KRH
12/16/10
Item No. 13

AN ORDINANCE 2010-12-16-1060

AUTHORIZING EXECUTION OF A DESIGN-BUILD SERVICES AGREEMENT WITH HENSEL PHELPS CONSTRUCTION CO. IN THE AMOUNT OF $47,175,000.00 FOR THE DESIGN AND CONSTRUCTION OF THE PUBLIC SAFETY HEADQUARTERS.

* * * * * *

WHEREAS, federal officials and the City of San Antonio (City) have agreed to locate a new federal courthouse at the site of the current police headquarters necessitating a new location for the Public Safety Headquarters to house both the Police and Fire Departments; and

WHEREAS, the City selected the design-build methodology with bridging documents for delivery of this project; and

WHEREAS, a request for qualification (RFQ) was released in July 2010 and advertised in numerous mediums; and

WHEREAS, fourteen teams responded to the RFQ on August 20, 2010 and five teams were shortlisted to proceed to phase two; and

WHEREAS, it was determined through the two phase selection process that Hensel Phelps Construction Co. was the best qualified; and

WHEREAS, it is now necessary to authorize the execution of a Design-Build Agreement with Hensel Phelps Construction Co.; **NOW THEREFORE,**

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

SECTION 1. The City Manager or her designee is authorized to execute the Design-Build Agreement attached hereto as "Attachment 1" with Hensel Phelps Construction Co. in the not to exceed amount of $47,175,000.00 for the design and construction of the Public Safety Headquarters.

SECTION 2. Payment in the amount not to exceed $47,175,000.00 in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00176, Public Safety Headquarters, is authorized to be encumbered and made payable to Hensel Phelps Construction Company for construction services.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation 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 shall become effective immediately after passage upon the receipt of eight affirmative votes, or, in the absence of eight affirmative votes, ten days after passage.

PASSED AND APPROVED this 16th day of December 2010.

M A Y O R
Julián Castro

ATTEST:

for Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Michael D. Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 13

Name:	13
Date:	12/16/2010
Time:	11:24:03 AM
Vote Type:	Motion to Appr w Cond
Description:	An Ordinance awarding a Design/Build Services Agreement to Hensel Phelps Construction Company for a guaranteed maximum price of $47,175,000.00 and a $3,500,000.00 allowance for additional work for a total amount not to exceed $50,675,000.00 for the design and construction of the Public Safety Headquarters project, a Certificates of Obligation funded project, located in downtown San Antonio. [Erik Walsh, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x			x	
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

ITEM #13

Guaranteed Maximum Price GMP Proposal

Price Proposal for:	**Public Safety Headquarters**											
Name of Firm:		Bartlett Cocke, L.P.	Rating	Hensel Phelps Construction Co.	Rating	Skanska USA Building, Inc.	Rating	Turner Construction Company	Rating	Zachry Construction Company	Rating
Cost of Work:		**Proposed Price:**		**Proposed Price:**		**Proposed Price:**		**Proposed Price:**		**Proposed Price:**	
Division 2											
	Selective Demolition	$ -		$ 115,000		$ 229,050		with earthwork		$ 125,759	
Division 3											
	Concrete	$ 10,640,597	5	$ 9,150,000	2	$ 9,146,792	1	$ 9,436,600	3	$ 10,218,708	4
Division 4											
	Masonry	$ 3,086,359	5	$ 2,290,000	3	$ 2,219,842	1	$ 2,265,000	2	$ 2,561,959	4
Division 5											
	Metals	$ 2,947,661	5	$ 1,349,000	2	$ 1,895,514	4	$ 1,328,000	1	$ 1,405,424	3
Division 6											
	Rough Carpentry	$ 161,609	5	$ 61,000	4	$ 55,000	3	$ 21,894	1	$ 31,440	2
	Casework	$ 560,916		$ 475,000		$ 712,348		$ 605,000		$ 554,684	
Total:		$ 722,525	4	$ 536,000	1	$ 767,348	5	$ 626,894	3	$ 586,124	2
Division 7											
	Thermal & Moisture Protection	$ 879,295		$ 3,080,000		$ 951,361		$ 3,301,012		$ 955,724	
	Roofing System	$ 3,808,138		$ 439,000		$ 3,306,810		$ 462,860		$ 3,436,847	
	Thermal & Moisture Protection + Roofing	$ 4,687,433		$ 3,519,000		$ 4,258,171		$ 3,763,872		$ 4,392,571	
	Pre-Vegetated Roof Modules	$ 512,350		$ 459,000		$ 464,000		$ 428,000		$ 467,406	
Total:		$ 512,350	5	$ 459,000	2	$ 464,000	3	$ 428,000	1	$ 467,406	4
Division 8											
	Doors, Frames and Hardware	$ 804,919		$ 596,000		$ 805,003		$ 564,800		$ 682,616	
	Aluminum Storefront Assemblies	$ 2,513,471		$ 1,205,000		$ 271,600		$ 1,956,936		$ 1,664,021	
	Overhead Doors	$ 108,113		$ 111,000		$ 88,536		$ 90,000		$ 114,158	
	Glass and Mirrors			$ 252,000		$ 2,497,693		$ 471,064		$ 779,914	
	Alum Store + Glass mirrors	$ 2,513,471		$ 1,457,000		$ 2,769,293		$ 2,428,000		$ 2,443,934	
	Fiberglass Sandwich Panel Assemblies	$ 460,952		$ 454,000		$ 572,000		$ 550,000		$ 584,259	
Total:		$ 6,400,926	4	$ 4,075,000	1	$ 7,004,125	5	$ 6,060,800	2	$ 6,268,902	3
Division 9											
	Gypsum Bd Assemblies	$ 3,363,650		$ 1,311,000		$ 1,943,344		$ 1,318,812		$ 1,317,503	
	Ceramic Tile	$ 664,724		$ 428,000		$ 531,144		$ 549,457		$ 587,210	
	Suspended Ceilings			$ 1,289,000		$ 1,310,000		$ 1,404,720		$ 1,302,868	
	Resilient Flooring and Base	$ 753,383		$ 237,000		$ 178,900		$ 320,993		$ 335,568	
	Terrazzo Floor	$ 199,509		$ 182,000		$ 186,165		$ 193,000		$ 198,071	
	Carpet Tile			$ 424,000		$ 524,784		$ 450,000		$ 409,976	
	Paint and Wall Coverings	$ 616,835		$ 454,000		$ 486,822		$ 592,000		$ 462,103	
Total:		$ 5,598,101	5	$ 4,325,000	1	$ 5,161,159	4	$ 4,828,982	3	$ 4,613,299	2
Division 10											
	Specialties	$ 988,950	4	$ 814,000	1	$ 898,390	2	$ 1,046,560	5	$ 932,635	3
Division 11											
	Vehicle Wash Equipment	$ 221,679		$ 236,000		$ 255,555		$ 253,000		$ 265,087	
	Fuel Dispensers & Underground Tanks	$ 337,034		$ 329,000		$ 373,496		$ 259,000		$ 428,454	
	Parking Equipment	$ 127,756		$ 100,000		$ 103,316		$ 122,000		$ 138,865	
Total:		$ 1,675,419	5	$ 665,000	2	$ 732,367	3	$ 634,000	1	$ 832,406	4
Division 12											
	Furnishings	$ 68,951	4	$ 63,000	3	$ 44,179	1	$ 181,586	5	$ 48,408	2
Division 13											
	Bullet Resistant Specialties	w/ trades		$ 673,000	1	$ 715,000	3	$ 788,000	5	$ 747,692	4
Division 14											
	Elevators	$ 1,018,516	3	$ 880,000	1	$ 914,190	2	$ 1,073,745	4	$ 1,086,923	5
Division 21											
	Fire Suppression	$ 424,659	1	$ 430,000	2	$ 667,145	5	$ 485,500	3	$ 508,802	4
Division 22											
	Plumbing	$ -		$ 1,350,000		$ 1,474,053		with HVAC		$ 1,499,052	
Division 23											
	HVAC	$ 7,093,360		$ 4,050,000		$ 4,625,947		$ 5,960,000		$ 4,928,055	
	Plubming + HVAC	$ 7,093,360	5	$ 5,400,000	1	$ 6,100,000	3	$ 5,960,000	2	$ 6,427,107	4
Total:											
Division 26											
	Electrical	$ 6,986,869	5	$ 4,918,000	2	$ 5,829,085	4	$ 4,725,000	1	$ 5,812,417	3
Division 28											
	Electronic Safety and Security	$ -		$ 240,000		$ 54,704		$ 800,000		$ 158,903	
Division 31											
	Earthwork	$ 533,212	4	$ 203,000	1	$ 701,838	5	$ 485,300	3	$ 387,144	2
Division 32											
	Paving, Curbs, Walks and Medians			$ 416,000		$ 537,613		with earthwork		$ 36,680	
	Pavement Markings	$ 21,198		$ 15,000		$ 25,229		$ 20,706		$ 10,083	
	Fences and Gates	$ 189,857		$ 111,000		$ 178,048		$ 296,000		$ 200,014	
	Plantings and Irrigation	$ 306,844		$ 218,000		$ 157,258		$ 292,161		$ 335,363	
Total:		$ 517,898	1	$ 760,000	4	$ 898,148	5	$ 608,867	3	$ 582,139	2
Division 33											
	Underground Utilities	$ 318,960	5	$ 250,000	2	$ 272,106	3	$ 235,662	1	$ 289,509	4
Cost of Work Total		**$ 50,720,325**		**$ 39,657,000**		**$ 46,203,860**		**$ 43,334,368**		**$ 46,010,300**	
Insurance	Builders Risk	$ 41,942		$ 48,000		$ 55,372		$ 102,930		$ 75,149	
	General Liability	$ 217,533		$ 237,000		$ 237,961		$ 935,753		$ 514,572	
Bond Premium		$ 584,801		$ 501,000		$ 656,516		$ 690,660		$ 608,492	
General Conditions		$ 1,565,489		$ 2,582,000		$ 1,676,500		$ 4,600,000		$ 1,770,130	
Proposed Contractors Fee & Overhead		$ 1,250,813		$ 1,700,000		$ 5,023,927		$ 1,801,275		$ 1,534,970	
Total Proposed GMP		**$ 54,380,903**		**$ 44,725,000**		**$ 53,854,136**		**$ 51,464,986**		**$ 50,513,615**	

Design Services Fee		**$ 2,743,365**		**$ 2,450,000**		**$ 2,574,767**		**$ 3,965,000**		**$ 3,722,000**	

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

DESIGN-BUILD CONTRACT

ARCHITECTURAL/ENGINEERING AND CONSTRUCTION SERVICES FOR PUBLIC SAFETY HEADQUARTERS PROJECT NO. 40-00176

This **DESIGN-BUILD CONTRACT** (the "Contract") is made and entered into by and between the City of San Antonio, a Texas municipal corporation (the "Owner") and **HENSEL PHELPS CONSTRUCTION CO.**, a foreign corporation, with its principal place of business at 8326 Cross Park Drive, Austin, Texas 78754 (the "Design-Builder").

This Contract for the design and construction of a project identified as: Public Safety Headquarters Project to be located at 313 Santa Rosa St., including the related Fueling Station and Car Wash, to be located at 515 Frio St., in the City of San Antonio, County of Bexar, Texas (the "Project") is being executed by the Owner pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the DESIGN-BUILDER for architectural and/or engineering and construction services hereinafter set forth in connection with the above designated Project for the City of San Antonio.

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ARTICLE I.
DEFINITIONS

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

1.1 **Design-Builder Architect of Record** A representative of the Design-Builder who is registered as an Architect pursuant to Tex. Occupations Code Ann., Chapter 1051 who will provide professional architectural services and exercising overall responsibility for the design of the Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in the Contract.

1.2 **"Bridging Documents"** means 100% design development documents, which are 50-60% of the complete Construction Documents, schedules, reports, surveys, specifications and systems and product descriptions that are dated by the Design Professional and approved by the Owner and used to prepare a Guaranteed Maximum Price.

1.3 **"City"** and **"Owner"** means the City of San Antonio, Texas as provided for in Article 2.1.1 of the General Conditions.

1.4 **"Claim"** is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the 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 the Owner and DESIGN-BUILDER arising out of or relating to the Contract.

1.5 **"Compensation"** means amounts paid by Owner to DESIGN-BUILDER for completed services under this Contract.

1.6 **"Construction Documents"** means all the design documents provided by Design-Builder and approved by Owner pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, signed and sealed detailed plans, drawings, specifications, manuals, and related materials prepared by the Architect of Record on behalf of the Builder.

1.7 **"Construction Work"** shall mean whatever is done by or required of Design-Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation, the following:

1.7.1 construction of the whole and all parts of the Project in full and strict conformity with this Contract;

1.7.2 the provision and furnishing, and prompt payment therefor, of all labor, supervision,services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;

1.7.3 the procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;

1.7.4 the creation and submission to Owner of detailed as-built drawings depicting all as-built construction;

1.7.5 the furnishing of any required surety bonds and insurance as required by the Contract;

1.7.6 the furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design-Builder; and

1.7.7 the furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 7 below.

1.8 **"Cost of the Construction Work"** shall mean costs necessarily incurred in the performance of the Construction Work during the Construction Phase, and paid or payable by the Design-Builder, and not included in the Management Fee as set forth herein. Cost of the Construction Work is further defined in Article 8.7 herein.

1.9 **"Design-Builder"** means the legal entity that executes this Contract to provide design and construction services for the Public Safety Headquarters Project, and its officers, partners, employees, agents and representatives, and all sub-consultants and/or sub-contractors, if any, and all other persons or entities for which the DESIGN-BUILDER is legally responsible.

1.10 **"Design Criteria Consultant"** means the Owner's Architect/Engineering consultant supplying the Bridging Documents.

1.11 **"Design Services"** means any and all architectural, engineering and design services required to be performed by Design-Builder pursuant to the Contract and all labor, materials, supervision, equipment, computers, documents, and all other things necessary for the performance of such services.

1.12 **"Director"** means the Director of CITY's Capital Improvements Management Services Department, Public Works Department or the designated project manager identified by the Notice to Proceed.

1.13 **"Final Compensation"** means the final amounts paid by Owner to DESIGN-BUILDER for completed services and construction under this Contract.

1.14 **"Final Completion"** means, as stated herein and as an addition to Article 13.1 of the General Conditions, the completion of all Design Services and all Construction Work required by, and in strict compliance with, the Contract, including Design-Builder's provision to Owner of all documents and things required to be provided by the Contract.

1.15 **"Final Payment"** means the final amounts paid by Owner to DESIGN-BUILDER for completed Design Services and Construction Work under the construction contract.

1.16 **"Guaranteed Maximum Price"** or **"GMP"** means the guaranteed maximum price for which all Construction Work will be completed within the construction schedule and the Project Budget.

1.17 **"Owner Designated Representative (ODR)"** means the person designated by Owner to act for Owner.

1.18 **"Owner's Consultant"** means Ford, Powell & Carson, Inc., the independent architectural firm that prepared the Bridging Documents and will provide peer review services.

1.19 **"Project"** means services to be provided by the Design-Builderr pursuant to this Contract for the design and construction of the Public Safety Headquarters to be located at 313 Santa Rosa St. and the related Fueling Station and Car Wash to be

located at 515 Frio St., in San Antonio, Texas as further set out in the Scope of Services.

1.20 **"Schedule of Values"** means the values allocated to materials and various portions of the work, prepared in such form, and supported by such data to substantiate its accuracy as Owner may require.

1.21 **"Subcontractor"** means an entity which has a direct contract with Design-Builder to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing specially fabricated equipment and materials for the Project.

1.22 **"Substantial Completion"** is, as stated herein and as an addition to Article 9.8 of the General Conditions, that stage in the progression of the Construction Work, as approved by Owner in writing, when the Project is sufficiently complete in accordance with the Contract that Owner can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by Owner of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. Owner reserves the right to occupy and use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

1.23 **"Supplier"** means an entity manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with the Design-Builder or with any subcontractor to furnish or provide materials or equipment to be incorporated in the construction phase for the performance of the Construction Work.

ARTICLE II
REGULATORY GUIDELINES, REQUIREMENTS AND STANDARDS

2.1 **Generally:** Design-Builder shall perform all Design Services described in, contemplated by, inferable from, or necessary to achieve the objectives stated in the Bridging Documents and the Contract, including all Design Services necessary for the Project to be properly constructed by Design-Builder and used, operated and maintained by Owner in accordance with all applicable guidelines, requirements and standards. The Design Services shall be performed within the time provided by the Design Schedule for the performance of Design-Builder's Design Services as provided in Paragraph 6.8 of this Contract.

2.2 **Owner's Review of Design Services:** Subject to Paragraph 12.2 of this Contract, Design-Builder shall submit all documents produced as part of the Design Services to the Director for review and approval in accordance with the terms of the Contract. However, any review or approval by the Director shall not relieve Design-Builder of or otherwise diminish its obligations under the Contract. The Director may direct Design-Builder to make changes to any Construction Documents in order to conform the documents to Owner's objectives. Any changes by Design-Builder ordered by the Director shall not relieve Design-Builder of its obligations under this Contract unless, and only to the extent that, Design-Builder notifies Owner in writing, within five (5) days after receipt of Owner's directive to make changes, concerning any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements, or other adverse impact that may result from the directed changes. Failure of Design-Builder to submit its notice within the five (5) day period constitutes a waiver by Design-Builder of any claim for an adjustment to the Design Schedule or the Contract Time.

2.3 **Preparation of Site Information:** Design-Builder shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines. **Owner expressly does not warrant any information provided by it in connection with preparation of the above-mentioned information**; Design-Builder, however, may reasonably rely on information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors, and omissions that a reasonable, prudent professional architect or engineer should or would detect and inquire about.

2.4 **Retention of Geotechnical Consultants:** In preparing the Construction Documents, Owner shall separately retain an experienced, qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. Design-Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of the geotechnical consultant. Nothing in this paragraph, however, prevents Design-Builder from retaining its own geotechnical consultant to review design work, raise issues for mutual discussion, and obtain further information in connection with the geotechnical nature of the Project. **Owner expressly does not warrant any geotechnical information provided by it for use in connection with preparation of the Construction Documents**; Design-Builder, however, may reasonably rely on geotechnical information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors, and omissions that a reasonable, prudent professional architect or engineer should or would detect and inquire about.

2.5 **Quality of Design Services:** Design-Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of Construction Documents. Design-Builder shall provide Design Services that will result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology. Design-Builder shall provide for all quality control reviews required by sound professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project.

2.6 **Compliance with Laws and Regulatory Requirements:** In providing Design Services, Design-Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design-Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, without limitation, environmental standards, fire and safety regulations, and requirements and compliance with all other applicable standards and codes.

2.7 **Duty to Correct Errors:** Design-Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Construction Documents.

2.8 **Schedule of Design Services:** Design-Builder shall, within ten (10) calendar days after execution of the Contract, submit for Owner's approval the Design Schedule for the performance of Design-Builder's Design Services, which shall include allowance for reasonable time required for the Director's review of submissions and for approvals of authorities having jurisdiction over the Project. This Schedule shall, upon approval by the Director, be considered incorporated and made a part of this Contract as part of Exhibit B, Design Builder's Scope and Fee Proposal. The Design Schedule, when approved by the Director, shall not, except for good cause, be exceeded by Design-Builder. Should Design-Builder at any time during the course of performing the

Contract, have reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall immediately notify the Director in writing. Design-Builder shall state the reason for the delay in the notice, including the party responsible, if any, and the steps being taken to remedy or minimize the impact of the delay. **Failure of Design-Builder to submit such notice shall constitute a waiver by Design-Builder of any claim for an adjustment to the Contract Price, the Design Schedule, or the Contract Time.** All extensions of time shall be governed by Article 8 of the General Conditions. Subject to the provisions of Paragraph 8.3 of the General Conditions, Owner shall review and approve, where appropriate, the Design Schedule, or any portion thereof.

