant shall be accompanied by a complete itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow Owner and Design Consultant a minimum of thirty (30) calendar days after receipt by Owner to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in Contractor's response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution or other grounds for seeking extra compensation or additional time under the Contract Documents, without reservation or further recourse.

7.5.2 All Change Orders require written approval by either Owner or City Council or, where authorized by the state law and Owner ordinance, by Owner's City Manager or designee, pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal shall be authorized by Owner or City Council Resolution or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM SHALL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Contractor shall proceed with the work under a pending Change Order only if directed in writing to do so by Owner.

ARTICLE VIII. TIME

8.1 PROGRESS AND COMPLETION

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

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

8.1.3 For Projects not affecting City traffic and a Working Day is measured from sunrise to sundown Monday through Friday, nothing in this **Article VIII** shall be construed as prohibiting Contractor from working on Saturdays if it so desires and giving Owner at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday, Sunday and holidays so that Owner's representative may be scheduled to observe/inspect said Work and only if Contractor has performed work on the Project during the same week of the requested Saturday, Sunday or holiday.

8.1.4 On Projects affecting City traffic, Contractor shall work sunrise to sundown Monday through Saturday.

8.2 DELAYS AND EXTENSIONS OF TIME

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

8.2.2 Should Contractor be delayed solely by the act, negligence or default of Owner or Design Consultant, and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and Owner, Contractor shall receive an extension of the Contract Time equal to the verified delay or portion thereof if a written claim is made within five (5) calendar days of the act, negligence or default of Owner or Design Consultant and granted by Owner. In addition, Contractor, upon timely notice to Owner, with substantiation by Owner and Design Consultant and upon approval of Owner, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs

incurred by Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or supplier to administer their Work. Compensation for Subcontractor's and supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to the Owner-caused event. In no event shall Contractor be entitled to home office or other off-site expenses or damages.

8.2.3 Claims relating to time shall be made in accordance with applicable provisions of **Section 4.3** herein.

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

ARTICLE IX. PAYMENTS AND COMPLETION

9.1 **CONTRACT SUM.** The Contract Sum is stated in the Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by Owner to Contractor for performance of the Work under the Contract Documents. Contractor accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the San Antonio City Council. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any party to this Contract.

9.2 **SCHEDULE OF VALUES**

9.2.1 A Schedule of Values for all of the Work shall be submitted by Contractor and shall include quantities and prices of items which, when added together, equal a contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable, overhead and profit shall be included as a separate line item.

9.2.2 Before the first Application for Payment, Contractor shall submit to Owner and Design Consultant a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner and Design Consultant may require. This schedule, unless objected to by Design Consultant or Owner, shall be used as a basis for reviewing Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Contractor shall submit Applications for Payment to Owner electronically, at minimum, every thirty (30) days throughout the duration of the Project. Contractor electronically shall attach to its Application for Payment all data substantiating Contractor's right to payment as Owner or Design Consultant may require, such as copies of requisitions from Subcontractors and material suppliers reflecting retainage, if provided for in the Contract Documents, and reflecting a deduction for Liquidated Damages, if applicable. Applications for Payment shall not include requests for payment for portions of the Work which Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by Owner. If approved in advance in writing by Owner, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by Owner. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

9.3.3 Contractor warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONTRACTOR.**

9.3.4 By submission of an Application for Payment, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor; provided if any of the foregoing is not true and cannot be certified,

Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.4 PAY APPLICATION APPROVAL

9.4.1 Design Consultant shall, within ten (10) business days after receipt of Contractor's Application for Payment, either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Contractor and Owner the Design Consultant's reasons for withholding approval, as provided in **Section 9.5.1** herein.

9.4.2 The certification of an Application for Payment shall constitute a representation by Design Consultant to Owner, based on Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Design Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by Design Consultant. The issuance of a Certificate for Payment further shall constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation Design Consultant has:

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment; or

(4) made any examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT

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

9.5.1.1 Work not performed or defective ;

9.5.1.2 third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder unless security acceptable to Owner is provided by Contractor;

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

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

9.5.1.5 damage to Owner or another contractor;

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

9.5.1.7 persistent failure by Contractor to carry out the Work in accordance with the Contract Documents;

9.5.1.8 the applicable liquidated damages were not included in the Application for Payment;

9.5.1.9 billing for unapproved/unverified materials stored off Site; or

9.5.1.10 a current schedule update has not been submitted by Contractor.

9.5.2 Owner shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Section 9.5.1** herein.

9.6 PROGRESS PAYMENTS

9.6.1 After the final approval of the Application for Payment, Owner may make payment in the manner and within the time provided in the Contract Documents.

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

of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of Owner receipt of a complete and mathematically accurate Application for Payment from the Contractor, and the retainage held until Final Completion shall be five percent (5%).

9.6.3 Owner's payment of installments shall not, in any way, be deemed to be a final acceptance by Owner of any part of the Work, shall not prejudice Owner in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work herein provided.

9.6.4 Contractor shall, within ten (10) calendar days following receipt of payment from Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide Owner with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to Owner bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if Owner so requests, shall provide copies of such Subcontractor payments to Owner. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which Owner has made payment to the Contractor, Owner shall be entitled to withhold payment to Contractor to the extent necessary to protect Owner.

9.6.5 Owner and/or Design Consultant shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Owner and Design Consultant on account of portions of the Work done by such Subcontractor.

9.6.6 Neither Owner nor Design Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.

9.6.7 Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.2, Section 9.6.3** and **Section 9.6.4** herein regarding Subcontractors.

9.6.8 A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

9.6.9 Contractor shall, as a condition precedent to any obligation of Owner under this Contract, provide to Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

9.7 SUBSTANTIAL COMPLETION

9.7.1 Substantial Completion is defined as the stage in the progress of the Work when the Work – or a designated portion thereof, which Owner agrees to accept separately – sufficiently is complete, in accordance with the Contract Documents, so Owner may occupy or utilize the Work or a designated portion thereof for its intended use. In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s), Owner may withhold payment of sums necessary to pay the estimated Liquidated Damages due Owner. Owner shall be entitled, at any time, to deduct out of any sums due to Contractor any or all Liquidated Damages due Owner in accordance with the Contract between Owner and Contractor.