ARTICLE III
PRELIMINARY CONSULTATION AND PROJECT ANALYSIS

3.1 **Determining the Project Objectives:** Prior to the preparation of the Construction Documents as required by Article IV below, Design-Builder shall first consult in detail with Owner, and shall carefully analyze any information furnished by Owner concerning requirements of the Project, including but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations, and objectives, as well as the Design Scope Specification.

3.2 **Report On Project Requirements And Objectives:** Based on its study and analysis, and no later than ten (10) days after the effective date of the Contract, Design-Builder shall prepare and submit to Owner a written report detailing Design-Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational, or other problems which may result from said requirements. The written report of Design-Builder shall also include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design-Builder shall review such report with Owner and shall implement such changes as Owner may require as provided in Paragraph 2.2 of this Contract.

3.3 **Scheduling:** Based upon the Design-Builder recommendation that the Project schedule should be "fast tracked" for the Design Phase, Owner agrees to review the proposed plan of action promptly. The proposed schedule should include sufficient budget allowances in anticipation of currently unknown refinements of budgets that may become necessary and in order to control Project costs.

ARTICLE IV
CONSTRUCTION DOCUMENTS

4.1 **Time for Preparation:** After the Director has authorized Design-Builder to commence with the completion of the Construction Documents, the Design-Builder shall prepare Construction Documents consisting of Drawings and Specifications and submit them to the Owner for approval. The Construction Documents shall be based on the approved Bridging Documents, any further adjustments to the facility program, and the GMP, and shall be provided not later than the date called for in the design schedule.

4.2 **The Construction Documents:** The Construction Documents shall include all design documents which shall describe with specificity all elements, details, components, materials, and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes, including satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of Paragraph 10.1.7 of this Contract, Owner shall review and approve, where appropriate, the Construction Documents, or any portion thereof.

4.3 **Guaranteed Maximum Price Includes Construction Documents:** The Guaranteed Maximum Price, as set forth in Article 11 below, shall include the cost of constructing the Project in strict accordance with the requirements of the Construction Documents.

ARTICLE V
CONSTRUCTION SERVICES

5.1 **General Intent:** Design-Builder shall perform all Construction Work necessary to construct the Project in accordance with this Contract, and to render the Project and all its components operational and functionally and legally usable for their intended purpose.

ARTICLE VI
TIME FOR CONSTRUCTION: THE CONTRACT TIME

6.1 **Notice of Commencement:** After Owner has approved the Construction Documents for the Detailed Design, Owner shall issue a notice to commence the Construction Work directing Design-Builder to proceed with the Work on the date indicated in the notice (the "Commencement Date"). The notice to commence Construction Work shall be issued at least ten (10) days prior to the Commencement Date.

6.2 **Time for Completion:** Design-Builder shall commence the Construction Work on the Commencement Date, and the Construction Work shall be carried out regularly and without interruption. Design-Builder shall substantially complete the Construction Work not later than five hundred fifty-five **(555)** Calendar Days from the effective date of the Contract, the "Scheduled Completion Date". Design-Builder shall achieve Final Completion of the Construction Work no later than thirty (30) calendar days after achieving Substantial Completion.

6.3 **Liquidated Damages for Delay in Substantial Completion:** Design-Builder shall pay Owner the sum of EIGHT THOUSAND TWO HUNDRED AND NO/100 Dollars ($8,200.00) per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date. Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Contract. Such liquidated damages shall apply regardless of whether Design-Builder has been terminated by Owner prior to Substantial Completion so long as Design-Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design-Builder's performance hereunder for matters other than delays in Substantial Completion. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design-Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design-Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design-Builder those funds withheld, but no longer applicable as liquidated damages.

6.4 **Liquidated Damages for Delay in Final Completion:** If Design-Builder fails to achieve Final Completion within thirty (30) calendar days after the date of Substantial Completion, Design-Builder shall pay Owner the sum of EIGHT THOUSAND TWO HUNDRED AND NO/100 Dollars ($8,200.00) per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Contract. Liquidated damages shall apply regardless of whether Design-Builder has been terminated by Owner prior to Final Completion so long as Design-Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in

Design-Builder's performance hereunder for matters other than delays in Final Completion. When Owner reasonably believes that Final Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design-Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design-Builder overcomes the delay in achieving Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design-Builder those funds withheld, but no longer applicable as liquidated damages.

6.5 **Time is of the Essence:** All limitations of time set forth in this Contract are material and time is of the essence of the Contract.

ARTICLE VII
ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN-BUILDER

7.1 **Design-Builder to Perform All Work Required by the Contract:** The intent of this Contract is to require complete, correct and timely execution of the Design Services and the Construction Work. Any and all Design Services that may be required, reasonably implied, or reasonably inferred by the Contract, or any part of it, as necessary to produce the intended result shall be provided by Design-Builder for the Design Services Fee as provided in Article IX of this Contract. In addition, any and all Construction Work that may be required, reasonably implied, or reasonably inferred by the Contract, or any part of it, as necessary to produce the intended result shall be provided by Design-Builder for the Guaranteed Maximum Price as provided in Article IX of this Contract.

7.2 **Strict Compliance with the Contract Documents:** All Construction Work performed by Design-Builder shall be in strict compliance with this Contract. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with the Contract is defective.

7.3 **Design-Builder's Schedule of Construction:** Per Article 1.2.4 of the General Conditions, Design-Builder, within ten (10) days after the commencement Date, shall submit to the ODR Design-Builder's Preliminary Work Progress Schedule, Preliminary Schedule of Shop Drawing and Sample Submittals and Preliminary Schedule of Values for all of the Work which shall constitute the Design-Builder's schedule for completing the Construction Work by the Scheduled Completion Date. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path management ("CPM") schedule in a form acceptable to Owner. Per Article 3.10 of the General Conditions, the Work Progress Schedule and successive updates shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to Owner. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design-Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Contract. No claim for an increase in the Guaranteed Maximum Price ("GMP") shall be allowed as a result of Design-Builder basing the GMP upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7.4 **Review and Approval of Submittals:** Design-Builder shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that the Project will be constructed in a timely fashion in strict compliance with the Contract. No deviation from, substitution for, or other modification from the Contract Documents shall be allowed by Design-Builder in a shop drawing or submittal without written approval, in the form of a Change Order, from Owner. Design-Builder shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Design-Builder also warrants it will use its best independent professional judgment in its review to determine compliance with the Contract Documents.

7.5 **Owner's Option to Review Submittals:** Owner shall also, in its discretion, have the right to review and approve Submittals, and if Owner so elects, Design-Builder shall not perform any

portion of the Construction Work as to which Owner has required submittal and review until such Submittal has been approved by the Director. Approval by the Director, however, shall not be evidence that Construction Work installed pursuant to the Director's approval conforms to the requirements of the Contract nor shall such approvals relieve Design-Builder of any of its responsibilities or warranties under the Contract. If Owner elects to review Submittals, Design-Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Design-Builder shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to Owner. Shop Drawings and other Submittals from Design-Builder do not constitute a part of this Contract.

7.6 **Procurement of Operations and Maintenance Documentation:** Design-Builder shall prepare or procure and shall transmit to the Director all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

7.7 **As-Built Drawings:** Design-Builder shall use REVIT Modeling Software in the latest revision to prepare and provide to the Director the final as-build deliverable which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract. The model shall follow the AIA E202 Protocol, level 500 as a minimum and Design-Builder shall attach all close-out documents electronically to the model for delivery to the owner on a flash drive or DVD.

7.8 **Compliance with Labor Laws:** Per this Paragraph 8.8 and Article 3.4 of the General Conditions, Design-Builder shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

7.9 **Testing, Inspections, and Approvals:** Owner shall be responsible for procuring the services of special inspections and material testing as required by IBC 2009 Chapter 17, including but not limited to construction materials testing. Any licenses, certifications, or performance testing as required shall be the responsibility of the Design-Builder.

7.10 **Owner's Regulations and Applicable Laws:** Design-Builder shall, during the course of the Construction Work, comply with any regulations or guidelines contained in the Contract or as mutually agreed to in writing to by the Parties. Design-Builder warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Design-Builder in connection with the Construction Work to be performed under the Contract.

7.11 **Compliance with Construction Regulations:** Design-Builder shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design-Builder, and Design-Builder shall fully indemnify and hold Owner harmless from all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations.

7.12 **Conditions to Site Access:** While on Owner's property, all Design-Builder's employees and Subcontractors shall confine themselves to areas designated by the Director and will be subject to Owner's badge and pass requirements, if any, in effect at the site of the Construction Work.

7.13 **Repair of Collateral Damage:** Unless otherwise instructed by Owner, Design-Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities and pre-existing site features affected by Design-Builder's performance of the Construction Work.

ARTICLE VIII
CONTRACT PRICE

8.1 **Contract Price: The Contract Price is the not to exceed amount of FORTY-SEVEN MILLION ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS ($47,175,000.00), and will consist of the Design Services Fee, and Guaranteed Maximum Price for Construction work as set out herein.** The quantities of the various elements of the Work to be done and material to be furnished are determined by the Design-Builder. It is expressly understood and agreed by Owner and Design-Builder that the Contract Sum, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder and shall cover the cost for all Work required to complete the Project in accordance with the Contract Documents, regardless of what the final measurement of quantities is measured to be.

8.2 **Design Services Fee:** Owner shall pay, and Design-Builder shall accept, as full and complete payment for the Design Services, an amount not to exceed **TWO MILLION FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($2,450,000.00)**, payable on the basis of monthly billings as Design Services are completed and accepted by the Director.

8.3 The GMP is intended to address all items for the performance of all Construction Work required by the Contract, and the performance of all other requirements of this Contract, to include assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the GMP. The Design-Builder shall provide a fully functional and operational facility as intended in the GMP.

8.4 The GMP shall adopt and incorporate all of the terms and conditions of this Agreement and all other documents that comprise the Contract between the Owner and the Design-Builder. Any exceptions to or modifications of such terms and conditions proposed by the Design-Build Contractor in the GMP shall not be effective unless they are expressly stated and conspicuously identified in the GMP and are specifically accepted and approved by the Owner.

8.4.1 The GMP shall consist of the Cost of the Construction Work as defined in the Contract, plus the **Design-Builder's Management Fee, which is ONE MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS ($1,700,000.00)**. Owner agrees to perform its responsibilities so as to assist Design-Builder to facilitate the completion of the Construction Work and represents to Design-Builder that there will be sufficient funds available to pay Design-Builder up to the **GMP of FORTY-FOUR MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS ($44,725,000.00)** as adjusted by any Change Order. **The GMP, unless changed by Supplemental Agreement or Change Order, represents the absolute limit of obligation or liability that Owner may ever have insofar as the cost for full and final completion of the Construction Work, and the total of all payments to Design-Builder or its Subcontractors, are concerned.** Should additional amounts be required to be expended, over and above the GMP, to achieve completion of the Construction Work, including Project construction, and payment to Design-Builder, in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of Design-Builder and its Contract Surety herein, and Owner shall never be liable for same. **Should the final Cost of the Construction Work and Design-Builder's compensation total less than the GMP, or any approved revision thereof, the difference shall inure to the benefit of Owner and no claim for all or any portion of said difference shall be valid against or payable by Owner. Owner's limitation of obligation or liability set out in this Paragraph shall be incontrovertible and unequivocal; any term or provision of this Contract, the Exhibits, attachments, or provisions incorporated by reference in or to this Contract, or of any Subcontract**

executed in furtherance of the anticipated Construction Work under the Contract shall not be construed or deemed to alter or waive this absolute condition. Likewise, Design-Builder's absolute responsibility for the completion of the Project in accordance with the Contract Documents, including the Plans and Specifications, and within the agreed cost constraints, as well as Design-Builder's agreement to bear all costs in excess of the GMP without recourse to Owner, if such excess costs are necessary for the completion of the Construction Work, shall be incontrovertible and undisputable, and shall take precedence over all other terms and provisions of this Contract and the Exhibits hereto, no part of which shall be deemed to alter, diminish or waive such obligations.

8.5 RESERVED

8.6 Management of Construction Work: In addition to the Construction Work Design-Builder will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Management Fee described in Paragraph 9.1 is paid. The services required are not intended in any manner to diminish the overall responsibility of Design-Builder for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

8.7 Cost of Construction Work: Owner agrees to pay Design-Builder for the Cost of the Construction Work as defined herein, subject to submission by Design-Builder of all backup substantiation as may be reasonably required by the Director. Such payment shall be in addition to the Design-Builder's Management Fee specified above. However, in no event shall the sum of payments for the Cost of the Construction Work, Design-Builder's Management Fee and any other Design-Builder compensation exceed the Guaranteed Maximum Price, as adjusted by Change Order. The following items are considered to be part of the Cost of the Construction Work:

8.7.1 Wages paid for labor in the direct employ of the Design-Builder in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by the Owner and Design-Builder, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard pay in the locality of the Construction Work except with prior consent of the Owner, and shall include the items set forth below in this Article. The reasonable cost of drug testing for all of Design-Builder's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Construction Work.

8.7.2 Salaries of Design-Builder's employees at or below the level of Project Design-Builder, when engaged on the Construction Work and stationed at the Field Office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Construction Work.

8.7.3 Cost of reasonable and customary pension contributions, hospitalization insurance, medical insurance, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to employees of the Design-Builder and included in the Cost of the Construction Work under Subparagraphs 9.3.1, 9.3.2, 9.3.24, and 9.3.25 herein.

8.7.4 With prior Owner approval, the proportion of reasonable travel and hotel expenses incurred outside of the City of San Antonio metropolitan area by the Design-Builder's officers or employees in discharge of duties directly connected with the Construction Work.

8.7.5 Cost of all materials, supplies and equipment incorporated in the Construction Work, including costs of transportation thereof.

8.7.6 Payments made by the Design-Builder to Subcontractors for Construction Work performed pursuant to Subcontract, entered into in the performance of this Contract.

8.7.7 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Construction Work, and cost less salvage value of such items used but not consumed which remain the property of the Design-Builder.

8.7.8 In connection with the Construction Work and management services and with prior Owner approval, rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Construction Work, whether rented from the Design-Builder or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those shown in the then current Associated Equipment Distributors (AED) Manual. Provided further, that with respect to equipment and machinery rented from the Design-Builder, the rental rate shall not exceed 75% of the current AED Manual rental charges, and shall in no event cumulatively exceed the value of such equipment or machinery at the commencement of the rental period. Should rental charges reach such value for equipment and machinery rented from the Design-Builder, same shall thereafter belong to Owner, to be disposed of in accordance with Paragraph 11.5 below. Design-Builder shall furnish the Director with a list, to be updated monthly, of all equipment furnished for the Project for which Owner reimburses Design-Builder as a part of the Cost of the Construction Work. Equipment and machinery rented which becomes property of Owner pursuant to this paragraph shall be delivered to Owner upon final completion and acceptance by Owner of all Construction Work under the Project.

8.7.9 Cost of the premiums for all bonds and insurance coverage required by this Contract, or deemed necessary by the Design-Builder, in the normal pursuit of the Construction Work. Premiums for company-wide coverage will be pro-rated on the basis of value of Construction Work completed during the premium period. The cost of (or payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon Design-Builder's negligence, under any insurance furnished by Owner, or under insurance policies required by this Contract or deemed necessary by the Design-Builder in the normal pursuit of the Construction Work.

8.7.10 Taxes, if any, related to the Work. However, as Owner qualifies for exemption under Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, Design-Builder shall alert all Subcontractors to prevent erroneous payment of taxes covered by this exemption. Owner will provide exemption certificates as needed to confirm this exemption.

8.7.11 Permit fees, licenses, tests, royalties; deposits lost for causes other than the Design-Builder's negligence.

8.7.12 Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with and for the benefit of the Construction Work.

8.7.13 Cost of removal of debris. Removal of debris left by other contractors hired by the Owner is not a part of this Contract.

8.7.14 Cost incurred due to an emergency affecting the safety of persons and property.

8.7.15 Other costs incurred in the performance of the Construction Work, if and to the extent approved in advance in writing by Owner.

8.7.16 The reasonable, actual direct cost of data processing services as required for the Project. Such costs shall be specifically documented as having been done for the Project.

8.7.17 Legal costs growing out of prosecution of the Construction Work for the Owner will only be reimbursable if such were incurred for the direct benefit of the Owner and with prior written approval of Owner.

8.7.18 Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs, or video tape records.

8.7.19 All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, blueprinting, furniture, fixtures, office equipment, etc.

8.7.20 Costs incurred by the Design-Builder in preparing and maintaining progress schedules, budgets, and reports required hereby.

8.7.21 The reasonable, actual direct cost of computer services, including jobsite and main office terminal, for purposes of field payroll preparation and control. Such costs shall be specifically documented as having been done for the Project.

8.7.22 Design-Builder shall be responsible for enforcing warranties and for obtaining correction and/or replacement of all defective Construction Work not constructed or installed in accordance with the Contract Documents. All such corrective or remedial Construction Work required by the Contract Documents shall be performed by the responsible Subcontractors under the terms of their Subcontracts, without additional cost to the Owner. Costs incurred by Design-Builder to correct or remedy Construction Work performed by Design-Builder's own forces, or where the responsible Subcontractor fails to perform, shall **NOT** be a Cost of the Construction Work, and shall be Design-Builder's sole responsibility, at no additional cost to Owner; provided, however, Design-Builder shall be entitled to the proceeds of any Subcontractor maintenance bond, where such Subcontractor has defaulted in this regard.

8.7.23 Salaries of Design-Builder's Project Design-Builder and Contract Design-Builder, Safety Engineer, M/WBE Coordinator, and Procurement Specialist (for coordinating, costing, scoping and purchasing of major Work items), earned after the date of approval and funding of the GMP, whether stationed at the Field Office or at the Main Office of the Design-Builder, for that portion of their time spent on this Construction Work.

8.7.24 Where not otherwise included in the Cost of the Construction Work under Subparagraphs 9.5.16, 9.5.20 and 9.5.22, cost of central accounting services in connection with the Construction Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting and preparation of other reports.

8.8 Reconstruction Due to Casualty Loss: If, after a substantial loss from fire, flood, or similar cause not due to the default or neglect of the Design-Builder, the Design-Builder is put in charge of reconstruction, the Design-Builder shall be paid a management fee for its services proportionate to the Management Fee specified in this Contract. Any reconstruction work shall be considered part of the Scope of the Work, except that the Design-Builder's Management Fee under the GMP shall be adjusted accordingly, unless otherwise reimbursed by the proceeds of insurance, or through utilization of the Change Order procedure set out in this Contract.

8.9 **Discounts, Refunds, Sales of Surplus Materials:** All discounts, if realized, for prompt payment shall belong to Owner and shall be accounted for in the applicable GMP line item. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall likewise belong to Owner, and Design-Builder and Owner shall make provisions so that they can be secured, the amounts thereof to be accounted for in the applicable line item.

8.10 **Costs Not Included as Part of the Construction Work and Services:** The following items of cost and expense are not included as part of the Cost of the Construction Work to be paid by Owner to Design-Builder:

8.10.1 Except as specifically provided above, salaries, wages, and other compensation of Design-Builder personnel stationed at Design-Builder's principal office or offices.