9.7.2 When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is Substantially Complete, Contractor shall prepare and submit to Owner and Design Consultant a preliminary comprehensive list of items to be completed or corrected prior to Final Completion and final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.7.3 Upon receipt of Contractor's list of items to be completed or corrected, Owner and Design Consultant shall make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If Owner's or Design Consultant's inspection discloses any item, whether or not it was included on Contractor's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that Owner may occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by Owner or Design Consultant. In such case, Contractor then shall submit a request for another inspection by Owner and Design Consultant to determine Substantial Completion and Contractor shall be responsible for all costs incurred and associated with re-inspection.

9.7.4 When the Work – or the designated portion thereof which Owner agrees to accept separately – is Substantially Complete, Design Consultant or Owner shall prepare a Certificate of Substantial Completion (Vertical Projects) or a Letter of Conditional Approval (Horizontal Projects) which shall:

(1) establish the date of Substantial Completion (which shall be the date on which the Work met the requirements under the Contract Documents for Substantial Completion);

(2) establish responsibilities of Owner and Contractor, as agreed to by Owner and Contractor, for security, maintenance, heat, utilities, damage to the Work and insurance; and

(3) fix the time limit by which Contractor shall complete all items on the list accompanying the Certificate.

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

9.8 PARTIAL OCCUPANCY OR USE

9.8.1 Owner may occupy or use any completed or partially completed portion of the Work at any stage of the Work when such partially completed portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer, as required under **Section 11.4.1.5** herein and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided Owner and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion of the Work to be Substantially Complete, Contractor shall prepare and submit a list of items to be completed or corrected prior to Final Completion and final payment and submit such list to Owner and Design Consultant, as provided under **Section 9.8.2** herein. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between Owner and Contractor or, if no agreement is reached, by the decision of Design Consultant.

9.8.2 Immediately prior to such partial occupancy or use, Owner, Contractor and Design Consultant collectively shall inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.8.3 Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.8.4 Upon such partial occupancy or use, and upon Substantial Completion, Owner may assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.

9.8.5 Partial occupancy or use by Owner does not constitute substantial completion and does not start any warranty period(s).

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 When all of the Work finally is completed and ready for final inspection, Contractor shall notify Owner and Design Consultant thereof in writing. Thereupon, Owner and Design Consultant shall make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the final Application for Payment may be submitted. If Owner and Design Consultant are unable to approve the final Application for Payment for reasons for which Contractor is responsible and Owner and Design Consultant are required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by Owner from the Contractor's retainage.

9.9.2 Contractor shall not be entitled to payment of retainage unless and until it submits to Owner its affidavit that the payrolls, invoices for materials and equipment, and other liabilities, to include Liquidated Damages, connected with the Work for which Owner or the Owner's property might be responsible fully have been paid or otherwise satisfied or shall be paid from final payment; releases and waivers of liens from all Subcontractors of Contractor and of any and all other parties required by Design Consultant or Owner that either are unconditional or conditional on receipt of final payment; Certificates of insurance showing continuation of required insurance coverage; such other documents as Owner may request; and consent of Surety to final payment. A Retainage Checklist shall be provided by Owner to Contractor upon request.

9.9.3 If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Design Consultant so confirms, Owner shall, upon application by Contractor and certification by Design Consultant and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Design Consultant, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

(1) Design Consultant is required to make more than one inspection to determine if Substantial Completion has been achieved by Contractor;

(2) Design Consultant is required to make more than one inspection to determine if Final Completion has been achieved by Contractor; or

(3) the Work is not substantially complete within thirty (30) calendar days after the date established for the Work's Substantial Completion in the Contract Documents.

ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.1.2 Contractor shall notify Owner immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities including, but not limited to, copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.

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

alcoholic beverages while performing the Work or while on Site or performing the Work. Contractor shall remove any of its employees or Subcontractor employees from performing the Work or from the Site any time there is suspicion of alcohol and/or drug use, possession or impairment involving such employee and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Contractor's or Subcontractor's employees only may be considered for return to work after Contractor certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Contractor shall not employ any individual, or shall not accept any Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.

10.1.4 Contractor shall comply with all applicable federal, state and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether the owner thereof has a permit for a concealed weapon.

10.1.5 Both Owner and Contractor agree that these safety and health terms are of the highest importance and that a breach or violation of any of the terms of this **Section X** by Contractor or a Subcontractor shall be a material and substantial breach of this Contract. In the event that Owner shall determine that Contractor has breached or violated the terms of this Section, then Owner shall determine, immediately upon written notice to Contractor, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until Owner is satisfied that the safety provisions hereof shall not be breached or violated thereafter. If Owner terminates the Contract as a result of such breach or violation, Owner and Contractor shall complete their obligations hereunder to one another in accordance with **Section 14.2** herein.

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

10.1.7 Notwithstanding either of the above provisions, or whether Owner exercises its rights set forth herein, Owner neither warrants nor represents to Contractor, Contractor's employees or agents, any Subcontractors or any other third party that Contractor's safety policy meets the requirements of any applicable law, code, rule or regulation, nor does Owner warrant that the proper enforcement of Contractor's policy shall insure that no accidents or injuries shall occur. In addition, any action by Owner under these provisions in no way diminishes any of Contractor's obligations under applicable law or the contract documents.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Contractor shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees performing the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or Contractor's Subcontractors or Sub-Subcontractors;

10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction; and

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

10.2.2 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying all owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, Contractor shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel. Prior to the use of any explosives, Contractor shall submit a written blasting plan, shall obtain Owner's approval and shall comply with Owner's requirements for such use.