8.10.2 Design-Builder's home office overhead, including, but not limited to, any and all expenses associated with Design-Builder's principal office and offices other than at the Project site.

8.10.3 Design-Builder's capital costs and expenses, including interest on capital utilized in the performance of this Contract.

8.10.4 Rental cost for machinery or equipment except as expressly provided above.

8.10.5 Cost and expense incurred by Design-Builder, its Subcontractors, consultants, or suppliers, or anyone directly or indirectly employed by any of them, when such costs or expenses are the result of their negligence or failure to perform any required contractual duty.

8.10.6 Any and all cost or expense not specifically allowed pursuant to Paragraph 9.3 above.

8.11 Any and all cash discounts, rebates, or refunds relating to payments made by Design-Builder shall accrue to Owner and shall be credited or paid to Owner at its election.

8.12 Owner may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to Owner from Design-Builder, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to Owner has been reduced to judgment by a court.

ARTICLE IX
PAYMENT OF THE CONTRACT PRICE

9.1 **Payment Procedure:** Owner shall pay the Contract Price to Design-Builder in accordance with the procedures set forth in this Article 10 and, for purposes of the Construction Work, the applicable provisions of Article 9 of the General Conditions to the extent they do not conflict with this Article.

9.2 **Internet-based Project Management Systems:** Owner will administer its design and construction management through an Internet-Based Management System. In such case, the Design-Builder shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, amendment, change orders and other administrative activities. The Owner shall administer the software, shall provide training to Project Team Members, and shall make the software accessible via the Inter net to all Project Team Members.

9.3 **Program Management Portal:** All draws shall be submitted through the CITY's Program Management Portal. Prior to submittal of the first draw, Design-Builder will

submit a schedule of values for payment to be approved by the CITY, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

9.4 **Request for Payment for Design Services:** As the Design Services progress, Design-Builder shall submit monthly statements for Design Services rendered, based upon a percentage of completion of the Design Services. If special services or reimbursable expenses are included as part of the Design Services Fee, such services shall be paid on the basis of the hourly rates or actual cost, as applicable, for those items as needed or required by Owner. Owner shall make monthly payments for Design Services in the amount shown by the Design-Builder's approved monthly statements and other required documentation submitted within thirty (30) days after receipt by Owner of a properly prepared and certified request for payment for Design Services. Nothing contained in this Subparagraph shall require Owner to pay for any Design Services which are unsatisfactory as determined by the Director, or which are not submitted in compliance with the terms of this Contract, and payment may be withheld until the Design Services at issue are corrected or compliance is achieved. Progress payments for Design Services under this Contract shall be up to but shall not exceed 95% of the total Design Services Fee; upon final completion and acceptance of the Construction Work, the balance of the Design Services Fee will be paid along with any final payment for the Construction Work.

9.5 **Request for Payment for Construction Work:** Payments for Construction Work shall be made in accordance with Article 9 of the General Conditions.

9.6 **Payment of the Management Fee:** In addition to the payment of the Cost of the Construction Work and related services as set forth above, Owner will pay Design-Builder its Management Fee monthly during performance of Construction Work, based upon the percentage of Construction Work completed in accordance with the Contract. From each scheduled Management Fee payment, Owner shall further withhold retainage in the amount of five percent (5%).

9.7 **Right to Audit:** Owner shall be entitled to rely upon the accuracy and completeness of the information furnished by Design-Builder in connection with any request for payment under this Contract. Owner reserves the right to audit, at Owner's election, all of Design-Builder's records and billings relating to the performance of Design Services or Construction Work under this Contract. Design-Builder agrees to retain its Project records for a minimum of four (4) years following completion of all Services under this Contract. Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Contractor under this Contract. City is granted the right to audit, at City's election, all of Contractor's records and billings relating to the performance of this Contract. Contractor agrees to retain such records for a minimum of four (4) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this subsection. In the event Owner determines that Design-Builder has been paid any sums not due Design-Builder, same shall be reimbursed by Design-Builder to Owner within forty-eight (48) hours of demand by Owner.

9.8 **Condition Precedent to Final Payment:** Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design-Builder until Design-Builder has fully performed all of its obligations under the Contract and the Design Services and the Construction Work are fully complete.

9.9 **Owner's Review of Pay Requests:** Owner shall have the right to review all pay requests for the Design Services and the Construction Work to determine whether the quantity and quality of the Design Services and the Construction Work is as represented in the pay request and as required by the Contract.

9.10 **Conditions Precedent to Payment:** In addition to all other conditions precedent contained in this Contract and in the General Conditions, including but not limited to the provisions of Subparagraphs 10.9 and 13.5, it shall be a condition precedent to payment of any pay request under this Contract that Design-Builder has submitted properly updated or revised schedules for the performance of its Design Services and Construction Work as required by this Contract.

9.11 **Passage of Title to Construction Work:** Notwithstanding progress payments made by Owner under this Contract, title to Construction Work under this Contract does not pass to Owner until final completion of the Project, at which point title to all Construction Work is deemed to pass immediately to Owner. The risk of loss regarding completed Construction Work that is paid for by Owner prior to final completion remains with Design-Builder.

9.12 **Design-Builder's Use of Progress Payments:** Upon receipt of any payment from Owner, Design-Builder shall promptly pay all Subcontractors, materialmen, laborers, and Suppliers such amounts as they are entitled for the Construction Work covered by such payment. Design-Builder shall also comply with the requirements of the General Conditions relating to payments to subcontractors.

9.13 **Use of Joint Checks:** If Owner becomes informed that Design-Builder has not paid a Subcontractor, materialman, laborer, or supplier as provided herein, Owner shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Design-Builder naming Design-Builder and any such Subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.

9.14 **Payment Not a Waiver or Acceptance:** No payment to Design-Builder, nor any use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Construction Work not in strict compliance with the Contract, and Design-Builder expressly accepts the risk that defective Construction Work may not be detected (1) during any inspection by Owner, (2) prior to making of any payment to Design-Builder, or (3) before Owner's occupancy of the Project.

9.15 **Withholding of Payment:** Owner shall have the right to refuse to make payment for Construction Work and, if necessary, may demand the return of a portion or the entire amount previously paid to Design-Builder in an amount then believed by Owner to be adequate to cover the penalties, damages, and potential losses resulting or likely to result from:

9.15.1 the quality of a portion, or all, of Design-Builder's Construction Work not being in accordance with the requirements of this Contract;

9.15.2 the quantity of Design-Builder's Construction Work not being as represented in Design-Builder's pay request, or otherwise;

9.15.3 Design-Builder's rate of progress being such that, in Owner's opinion, Substantial Completion, Final Completion, or both, may be inexcusably delayed;

9.15.4 Design-Builder's failure to use Contract funds, previously paid Design-Builder by Owner, to pay Design-Builder's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment suppliers;

9.15.5 evidence that the balance of the Construction Work cannot be completed in accordancewith the Contract for the unpaid balance of the Contract Price;

9.15.6 claims made, or likely to be made, against Owner or its property;

9.15.7 loss or damage caused by Design-Builder;

9.15.8 Design-Builder's failure or refusal to perform any of its obligations to Owner; or

9.15.9 any other basis for withholding of payment specified in the General Conditions.

In the event that Owner makes written demand upon Design-Builder for amounts previously paid by Owner as contemplated in this Paragraph 11(N), Design-Builder shall promptly comply with such demand.

9.16 **Limitation on Duty to Pay:** In addition to the grounds for withholding payment as set forth in Paragraph 10.16 hereinabove, Owner and Design-Builder further agree as follows:

9.16.1 Prior to Owner's approval of the Guaranteed Maximum Price and execution of a supplemental agreement, Design-Builder shall submit to Owner a Schedule of Values allocating the Guaranteed Maximum Price to the various portions of the Construction Work. Such Schedule of Values shall be prepared in such form, with such detail, and supported by such data as Owner may require to substantiate its accuracy. Design-Builder shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by Design-Builder shall constitute a material breach of this Contract. The Schedule of Values shall only be utilized as a basis for evaluating Design-Builder's request(s) for payment and shall only constitute such basis after it has been acknowledged in writing by Owner.

9.16.2 Each request for payment for Construction Work shall include a certification by Design-Builder of the percentage of completion, as of the date of such request for payment, of those portions of the Construction Work as identified in the Schedule of Values. Design-Builder shall furnish to Owner such documentation or other supporting data as Owner may request in order to verify the percentage of completion certified by Design-Builder.

9.16.3 Owner shall have no obligation to make payment to Design-Builder for any Design Services or Construction Work where the amount for which such payment is requested is in excess of the amount allocated in the Schedule of Values for Construction Work based upon the percentage of completion as of the date of the request for payment.

9.17 **Unexcused Failure to Pay:** If Owner, without cause or basis, fails to pay Design-Builder any amounts due and payable under this Contract to Design-Builder within thirty (30) days after the date established in this Contract for payment of such amounts, then the payment shall bear interest in accordance with the Texas Prompt Payment Act, as amended. Provided, however, that Owner shall not be liable for interest due on any late or delayed progress payment or final payment caused by any good faith claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the request for payment or as a precondition to payment under the Contract Documents, or due to any payment Owner has a right to withhold or not certify under the Contract Documents.

ARTICLE X
OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

10.1 In addition to payment, Owner shall undertake to perform the following:

10.1.1 **Provide Project Information:** Owner shall provide Design-Builder with information regarding Owner's requirements for the Project including any desired or required design or construction schedule.

10.1.2 **Review of Documents:** Owner shall review any documents submitted by Design-Builder requiring Owner's decision, and shall render any required decisions pertaining thereto.

10.1.3 **Provide Notice of Defects:** In the event Owner knows of any material fault or defect in the Construction Work, nonconformance with the Contract, or of any errors, omissions or inconsistencies in the Construction Documents, then Owner shall give prompt notice thereof in writing to Design-Builder.

10.1.4 **Access to the Site and the Construction Work:** Owner shall provide Design-Builder access to the site and to the Construction Work, and shall provide Design-Builder with such information, existing and reasonably available, necessary to Design-Builder's performance of the Contract as Design-Builder may request.

10.1.5 **Cooperation to Secure Permits, Licenses, Approvals and Authorizations:** Owner shall cooperate with Design-Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

10.1.6 **Timely Performance:** Owner shall perform the duties set forth in this Article 14 in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design-Builder's Design Services and of the Construction Work.

10.1.7 **Owner's Reviews, Inspections, Approvals, and Payments Not a Waiver:** Owner's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Design-Builder shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner of the Construction Work or documents shall relieve Design-Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or Contract Documents shall not relieve Design-Builder of responsibility for the strict performance of its obligations under the Contract. Payment by Owner pursuant to the Contract shall not constitute a waiver of any of Owner's rights under the Contract or at law, and Design-Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

10.1.8 **Delay Or Forbearance Not Waiver:** Owner's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Design-Builder under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

10.1.9 **Documents Requested By Design/Builder:** Owner shall furnish to Design-Builder, prior to the execution of this Contract, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written

and tangible material is furnished to Design-Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, Owner does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part. **Owner expressly does not warrant any geotechnical or site information provided by it for use in connection with preparation of the Construction Documents**; Design-Builder, however, may reasonably rely on geotechnical information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors, and omissions that a reasonable, prudent professional architect or engineer should or would detect and inquire about. If Design-Builder requests it in writing, Owner shall also furnish surveys, legal limitations, utility locations (if known), and a legal description of the Project site.

10.1.10 **Approvals and Easements:** Owner shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction site. Design-Builder shall render such assistance as Owner may request in obtaining such easements, certificates of occupancy, and the like.

10.1.11 **Right to Stop Construction Work:** In the event Design-Builder fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, Owner may, at its option, instruct Design-Builder to stop the Work in accordance with paragraph 2.2.6 of the General Conditions and/or carry out the Work in accordance with paragraph 2.2.7 of the General Conditions.

ARTICLE XI
PROJECT DOCUMENTATION

11.1 **Maintenance of Project-Related Records:** Design-Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

11.2 **Availability of Project-Related Records to Owner:** All Project Records which are in the possession of Design-Builder or Design-Builders Subcontractors shall be made available to Owner for inspection and copying upon Owner's request at any time. Additionally, such records shall be made available upon request by Owner to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Design-Builder.

11.2.1 Design-Builder must notify Owner immediately if Design-Builder receives a request for documements from a third party. Owner must be given the opportunity to assert any proprietary interest it may have.

11.2.2 Design-Builder must impose on it Subcontractors or Subconsultants, if any, all record retention obligations of this Contract.

ARTICLE XII
OWNERSHIP OF PROJECT DOCUMENTS AND COPYRIGHTS

12.1 All work products (electronically or manually generated) including but not limited to cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and

Design (CADD) file diskettes, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the Owner and are to be delivered to the Director before the final payment is made to the Design-Builder. Nonetheless, in the event these Projects Documents are altered, modified or adapted with or without the written consent of the Design-Builder, which consent the Design-Builder will not unreasonably withhold.

12.2 When applicable and required by state law, all completed documents submitted by the Design-Builder and its Subconsultants for final approval or issuance of a permit shall bear the seal with signature and the date adjacent thereto of a Texas registered professional for all plans, works, and Deliverables prepared by them for this Contract.

12.3 All previously owned documents, including the original drawings, estimates, specifications, and all other documents and data, will remain the property of the Design-Builder as instruments of service. However, the Design-Builder understands and agrees that the OWNER shall have free access to all such information with the right to make and retain copies of previously owned **drawings, estimates, specifications and all other documents and data. Any reuse without specific written verification or adaptation by Design-Builder will be at OWNER's sole risk and without liability or legal exposure to Design-Builder.**

12.4 The Design-Builder acknowledges and agrees that upon payment, the OWNER shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Contract and shall be used as the OWNER desire and documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to the OWNER at no additional cost to the OWNER upon **request or termination or completion of this Contract without restriction on future use. However, any reuse by owner without specific written verification or adaptation by Design-Builder will be at OWNER's sole risk and without liability or legal exposure to Design-Builder.**

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

12.6 THE DESIGN-BUILDER HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT IN PART OR IN WHOLE WAS PRODUCED FROM THIS CONTRACT TO THE OWNER, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS CONTRACT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY THE DESIGN-BUILDER. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS CONTRACT SHALL BECOME THE PROPERTY OF THE OWNER (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). THE DESIGN-BUILDER SHALL, AT ITS EXPENSE, INDEMNIFY OWNER AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE OWNER AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE OWNER, INSOFAR AS THE SAME ARE BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS CONTRACT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.

12.7 The Design-Builder may make copies of any and all documents and items for its files. The Design-Builder shall have no liability for changes made to or use of the drawings, specifications and other documents made by engineers, or persons other than the Design Builder. Design-Builder shall appropriately mark all changes or modifications on all drawings, specifications and other documents made by engineers or persons other than the Design Builder, including electronic copies.

12.8 Copies of documents that may be relied upon by the OWNER are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by the Design-Builder. Files in editable electronic media format of text, data, graphics, or other types, (such as DGN) that are furnished by the Design-Builder to the OWNER are only for convenience of the OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by Design-Builder will be at OWNER's sole risk and without liability or legal exposure to Design-Builder.

12.9 Nothwithstanding anything to the contrary contained herein, all previously owned intellectual property of Design-Builder, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by Design-Builder or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the Design-Builder to provide the services or protect deliverables to OWNER, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of Design-Builder or its suppliers.

ARTICLE XIII
INSURANCE REQUIREMENTS

13.1 Prior to the commencement of any work under this Project the Design-Builder shall purchase and maintain insurance as set forth in Article 11 of the Owner's General Conditions, and any supplementary General Conditions or Special Conditions, if applicable.

ARTICLE XIV
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

14.1 DEFINITIONS

14.1.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the OWNER. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Contract:

14.1.2 SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

14.1.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors

shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

14.1.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

14.1.5 SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Design-Builder's submittal for this project Contract, attached hereto and incorporated herein as part of "Exhibit D".

14.2 For this Contract, the Parties agree that:

14.2.1 The terms of the CITY's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Contract by reference; and

14.2.2 The failure of Design-Builder or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Contract.

14.2.3 Failure of Design-Builder or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Contract.

14.2.4 During the Term of this Contract, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Design-Builder SBEDA Plan ("Exhibit D") shall constitute a material breach of the SBEDA Program and this Contract.

14.2.5 Design-Builder shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Exhibit D") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Design-Builder to the CITY Managing Department. Failure to pay Suppliers and subcontractors in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Contract.

14.3 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Contract:

14.3.1 Failure of Design-Builder to utilize an SE that was originally listed at bid opening or proposal/SOQ submission to satisfy SBEDA Program goals in order to be awarded this Contract, or failing to allow such SE to perform a Commercially Useful Function; or

14.3.2 Modification or elimination by Design-Builder of all or a portion of the scope of work attributable to an SE upon which the Contract was awarded; or

14.3.3 Termination by Design-Builder of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Contract without

replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or

14.3.4 Participation by Design-Builder in a Conduit relationship with an SE scheduled to perform work that is the subject of this Contract.

14.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the Owner may have at law or in equity, or under this Contract for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the Owner shall be entitled, at its election, to exercise any one or more of the following remedies if the Design-Builder materially breaches the requirements of the SBEDA Program:

14.4.1 Terminate this Contract for default;

14.4.2 Suspend this Contract for default;

14.4.3 Withhold all payments due to the Design-Builder under this Contract until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or

14.4.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the Owner pursuant to the Contract, or from any other amounts due to the Design-Builder under the Contract.

14.4.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Contract.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

14.5 Owner Process for Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the Owner to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Contract. If the recommended remedy is to terminate the Contract, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

14.6 Special Provisions for Extension of Contracts. In the event the Owner extends this Contract without a competitive Bid process, the CITY Managing Department responsible for monitoring the Contract shall establish the following, subject to review and approval by the SBEDA Program Manager:

14.6.1 A SBEDA Utilization Goal for the extended period; and

14.6.2 A modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if Design-Builder does not meet the SBEDA Utilization Goal; and

14.6.3 The required minimum Good Faith Efforts outreach attempts that Design-Builder shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Contract extension document. The Design-Builder entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

14.6.3.1 Subject Design-Builder to any of the remedies listed above; and/or

14.6.3.2 Result in resolicitation of the Contract that was considered for extension.

ARTICLE XV
DESIGNATED REPRESENTATIVES

15.1 REPRESENTATIVES OF THE PARTIES

15.1.1 **Owner's Designated Representatives:**

Owner designates the individual listed below or his designee as its Architect or Engineer Representative, which individual has the authority and responsibility for avoiding and resolving disputes in project delivery, addressing project management issues and for avoiding and addressing technical disputes regarding architectural and engineering design services provided under the provisions of this Contract.

Elizabeth Feldman, AIA
City Architect
Capital Improvements Management Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Owner designates the individual listed below as its Owner's Designated Project Management Representative (ODR), which individual has the authority and responsibility for day-to-day project management activities as set forth in this Agreement.

Cathleen Crabb
Project Manager
Capital Improvements Management Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

15.1.2 **Design-Builder's Designated Representatives:**

Design-Builder designates the individual listed below as its Senior Representative

("Design-Builder's Senior Designated Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under the provisions of this Contract.

Jim Pappas
Project Executive
8326 Cross Park Drive
Austin, Texas 78754

Design-Builder designates the individual listed below as its Representative (Design-Builder's Representative), which individual has the authority and responsibility for day-to-day project management activities as set forth in this Agreement.