10.2.5 Contractor promptly shall remedy any and all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). Contractor also shall HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND Owner, its elected officials, employees, officers, directors, volunteers and representatives of Owner, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of Contractor and of Owner) referred to in **Section 10.2.1.2** and **Section 10.2.1.3** herein, but only to the extent caused in whole or in part by the acts, omissions and/or negligence of Contractor, its agents, servants and employees, its Subcontractor(s) and its/their agents, servants and employees, anyone directly or indirectly employed by Contractor or Subcontractor and/or by any other person or entity for which Contractor or Subcontractor may be responsible under the Contract Documents in connection with the Work to be

performed, services to be rendered or materials to be furnished under this Contract including, but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without, however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of Contractor are in addition to Contractor's obligations under **Section 3.18** herein. In the event Contractor and Owner are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively, in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the parties under Texas law.

10.2.6 Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to Owner and Design Consultant.

10.2.7 Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.8 Notwithstanding the delivery of a survey or other documents by Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the property. Contractor acknowledges and accepts that the location of underground utilities (both public and private) reflected on any City-provided plans are not guaranteed and may not be completely accurate. Contractor shall locate and verify any and all utilities and associated service lines prior to beginning any Work. Contractor shall be responsible for and shall repair, at Contractor's own expense, any damage done to lines, cables, pipes and pipelines identified or not identified to Contractor.

10.3 EMERGENCIES.

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

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

10.4 PUBLIC CONVENIENCE AND SAFETY

10.4.1 Contractor shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by Owner. Sidewalks or streets shall not be obstructed, except by special permission of Owner. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances and fire alarm or police call boxes in the vicinity.

10.4.2 Owner reserves the right to remedy any neglect on the part of Contractor, in regard to public convenience and safety, which may come to Owner's attention after twenty-four (24) hours notice in writing to Contractor. In case of an emergency, Owner shall have the right immediately to remedy any neglect without notice. In either case, the cost of any work done by or for Owner to remedy Contractor's neglect shall be deducted by Owner from Contractor's Contract Sum. Contractor shall notify Owner, Owner's Traffic Control Department and Design Consultant when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be given at least forty-eight (48) hours in advance. Owner reserves the right to postpone and/or prohibit any closure or obstruction of any streets or thoroughfares, to the extent necessary for the safety and benefit of the traveling public. Contractor shall, when directed by Owner or Design Consultant, keep any street or streets in condition for unobstructed use by Owner departments. When Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

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

10.4.4 City's Office of Sustainability continues to work on City's Air Quality Control Strategies Plan in its ongoing efforts to lower emissions throughout the City, including City's Project sites. In an effort to assist City in these goals, Contractor shall strive to:

10.4.4.1 reduce fuel use by directing its employees and its Subcontractors to reduce vehicle idling, maintaining equipment utilized on the Project and replacing or repowering equipment with current technologies;

10.4.4.2 conserve electricity used to provide power to Contractor's offices and throughout the Project site, to include Project lighting, tools and Contractor's Project construction trailer; and

10.4.4.3 recycle Project site materials such as asphalt, steel, other metals and concrete.

10.4.4.4 All costs associated with Contractor's and its Sub-Consultants' and Subcontractors' acquisition and installation of emission control technology shall be considered incidental costs of the Project; as such, no additional compensation shall be provided Contractor by City.

10.5 BARRICADES, LIGHTS AND WATCHMEN. If the Work is carried on, in or adjacent to any street, alley or public place, Contractor shall, at Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, provide sufficient watchmen and take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that shall be visible at night, and shall be illuminated by lights as required under City's Barricades specifications. The term "lights," as used in this **Section 10.5**, shall mean flares, flashers or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices also shall be erected to keep vehicles from being driven on or into any Work under construction. Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and/or watchmen necessary to protect the Work. Whenever evidence is found of such damage, Owner or Design Consultant may order the damaged portion immediately removed and replaced by Contractor at Contractor's sole cost and expense. Contractor's responsibility for maintenance of barricades, signs, lights, and for providing watchmen, as required under this **Section 10.5**, shall not cease until the Project has been finally accepted by Owner.

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

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS. When existing storm sewers or drains have to be taken up or removed, Contractor shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Contractor also shall provide for all storm sewage and drainage which shall be received from these storm drains and sewers. For this purpose, Contractor shall provide and maintain, at Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. Contractor shall, at Contractor's own expense, construct such troughs, pipes or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by Design Consultant. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction shall be adequately protected.

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

10.8.1 When Contractor desires to use Owner's water in connection with the Work, Contractor shall make complete and satisfactory arrangements with the San Antonio Water Service and shall be responsible for the cost of the water Contractor uses. Where meters are required and used, the charge shall be at the regular established rate; where no meters are required and used, the charge shall be as prescribed by Owner ordinance, or where no ordinance applies, payment shall be based on estimates made by the representatives of the San Antonio Water Service.

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

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

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

10.10 ENVIRONMENTAL COMPLIANCE

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

10.10.2 In the event Contractor encounters on the Project Site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, Contractor immediately shall stop Work in the affected area and report in writing the facts of such encounter to Owner and Design Consultant. Work in the affected area shall not thereafter be resumed except by written order of Owner and written consent of Contractor, unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, Owner shall remediate the Hazardous Substance with a separate contractor or through a Change Order with Contractor. If the Hazardous Substance exists in the affected area due to the fault or negligence of Contractor or any of its Subcontractors, Contractor shall be responsible for remediating the condition at the sole expense of Contractor. If applicable, such remediation shall be in accordance with Contractor's Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by Owner only if the Project critical path is affected and Contractor is not the source of the Hazardous Substance. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of **Section 4.3** and **Article VIII** herein.

10.10.3 Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substance brought into or onto the site by Contractor or any Subcontractor or Contractor's Supplier. Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation and/or disposal, notify Owner and Design Consultant so that they may observe the activities; provided, however, that it shall be Contractor's sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities.