Jeff Balthrop, LEED AP
Design-Build Project Manager
8326 Cross Park Drive
Austin, Texas 78754

ARTICLE XVI
MISCELLANEOUS PROVISIONS

18.1 **Dispute Resolution:** All disputes against the Owner that arise from this Contract or any Project shall be resolved in accordance with the procedures and limitations of Texas Local Government Code Subchapter I, Chapter 271.151et.seq., and the Owner's General Conditions. The Owner designates the Director or his Director of the Department Designee as its officer(s) for examining, negotiating and resolving claims and counterclaims. Owner hereby waives sovereign immunity only in accordance with Section 271.152 of the Local Government Code for its obligations to Design-Builder arising under this Contract.

18.2 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

18.3 **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, Texas Family Code, Design-Builder certifies that it is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

18.4 **Franchise Tax Certification:** A corporate or limited liability company Design-Builder certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

18.5 **Payment of Debt or Delinquency to the Owner:** It is the policy of the Owner that any person or entity doing business with the Owner shall at all times remain in financial good standing with all City Departments. In that regard, Design-Builder warrants that it has no outstanding obligations to any City Department at the time of the execution of this Contract, and hereby covenants that it will timely pay, as they come due, any and all taxes, fees, fines or any other charges assessed by any City Department whether imposed by statute, ordinance or contract, without regard to whether these charges are associated with this Contract, or Design-Builder's operation under this Contract.

18.6 Contract Documents; Merger: The Contract Documents form the entire and integrated Contract between Owner and Design-Builder and supersede all prior negotiations, representations or agreements, written or oral. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Design-Builder and Owner.

18.7 Captions: The captions of paragraphs in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

18.8 Notices: In addition to the written Notice Provision in the General Conditions all notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Design-Builder or Owner for whom it is intended; or sent by U. S. Mail, certified mail, return receipt requested, to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. Notices of claims or disputes or other legal notices required by this Contract shall be sent to the following persons at the indicated locations. The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

If to City:
City of San Antonio
Capital Improvements Management
Services Department
Attention: Mike Frisbie, P.E., Director
P. O. Box 839966
San Antonio, Texas 78283-3966

If to Design-Builder:
Hensel Phelps Construction Co.
Attention: Thomas D. Fisher, Vice
President
8326 Cross Park Drive
Austin, Texas 78754

18.9 Severability: Should any term or provision of this Contract be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Contract shall be construed as if the invalid or unenforceable term or provision had never been included.

18.10 Illegal Dumping: The Design-Builder shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

18.11 Equal Employment Opportunity and Affirmative Action: The Design-Builder shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Contract as of the day and year first above written.

CITY OF SAN ANTONIO, TEXAS

By: _____
Sheryl Sculley, City Manager

HENSEL PHELPS CONSTRUCTION CO.

By: _____
Thomas D. Fisher, Vice President

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
BRIDGING DOCUMENTS

PREPARED BY FORD, POWELL AND CARSON AND DATED SEPTEMBER 3, 2010 AND PROVIDED TO DESIGN-BUILDER AS PART OF THE RFP DATED SEPTEMBER 20, 2010

EXHIBIT B
DESIGN-BUILDER'S FEE PROPOSAL

Guaranteed Maximum Price GMP Proposal

Price Proposal for:	**Public Safety Headquarters**
Name of Firm:	**Hensel Phelps Construction Co.**

Cost of Work:			**Proposed Price:**
Division 2			
	Selective Demolition	$	115,000
Division 3			
	Concrete	$	9,150,000
Division 4			
	Masonry	$	2,290,000
Division 5			
	Metals	$	1,349,000
Division 6			
	Rough Carpentry	$	61,000
	Casework	$	475,000
Division 7			
	Thermal & Moisture Protection	$	3,080,000
	Roofing System	$	439,000
	Pre-Vegetated Roof Modules	$	459,000
Division 8			
	Doors, Frames and Hardware	$	596,000
	Aluminum Storefront Assemblies	$	1,205,000
	Overhead Doors	$	111,000
	Glass and Mirrors	$	252,000
	Fiberglass Sandwich Panel Assemblies	$	454,000
Division 9			
	Gypsum Bd Assemblies	$	1,311,000
	Ceramic Tile	$	428,000
	Suspended Ceilings	$	1,289,000
	Resilient Flooring and Base	$	237,000
	Terrazzo Floor	$	182,000
	Carpet Tile	$	424,000
	Paint and Wall Coverings	$	454,000
Division 10			
	Specialties	$	814,000
Division 11			
	Vehicle Wash Equipment	$	236,000
	Fuel Dispensers & Underground Tanks	$	329,000
	Parking Equipment	$	100,000
Division 12			
	Furnishings	$	63,000
Division 13			
	Bullet Resistant Specialties	$	673,000
Division 14			
	Elevators	$	880,000

Division 21				
	Fire Suppression	$	430,000	
Division 22				
	Plumbing	$	1,350,000	
Division 23				
	HVAC	$	4,050,000	
Division 26				
	Electrical	$	4,918,000	
Division 28				
	Electronic Safety and Security	$	240,000	
Division 31				
	Earthwork	$	203,000	
Division 32				
	Paving, Curbs, Walks and Medians	$	416,000	
	Pavement Markings	$	15,000	
	Fences and Gates	$	111,000	
	Plantings and Irrigation	$	218,000	
Division 33				
	Underground Utilities	$	250,000	
Cost of Work Total		**$**	**39,657,000**	$ 39,657,000
Insurance	Builders Risk	$	48,000	
	General Liability	$	237,000	
Bond Premium		$	501,000	
General Conditions		$	2,582,000	
Proposed Contractors Fee & Overhead		$	1,700,000	
Total Proposed GMP		**$**	**44,725,000**	$ 44,725,000

Design Services Fee	**$**	**2,450,000**
	$	47,175,000

EXHIBIT C
GENERAL CONDITIONS FOR CITY OF SAN ANTONIO BUILDINGS DESIGN-BUILD CONTRACTS

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GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO BUILDING DESIGN-BUILD CONTRACTS
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GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO BUILDING DESIGN-BUILD CONTRACTS

ARTICLE I. GENERAL PROVISIONS

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

1.1.1 The Contract Documents.

1.1.1.1 The Integrated Contract Documents consist of the formal Design-Build Contract between the Owner and the Design-Builder, the procurement solicitation documents, the Ordinance, these General Conditions and other supplementary conditions included by special provisions or addenda, Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract and Modifications or Amendments issued after execution of the Contract. An Amendment or Modification is a written supplemental agreement to the Contract signed by authorized representatives of both parties; a Change Order, including Change Orders signed only by the Owner as described in Section 7.1; or a written order for a minor change in the Work issued by the Owner or Owner's Consultant as described in Section 7.3.

1.1.1.2 The Contract Documents also include solicitation documents such as the Owner's Instructions to Bidders, sample forms, the Design-Builder's Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Design-Builder.

1.1.2 The Contract. The Contract Documents, as defined in Section 1.1, are expressly incorporated into and made a part of the formal Design-Build Contract between the Owner and the Design-Builder by reference in this Section and Section 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Design-Builder and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only by a Modification or an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

1.1.2.1 between the Owner's Consultant (if any) and Design-Builder;
1.1.2.2 between the Owner and a Sub-contractor or Sub-subcontractor; or
1.1.2.3 between any persons or entities other than the Owner and Design-Builder.

The Owner's Consultant (if any) shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Owner's Consulant's duties.

1.1.3 The Work. The term "Work" means the design, 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 the Design-Builder, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Design-Builder is responsible, to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 The Project. The Project is the capital improvement/construction development undertaking more particularly described in the Design-Build Contract, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

1.1.5 The Drawings. The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.6 The REVIT Model. The REVIT Model is the Building Information Model prepared by the design consultant with data bases of materials, products and systems that can be used by the contractor to prepare schedules for cost estimating, product and materials placement schedules and evaluations of crash incidences. The REVIT Model is available to be used as a tool, however all information taken from the model is the responsibility of the contractor and not the owner or the design consultant.

1.1.7 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

1.1.8 The Project Manual. The Project Manual is the volume or volumes which contain the bidding requirements, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

1.1.9 Alternate. An Alternate is a variation in the Work on which the Owner requires a price separate from the Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through award of the Contract and the Base Bid will be adjusted to include the amount quoted. If an Alternate is accepted by the Owner, and later deleted, the Owner will be entitled to a credit in the full value of the Alternate as priced in the Design-Builder's Proposal.

1.1.10 Base Proposal. The Base Bid is the price quoted for the Work before Alternates are considered.

1.1.11 Hazardous Substance. The term Hazardous Substance is defined to include the following:

1.1.11.1 any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable;

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

1.1.11.3 radon;

1.1.11.4 any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

1.1.11.5 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;

1.1.11.6 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;

1.1.11.7 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.; 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

1.1.11.8 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.

1.1.12 City Council. The duly elected members of the City Council of the City of San Antonio, Texas.

1.1.13 Construction Observer/Inspector. ("COI") The authorized representative of the Director of Capital Improvements Management Services or Public Works, or City of San Antonio designee department, assigned by the Owner to observe and inspect any or all parts of the Project and the materials to be used therein. Sometimes also referred to as the Resident Inspector. Also referred to as Resident Inspector.

1.1.14 Department. The Department of Capital Improvements Management Services, City of San Antonio, Texas or other department designee of the Department of Capital Improvements Management Services.

1.1.15 Federally Assisted Contract. Any contract financed in whole or in part with federal funds

1.1.16 Field Work Directives. A written order issued by the Owner Designated Representative (ODR) or Owner's Consultant which orders minor changes in the Work, but which does not involve a change in the Contract Sum or the Contract Time.

1.1.17 Major Bid Item. Any individual bid item submitted by Design-Builder that constitutes, at a minimum, five percent (5%) of the total Contract Sum proposed by the Design-Builder or, the dollar amount defined in the Special Conditions as constituting a "Major Bid Item", whichever is less; or in some instances specific bid Items which are identified and defined in other sections of the Contract Documents as constituting "Major Bid Items"

1.1.18 Notice to Proceed. (also "Work Project Authorization" or "Notice to Commence") A written notice given by Owner to Design-Builder establishing the date on which the Contract Time will commence to run, and on which Design-Builder may begin performance of its contractual obligations.

1.1.19 Site. Lands or areas (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 Design-Builder.

1.1.20 Other Definitions. As used in the Contract Documents, the following additional terms have the following meanings:

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

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

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

1.1.20.4 "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.

1.1.20.5 Not used.

1.1.20.6 "Program Management Team" is comprised of the Owner, its representatives and the Program Manager (if any) for this Work.

1.2 PRELIMINARY MATTERS.

1.2.1 Delivery of Bonds. When Design-Builder delivers the executed Contract to City, Design-Builder shall also deliver to City such bonds as Design-Builder may be required to furnish, including but not

limited to a payment bond in the form and amount specified in the Contract Documents and a performance bond in the form amount specified in the Contract Documents.

1.2.2 Delivery of Evidence of Insurance. Prior to the commencement of any Work under this Contract, Design-Builder shall furnish a copy of the Certificate of Insurance and the additional insureds endorsement page. Upon request of City, Design-Builder 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 Department, or its delegate department, clearly labeled with the name of the Project, which shall furnish and contain all information required by Contract Documents. The Design-Builder shall be prohibited from commencing the Work and the City shall have no duty to pay or perform under this Contract until such evidence of insurance shall have been delivered to the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

1.2.3 Notice to Proceed and Commencement of Contract Times. Unless otherwise stated in the Notice of Commencement, the Contract Times will commence to run on the earlier of the date work actually commenced, or seven calendar days after issuance of City's Notice of Proceed. No Work shall be done at the Site prior to issuance of the Notice to Proceed.

1.2.4 Submission of Preliminary Schedules. Contractor shall provide schedules in accordance with the February 2010 update, Special Provisions to the City of San Antonio Specifications for Construction dated June 2008, Item 700 Project Schedules that governs the creation, maintenance and delivery of Critical Path Method (CPM) Project Schedules. Within ten (10) calendar days after receipt of City's Notice to Proceed (unless otherwise specified elsewhere in the Contract Documents) Contractor shall submit to the Director of Capital Improvements Management Services or his or her designee the following:

1.2.4.1 A Preliminary Work Progress Schedule, which shall show the order in which the Design-Builder 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 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;

1.2.4.2 A Preliminary Schedule of Shop Drawing and Sample Submittals, which shall list each required submittal and the times for submitting, reviewing and processing such submittal; and

1.2.4.3 A Preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the 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. Overhead and Profit shall be included as a separate line item.

1.2.5 Preconstruction Conference. Within seven (7) days of issuance of the Notice to Proceed, but before any Work at the Site is started, a conference attended by Owner, Owner's Consultant (if applicable), Design-Builder and others as appropriate will be held to establish a working understanding among the parties as to the Work and discuss the Preliminary Work Progress Schedule referenced in this Article, procedures for handling Shop Drawings and other submittal, processing Applications for Payment and maintaining required records.

1.3 THE CONTRACT AND CONTRACT DOCUMENTS.

1.3.1 The Contract between Design-Builder and Owner consists of this document and the other Contract Documents described in Paragraph 2.2. The Contract shall be effective as of _____, the date of its approval, and that date shall also be considered the execution date of this Contract.

1.3.2 **The Contract Documents:** The Contract Documents consist of this document, the Bridging Documents, all Design Documents hereafter prepared by Design-Builder and approved by Owner in accordance with this Contract, the General Conditions for City of San Antonio Building Design-Build Contracts (hereinafter called the "General Conditions"), along with any special or supplemental

conditions or provisions added thereto with the consent of Owner. The General Conditions are deemed to be a part of this Contract by reference. The General Conditions shall govern all Construction Work on the Project, for which Construction Work Design-Builder is fully responsible to Owner. The General Conditions shall be included as general provisions for use with Construction Documents prepared by Design-Builder, Change Orders and Field Work Directives issued hereafter, along with any other written amendments executed by Owner and Design-Builder, as well as the following documents (if any):

all of which are hereby incorporated herein by reference and made a part of this Contract.

1.3.3 **Execution of Contract Documents.** The Contract Documents shall be signed by Owner and Design-Builder. If either the Owner or Design-Builder or both do not sign all of the Contract Documents, the Owner's Consultant (if any) shall identify such unsigned documents to both the Owner and the Design-Builder upon request. Execution of the Contract by the Design-Builder is a representation that the Design-Builder has been provided unrestricted access to the existing improvements and conditions on the Project Site, that it has thoroughly investigated the visible conditions at the Site and the general local conditions affecting the Work, and that Design-Builder's investigation was instrumental in preparing its bid or proposal for the Work. Design-Builder shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum arising from conditions that Design-Builder discovered or, in the exercise of reasonable care, should have discovered in Design-Builder's investigation.

1.3.4 **Enumerated Documents Form Entire Contract:** Documents not specifically enumerated in Paragraph 2.2 of this Contract or in Article 1 of the Owner's General Conditions are not Contract Documents.

1.3.5 **Contract Interpreted as a Whole:** This Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion of the Contract shall be deemed to be required Contract Work as if called for in the whole Contract and no claim for extra work shall be based upon the fact that the description of the Work in question is incomplete.

1.3.6 **Provision of All Things Required:** Anything that may be required, implied or inferred by the Contract Documents which make up this Contract, or any one or more of them, shall be provided by Design-Builder for the Contract Price.

1.3.7 **Privity Only With Design/Builder:** Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between Owner and any person except Design-Builder.

1.3.8 **Agreed Interpretation Of Contract Terms:** When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage. Headings are used herein solely for convenience.

1.3.9 **Term "Include" Intended to be Encompassing:** The term "include" is intended to be encompassing; "include", "includes", or "including", as used in the Contract, shall be deemed in all cases to be followed by the phrase, "without limitation."

1.3.10 **Use of Singular and Plural:** Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.3.11 **Definition of Material Breaches Not Exhaustive:** The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other, nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Contract.

1.3.12 **Administration:** This Contract shall be administered on behalf of Owner by the Director of the Capital Improvements Management Services Department, or the Director's designee (hereinafter called the "Director"), and on behalf of the Design-Builder by its duly authorized representative

1.3.13 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

1.3.13.1The Drawings, Specifications and other documents, including those in electronic form, prepared by the Design-Builder, its consultants, or other consultants retained by the City for the Project that describe the Work to be executed by the Design-Builder (the "Construction Documents") are Instruments Of Service and shall become the property of the City whether the Project(s) for which they are made is executed or not. The Design-Builder shall be permitted to retain one record set. Neither the Design-Builder nor any Sub, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Design-Builder or the Design-Builder's consultants. The Drawings, Specifications and other documents prepared by the Design-Builder and the Design-Builder's consultants, and copies thereof furnished to any separate contractor, are for use solely with respect to this Project. They are not to be used by the Design-Builder or any Subcontractor, Sub-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. The Design-Builder, Subcontractors, Sub-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-Builder and the Design-Builder'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 the Design-Builder and the Design-Builder'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 in derogation of the Owner's copyrights or other reserved rights.

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

1.3.13.3 The Design-Builder 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 the Design-Builder shall be replaced or reproduced at the Design-Builder's non-reimbursable, sole cost. In addition, City shall have access during normal business hours and following reasonable notice during the time this Contract is in effect, and for four (4) years after the final completion of the Work, to all of Design-Builder's records and documents covering reimbursable expenses, actual base hourly rates, time cards, annual salary escalation records maintained in connection with this Contract, for purposes of auditing same at the sole cost of the City. The purpose of any such audit shall be for the verification of such costs. The Design-Builder 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. At the conclusion of any City audit, Design-Builder will be afforded an audit exit conference to review the results of City's audit. Nothing herein shall deny the Design-Builder the right to retain duplicates. Refusal by the Design-Builder to comply with the provisions hereof shall entitle City to withhold further payments to Design-Builder until compliance is obtained.

1.3.13.4 All of the Design-Builder's documentary Work product shall be maintained within the Design-Builder's San Antonio offices, unless otherwise authorized by the City. After expiration of this Contract, the Design-Builder's documents may be archived in the Design-Builder's central record storage facility.

1.3.14 Correlation and Intent.

1.3.14.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design-Builder. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Design-Builder shall be required only to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the indicated results. In cases of discrepancy between any drawing and the dimension figures written thereon, the dimension figures shall govern over scaled dimensions; Detailed Drawings and accompanying notations shall govern over general Drawings; Specifications shall govern over Drawings, subject to Section 1.3.3.6; and Special Conditions shall govern over Specifications, Drawings and these General Conditions. The most recent revision of Plans shall control over older revisions.

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

1.3.14.3 Unless otherwise stated in the Contract Documents, words which 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" the Owner or Owner's Consultant (if any) or the City's Resident Inspector 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.

1.3.14.4 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 Design-Builder's Proposal except as may be otherwise 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.

1.3.14.5The 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 as "1".

1. Contract Modifications signed by Design-Builder and Owner.
2. Addenda, with those of later date having precedence over those of earlier date.
3. Special Conditions
4. Supplementary Conditions.
5. Design-Build Contract.
6. General Conditions
7. Specifications
8. Drawings.
9. As between figures given on plans and scaled measurements, the figures shall govern.
10. As between large scale plans and small scale plans, the large scale plans shall govern.
11. As between plans and specifications, the requirements of the specifications shall govern.

1.3.14.6 **Order of Precedence:** Unless otherwise provided in this Design Build Contract and as provided in Article 1.3 of the General Conditions, in the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents which make up this Contract, the following shall control:

1.3.14.7 Relation of Specifications and Drawings.

1.3.14.7.1 Drawings and Specifications are intended to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of work indicated. In the event of the above-mentioned disagreements, the Design-Builder shall determine the resolution.

1.3.14.7.2 Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, that is done 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 substitution has been specifically accepted for use on this Project by the Owner or Owner's Consultant.

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

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

1.3.15 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 2. OWNER

2.1 GENERAL

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

2.1.2 The Design-Builder acknowledges that no lien rights exist with respect to public property.

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER.

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

2.2.2 The Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations. The furnishing of these surveys and reports shall not relieve the Design-Builder of any of its duties under the Contract Documents or these General Conditions. Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness following actual receipt of a written request. It is incumbent upon the Design-Builder to identify, establish, and maintain a current schedule of latest dates for submittal and approval by the Owner, as required in Section 3.10, including when such information or services must be delivered. If Owner delivers the

information or services to the Design-Builder as scheduled and Design-Builder is not prepared to accept or act on such information or services, then Design-Builder shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

2.2.4 Unless otherwise provided in the Contract Documents, the Design-Builder will be furnished, free of charge, five (5) complete sets of the Plans and Specifications. Additional complete sets of Plans and Specifications, if requested, will be furnished at reproduction cost to the Design-Builder requesting such additional sets.

2.2.5 Owner's personnel may, but are not required to be present at the construction site during progress of the Work to assist the Owner's Consultant (if any) in the performance of his or her duties, and to verify the Design-Builder's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Design-Builder's Applications for Payment.

2.2.6 **OWNER'S RIGHT TO STOP THE WORK.** If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2, "CORRECTION OF WORK," or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Paragraph 12.2.

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

ARTICLE 3. DESIGN-BUILDER

3.1 GENERAL.

3.1.1 The Design-Builder 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.

3.1.2 The Design-Builder shall not be relieved of obligations, responsibilities and duties to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Owner's Consultant in the Design-Builder's administration of the Contract, or by tests, inspections or approvals required or performed by the City or persons other than the Design-Builder.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN-BUILDER.

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Design-Builder shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the Site affecting it. Any error, inconsistencies or omissions discovered by the Design-Builder shall be reported promptly to the Owner or Owner's Consultant (if any) along with the Design-Builder's proposed corrections. In no case shall an error, inconsistency or omission in the contract documents prepared by the Design-Builder warrant additional compensation for the Design-Builder.

3.2.1.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Owner or Owner's Consultant, or the work installed by other contractors, is not guaranteed by the Owner or the Owner's Consultant (if any). The Design-Builder 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 or other work, the Design-Builder shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Design-Builder's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Design-Builder without any additional cost to the Owner.

3.2.2 As between Owner and Design-Builder, and subject to the provisions of Section 3.2.4 below, Design-Builder has complete responsibility for the timely delivery, completeness, accuracy and/or sufficiency of the Specifications or Drawings (or any errors, omissions, or ambiguities therein), and is responsible for any failure of the design of the facilities or structures as reflected thereon to be suitable, sound or safe. The Design-Builder 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, the Design-Builder will review the Contract Documents to establish that:

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

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

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

3.2.3 NOT USED.

3.2.4 If the Design-Builder believes that additional cost or time in involved because of clarifications or instructions issued by the Owner or Owner's Consultant in response to the Design-Builder's Notices or Requests for Information the Design-Builder shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Design-Builder fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Design-Builder shall pay such costs and damages to the Owner as would have been avoided if the Design-Builder had performed such obligations. The Design-Builder is liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents.

3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Design-Builder 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. Design-Builder shall be responsible for, and shall repair at Design-Builder's own expense, any damage done to lines, cables, pipes, and pipelines identified to Design-Builder.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.

3.3.1 The Design-Builder shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a reasonably prudent Design-Builder, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, procedures, and for coordinating 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, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below,

shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and Owner's Consultant and shall not proceed with that portion of the Work without further written instructions from the Owner or Owner's Consultant. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 **Supervision of the Construction Work:** The Construction Work shall be strictly supervised and directed using Design-Builder's best and highest skill and effort. Design-Builder shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of Design-Builder.

3.3.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Design-Builder or any of its Subcontractors.

3.3.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portion are in proper condition to receive subsequent Work.

3.3.5 Design-Builder 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.

3.3.6 It is understood and agreed that the relationship of Design-Builder to Owner shall be that of an independent contractor and the execution of this contract does not change the independent status of the Design-Builder. Design-Builder shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Design-Builder in the performance of this Contract shall be construed as making Design-Builder the agent, servant or employee of Owner, or making Design-Builder or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which Owner provides its employees. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Design-Builder the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Design-Builder. 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 Design-Builder's independent contractor status as described herein.

3.3.7 The Design-Builder shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Design-Builder'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 the Design-Builder 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 paragraph are not intended to impose upon the Design-Builder any additional obligations that the Design-Builder 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, the Design-Builder 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 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

3.4.3 **PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS**. The Provisions of Chapter 2258, Texas Government Code, are expressly made a part of this contract. In accordance therewith, the City will provide Contractor with a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this contract prior to the bidding of the Project and this schedule will become a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars ($60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any sub-contractor under him. The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Contractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The Contractor, in the execution of this Project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, Contractor agrees that he/she will abide by all applicable terms and City "General Conditions" governing wages and labor standards and practices, established by City ordinance 60110, amended by City ordinance 71312 and 2008-11-20-1045, and provisions of the Nondiscrimination Clause and the Small and/or Minority Business Advocacy Clause as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office.

3.4.4 Substitutions.

3.4.4.1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Design-Builder (iii) and when in the judgment of the Owner or the Owner's Consultant, a substitution would be substantially in the Owner's best interests in terms of cost, time, or other considerations.

3.4.4.2 The Design-Builder must submit to the Owner and Owner's Consultant (i) 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; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) and in the event of a substitution under clause (ii) of Section 3.4.2.1, an affidavit stating the (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Design-Builder accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Owner or the Owner's Consultant. Proposals for substitutions shall be submitted in triplicate to the Owner or Owner's Consultant (if any) in sufficient time to allow the Owner or Owner's Consultant no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Design-Builder's submittal of complete substantiating data and information as stated hereinbefore.

3.4.4.3 In the event of substitution under clause (ii) of Section 3.4.2.1, and whether or not any such proposed substitution is accepted by the Owner or the Owner's Consultant, the Design-Builder shall reimburse the Owner for any fees charged by the Owner's Consultant or other consultants for evaluating each proposed substitute.

3.4.5 Except as otherwise required for safety or protection of persons or the Work or property at the Site or adjacent thereto, no Work will be allowed by Owner between the hours of 10:00 p.m. and 6:00 a.m. of the following day unless directed by the ODR or requested in writing by Design-Builder and approved by the Director of Capital Improvements Management Services or its Designee Department Director.

3.4.6 The Design-Builder 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. The Design-Builder shall be responsible to the Owner for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone whom the Design-Builder may allow to perform any Work on the Project, and their respective officers, agents, employees, and consultants whom the Design-Builder may allow to come on the job site with the exception of the Owner, the Owner's Consultant (if any), and the Program Management Team (if any). In addition, if the Design-Builder receives written notice from the Owner complaining about any Subcontractors or employees or anyone who is a hindrance to proper or timely execution of the Work, Design-Builder shall remedy such complaint without delay to the Project and at no additional cost to the Owner. This provision shall be included in all contracts between the Design-Builder and all Subcontractors of all tiers.

3.4.7 The Design-Builder recognizes that the Project Site is a public facility which represents the City of San Antonio, and the Design-Builder shall prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Design-Builder's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the Design-Builder or employees of the Owner by employees of the Design-Builder is strictly forbidden. Any employee of the Design-Builder who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Design-Builder, including removal from the job Site.

3.4.8 The Design-Builder shall only 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.

3.4.9 All materials and equipment shall be as specified in the Contract Documents, and if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Owner or Owner's Consultant, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. The Design-Builder may make substitutions only with the consent of the Owner.

3.4.10 All materials shall be shipped, stored and handled in a manner that will protect and ensure their condition at the time of incorporation in the Work. After installation, all materials shall be properly protected against damage to ensure their being in the condition required by Section 3.5.1 when the Work is Substantially Completed or Owner takes over use and occupancy, whichever is earlier.

3.4.11 The Design-Builder shall procure and furnish to the Owner all guarantees, warranties, spares and maintenance manuals that are called for by the Specifications or that are normally provided by a manufacturer. The maintenance manual shall include a catalog and price list for any equipment, materials, supplies, or parts used in the inspection, calibration, maintenance or repair of the equipment. Items in the catalog shall be readily available for purchase.

3.4.12 During construction of the Work and for four years after final completion, the Design-Builder shall retain and shall require all Subcontractors to retain for inspection and audit by the City 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 the Owner, a legible copy or the original of any or all such records shall be produced by the Design-Builder at the administrative office of the Owner. To the extent that it requests copies of such documents, the City will reimburse the Design-Builder and its Subcontractors for copying costs. The Design-Builder 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 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, 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 Design-Builder. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 Design-Builder warrants and guarantees to Owner that all labor furnished to perform the Construction Work under the Contract will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only first-class results in strict compliance with the Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Contract, and that the Construction Work will be of high quality, free from faults and defects and in strict conformance with the Contract. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Design-Builder's warranty.

3.5.3 The Contractor agrees to assign to the 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 to also enforce the manufacturer's warranties. As a condition precedent to final payment, the Contractor shall prepare a notebook with reference tabs and submit three copies of the notebook to Owner that includes a complete set of warranties from subcontractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with, as between Owner and Contractor, a warranty commencement date as required by the Contract Documents. The complete set of warranties shall also be submitted to Owner in an electronic format (PDF) on a Compact Disc (CD).

3.5.4 A right of action by the Owner for any breach of the Design-Builder'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.

3.5.5 The warranty provided in paragraph 3.5.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Design-Builder, upon written timely demand by Owner, to replace defective materials and equipment and re-execute defective Work which is disclosed to the Design-Builder by the Owner within a period of one (1) year after (i) Substantial Completion of the applicable Work, (ii) such earlier date contemplated by Section 9.9 or, (iii) in the event of a latent defect, within one (1) year after discovery thereof by Owner.

3.5.6 The Design-Builder shall issue in writing to the Owner, as a condition precedent to final payment, a "General Warranty" reflecting the terms and conditions of paragraphs 3.5.1 and 3.5.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

3.5.7 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to the Owner. Owner and Design-Builder acknowledge that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or final completion. Design-Builder shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one year warranty on each phase or building which is substantially complete will expire, and dates of . Design-Builder agrees to provide notice of the warranty expiration date to Owner and Owner's Consultant at least one month prior to the

expiration of the one year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one year warranty period, Design-Builder shall accompany the Owner and Owner's Consultant on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by the Contract Documents, Owner will notify the Design-Builder of deficiencies and Design-Builder shall start remedying these defects within seven (7) days of initial notification from Owner. Design-Builder shall prosecute the work without interruption until accepted by the Owner and the Owner's Consultant (if any), even though such prosecution should extend beyond the limit of the warranty period. If Design-Builder fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Design-Builder's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

3.5.8 Warranties, special or specific guarantees shall become effective on a date established by the Owner and Owner's Consultant 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. 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 the Owner and Owner's Consultant or the date of final completion of the Work.

3.5.9 Neither final payment nor compliance by the Design-Builder with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Design-Builder or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship. The Design-Builder warrants that the Work will conform to the requirements of the Contract Documents.

3.5.10 The building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Design-Builder's control. The Design-Builder, 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(s) watertight. The Design-Builder also shall repair or replace any damaged material, finishes, and fixtures, damaged as a result of this water penetration, to return the building(s) to original condition. The costs of such determination and repair shall be borne by the Design-Builder only to the extent that the leak(s) are attributable to faulty workmanship or unauthorized or defective materials.

3.5.11 WARRANTY FULFILLMENT. Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Owner or Owner's Consultant will make a detailed inspection of the Work and will advise the Design-Builder and the Design-Builder's Surety of the items that require correction. The Owner or Owner's Consultant will make a subsequent inspection and if the corrections have been properly performed, the Owner or the Owner's Consultant will issue a letter of release on the maintenance obligations to the Design-Builder and the Surety. If for any reason the Design-Builder 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 been properly performed and a letter of release issued.

3.5.12 . **Procurement and Review of Warranties:** Design-Builder shall procure from all Subcontractors and Suppliers and shall transmit to the Director, all warranties required by the Contract. Design-Builder shall review all such warranties and shall certify to Owner that the warranties are in strict compliance with the requirements of the Contract.

3.6 **TAXES.** The Design-Builder will not include in the Contract Sum or any Modification any amount for sales, use, or similar taxes for which (1) the City is exempt, and (2) the Owner has provided the Design-Builder with a tax exemption certificate or other documentation necessary to establish the 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 the Owner per Article 2.2.2, the Contractor shall secure and pay for permits and governmental fees, licenses, and inspections which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. The originals of permits, licenses and authorizations shall be delivered to the Director upon completion of the Construction Work, and receipt of these documents by Owner shall be a condition precedent to final payment. Design-Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work

3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is the Design-Builder's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. If the Design-Builder observes that portions of the Contract Documents are at variance therewith, the Design-Builder shall promptly notify the Owner's Consultant and Owner in writing, and shall make all necessary changes before the Work affected by such modification is performed.

3.7.4 If the Design-Builder performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner's Consultant and Owner, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.7.5 The Design-Builder shall also assist Owner in obtaining all permits and approvals, and pay at the Owner's request, all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Design-Builder's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the Site. However, any drainage alterations made by Design-Builder during the construction process which require the issuance of a permit shall be at Design-Builder's sole cost.

3.8 ALLOWANCES.

3.8.1 The Design-Builder 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 the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1 Allowances shall cover the cost to the Design-Builder 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 and other expenses contemplated for stated allowance shall be included in the Contract Sum;

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: (1) the difference between actual costs and the allowances under Section 3.8.2.1, and (2) changes in Design-Builder's costs under Section 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner within such time as is reasonably specified by the Design-Builder as necessary to avoid delay in the Work.

3.9 SUPERINTENDENT.

3.9.1 At all times during the progress of the Work Design-Builder shall assign a competent resident superintendent, able to communicate fluently in English, and any necessary assistants, all satisfactory to the Director of Capital Improvements Management Services or Designee Department Director, as applicable. Any Superintendent designee shall be identified in writing to the ODR promptly after Owner issues written Notice to Proceed. The Superintendent shall represent the Design-Builder and all directions given to him shall be binding on the Design-Builder. The designated Superintendent shall not be replaced without written notice to the ODR and approval of the Director, which approval will 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 the Director, which approval will not be unreasonably withheld.

3.9.2 The Design-Builder shall furnish a list to the Owner and Owner's Consultant (if any) of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Design-Builder shall provide such information to the Owner.

3.9.2.1 The Owner, upon the showing of good and reasonable cause, may reject or require removal of any engineer, consultant, job superintendent, or employee of the Design-Builder, Subcontractor or Sub-subcontractor involved in the Project.

3.9.2.2 Design-Builder shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Design-Builder to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, 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 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the City's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

3.10 DESIGN-BUILDER'S WORK PROGRESS SCHEDULES.

3.10.1 Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project to the ODR and the Design Consultant not later than ten (10) days after the effective date of the Notice to Proceed. Unless otherwise indicated in the Contract Documents, in accordance with Specification 700, updated February 2010, the Work Progress Schedule shall be a computerized Critical Path Method (CPM) with full reporting capability (Primavera Project Manager 5.x or above, or Primavera Contractor 4.1 or above). This initial schedule shall indicate the dates for starting and completing the various aspects 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 initial schedule shall not exceed the time limits set forth in the Contract Documents. Contractor shall organize the Work Progress Schedule and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. When acceptable to the Owner, this initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract Duration.

3.10.2 The Work Progress Schedule and successive updates or revisions thereof are for the Design-Builder's use in managing the Work. The Work Progress Schedule is for the information of the Owner and to demonstrate that the Design-Builder has complied with requirements for planning the Work. The Owner's acceptance of a schedule and schedule updates or revisions constitutes the Owner's agreement to coordinate its own activities with the Design-Builder's activities as shown on the schedule.

3.10.2.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto, does not indicate any approval of the Design-Builder's proposed sequences and duration.

3.10.2.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute the Owner's consent to any changes, alter the terms of the Contract, waive either the Design-Builder's responsibility for timely completion, or waive the Owner's right to damages for the Design-Builder's failure to do so.

3.10.2.3 The Design-Builder'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 Times.

3.10.3 Submittal of a schedule, schedule revision, recovery schedule or schedule update constitutes the Design-Builder's representation to the Owner, as of the date of the submittal, of the accurate depiction of all progress to date and that the Design-Builder will follow the schedule as submitted in performing the Work.

3.10.4 Schedule Updates. The Work Progress Schedule and the Submittal Schedule shall be updated monthly, as 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 the Owner's Consultant (if any) and ODR as directed. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress 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. The Design-Builder, after coordination and consultation with the Owner, may revise the Work Progress Schedule logic only with the Owner's concurrence, which will not be unreasonably withheld, when, in the Design-Builder's judgment, it becomes necessary for the management of the Work. The Design-Builder shall identify all proposed changes to schedule logic to Owner and to the Owner's Consultant via an Executive Summary accompanying the updated schedule for review prior to implementation of any revisions.

3.10.4.1 Each schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Design-Builder, Owner, and Owner's Consultant. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Design-Builder to project cash flow for the Project.

3.10.4.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Owner and/or Owner's Consultant is required to review submittals, shop drawings, product data, or samples.

3.10.4.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

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

3.10.4.5 Neither the Owner or the Design-Builder shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the project. The Design-Builder agrees to use its best efforts not to sequence the Work or assign activity duration so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

3.10.4.6 Submission of any schedule under this Contract constitutes a representation by the Design-Builder that as of the date of the submittal: (1) the schedule represents the sequence in which the Design-Builder intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and duration used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Design-Builder is able to complete the remaining Work in the

sequence and time indicated; and, (4) that the Design-Builder intends to complete the remaining work in the sequence and time indicated.

3.10.5 Completion of Work. The Design-Builder is accountable for Substantially Completing the Work in the Contract Time, or as otherwise amended by Change Order.

3.10.5.1 If, in the judgment of the Owner, the Schedule update reflects that the Work is behind schedule and the rate of performance of the Work is inadequate to regain scheduled progress to insure timely Substantial Completion of the entire Work or a separable portion thereof, the Design-Builder, when so informed by the Owner, shall immediately take action to increase the rate of Work performance by: increasing working forces; increasing equipment or tools; increasing hours of work or number of shifts; expediting delivery of materials; changing, with the approval of the Owner, the schedule logic and Work sequences; or taking other action proposed if acceptable to Owner.

3.10.5.2 Within ten (10) calendar days after such notice from the Owner or the ODR, the Design-Builder shall notify the ODR in writing of the specific measures taken and/or planned to increase the rate of progress. The Design-Builder shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating the Design-Builder's plan for achieving timely completion of the project.

3.10.5.3 Should the ODR deem the plan of action inadequate, the Owner shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents.

3.10.5.4 The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Substantial Completion of the Work within the Contract Time. The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section, except as may be provided under the provisions of Article 4.3.11.

3.10.5.5 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Design-Builder's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

3.10.6 If reasonably required by Owner, Design-Builder shall also 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.

3.10.7 The Design-Builder shall recommend to the Owner and to the Owner's Consultant a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the project schedule

3.10.8 This Article pertains to construction phase schedules. Additional requirements for design phase scheduling for Construction Manager-at-Risk and Design Build contracts are outlined in Division 1 Project Planning and Scheduling Specification. Refer to Special Conditions and Division 1 General Administration Specifications for additional schedule requirements.