ARTICLE XI. INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

11.1.1.2 Commercial General Liability Insurance, Personal Injury Liability, Independent Contractor's Liability and Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (and/or Subcontractor's) liability for injury to or death of Owner's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of $1,000,000 per occurrence, $2,000,000 annual aggregate. If coverage is written on a

claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. Owner shall be named as additional insured by using endorsement CG 20 26 or broader. The general liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the Project in question.

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

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

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

11.2 PROPERTY INSURANCE

11.2.1 In addition to the insurance described in **Section 11.1** and **Section 11.4** herein, Contractor shall obtain at its expense and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, Owner shall be shown as a Joint Named Insured with respect to the Project. If a

Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be in the name of Contractor and naming Owner, Design Consultant and Subcontractors, as well as any Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

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

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

11.2.2 **BOILER AND MACHINERY INSURANCE.** If applicable, Owner shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by Owner. This insurance shall include the interests of Owner, Contractor, Subcontractors and Sub-Subcontractors in the Work, and Owner and Contractor shall be named insureds.

11.2.3 **LOSS OF USE INSURANCE.** Owner, at Owner's option, may purchase and maintain such insurance as shall insure Owner against loss of use of Owner's property due to fire or other hazards, however caused. Owner waives all rights of action against Contractor that it may now have or have in the future for loss or damage to Owner's property howsoever arising, including consequential losses due to fire or other hazards however caused.

11.2.4 Contractor shall provide to Design Consultant for delivery to Owner a Certificate of Insurance evidencing all property insurance policies procured under **Section 11.2** herein and all endorsements thereto, before any exposure to loss may occur.

11.2.5 Partial occupancy or use in accordance with **Section 9.9** herein shall not commence until the insurance company/companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.3 PERFORMANCE BOND AND PAYMENT BONDS

11.3.1 Subject to the provisions of **Section 11.3.2** herein, Contractor shall, with the execution and delivery of the Contract, furnish and file with Owner, in the amounts required in this **Article XI**, the surety bonds described in **Section 11.3.1.1** and **Section 11.3.1.2** herein, with said surety bonds in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each surety bond shall be signed by Contractor, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of **Section 11.3.3** herein and approved by Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

11.3.1.1 **PERFORMANCE BOND**. A good and sufficient bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

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

11.3.2 If the Contract Sum, including Owner-accepted Alternates and allowances, if any, is greater than $100,000, Performance and Payment Bonds equaling one hundred percent (100%) of the Contract Sum are mandatory and shall be provided by Contractor. If the Contract Sum is greater than $50,000 but less than or equal to $100,000, only a Payment Bond equaling One hundred percent (100%) of the Contract amount is mandatory; provided, however, that Contractor also may elect to furnish a Performance Bond in the same amount if Contractor so chooses. If the Contract Sum is less than or equal to $25,000, Contractor may elect not to provide Performance and Payment Bonds; provided that in such event, no money shall be paid by Owner to Contractor until Final Completion of all Work. If Contractor elects to provide Performance and Payment Bonds, the Contract Sum shall be payable to Contractor through progress payments in accordance with these General Conditions.

11.3.3 No surety shall be accepted by Owner that is in default, delinquent on any bonds or that is a party to any litigation against Owner. All bonds shall be made and executed on Owner's standard forms, shall be approved by Owner and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to Owner. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Bexar County, Texas. Each surety shall designate an agent resident in Bexar County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.

11.3.4 The person or persons, partnership, company, firm, limited liability company, association, corporation or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on Owner until:

(1) it has been approved as to form by Owner's City Attorney;

(2) it has been executed by Owner's City Manager;

(3) the performance and payment bonds and evidence of insurance have been furnished to Owner by Contractor, as required by the Contract Documents; and

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

11.3.5 The failure of Contractor to execute the Contract and deliver the required bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as Owner can assemble and deliver the Contract and by the time the Owner-scheduled Pre-Construction meeting is held shall, at Owner's option, constitute a material breach of Contractor's bid proposal and Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices for materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to Owner by reason of Contractor's failure to execute the Contract within ten (10) days and deliver bonds and insurance by the Owner-scheduled Pre-Construction meeting, the filing of a bid proposal shall constitute an acceptance of this **Section 11.3.5**. In the event Owner should re-advertise for bids, the defaulting Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this **Section 11.3**.

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

11.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

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

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

11.5.1.2 Within five (5) calendar days of a suspension, cancellation or non-renewal of any required line of insurance coverage, Contractor shall provide Owner a replacement certificate of insurance with all applicable endorsements included. Owner shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during the Contract.

11.5.1.3 The terms "Owner," "City" or "City of San Antonio" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Owner and the individual members, employees and agents thereof in their official capacities, while acting on behalf of Owner.

11.5.1.4 The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The required insurance coverage furnished by Contractor shall be the primary insurance for all purposes for the Project, as well as the primary insurance for the additional insureds named in the required policies.

11.5.1.5 All provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten with contractual liability coverage(s) sufficient to include such obligations with the applicable liability policies.

11.5.2 Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability which:

11.5.2.1 All policies must comply with the applicable requirements and special provisions of this **Article 11**.

11.5.2.2 Any policy evidenced by a Certificate of Insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and Owner's decision regarding whether any policy contains such provisions and contrary to this requirement shall be final.

11.5.2.3 All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that otherwise are acceptable to Owner.

11.5.3 Contractor agrees to the following special provisions:

11.5.3.1 Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Owner, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this **Article XI**.

11.5.3.2 Insurance companies issuing the insurance policies and Contractor shall have no recourse whatsoever against Owner for payment of any premiums or assessments for any deductibles, as all such premiums and assessments solely are the responsibility and risk of Contractor.

11.5.3.3 Approval, disapproval or failure to act by Owner, regarding any insurance supplied by Contractor or any Subcontractor(s), shall not relieve Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by Contractor's insurance company shall likewise not exonerate or relieve Contractor from liability.

11.5.3.4 Owner reserves the right to review the insurance requirements of this **Article XI** during the effective period of this Contract and to adjust insurance coverage and insurance limits when deemed necessary and prudent by Owner's Risk Management Division, based upon changes in statutory law, court decisions or the claims history of Contractor and Subcontractors. Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions. Upon request by Owner, Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage.