3.11 DOCUMENTS AND SAMPLES AT THE SITE.

3.11.1 **Record Copy of Contract Documents:** Design-Builder shall continuously maintain at the site, for the benefit of Owner, an updated copy of this Contract, including one record copy of the Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design-Builder shall maintain at the site, for the benefit of Owner, a copy of all

Shop Drawings, Product Data, Samples, and other Submittals. Upon Final Completion of the Construction Work, or upon the Director's request, all of the documents described in this Paragraph shall be finally updated and delivered to Owner and shall become the property of Owner.

3.11.2 The Design-Builder shall maintain at the Site for the Owner 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, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner's Consultant and shall be delivered to the Owner's Consultant for submittal to the Owner upon completion of the Work.

3.11.3 Design-Builder 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. Design-Builder shall make such reports and records available to inspection by the Owner, Owner's Consultant, or their respective agents, within five (5) working days of request by Owner, Owner's Consultant, or their respective agents.

3.12 SHOP DRAWINGS, PRODUCE DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared and furnished by the Design-Builder 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 the Design-Builder 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 Design-Builder to Owner to assist Owner and Owner's Consultant in the establishment of workmanship and quality standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Owner or Owner's Consultant is subject to the limitations of Section 4.2.8. Informational submittals upon which the Owner or Owner's 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 Owner's Consultant without action.

3.12.5 The Design-Builder shall review for compliance with the Contract Documents, approve and submit to the Owner or Owner's 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 the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Design-Builder may be returned by the Owner or Owner's Consultnat without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and filed construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Design-Builder 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 has been approved by the Owner or Owner's Consultant. The Owner, or Owner's Consultant, if applicable, will review and return such submittals within ten (10) working 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 the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's or Owner's Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design-Builder has specifically informed the Owner or Owner's Consultant in writing of such deviation at the time of submittal and (1) the Owner or Owner's 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. The Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design-Builder's approval thereof.

3.12.9 The Design-Builder shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner or Owner's Consultant on previous submittals. In the absence of such written notice, the Owner's or Owner's Consultant's approval of a resubmission shall not apply to such revisions.

3.12.10 The Design-Builder shall provide professional services which constitute the practice of architecture or engineering as required by the Contract Documents for the design of the Work and as necessary for the Design-Builder to carry out the Design-Builder's responsibilities for construction means, methods, techniques, sequences and procedures. The Design-Builder 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 are specifically required of the Design-Builder by the Contract Documents, the Owner and the Owner's Consultant (if any) will specify all performance and design criteria that such services must satisfy. The Design-Builder shall cause such services or certifications to be provided by a properly 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 the Owner or Owner's Consultant. The Owner and the Owner's Consultant (if any) shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and the Owner's Consultant (if any) have specified to the Design-Builder all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Owner and the Owner's Consultant will 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.

3.13 USE OF SITE

3.13.1 Design-Builder 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 Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

3.13.3 The Design-Builder will abide by all applicable rules and regulations of the Owner with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by the City.

3.14 CUTTING AND PATCHING

3.14.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly

3.14.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design-Builder shall not cut or otherwise alter such

construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor, which consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

3.14.3 Any part of the finished Work damaged during installation or prior to Substantial Completion of the Work (or such earlier date established in Section 9.9) shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced.

3.15 **CLEANING UP.**

3.15.1 During the progress of the Work, Design-Builder shall keep the Site and surrounding area free from accumulations of waste materials, rubbish, trash, excess materials or equipment, together with Design-Builder's property and other debris resulting from the Work. Design-Builder shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements 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 the Design-Builder fails to clean up as provided in the Contract Documents, the Owner may do so and the cost therefore shall be charged to the Design-Builder

3.15.2 Prior to Substantial Completion of the Work, Design-Builder 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 site clean and ready for occupancy, by Owner. Design-Builder shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements 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. Design-Builder shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If the Design-Builder fails to clean up as provided in the Contract Documents, the Owner may do so and the cost therefore shall be charged to the Design-Builder.

3.16 **ACCESS TO WORK.** At all times relevant to the Contract, the Design-Builder shall provide the Owner, Owner's Consultant and designees access to theConstruction Work in preparation and in progress wherever located without formality or other procedure.

3.17 **PATENT FEES AND ROYALTIES.**

3.17.1 Design-Builder 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.**

Design-Builder covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, and Owner's Consultant (if any) 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 Design-Builder and of Owner) damage to property (other than the Work itself and including property of Design-Builder 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, Design-Builder, its agents, servants, and 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. Notwithstanding anything to the contrary included herein, in no event shall the Design-Builder be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

3.18.2 In addition to the above, Design-Builder also covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the 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 Design-Builder and of Owner) damage to property (other than the Work itself and including property of Design-Builder and of Owner), but only to the extent caused by the intentional or deliberate misconduct, grossly negligent, willful acts or omissions of, Design-Builder, its agents, servants, and 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 the Design-Builder be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

3.18.3 **Intellectual Property Indemnification** Design-Builder 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 the City and Owner's Consultant, 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 Design-Builder and its employees or its subcontractors and their agents, servants, and employees, based on any deliverable or any other materials furnished hereunder by the Design-Builder, and used by either City or Design-Builder within the scope of this agreement (unless said infringement results directly from Design-Builder's compliance with City's written standards or specifications). Design-Builder does not warrant against infringement by reason of Owner's or Owner's Consultant's (if applicable) design of articles or their use in combination with other materials or in the operation of any process. Design-Builder 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 and expressed in writing signed by the parties hereto. Design-Builder agrees to consult with the City Attorney during such defense or negotiations, and make good faith efforts to avoid any position adverse to the interest of the City. City will make available to Design-Builder any deliverables and/or works made for hire by Design-Builder which are necessary to the defense of Design-Builder against any claim of infringement for the duration of Design-Builder's legal defense.

3.18.4 If such infringement claim or action has occurred or, in Design-Builder's judgment is likely to occur, City shall allow the Design-Builder at Design-Builder's option and expense, (unless such infringement results directly from Design-Builder's compliance with City's written standards or specifications or by reason of City's or Owner's Consultant's 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 either: (a) procure for City the right to continue using said deliverable and/or materials; (b) 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); (c) 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 (d) if none of the foregoing alternatives is reasonably available to Design-Builder, upon written request City shall return the deliverable and/or materials in question to Design-Builder and Design-Builder 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 Section shall fail to satisfy the third-party claimant, these actions shall not relieve Design-Builder from its defense and indemnity obligations set forth in this Article.

3.18.5 The indemnification obligations under this Article 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 Design-Builder or any subcontractor, supplier, or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts, or other employee benefits acts.

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

3.18.7 Other Provisions Regarding Indemnity.

3.18.7.1 The provisions of this indemnification are solely 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 Design-Builder shall promptly advise the City in writing of any claim or demand against the City or Design-Builder, as the case may be, known to Design-Builder, related to or arising out of Design-Builder's activities under this Contract, and shall see to the investigation and defense of such claim or demand at Design-Builder's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Design-Builder of any of its obligations under this Article.

3.18.7.4 Defense Counsel. City shall have the right to approve defense counsel, of which approval will not be unreasonably withheld, to be retained by Design-Builder in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Design-Builder shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Design-Builder fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf and Design-Builder shall be liable for all costs incurred by City. City shall also 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.** The Design-Builder represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the 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:

3.19.1 Design-Builder will maintain all necessary licenses, permits or other authorizations necessary to act as Design-Builder for the Project until Design-Builder's duties under this Contract have been fully satisfied;

3.19.2 Design-Builder has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of this Contract;

3.19.3 Prior to the execution of this Contract, Design-Builder has visited and inspected the Project site and the local conditions under which the Project is to be designed, constructed and operated;

3.19.4 Design-Builder assumes full responsibility to Owner for the improper acts and omissions of its Subcontractors or others employed or retained by Design-Builder in connection with the Project;

3.19.5 that it 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;

3.19.6 that it 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;

3.19.7 that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

3.19.8 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

3.19.9 that its duly authorized representative has visited the Site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

3.19.10 **Specific Representations:** In order to induce Owner to execute this Contract and recognizing that Owner is relying thereon, Design-Builder, by executing this Contract, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, makes the following express representations to Owner:

3.19.11 Design-Builder is professionally and fully qualified to act as the design professional and the general contractor for the Project and is, and will remain, licensed to practice engineering and architecture and general contracting by all public entities having jurisdiction over Design-Builder or the Project;

3.20 **BUSINESS STANDARDS.** Design-Builder, in performing it's obligations under 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. Design-Builder 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 Design-Builder's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, subDesign-Builders, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT.

4.1 OWNER

4.1.1 The Owner will not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work.

4.1.2 Owner's Option to Review Submittals: Owner shall, have the right to review and accept Submittals, RFIs, ASIs, Pay Application, and if Owner so elects, Design-Builder shall not perform any portion of the Construction Work as to which Owner has required submittal and review until such Submittal has been accepted by the Director or ODR. Acceptance by the Director or the ODR, however, shall not be evidence that Construction Work installed pursuant to the Director's or the ODR's acceptance conforms to the requirements of the Contract nor shall such acceptance relieve Design-Builder of any of its responsibilities or warranties under the Contract. Except as otherwise provided in the Supplementary or Special Conditions, the Owner will have authority to reject Work that does not conform to the Contract Documents. .

4.1.3 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communication has been specifically authorized, the Owner, and

Design-Builder shall endeavor to communicate with each other about matters arising out of or relating to the Contract. Communications by and with the Design-Builder's consultants shall be through the Design-Builder. Communications by and with Subcontractors and material suppliers shall be through the Design-Builder. Communications by and with separate contractors hired by the Owner shall be through the Owner.

4.2 DESIGN-BUILDER

4.2.1 Design-Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any rejection. Design-Builder shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to Owner. Shop Drawings and other Submittals from Design-Builder do not constitute a part of this Contract.

4.2.2 The Design-Builder shall submit to the ODR for final review and acceptance all Submittals, including but not limited to shop drawings, mockups and material samples, Requests for Information, Architect's Supplemental Instructions, and Applications for Payment. All Submittals must be reviewed, certified and stamped by the Design-Builder Architect of Record prior to presenting such submittals to the ODR.

4.2.3 The Design-Builder Architect of Record will make visits to the Site at intervals appropriate to the various stages of construction to operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and (2) to endeavor to guard the Owner against defects in the Work.

4.2.4 The Design-Builder shall notify the Director in writing when the Design-Builder believes the Construction Work is substantially complete in accordance with Section 9.7, Substantial Completion, of this Agreement.

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, 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 the Owner and Design-Builder arising out of or relating to the Contract. Claims must be initiated by written notice. Except as contemplated by Section 0, every Claim of the Design-Builder, 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 the Design-Builder by his signature) of the Design-Builder, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim. Strict compliance with this Article shall be a condition precedent to any liability in regard to a claim.

4.3.2 Claim Procedures: All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the procedures set forth in this Article and this Contract, with this Contract controlling in the event of a conflict.

4.3.3 Time Limit on Claims. Claims by the Design-Builder must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the Design-Builder must be initiated by written notice to the Owner's Consultant and the Owner. Claims by the Owner must be initiated by written notice to the Design-Builder.

4.3.4 Continuous Duty to Provide Documentation: Design-Builder shall provide, and continue to provide, to Owner all such documentation, including cost and time records, as and when Owner may request so that Owner may evaluate Design-Builder's claim.

4.3.5 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Sections 4.5.1 or 9.7.2 and Article 14, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents regardless of the existence of any claims submitted by Design-Builder against Owner.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which were not known to the Design-Builder and which differ materially from those indicated in the Contract Documents or the reports of investigations and tests of subsurface and latent physical conditions provided by Owner to Design-Builder prior to the preparation by Design-Builder of its Proposal and referred to above or (2) 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 the Design-Builder shall notify the Owner and the Owner's Consultant of such conditions promptly before conditions are disturbed, and in no event less than 3 days after first observation of the conditions. The Owner will promptly investigate such conditions, or if the Owner has engaged a Consultant, Owner's Consultant will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Design-Builder cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to Article 4.5.

4.3.7 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Design Services, Contract Price or GMP as a condition precedent to any liability of owner for any such claim, Design-Builder shall strictly comply with this Article and, written notice to owner as provided in this Article shall be given before proceeding to execute the Work; provided that prior notice is not required for Claims relating to an emergency endangering life or property. If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner or Owner's Consultant, (2) an order by the Owner to stop the Work where the Design-Builder was not at fault, (3) a written order for a minor change in the Work issued by the Owner or Owner's Consultant, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner for convenience, (6) Owner's suspension or (7) other reasonable grounds, a Claim shall be filed in accordance with this Section 4.3. Failure of the conditions precedent to occur shall constitute a waiver by the Design-Builder of any claim.

4.3.8 Limit Of Owner's Liability For Increased Compensation. In connection with any claim by Design-Builder against Owner for compensation in excess of the Guaranteed Maximum Price or the not to exceed limit of the Design Services compensation, any liability of Owner shall be strictly limited to the Cost of the Construction Work and Design Services as defined and allowed in the formal Design-Build Contract between Owner and Design-Builder and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Design-Builder or its Subcontractors. Owner shall not be liable to Design-Builder for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which Owner would not be liable to Design-Builder under the terms of the Contract. As a condition precedent to Owner's liability to Design-Builder for any loss or damage resulting from claims of third parties, includingSubcontractors, such third parties must have complied with all conditions contained in their agreements with Design-Builder and such claims must have been submitted to Owner by Design-Builder in strict compliance with all the requirements of this Article XVIII. Owner shall not be liable to Design-Builder for claims of third parties including Subcontractors, unless and until the liability of Design-Builder has been established in a court of competent jurisdiction

4.3.9 Claims for Additional Time.

4.3.9.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided in this Section 4.3 shall be given. The Design-Builder's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.9.2 The Design-Builder 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 in Division 1 of the Project specifications.

The Design-Builder shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. Requests for an extension of time pursuant to this Section shall be submitted to the Owner or Owner's Consultant not later than the fifteenth (15th) 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.

4.3.10 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 of others for whose acts such party is legally responsible (including, with respect to the Owner, the acts or omissions of the Owner's separate contractors), written notice or such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) business days after the discovery of the injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.11 Change in Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

4.3.12 Claims for Consequential Damages. Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the Design-Builder and to claims by the Owner:

4.3.12.1 No consequential, indirect, incidental, punitive, or exemplary damages will be allowed, whether or not foreseeable, regardless of whether based on breach of contract, tort (including negligence), indemnity, strict liability, or other bases of liability.

4.3.12.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other similar analysis that is used to show total cost or other damages.

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

4.3.12.4 The maximum amount of any recovery for delay, to the extent damages for delay are not otherwise disallowed by the terms of the Contract, shall be as is provided in Section 8.3.2 hereof.

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

4.3.12.6 No profit will be allowed on any damage claim, except as expressly authorized by the Contract Documents.

4.3.13 Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Design-Builder asserts a claim to the Design-Builder that the Design-Builder seeks to pass through to the Owner under the Contract Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to:

4.3.13.1 the requirements of Section 4.3 of these General Conditions; and

4.13.2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Design-Builder to seek and assert such claim against the Owner:

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

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

(iii) The Subcontractor making the claim to the Design-Builder shall certify to the Design-Builder and to the Owner that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Design-Builder in the claim submittal materials.

4.13.3 Any failure of the Design-Builder 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.

4.13.4 Receipt and review of a claim by the Owner under this Section shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or law.

4.3.14 Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The Design-Builder acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Design-Builder falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Design-Builder to develop a recovery schedule 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 may reasonably direct and, upon receipt, the Design-Builder shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Design-Builder to additional compensation for any acceleration shall be subject to the terms of this Article.

(2) In the event that the Design-Builder is entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with this Article, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time and to order Design-Builder 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 the Design-Builder provided within fourteen (14) days after receipt of the Design-Builder's Claim. If the Owner denies the Design-Builder's claim for an extension of Contract Time, either in whole or in part, the Design-Builder 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 through no fault of the Design-Builder, the

Design-Builder is unable to achieve Substantial Completion within the originally scheduled Contract Time, the Owner will not be entitled to liquidated damages.

(3) If the Owner orders the Design-Builder to accelerate the Work, and the Design-Builder 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 the Owner if not for the need and right to accelerate, the Design-Builder may initiate a Claim for schedule recovery or acceleration costs. Any resulting Claim for these costs properly initiated by the Design-Builder 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 to bring the Work back within the then existing approved construction schedule. These direct costs include, but are not limited to, the premium portion of overtime pay additional crew, shift, or equipment costs if requested in advance by the Design-Builder and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, not to exceed 5% will be allowed on the claimed costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM**. The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause.

4.3.15 Attorney's Fees. **THE DESIGN-BUILDER SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES OR CERTAIN DIRECT OR CONSEQUENTIAL DAMAGES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, AND DESIGN-BUILDER HEREBY EXPRESSLY WAIVES SUCH CLAIMS.**

4.3.16 No Waiver of Governmental Immunity. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM 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 Recommendation of Owner's Consultant.

4.4.1.1 If a Consultant has been engaged by the Owner, claims by the Design-Builder against the Owner and Claims by the Owner against the Design-Builder, including those alleging an error or omission by the Design-Builder but excluding those arising under Sections 10.3 and 10.5, shall be referred initially to the Owner's Consultant for consideration and recommendation to the Owner. An initial recommendation by the Owner's Consultant (if applicable) 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 30 days have passed after the Claim has been referred to the Owner's Consultant with no recommendation having been rendered by the Owner's Consultant.

4.4.1.2 The Owner's Consultant (if applicable) will review Claims and within 10 days of receipt of the Claim and 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 the Owner's Consultant is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

4.4.1.3 Following receipt of the Owner's Consultant's initial recommendation regarding a claim, the Owner and Design-Builder shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Section 4.5.

4.4.1.4 If the Owner's Consultant requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall either provide a response or the requested

supporting data, advise the Owner's Consultant when the response or supporting data will be furnished, or advise the Owner's Consultant that no response of supporting data will be furnished.

4.4.2 Waiver of Lien. It is understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, 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.

4.4.3 Claims Resolved By Change Order: The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by Owner and Design-Builder.

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 final resolution of any dispute arising out of or relating to this Contract unless it would be impossible or impracticable under the circumstances.

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

4.5.3 Mediation.

4.5.3.1 In the event that the Owner or the Design-Builder shall contend that the other has committed a material breach of this Contract, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

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

4.5.3.3 In the event the Owner and the Design-Builder are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this Section 4.5 shall be deemed to have occurred.

4.5.3.4 The parties shall share the mediator's fee and any 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 a consent to suit.

ARTICLE 5. PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

5.1 **Personnel:** In accordance with Article 3 above, Design-Builder shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Design-Builder shall designate one such person as the Project Design-Builder. Absent written instruction from Design-Builder to the contrary, the Project Manager/Superintendent shall be deemed to be Design-Builder's authorized representative and shall be authorized to receive and accept any and all communications from Owner. Key design and supervisory personnel assigned by Design-Builder to this Project are as follows:

_____	_____
_____	_____
_____	_____
_____	_____

Evidence of the above-named personnel's competence, such as a resume, shall be provided to Owner prior to the personnel beginning performance of the function indicated. So long as the individuals named above remain actively employed or retained by Design-Builder, or any related entity or affiliate thereof, they shall perform the functions indicated next to their names unless Owner agrees to the contrary in writing or unless Owner requests removal of any such individual from the Project. In the event Owner requests the removal of any of the individuals named above, Design-Builder shall immediately comply and shall immediately replace such individual with a qualified substitute to whom Owner makes no objection. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, Design-Builder shall be bound by the provisions of this Paragraph 5.1 as though such individuals had been listed above

5.2 **DEFINITION.** A Subcontractor is a person or entity who has a direct contract with the Design-Builder to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.3 **Design/Builder Responsible for Acts of its Subcontractors:** Should Design-Builder subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Design-Builder from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Design-Builder shall be responsible for all and any acts, defaults, omissions or negligence of its Subcontractors, Suppliers, and consultants.

5.4 **Subcontractor Contract Requirements:** In addition to the Sub-Contractual Relations Provision in Article 5 of the General Conditions, Design-Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Design-Builder by the terms of the Contract Documents, and to assume toward Design-Builder all the obligations and responsibilities that Design-Builder, by these Documents, assumes toward Owner. Each subcontract agreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Design-Builder shall require each Subcontractor to enter into similar agreements with its sub-subcontractors. Design-Builder shall make available to each proposed subcontractor prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. Design-Builder shall provide Owner with a copy of each subcontract agreement upon request.

5.5 **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.5.1 **Objections to Subcontractors:** Upon execution of this Contract, and at such later times as may be applicable, Design-Builder shall furnish Owner, in writing, the names of persons or entities proposed by Design-Builder to act as Subcontractors on the Project. Design-Builder shall provide such information regarding such proposed Subcontractors as Owner deems necessary. Owner shall promptly reply to Design-Builder, in writing, stating any objections Owner may have to such proposed Subcontractors. Design-Builder shall not enter into a subcontract with an intended Subcontractor with reference to whom Owner objects. Any consent or failure to reject by Owner shall in no way relieve Design-Builder of any of its duties or warranties under the Contract.

5.5.2 Design-Builder shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner may have reasonable objection: A Subcontractor or other person or organization identified in writing to Owner prior to the Notice of Award and not objected to in writing by Owner prior to the Notice of Award will be deemed acceptable to Owner. Acceptance of any Subcontractor, other person, or

organization by Owner shall not constitute a waiver of any right of Owner to reject defective Work. If Owner, after due investigation, has reasonable objection to any Subcontractor, other person or organization proposed by Design-Builder after the Notice of Award, the Design-Builder will be required to submit an acceptable substitute. The Contract Sum will be equitably adjusted, if permitted by applicable law, for any change in the price of the subcontract work resulting from such substitution. Design-Builder shall not be required to employ any Subcontractor, other person, or organization against whom Design-Builder has reasonable objection.

5.5.3 Design-Builder shall be fully responsible to Owner for all acts and omissions of his Subcontractors, Suppliers and Consultants and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts, defaults, omissions, or negligence any of them may be liable to the same extent that Design-Builder is responsible for the acts and omissions of persons directly employed by Design-Builder. 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 Design-Builder, 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 Design-Builder on account of specific Work done.

5.5.4 The divisions and sections of the Specifications and the identifications of any Drawings shall not control Design-Builder in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

5.5.5 All Work performed for Design-Builder by a Subcontractor will be pursuant to an appropriate agreement between Design-Builder and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

5.5.6 **Removal Of Subcontractors And Personnel:** If, at any time during the course of the Project, Owner reasonably determines that the performance of any Subcontractor or any member of Design-Builder's staff construction Working on the Project is unsatisfactory, Owner's Representative may require Design-Builder to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to Owner for delays or inefficiencies the change may cause.

5.5.7 SBEDA/DBE Reporting and Auditing. During the term of the contract, the Design-Builder must report the actual payments to all SBEDA or DBE (as applicable) Subcontractors and Suppliers in the time intervals and format prescribed by the City of San Antonio. The City 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 must properly identify the project name or project number to substantiate a SBEDA or DBE payment for the Project.

5.5.8 Small Business Subcontractor Substitutions. See 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.

5.5.9 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, the Design-Builder shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, Amendment, Change Orders and other administrative activities. When such systems are employed, the Owner shall administer the software, shall provide training to Project Team Members, and shall make the software accessible via the Internet to all Project Team Members.

5.6 **SUBCONTRACTUAL RELATIONS.** By appropriate agreement, written where legally required for validity, the Design-Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Design-Builder by terms of the Contract Documents and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of

the Subcontractor's Work, which the Design-Builder, by these Documents, assumes toward the Owner and Owner's Consultant. Each subcontract agreement shall preserve and protect the rights of the Owner and Owner's Consultant (if applicable) under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Design-Builder shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Design-Builder shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound and upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Design-Builder shall provide Onwer with a copy of each subcontract agrement upon request.

5.7 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS.**

5.7.1 Each subcontract agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

5.7.1.1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Design-Builder in writing; and

5.7.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.7.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increase in cost resulting from the suspension.

ARTICLE 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS.

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

6.1.1 **Owner's Right to Perform Construction Work:** In the event Owner instructs the Design Builder instructions to stop Construction Work, and in the further event that Design-Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Owner that the cause of such instructions will be eliminated or corrected, then Owner shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Design-Builder shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 6 and Article 7 are in addition to, and without prejudice to, any other rights or remedies Owner may have against Design-Builder, including the rights to terminate or withhold payment as provided herein

6.1.2 The Owner reserves the right to perform construction or operations related to the Project with the 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 Conditions of the Contract identical or substantially similar to these. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section 4.3.

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

6.1.4 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules

shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

6.1.5 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operation related to the Project with the Owner's own forces, the Owner shall be subject to the same obligations and to have the same rights which apply to the Design-Builder under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 **MUTUAL RESPONSIBILITY.**

6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall coordinate the Design-Builder's construction and operations with theirs as required by the Contract Documents.

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

6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.

6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

6.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Design-Builder in Section 3.14.

6.3 **OWNER'S RIGHT TO CLEAN UP.** If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 7. CHANGES IN THE WORK

7.1 **GENERAL.**

7.1.1 **Owner's Right to Order Changes:** Changes in the Design Services or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by Owner without invalidating the Contract. Such changes shall be communicated by Change Order, Field Order or supplemental agreement, as applicable. Design-Builder shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the contract documents.

7.1.2 Changes in the Work may be accomplished after the execution of the Contract, and without invalidating the Contract, by Change Order, Field Work Directive or order for a minor change in the Work that does not affect the Contract Time or the Contract Price, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.3 A Change Order shall be based upon agreement among the Owner, Owner's Consultant (if applicable) and Design-Builder; a Field Work Directive requires agreement by the Owner and Owner's consultant (if any) and may or may not be agreed to by the Design-Builder; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Price may be issued by the Owner or Owner's consultant (if any) alone.

7.1.4 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design-Builder shall proceed promptly with the changed Work, unless otherwise provided in the Change Order, Field Work Directive or order for a minor change in the Work or in this Article 7.

7.2 **CHANGE ORDERS.**

7.2.1 A Change Order is a written modification of the Contract prepared by the Owner or Owner's Consultant and signed by the Owner, Owner's Consultant (if applicable),and Design-Builder, (and approved by the City Council, if required) which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price 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 Price may include those listed in Section 7.3.3. The Design-Builder and Subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by the Contract.

7.2.3 **Changes and Extensions of Time:** All changes to the scope of Design Services or extensions of the agreed upon Design Schedule during the design process shall be made by mutual agreement of Owner and Design-Builder, and claims for an increase in design compensation due to a change in the scope of design construction Work or for an extension of time to the Design Schedule shall be made in writing within seven (7) calendar days after occurrence of the event that gives rise to the claim. All requests for additional compensation due to a change in the scope of Design Services, and all requests for an extension of time to the Design Schedule, shall include sufficient backup documentation for Owner to reasonably understand the request and the amount of time or compensation requested and to determine the merits of the request.

7.2.4 Acceptance of a Change Order by the Design-Builder 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 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 the Design-Builder shall constitute conclusive evidence of the Design-Builder's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against the 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 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.

7.2.5 **Adjustments To Guaranteed Maximum Price Or Contract Time**: Upon the occurrence of a change order for Construction Work as set forth Article 7 herein which increases the Cost of the Construction Work, the Guaranteed Maximum Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed by this Article 7. The failure of Design-Builder to provide written notice to Owner of any request for an increase in the Guaranteed Maximum Price or for an extension of the Contract Time shall constitute a waiver by Design-Builder of any entitlement thereto.

7.2.6 **Continuing Duty To Perform Construction Work And Make Payment:** In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Design-Builder shall continue to diligently perform the Design Services and the Construction Work,

including any change directed by Owner by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement, subject to and in accordance with the provisions of Article 7 of the General Conditions.

7.2.7 **Fiduciary Relationship:** Design-Builder recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Design-Builder and Owner and agrees that it shall at all times in good faith use its best efforts to advance Owner's interests and agrees to perform the Design Services and the Construction Work in the highest professional manner.

7.3 **FIELD WORK DIRECTIVES.**

7.3.1 A Field Work Directive is a written order prepared by the Owner or Owner's Consultant, and signed by the Owner, Owner's Consultant (if applicable) and Design-Builder, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract time, or both. The Owner may, by Field Work Directive, 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.

7.3.3 If the Field Work Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:

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

7.3.3.2 unit prices stated in the Contract Documents or subsequently agreed upon;

7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

7.3.3.4 as provided in Section 7.3.6.

7.3.4 Upon receipt of a Field Work Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner and/or the Owner's Consultant as applicable of the Design-Builder's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Price or Contract Time.

7.3.5 A Field Work Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Price, the method and the adjustment shall be initially determined by the Owner or Owner's Consultant on the basis of reasonable costs and savings attributable to the change, including, in case of an increase in the Contract Price, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner or Owner's Consultant may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

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

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

7.3.6.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;

7.3.6.4 Expenses incurred in accordance with Design-Builder's standard personnel policy for travel approved by the Owner in advance;

7.3.6.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and additional costs of supervision and field office personnel directly attributable to the change; and

7.3.6.6 Payments made by the Design-Builder to Subcontractors.

7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change which results in a net decrease in the Contract Price shall be actual net cost of the deleted or change Work, plus the Design-Builder's allocated percent for profit and overhead as confirmed by the Owner or Owner's Consultant, subject to equitable adjustment recommended by the Owner's Consultant (if applicable) and approved by the 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.

7.3.8 Pending final determination of the total cost of a Field Work Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner or Owner's Consultant will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Design-Builder agree with the determination made by the Design-Builder concerning the adjustments in the Contract Price 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.

7.4 **MINOR CHANGES TO THE WORK.** The Owner or Owner's Consultant will have authority to order minor changes in the Work not involving adjustment in the Contract Price 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 the Owner and Design-Builder. The Design-Builder shall carry out such written orders promptly.

7.5 **TIME REQUIRED TO PROCESS CHANGE ORDERS**

7.5.1 All responses by the Design-Builder to proposal requests from the Owner or Owner's 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 the Owner and the Owner's Consultant a minimum of ten (10) calendar days after receipt by the Owner or Owner's Consultant to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of the Design-Builder's responses to proposal requests shall include a statement that the cost and additional time described and requested in the 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 approval by either the City Council or, where authorized by the state law and City ordinance, by the City Manager or designee pursuant to Administrative Action. The approval

process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by 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 PRICE WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, the Design-Builder will proceed with the work under a pending Change Order only if directed in writing to do so by the Owner.

ARTICLE 8. TIME

8.1 DEFINITIONS.

8.1.1 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Construction Work. When the plural ("Contract Times") is used, it refers to milestones designated in the Construction Work Progress Schedule.

8.1.2 Commencement of Work. The date of commencement of the Work is the date established in the Contract for the Construction Work to begin.

8.1.3 Day. The term "day" as used in the Contract Documents shall mean Calendar Day unless otherwise specifically defined. A Calendar Day is a day of 24 hours measured from midnight to the next midnight, unless otherwise specifically stipulated. A Working Day is a day of eleven hours as measured from seven o'clock a.m. to six o'clock p.m. on weekdays, except legal holidays.

8.2 PROGRESS AND COMPLETION.

8.2.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE CONTRACT. By executing the Contract the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Design-Builder shall not knowingly, except by agreement with or the instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Design-Builder and Owner. The date of commencement is established by the Contract Documents or a Notice To Proceed given by the Owner.

8.2.3 The Design-Builder shall proceed with the Work expeditiously using adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME.

8.3.1 Neither the Owner nor the Design-Builder, except as provided for in this Section 8.3.1, shall be liable to the other party for delay to the Design-Builder's Work by reason of unreasonably severe weather, fire, act of God, riot, strike, or any other cause beyond the Owner's control. Should any of these factors delay the Work's critical path, as evidenced by a time impact analysis developed by Design-Builder and verified by the Owner's Consultant (if any), the Program Manager (if any), and the ODR, Design-Builder shall receive an extension of the Contract Times equal to the delay if a written claim is made within five work days of the delaying event, and under no circumstances shall the Owner be liable to pay the Design-Builder any compensation for such delays.

8.3.2 Should the Design-Builder be delayed by the act, neglect or default of the Owner or the Owner's Consultant, and should any of these factors delay the Project's critical path, as evidenced by a time impact analysis developed by Design-Builder and verified by the Owner's Consultant, the Program Manager (if any) and the ODR, Design-Builder shall receive an extension of the Contract Times equal to the delay if a written claim is made within twenty one (21) days. In addition, Design-Builder, upon timely notice to the City and substantiation by the Owner's Consultant (if any), the Program Manager (if any)

and the ODR, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs incurred by the Design-Builder to administer its Work and does not include costs associated for any tier of Subcontractor or Supplier to administer their Work. Compensation for the 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 Design-Builder for the particular Project delayed and for the period of the critical path delay attributable to the Owner-caused event. In no event will Design-Builder be entitled to home office or other off-site expenses or damages.

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

8.3.4 This Contract does not permit the recovery of damages by the Design-Builder for delay, disruption or acceleration, other than those described above in Section 8.3.2 and as provided under Section 4.3.11(3). Design-Builder agrees that Design-Builder shall be fully compensated for all delays solely by an extension of time or as contemplated in Section 8.3.2

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 **SCHEDULE OF VALUES.** Before the first Application for Payment, the Design-Builder shall submit to the Owner and Owner's Consultant (if any) 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 the Owner and Owner's Consultant may require. This schedule, unless objected to by the Owner or Owner's Consultant, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

9.2 APPLICATIONS FOR PAYMENT.

9.2.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner or Owner's Consultant (if applicable) an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be in an Excel spreadsheet format and notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner or Owner's Consultant may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents. Design-Builder shall submit pay applications to Owner electronically

9.2.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Field Work Directives, or by interim determination of the Owner or Owner's Consultant, but not yet included in Change Orders.

9.2.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Design-Builder intends to pay.

9.2.2 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. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by the Design-Builder with procedures reasonably satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest. The Design-Builder shall be solely responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

9.2.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. DESIGN-

BUILDER SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE DESIGN-BUILDER, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE DESIGN-BUILDER OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO DESIGN-BUILDER.

9.2.4 In each Application for Payment, Design-Builder shall certify that there are no known liens or bond claims outstanding at the date of this requisition, 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 that 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 Design-Builder'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 Design-Builder; provided that if any of the foregoing is not true and cannot be certified, Design-Builder will revise the certificate as appropriate and identify all exceptions to the requested certifications.

9.3 PAY APPLICATION CERTIFICATION.

9.3.1 The Owner will, within seven days after receipt of the Design-Builder's Application for Payment, either certify the Application for Payment, with a copy to the Design-Builder or, if the Owner has engaged a Consultant, the Owner's Consultant will certify the application, with a copy to the Design-Builder, for such amount as the Owner or Owner's Consultant determines is properly due, or should the Owner withhold certification of payment, notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1. If the Owner has engaged a Consultant, should the Owner's Consultant withhold certification of the Payment Application, the Owner's Consultant will notify the Owner and Design-Builder in writing of the Owner's Consultant's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

9.3.2 The Certification of an Application for Payment by the Owner or the Owner's Consultant will constitute a representation by the Owner or by the Owner's Consultant to the Owner, based on the Owner's or Owner's 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 the Owner's or Owner's 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 the Owner or the Owner's Consultant. The issuance of Certification of an Application for Payment will further constitute a representation that the Design-Builder is entitled to payment in the amount certified. However, the issuance of a Certification of the Application for Payment will not be a representation that the Owner or the Owner's Consultant have (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 the Owner to substantiate the Design-Builder's right to payment, or (4) made any examination to ascertain how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

9.4 DECISIONS TO WITHHOLD CERTIFICATION.

9.4.1 The Owner or Owner's Consultant may withhold certification of the Payment Application in whole or in part, to the extent reasonably necessary to protect the Owner if, in the Owner's or Owner's Consultant's opinion, the representations to the Owner required by Section 9.4.2 cannot be made. If the Owner or the Owner's Consultant is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder, or the Owner's Consultant will notify the Design-Builder and Owner as provided in Section 9.4.1. If the Design-Builder and Owner and/or Owner's Consultant cannot agree on a revised amount, the Owner or Owner's Consultant will promptly issue a Certification of the Payment Application for the amount for which the Owner is able to make such representations, or the Owner's Consultant is able to make such representations to the Owner. The Owner or Owner's Consultant may also withhold a Certification of the Application for Payment or, because of subsequently discovered evidence, may modify the whole or a part of a Certification of the Application for Payment to such extent

as may be necessary, in the Owner's or Owner's Consultant's opinion, to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

9.4.1.1 defective Work not remedied;

9.4.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims for which Design-Builder is responsible hereunder unless security acceptable to the Owner is provided by the Design-Builder;

9.4.1.3 failure of the Design-Builder to make payments properly to Subcontractors or for labor, materials or equipment;

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

9.4.1.5 damage to the Owner or another contractor;

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

9.4.1.7 persistent failure by the Design-Builder to carry out the Work in accordance with the Contract Documents.

The Owner will pay the undisputed portions of such Application for Payment within the time frames established in the Section 9.

9.4.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in subparagraph 9.5.1.

9.5 PROGRESS PAYMENTS.

9.5.1 After the Owner or Owner's Consultant has issued a Certification of the Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design-Builder.

9.5.2 During the latter part of each month as the Work progresses on all City Contracts regardless of Contract Sum, the City's Project Manager and Design-Builder shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Design-Builder acquired materials stored on the Project site, and/or within off-site storage facilities either owned orleased by the Contractor. Upon receipt of a complete and mathematically accurate Construction Estimate Certification Form from the Design-Builder, The City shall make payments to Design-Builder within thirty (30) calendar days on Contracts totaling four hundred thousand ($400,000.00) dollars or less, based upon such cost determination and at the Contract unit prices in a sum equivalent to ninety percent (90%) of each such invoice. At the time the last monthly invoice is paid by Owner, a Letter of Conditional Approval may be furnished to the Design-Builder. The remaining ten percent (10%) retainage shall be held by the City until the final Contract Settlement. However, where the Contract amount exceeds four hundred thousand dollars ($400,000.00), installments shall be paid to Design-Builder 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 Construction Estimate Certification Form from the Design-Builder, and the retainage held until final Contract Settlement shall be five percent (5%). The payments of such installments are payments toward satisfaction of the Contract Sum, and the Design-Builder invoices upon which such monthly payments are based, are given to Owner by Design-Builder only for the purposes of fixing the periodic sums to be paid in compliance with Paragraph 7.1. Owner's payment of installments shall not in any way be deemed to be a final acceptance of any part of the Work

by Owner, and will not prejudice Owner in the final settlement of Contract account nor relieve the Design-Builder from completion of the Work as herein provided.