11.5.3.5 No special payments shall be made for any insurance policies that Contractor and Subcontractors are required to carry. Except as provided in **Section 11.5.3.4** herein, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.

11.5.3.6 Any insurance policies required under this **Article XI** may be written in combination with any of the other policies, where legally permitted, but none of the specified limits neither may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this **Article XI** be limited or circumvented by doing so.

ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK

12.1 Inspecting Work. Owner and Design Consultant shall have authority to reject Work that does not conform to the Contract Documents. Whenever Owner or Design Consultant considers it necessary or advisable, Owner and/or Design Consultant shall have authority to require inspection or testing of the Work in accordance with this **Article XII**, whether or not such Work is fabricated, installed or completed.

12.2 UNCOVERING WORK

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

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

12.3 CORRECTING WORK

12.3.1 Contractor promptly shall correct any Work rejected by Owner or Design Consultant as failing to conform to the requirements of the Contract Documents, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, along with all costs for additional testing, inspections and compensation for Design Consultant's services and expenses made necessary thereby.

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

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

12.3.2.2 one (1) year after the date for commencement of warranties established by agreement in connection with partial occupancy under **Section 9.9.1** hereto; or

12.3.2.3 the stipulated duration of any applicable special warranty required by the Contract Documents.

12.3.3 The one (1) year period, described in **Section 12.3.2.1**, **Section 12.3.2.2** and **Section 12.3.2.3** herein, shall be extended, with respect to portions of the Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual completion of the Work.

12.3.4 The obligations of Contractor under **Section 3.5** herein and this **Section 12.3** shall survive final acceptance of the Work and termination of this Contract. Owner shall give notice to Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in this **Section 12.3** does not limit the ability of Owner to require Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by Owner or Design Consultant at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one (1) year period also does not relieve Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one (1) year correction period.

12.3.5 Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

12.3.6 If Contractor fails to correct any defective or nonconforming Work within what Owner deems a reasonable time after Owner or Design Consultant gives written notice of rejection to Contractor, Owner may correct the defective or nonconforming Work in accordance with this **Section 12.3**. If Contractor promptly does not proceed with correction of any defective or nonconforming Work within a reasonable time fixed by written notice from Owner or Design Consultant, Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay the costs of removal and storage within ten (10) calendar days after written notice by Owner or Design Consultant, Owner may, upon ten (10) additional calendar days written notice, sell the materials and equipment at auction or at private sale and shall account to Contractor for the proceeds, after deducting all costs and damages that should have been borne by Contractor to correct the defective work, including all compensation for Design Consultant's services and expenses made necessary as a result of the sale, removal and storage. If the proceeds of sale do not cover the costs that Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to Contractor then or thereafter are not sufficient to cover the deficiency, Contractor shall pay the difference to Owner.

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

12.3.8 Nothing contained in this **Section 12.3** shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. The establishment of the one (1) year time period, as described in **Section 12.3.2** relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

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

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

ARTICLE XIII. COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 Final Completion Of Contract. The Contract shall be considered completed, except as provided in any warranty or maintenance stipulations, bond or by law, when all the Work has been finally completed, a final inspection is made by Owner and Design Consultant and final acceptance and final payment is made by Owner.

13.2 Warranty Fulfillment. Prior to the expiration of the specified warranty period provided for in the Contract Documents, Owner or Design Consultant shall make a detailed inspection of the Work and shall advise Contractor and Contractor's Surety of the items that require correction. Owner or Design Consultant shall make a subsequent inspection and, if the corrections have been properly performed, Owner shall issue a letter of release on the maintenance obligations to Contractor. If, for any reason, Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have properly been performed and a letter of release from Owner to Contractor is issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

13.3.1 Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by Owner for any good cause after giving seven (7) calendar days advance written notice and an opportunity to cure to Contractor, including but not limited to the following causes:

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

13.3.1.2 A reasonable belief of Owner or Design Consultant that the progress of the Work being made by Contractor is insufficient to complete the Work within the specified Contract time.

13.3.1.3 Failure or refusal of Contractor to provide sufficient and proper equipment or construction forces properly to execute the Work in a timely manner.

13.3.1.4 A reasonable belief that Contractor has abandoned the Work.

13.3.1.5 A reasonable belief that Contractor has become insolvent, bankrupt, or otherwise is financially unable to carry on the Work.

13.3.1.6 Failure or refusal on the part of Contractor to observe any material requirements of the Contract Documents or to comply with any written orders given by Owner or Design Consultant, as provided for in the Contract Documents.

13.3.1.7 Failure or refusal of Contractor promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Contractor in writing by Owner or Design Consultant.

13.3.1.8 A reasonable belief by Owner that collusion exists or has occurred for the purpose of illegally procuring the contract or a Subcontractor, or that a fraud is being perpetrated on Owner in connection with the construction of Work under the Contract.

13.3.1.9 Repeated and flagrant violation of safe working procedures.

13.3.2 When the Work or any portion of the Work is terminated for any of the causes itemized in **Section 13.3.1** herein, or for any other cause except termination for convenience pursuant to **Section 13.3.5** herein, Contractor shall, as of the date specified by Owner, immediately discontinue the Work or portion of the Work as Owner shall designate, whereupon the Surety shall, within fifteen (15) calendar days after the written Notice of Termination by Owner For Cause has been served upon Contractor and the Surety or its authorized agents, assume the obligations of Contractor for the Work or that portion of the Work which Owner has ordered Contractor to discontinue and Surety may:

13.3.2.1 perform the Work with forces employed by the surety;

13.3.2.2 with the written consent of Owner, tender a replacement Contractor to take over and perform the Work, in which event the Surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

13.3.2.3 with the written consent of Owner, tender and pay to Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work and compensate Owner for any other loss sustained as a result of Contractor's default.

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

13.3.3 The balance of the Contract Sum remaining at the time of Contractor's default and subsequent termination shall become due and payable to the Surety as the Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If the Surety does not, within the time specified in **Section 13.3.2** herein, exercise its obligation to assume the obligations of the Contract, or that portion of the Work which Owner has ordered Contractor to discontinue, then Owner shall have the power to complete the Work by contract or otherwise, as Owner may deem necessary and elect. Contractor agrees that Owner shall have the right to:

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

(2) procure other tools, equipment, labor and materials for the completion of the Work at Contractor's expense; and

(3) charge to the account of Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses.

13.3.4 All expenses incurred by Owner to complete the Work shall be deducted by Owner out of the balance of the Contract Sum remaining unpaid to or unearned by Contractor. Contractor and the Surety shall be liable to Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including, but not limited to, additional fees of Design Consultant and attorney's fees) and liquidated or actual damages incurred as a result of the termination.

13.3.5 Owner shall not be required to obtain the lowest bid for the Work of completing the Contract, as described in **Section 13.3.3** herein, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and the other damages, as provided in **Section 13.3.3** herein. In case Owner's costs and damages are less than the sum which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then Owner may pay Contractor (or the Surety, in the event of a complete Termination by Owner For Cause) the difference, provided that Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then Contractor and its Surety shall pay the amount of the excess to Owner immediately upon written notice from Owner to Contractor and/or the Surety for the excess amount owed. When only a particular part of the Work is being carried on by Owner, by contract or otherwise under the provisions of this Section, Contractor shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workers employed and provided by Owner.

13.3.6 The right to terminate this Contract for the convenience of Owner (including, but not limited to, non-appropriation of funding) expressly is retained by Owner. In the event of a termination for convenience by Owner, Owner shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Contractor. Upon Contractor's receipt of such written notice, Contractor immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Contractor shall then be paid by Owner, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred, the actual cost of all materials installed and the actual cost of all materials stored at the Project site or away from the Project site, as approved in writing by Owner but not yet paid for and which can not be returned, plus applicable overhead, profit, and actual, reasonable and documented termination costs, if any, paid by Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents up to the date of termination for convenience, less all amounts previously paid for the Work. No amount ever shall be paid to Contractor for lost or anticipated profits on any part of the Work not performed.

13.4 TEMPORARY SUSPENSION OF THE WORK

13.4.1 The Work or any portion of the Work may temporarily be suspended by Owner, for a time period not to exceed ninety (90) calendar days, immediately upon written notice to Contractor for any reason, including, but not limited to:

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

13.4.1.2 under other provisions in the Contract Documents that require or permit temporary suspension of the Work;

13.4.1.3 situations where the Work is threatened by, contributes to or causes an immediate threat to public health, safety, or security; or

13.4.1.4 other unforeseen conditions or circumstances.

13.4.2 Contractor immediately shall resume the temporarily suspended Work when ordered in writing to do so by Owner. Owner shall not, under any circumstances, be liable for any claim of Contractor arising from a temporary suspension due to a cause described in **Section 13.4.1** herein; provided, however, that in the case of a temporary suspension for any of the reasons described under **Section 13.4.1.2** through **Section 13.4.1.4** herein, where Contractor is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to Owner, Owner shall make an equitable adjustment for the following items, provided that a claim properly is made by Contractor under **Section 4.3** herein:

13.4.2.1 an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension, as determined by Owner and Design Consultant;

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

13.4.2.3 if it becomes necessary to move equipment from the Project Site and then return it to the Project Site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary and reasonable cost of these moves; provided, however, that no adjustment to the Contract Sum shall be due if said equipment is moved to another Project site of Owner.

ARTICLE XIV. MISCELLANEOUS PROVISIONS

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

14.2 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

14.2.1 This Contract shall be governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

14.2.2 This Contract is entered into subject to and controlled by the Charter and ordinances of the City of San Antonio and all applicable laws, rules and regulations of the State of Texas and the Government of the United States of America. Contractor shall, during the performance of the Work, comply with all applicable City of San Antonio codes and ordinances, as amended, and all applicable State of Texas and Federal laws, rules and regulations, as amended.

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

14.4 WRITTEN NOTICE. Any notice, payment, statement or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by facsimile transmission, email or by mail, postage prepaid, or by overnight delivery to an officer, management level employee or other designated representative of either party. Mailed or email notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed received as of three (3) calendar days after mailing.

14.5 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

14.5.1 The duties and obligations imposed on Contractor by the Contract Documents and the rights and remedies available to Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or made available by law.

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

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

14.7 INDEPENDENT MATERIALS TESTING AND INSPECTION

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

14.8 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER. Contractor acknowledges the Charter of the City of San Antonio and its Ethics Code prohibits a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(1) a City officer or employee; his parent, child or spouse;

(2) a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity;

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

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

Pursuant to this **Article XIV**, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and/or agents are neither officers nor employees of Owner. Except with Owner's low-bid contract awards, Contractor warrants and certifies that it has tendered to Owner a Discretionary Contracts Disclosure Statement in compliance with Owner's Ethics Code. Any violation of this article shall constitute malfeasance in office and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this **Section 14.8**, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with Owner shall render a Contract voidable by the Owner's City Manager or City Council.

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

14.10 INDEPENDENT CONTRACTOR. In performing the Work under this Contract, the relationship between Owner and Contractor is that of an independent contractor. Contractor shall exercise independent judgment in performing the Work and solely is responsible for setting working hours, scheduling and/or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making Contractor an agent, servant or employee of Owner or making Contractor or any of Contractor's employees, agents or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation which Owner provides to its employees.

14.11 NON-DISCRIMINATION. As a party to this Contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless Contractor is exempted by state or federal law, or as otherwise established herein. Contractor covenants that it shall take all necessary actions to insure that, in connection with any Work under this Contract, Contractor and its Subcontractor(s) shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, either directly, indirectly or through contractual or other arrangements. Contractor also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended.

14.12 GIFTS TO PUBLIC SERVANTS

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

14.12.2 For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

14.12.3 Notwithstanding any other legal remedies, Owner may require Contractor to remove any employee of Contractor, a Subcontractor or any employee of a Subcontractor from the Project who has violated the restrictions of this **Article XIV** or any similar State or Federal law and Owner may obtain reimbursement for any expenditures made to Contractor as a result of an improper offer, an agreement to confer or the conferring of a benefit to a City of San Antonio employee or official.

ARTICLE XV. AUDIT

15.1 RIGHT TO AUDIT CONTRACTOR'S RECORDS. By execution of the Contract, Contractor grants Owner the right to audit, examine, inspect and/or copy, at Owner's election at all reasonable times during the term of this Contract and for a period of four (4) years following the completion or termination of the Work, all of Contractor's written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by an Owner designee, which may include its internal auditors or an outside representative engaged by Owner. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute, with full access allowed to authorized representatives of Owner upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

15.1.1 As used in these General Conditions, "Contractor written and electronically stored records" shall include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Contractor written and electronically stores records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in Owner's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

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

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

ARTICLE XVI.
ATTORNEY FEES

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

Special Conditions for Horizontal Projects

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

Contractor promptly shall, before such discovered conditions and/or structures are disturbed, notify Owner in writing of differing site conditions. Differing site conditions are defined as subsurface or latent physical and/or structural conditions at the Site differing materially from those indicated in the Plans, Specifications and other Contract Documents or newly discovered and previously unknown physical conditions at the Site of an unusual nature differing materially from those geophysical conditions typically encountered in the type Work being performed and generally being recognized as not indigenous to the San Antonio, Bexar County, Texas environs.

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

(1) No claim of Contractor under this **Section 3.2.5** shall be allowed unless Contractor has given the written notice called for above, prior to disturbing the discovered conditions and/or structures.

(2) No Contract adjustment shall be allowed under this **Section 3.2.5** for any effects caused on unchanged work.

3.4.7 Material Testing (Added to Section 3.4.7 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

The source of supply of each of the materials shall be approved by Owner or Design Consultant before delivery is started and, at the option of Owner, may be sampled and tested by Owner for determining compliance with the governing specifications before delivery is started. If it is found after trial that sources of supply previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, Contractor shall furnish materials from other approved sources. Only materials conforming to the requirements of the Contract documents and approved by Owner shall be used by Contractor in the work. All

materials being used by Contractor are subject to inspection or test at any time during preparation or use. Any material which has been tested and accepted at the source of supply may be subjected to a check test after delivery and all materials which, when retested, do not meet the requirements of the specifications shall be rejected. No material which, after approval, has in any way become unfit for use shall be used in the Work.

If, for any reason, Contractor selects a material which is approved for use by Owner or Design Consultant by sampling, testing or other means, and Contractor decides to change to a different material requiring additional sampling and testing by Owner for approval, Contractor shall pay for any expense incurred by Owner for such additional sampling and testing and the costs incurred by Owner shall be deducted from any money due or owed to Contractor.

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

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

7.2.5 Allowable Markups (Added to Section 7.2.5 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

7.2.5.1 Labor

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

7.2.5.2 Materials

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

7.2.5.3 Equipment

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

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

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

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

7.2.5.4 Subcontractor Markups

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

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

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

8.2.2 Standby Equipment Costs (Added to Section 8.2.2 of GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

For Projects not affecting City traffic and working under a five (5) day work week, with a Working Day measured from sunrise to sundown Monday through Friday, no more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty (40) hours shall be paid per week for standby time and no more than one hundred and seventy six (176) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 176, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

For Projects affecting City traffic and working under a six (6) day work week, with a Working Day measured from sunrise to sundown Monday through Saturday, no more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty eight (48) hours shall be paid per week for standby time and no more than two hundred and eight (208) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 208, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

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

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

10.12 Use of City Streets (Adds this Section 10.12 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

10.13 Maintenance of Traffic (Adds this Section 10.13 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

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

(2) maintain the Work in passable condition, including proper drainage, to accommodate traffic;

(3) provide and maintain temporary approaches and crossings of intersecting roadways in a safe and passable condition;

(4) construct and maintain necessary access to adjoining property as shown in the plans or as directed by Owner; and

(5) furnish, install and maintain traffic control devices in accordance with the Contract.

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

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

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

10.15 Incidental Work, Connections, and Passageways (Adds Section 10.15 to GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS)

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

(1) Contractor shall make and provide all suitable reconnections with existing improvements (generally excluding new connections with or relocation of utility services, unless specifically provided for otherwise in the Contract Documents) as are necessarily incidental to the proper completion of the Project;

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

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

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Special Conditions for Task Order Contracts

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

9.3 APPLICATION FOR PAYMENT/CONTRACTOR BILLING

9.3.1 Under an issued Task Order contract with Owner, Contractor shall not be required to submit an application for payment to Owner for materials and work performed. Instead, Owner shall calculate the accrual of materials utilized for the subject payment period and submit a request for payment from Owner on Contractor's behalf.

9.3.2 Owner, through its on-site Project Inspector, shall calculate the daily total of materials utilized by Contractor performing horizontal work through an issued Task Order contract. Inspector's daily total of utilized materials shall be confirmed daily by Contractor. Inspector also shall keep a monthly running total of work performed and materials utilized as agreed upon, for each day of Work, by Contractor.

9.3.3 Inspector, at minimum every thirty (30) days throughout the Project's duration, then shall submit, on Contractor's behalf, the agreed upon total materials utilized by Contractor for the outstanding days, up to the date of Inspector's submittal, to Owner's TCI Fiscal Department for payment to Contractor.

9.3.4 Owner's TCI Fiscal Department then shall issue payment to Contractor, within ____ days of receipt of Inspector's and Contractor's agreed upon total materials utilized, calculated at the rate for the utilized materials reflected in Contractor's Task Order contract with Owner.

9.3.5 Unless otherwise provided in the Contract Documents, payments by Owner shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by Owner. If approved in advance in writing by Owner, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by Owner. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

9.3.6 Contractor warrants, upon Owner's submittal of an Application for Payment to Contractor, all Work for which payment previously has been received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONTRACTOR.**

9.3.7 By Owner's submission of an Application for Payment on behalf of Contractor and by its concurrence with said submission, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor; provided if any of the foregoing is not true and cannot be certified, Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.4 PAYMENT APPROVAL

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

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment; or

(4) made any examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO REJECT PAYMENT TO CONTRACTOR

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

9.5.1.1 Work not performed or is defective ;

9.5.1.2 third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder, unless security acceptable to Owner is provided by Contractor;

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

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

9.5.1.5 damage to Owner or another contractor;

9.5.1.6 reasonable evidence that the Work shall not be completed within the time allotted on the issued Task Order and that the unpaid balance on the issued Task Order would not be adequate to cover actual or liquidated damages for the anticipated delay;

9.5.1.7 persistent failure by Contractor to carry out the Work in accordance with the issued Task Order and/or Contract Documents;

9.5.1.8 the applicable liquidated damages were not included in the Owner-submitted Application for Payment;

9.5.1.9 billing for unapproved/unverified materials stored off Site; or

9.5.1.10 a current schedule update has not been submitted by Contractor to Owner.

9.5.2 Owner shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Section 9.5.1** herein.

9.6 PROGRESS PAYMENTS

9.6.1 Owner's payment of installments shall not, in any way, be deemed to be a final acceptance by Owner of any part of the Work, shall not prejudice Owner in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work herein provided.

9.6.2 Contractor shall, within ten (10) calendar days following receipt of payment from Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide Owner with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to Owner bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if Owner so requests, shall provide copies of such Subcontractor payments to Owner. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which Owner has made payment to the Contractor, Owner shall be entitled to withhold payment to Contractor to the extent necessary to protect Owner.

9.6.3 Owner shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Owner shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.

9.6.5 Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.3** and **Section 9.6.4** herein regarding Subcontractors.

9.6.6 A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

9.6.7 Contractor shall, as a condition precedent to any obligation of Owner under this Contract, provide to Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 When all of the Work on an issued Task Order finally is complete and ready for final inspection, Contractor shall notify Owner in writing. Thereupon, Owner shall make final inspection of the Work and, if the Work is complete in full accordance with the issued Task Order and, pursuant to this Contract, fully has been performed, Contractor shall submit a final Application for Payment. If Owner is unable to approve the final Application for Payment for reasons for which Contractor is responsible and Owner is required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by Owner from the Contractor's final payment.

9.9.2 If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Owner so confirms, Owner shall, upon application by Contractor and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. Request for final payment by Contractor shall constitute a waiver of all claims against Owner, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

9.9.3 For all payments made through an issued Task Order contract, City shall not withhold any retainage from payments made to Contractor.

EXHIBIT B

SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

NOT APPLICABLE

EXHIBIT C

APPLICABLE WAGE DETERMINATION

General Decision Number: TX150021 01/02/2015 TX21

Superseded General Decision Number: TX20140021

State: Texas

Construction Type: Residential

Counties: Bexar, Comal and Guadalupe Counties in Texas.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories.)

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

Modification Number	Publication Date
0	01/02/2015

* SUTX1983-005 05/01/1983

	Rates	Fringes
Air Conditioning Mechanic	$ 7.25	
CARPENTER	$ 7.25	
CEMENT MASON/CONCRETE FINISHER	$ 7.46	
DRYWALL HANGER	$ 8.73	
ELECTRICIAN	$ 9.66	
IRONWORKER	$ 7.25	
LABORER	$ 7.25	
PAINTER (Including Drywall taping)	$ 8.16	
PLUMBER	$ 7.70	
ROOFER, Including Built Up, Composition and Single Ply Roofs	$ 7.25	

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

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

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

Union Rate Identifiers

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

"UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

AMENDMENT TO CONTRACT

1. **There are no SBEDA requirements for this contract.**

2. **Insert the following funding source requirements for task orders funded by the Department of Housing and Urban Development:**

The Selected Respondent acknowledges, understands, and agrees to comply with the following federal regulations as promulgated in Section 3 clause of the Housing and Urban Development Act of 1968, as amended, if applicable:

(A) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170(1)(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.

(B) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(C) Contractor agrees to send to each labor organization or representative of workers with which Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(D) Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. 135. Contractor will not subcontract with any subcontractor where Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. 135.

(E) Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. 135.

(F) Noncompliance with HUD's regulations in 24 C.F.R. 135 may result in sanctions, termination of this contract for default, and debarment or suspension from further HUD-assisted contracts.

(G) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25U.S.C.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provision of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Selected respondent acknowledges, understands, and agrees to submit a Section 3 Utilization Plan upon contract execution.

The Selected Respondent acknowledges, understands, and agrees to ensure that no person shall be subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.

The Selected Respondent acknowledges, understands, and agrees ensure that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded with HUD federal assistance.

The Selected Respondent acknowledges, understands, and agrees ensure no discrimination based on disability in federally assisted programs and shall provide that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.

The Selected Respondent acknowledges, understands, and agrees to provide HUD Form 2516 to the City prior to start of project construction for each task order

The Selected Respondent acknowledges, understands, and agrees to provide the HUD Section 3 Completion Form to the City within 30 calendar days of completion of the final task order contract.

3. Article XX (Prevailing Wages), revised to the following:

JOC shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Residential Wage Determination in effect at the time this JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. JOC acknowledges it shall utilize the Residential Wage Determination when determining prevailing wages for all issued Job Orders. If JOC is required to pay the prevailing wage for a job classification not found on the cited Residential Wage Determination, JOC shall utilize the Heavy Highway Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Heavy Highway Wage Determination job classification from City.

4. Delete Article XXV (Small, Minority, & Women-Owned Business Advocacy) in its entirety.

5. Delete Article 34.2 (JOC Outreach and Diversity Plan) in its entirety.