9.5.3 The Design-Builder shall, within ten (10) days following receipt of payment from the 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 the Owner with evidence of such payment. Design-Builder's failure to make payments within such time shall constitute a material breach of this contract, unless the Design-Builder is able to demonstrate to Owner bona fide disputes associated with the unpaid subcontractor or supplier and its work. Design-Builder shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Design-Builder hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Design-Builder has failed to make payment promptly to the Design-Builder's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Design-Builder, the Owner shall be entitled to withhold payment to the Design-Builder to the extent necessary to protect the Owner.

9.5.4 The Owner or Owner's Consultant will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner's Consultant and Owner on account of portions of the Work done by such Subcontractor.

9.5.5 Neither the Owner nor the Owner's 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.

9.5.6 Payments to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4 regarding Subcontractors.

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

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

9.6 FAILURE OF PAYMENT.

9.6.1 If the Owner or Owner's Consultant does not issue a Certification of the Application for Payment, through no fault of the Design-Builder, within seven days after receipt of the Design-Builder's Application for Payment, or if the Owner does not pay the Design-Builder the amount certified by the Owner or Owner's Consultant within seven (7) days after the date established in the Contract Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner and Design Consultant (if applicable), stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.7 SUBSTANTIAL COMPLETION.

9.7.1 **Determination of Substantial Completion:** When Design-Builder believes that the Construction Work is substantially complete, Design-Builder shall notify the Director in writing and shall submit to Owner a list of items remaining to be completed or corrected. The Director (or an independent consultant hired by Owner) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of Owner, Design-Builder will prepare and submit to Owner for written acceptance a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of Owner and Design-Builder for Project security, maintenance, heat, utilities, damage to the Construction Work, and insurance, and shall fix the date, not longer than thirty (30) days after the established date of Substantial Completion, within which Design-Builder shall complete anyitems of incomplete or defective Construction Work. The

Certificate of Substantial Completion shall be submitted to Design-Builder for its written acceptance of the responsibilities assigned to it in such certificate

9.7.2 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. In the event Substantial Completion is not achieved by the designated date, or as that date may be extended by Change Order(s), Owner may withhold payment of sums necessary to pay the estimated liquidated damages due Owner until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Design-Builder any or all liquidated damages due Owner in accordance with the Contract between the Owner and the Design-Builder.

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

9.7.4 Upon receipt of the Design-Builder's list, the Owner or Owner's Consultant will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Owner's Consultant's or Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by the Owner or Owner's Consultant. In such case, the Design-Builder shall then submit a request for another inspection by the Owner's Consultant or Owner to determine Substantial Completion.

9.7.5 When the Work or designated portion thereof is Substantially Complete, the Owner or Owner's Consultant will prepare a Certificate of Substantial Completion which shall (a) establish the date of Substantial Completion (which will be the date on which the Work met the requirements under the Contract Documents for Substantial Completion), (b) establish responsibilities of the Owner and Design-Builder, as agreed to by the Owner and Design-Builder, for security, maintenance, heat, utilities, damage to the Work and insurance, and (c) fix the time within which the Design-Builder shall finish 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 designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.7.6 The Certificate of Substantial completion shall be submitted to the Owner and Design-Builder for their written acceptance of responsibilities assigned to them in such Certificate.

9.7.7 **Payment Upon Substantial Completion:** Upon Substantial Completion of the Construction Work, and upon execution by both Owner and Design-Builder of the Certificate of Substantial Completion, Owner shall pay Design-Builder, within thirty (30) days, all sums due Design-Builder, including suchmount of retainage as the Owner in its sole discretion wishes to pay based upon the value of remaining performance, less the reasonable costs, as determined by Owner in Owner's sole discretion, for completing all incomplete Construction Work and Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and handling all outstanding or threatened claims.

9.8 PARTIAL OCCUPANCY OR USE.

9.8.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 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 the Owner and Design-Builder 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 the Design-Builder considers a portion Substantially Complete, the Design-Builder shall prepare and submit a list of items to be completed or corrected prior to final payment and submit such list to the Owner or Owner's Consultant as provided under Section 9.8.2. Consent of the Design-Builder 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 the Owner and Design-Builder or, if no agreement is reached, by decision of the Owner or Owner's Consultant.

9.8.2 Immediately prior to such partial occupancy or use, the Owner, Design-Builder and Owner's Consultant (if any) shall jointly 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.

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

9.9 FINAL COMPLETION AND FINAL PAYMENT.

9.9.1 When all of the Work is finally completed and ready for final inspection, the Design-Builder shall notify the Owner and the Owner's Consultant thereof in writing. Thereupon, the Owner's Consultant and Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Owner will promptly issue a final Certification of the Application for Payment, or Owner's Consultant will issue a Certification of the Application for Payment certifying to the Owner that the Project is complete and that the Design-Builder is entitled to the remainder of the unpaid Contract Sum, less any amount withheld pursuant to this Contract. If the Owner or Owner's Consultant is unable to issue its final Certification of the Application for Payment for reasons for which the Design-Builder is responsible and is required to repeat its final inspection of the Work, the Design-Builder shall bear the cost of such repeat final inspection(s), the reasonable cost of which may be deducted by the Owner from the Design-Builder's final payment.

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

9.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, and the Design-Builder so confirms, the Owner shall, upon application by the Design-Builder and certification by the Owner or Owner's Consultant, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner or Owner's Consultant prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.4 **Conditions Precedent to Final Payment:** Prior to being entitled to receive final payment and as a condition precedent thereto, Design-Builder shall furnish Owner, in the form and manner required by the Director, the following:

9.9.4.1 Owner's standard Affidavit of Final Payment and Release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and

releasing Owner from all claims that Design-Builder had or might have asserted during the performance of this Contract;

9.9.4.2 if required by Owner, separate releases of lien, lien waivers, or affidavits of payment from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against Owner or Owner's property;

9.9.4.3 consent of surety to final payment;

9.9.4.4 a complete set of the as-built drawings and the record set of Contract Documents; and

9.9.4.5 all product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

9.9.5 The Owner shall make final payment of all sums due the Design-Builder not more than thirty (30) days after the Owner's or Owner's Consultant's execution of a final Certification of the Application for Payment and provided that all other conditions precedent to payment have been satisfied.

9.9.6 Acceptance of final payment by the Design-Builder, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payees as unsettled at the time of final Application for Payment.

9.10 **ADDITIONAL INSPECTIONS.** In addition to any liquidated damages payable to the Owner by the Design-Builder, if: (1) the Owner or Owner's Consultant is required to make more than one inspection for Substantial Completion, (2) the Owner or Owner's Consultant is required to make more than one inspection for final completion, or (3) the Work is not substantially complete within sixty days after the date established for Substantial Completion in the Contract Documents, the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Design-Builder for any additional inspections or services, provided that the Owner or Owner's Consultant undertook these services due to the fault or neglect of the Design-Builder..

ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Design-Builder 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 Design-Builder's insurers and the State of Texas in connection with such injuries or fatalities.

10.1.2 Design-Builder has adopted or will adopt its own policy to assure a drug and alcohol free work place while performing the Work. Design-Builder's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Design-Builder, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Design-Builder, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work or while on the site of the Work. Design-Builder will remove any of its employees from performing the Work 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 Design-Builder to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Design-Builder's employees may only be considered for return to work after the Design-Builder certifies, as a result of a for-cause test conducted immediately following removal, that said employee was in compliance with this Contract. Design-Builder will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

10.1.3 Design-Builder will 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.

10.1.4 Both Owner and Design-Builder 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 by Design-Builder will be a material and substantial breach of this Contract. In the event that Owner shall determine that Design-Builder has breached or violated the terms of this Section, then Owner shall determine, immediately upon written notice to Design-Builder, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until Owner shall be satisfied that the safety provisions hereof shall not be breached or violated thereafter. If Owner shall terminate the Contract as a result of such breach or violation, the Owner and Design-Builder shall complete their obligations hereunder to one another in accordance with Section 14.2 "Termination by Owner."

10.1.5 Nothing contained in this Section shall be interpreted as creating or altering the legal duty of Owner to Design-Builder or to Design-Builder's agents, employees, Subcontractors, or third parties, or altering the status of Design-Builder as an independent contractor.

10.1.6 Notwithstanding either of the above provisions or whether Owner exercises its rights set forth herein, Owner does not warrant nor represent to Design-Builder, Design-Builder's employees or agents, any subcontractors, or any other third party that Design-Builder's safety policy meets the requirements of any applicable law, code, rule, or regulation, nor does Owner warrant that the proper enforcement of Design-Builder's policy will insure that no accidents or injuries will occur. In addition, any action by Owner under these provisions in no way diminishes any of Design-Builder's obligations under applicable law or the contract documents.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Site Safety and Security: Design-Builder shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Design-Builder shall at all times safeguard Owner's property and employees from injury or loss in connection with the performance of the Contract. Design-Builder shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Design-Builder shall protect Owner's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

10.2.2 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.2.1 employees on the Work and other persons who may be affected thereby;

10.2.2.2 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 the Design-Builder or the Design-Builder's Subcontractors or Sub-subcontractors; and

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

10.2.3 The Design-Builder 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.

10.2.4 The Design-Builder 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 owners and users of adjacent sites and utilities.

10.2.5 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, the Design-Builder shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel.

10.2.6 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). The Design-Builder shall also HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of the Design-Builder and of the Owner) referred to in Clauses 10.2.1.2 and 10.2.1.3 but only to the extent caused in whole or in part by the acts or omissions of Design-Builder, its agents, servants, and employees, or its Subcontractors and their agents, servants, and employees, or anyone directly or indirectly employed by them, or by any other person or entity for which they 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 the Design-Builder be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under paragraph 3.18.

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

10.2.8 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 EMERGENCIES.

10.3.1 In an emergency affecting safety of persons or property, the Design-Builder shall exercise its best efforts to act to prevent or minimize threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

10.4 PUBLIC CONVENIENCE AND SAFETY.

10.4.1 The Design-Builder 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 the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the 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 The Owner reserves the right to remedy any neglect on the part of the Design-Builder in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Design-Builder. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by or for the Owner to remedy the Design-Builder's neglect shall be deducted from the Contract Sum. The Design-Builder shall notify the City Traffic Control Department, the ODR and the Owner's 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 at least forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Design-Builder shall, when directed by the Owner's Consultant or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Design-Builder is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Design-Builder's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN.

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

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.

10.6.1 In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Owner or Owner's Consultant. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site 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 the Owner's property. The Owner's actions shall conform to the Design-Builder's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Design-Builder.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

10.7.1 When existing storm sewers or drains have to be taken up or removed, the Design-Builder shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Design-Builder shall also provide for all storm sewage and drainage which will be received from these storm drains and sewers. For this purpose, the Design-Builder shall provide and maintain, at the Design-Builder's own expense, adequate pumping facilities and temporary outlets or diversions. The Design-Builder shall, at the Design-Builder'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 the Owner or Owner's 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 will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT.

10.8.1 When the Design-Builder desires to use the Owner's water in connection with the Work, the Design-Builder shall make complete and satisfactory arrangements with the San Antonio Water Service

and shall be responsible for the cost of the water the Design-Builder uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City 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 The Design-Builder shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner, or with any retail electric provider in the event that separately metered electrical connections are required for the Project. The Design-Builder shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Design-Builder through a retail electric provider.

10.9 **USE OF FIRE HYDRANTS.**

10.9.1 The Design-Builder, 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 the Owner, unless duly authorized to do so by the City.

10.10 **ENVIRONMENTAL COMPLIANCE.**

10.10.1 The Design-Builder and its Subcontractors are deemed to have made themselves familiar with and shall 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 the Design-Builder 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, the Design-Builder shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Design-Builder and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner and written consent of the Design-Builder, 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, the Owner shall remediate the Hazardous Substance with a separate contractor or through a Change Order with the Design-Builder. If the Hazardous Substance exists in the affected area due to the fault or negligence of the Design-Builder or any of its Subcontractors, the Design-Builder shall be responsible for remediating the condition at the sole expense of the Design-Builder. If applicable, such remediation shall be in accordance with the Design-Builder'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 the Owner only if the Project critical path is affected. 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 8.

10.10.4 The Design-Builder shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Design-Builder or any Subcontractor or Supplier. The Design-Builder 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 disposal, notify the Owner and the Owner's Consultant so that they may observe the activities; provided, however, that it shall be the Design-Builder's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

ARTICLE 11.
INSURANCE AND BONDS.

11.1 DESIGN-BUILDER'S LIABILITY INSURANCE.

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

11.1.1.1 Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to the Owner; Employer's Liability Insurance of not less than $100,000 for each accident, $100,000 disease for each employee and $500,000 disease policy limit.

11.1.1.2 Commercial General Liability Insurance, Including Personal Injury Liability, Independent Contractor's Liability, Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Design-Builder's (or Subcontractor's) liability for injury to or death of the Owner's employees and 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 60 months following completion of the contract and acceptance of work by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Owner and the Owner's Consultant (if any) shall be named as additional insureds 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 $500,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.

11.1.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates required under Section 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled, nonrenewed, or materially changed until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage shall be furnished by the Design-Builder to the Owner with reasonable promptness in accordance with the Design-Builder's information and belief.

11.1.3 If any insurance company for the Design-Builder, which company provides insurance required under the Contract Documents, becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Design-Builder shall procure, immediately upon first notice of such occurrence and without cost to the 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 Sections 11.1 and 11.4, the Design-Builder 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, or 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, the 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 the Design-Builder and naming the Owner and the Subcontractors, and 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 the Design-Builder or the Owner and Design-Builder as trustee for the insureds as their interests may appear.

11.2.1.3 The right of subrogation under the policy shall be waived as to the Design-Builder.

11.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include the interests of the Owner, Design-Builder, Subcontractors and Sub-subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

11.2.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder 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 The Design-Builder shall provide to the Design-Builder for delivery to the Owner a certificate of insurance evidencing all property insurance policies procured under this Section 11.2 and all endorsements thereto before any exposure to loss may occur.

11.2.5 If any insurance company which provides insurance for the Design-Builder that is required under the Contract Documents becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Design-Builder shall immediately cease the performance of the Work and shall procure, immediately upon first notice of such occurrence and without cost to the 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.

11.2.6 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain

consent of the insurance company or 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, the Design-Builder shall, with the execution and delivery of the Design-Build Contract, furnish and file with the Owner in the amounts required in this Section, the surety bonds described in Sections 11.3.1.1 and 11.3.1.2 below, which surety bonds shall be in accordance with the provisions of Chapter 2253, Texas Government Code, as amended and Article 7.19-1, Texas Insurance Code, as amended. If the GMP established under Article 10 of this Contract is less than the Project Construction Budget, Design-Builder may furnish a rider to adjust the amount of the bonds to reflect the GMP, and shall reflect the adjusted premium cost appropriately in the general conditions shown as a part of the GMP. The bonds shall be written by a corporate surety or sureties authorized to conduct an insurance business in the State of Texas and licensed to issue surety bonds in the State of Texas, and otherwise acceptable to Owner. Each bond shall be signed by the Design-Builder, as Principal, and by an established corporate surety bonding company, as surety, meeting the requirements of Section 11.3.3 and approved by the 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. The bonds shall be written on forms approved for use by Owner, a copy of which bond forms are attached to and made a part of this Contract as Exhibit E.

11.3.1.1 Performance Bond. A good and sufficient bond in an amount equal to 100% of the GMP, or the amount of the Project construction budget if a GMP has not been established as of the date of execution of the Contract, 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 the 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 GMP, or the amount of the Project construction budget if a GMP has not been established as of the date of execution of the Contract, 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.

11.3.1.3 Subcontractor Bonds. Each Subcontractor whose Subcontract is greater than $25,000 but less than or equal to $100,000 will likewise be required, as a condition of their Subcontract, to execute similar Payment Bonds (in the case of Subcontracts greater than $100,000, similar Performance and Payment Bonds will be required) in the full amount of each Subcontract, naming both Design-Builder and Owner as joint obligees. Subcontractors not required to provide a payment bond will not be paid progress payments, but shall be paid upon final completion and acceptance of their Construction Work.

11.3.1.4 The Design-Build shall deliver the bonds not later than the tenth (10th) day after the date the Design-Builder executes the Contract unless the Design-Builder furnishes a bid/surety bond or other financial security acceptable to the Owner to ensure that the Design-Builder will furnish the required performance and payment bonds when a GMP is established.

11.3.1.5 The Design-Builder may furnish a bid/surety bond equal to five percent (5%) of the Project Construction Budget if a GMP has not been established not later than the tenth (10th) day after the date the Design-Builder executes the Contract The bid surety bond shall guarantee Owner that Design-Builder will furnish the required performance and payment bonds when the GMP is established.

11.3.2 If the GMP (or the amount of the Project construction budget if a GMP has not been established as of the date of execution of the Contract) including Owner-accepted Alternates and allowances, if any, is greater than $100,000, Performance and Payment Bonds in an amount of 100% of the GMP (or the amount of the Project construction budget if a GMP has not been established as of the date of execution of the Contract) are mandatory and shall be provided by the Design-Builder. If the GMP (or the amount of the Project construction budget if a GMP has not been established as of the date of execution of the Contract) is greater than $25,000 but less than or equal to $100,000, only a Payment Bond in an amount of 100% of the GMP (or the amount of the Project construction budget if a GMP has not been established as of the date of execution of the Contract) is mandatory; provided, however, that the Design-Builder may elect to also furnish a Performance Bond in the same amount if the Design-Builder so chooses. If the GMP (or the amount of the Project construction budget if a GMP has not been established as of the date of execution of the Contract) is less than or equal to $25,000, the Design-Builder may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid to the Design-Builder until Final Completion of all Work by Owner. If the Design-Builder elects to provide Performance and Payment Bonds, the Contract Sum shall be payable to the Design-Builder through progress payments in accordance with these General Conditions.

11.3.3 No surety will be accepted by the Owner that is now in default or delinquent on any bonds or that is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one 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 the Owner. Each bond shall be executed by the Design-Builder and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively 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 the Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on the Owner until it has been approved as to form by the City Attorney, executed for the Owner by the City Manager, the performance and payment bonds and evidence of insurance have been furnished as required by the Contract Documents, and the fully executed Contract has been delivered to the Design-Builder.

11.3.5 The failure of the Design-Builder to execute the Contract or deliver the required bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as the Owner can assemble and deliver the Contract shall, at the Owner's option, constitute a material breach of the Design-Builder's proposal and the 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 the Owner by reason of the Design-Builder's failure to execute and furnish the bonds and to sign the Contract within ten (10) days, the filing of a bid proposal shall constitute an acceptance of this Section 11.3.5. In the event the Owner should readvertise for bids or proposals, the defaulting Design-Builder shall not be eligible to bid or propose, and the lowest responsible bid obtained, or the proposal that is accepted as a result of the readvertisement shall be the bid or proposal referred to in this Section.

11.4 'UMBRELLA' LIABILITY INSURANCE

11.4.1 The Design-Builder shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Design-Builder for an amount of not less than $3,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. The Owner and Design-Builder shall be named as

additional insureds using endorsement CG 20 26 or broader. No aggregate shall be permitted for this type of coverage. The policy shall provide "drop down" coverage where 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 the Design-Builder 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 That the Owner and Owner's Consultant shall be named as additional insureds on all liability coverages, using endorsement CG 20 26 or broader. Where the Owner employs a Construction Manager on the Project, the Design-Builder and Subcontractor shall include the Construction Manager on all liability insurance policies to the same extent as the Owner and Owner's Consultant are required to be named as additional insureds.

11.5.1.2 That each insurance policy shall require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to Owner. Design-Builder shall also notify Owner, within 10 days after receipt, of any notice of expiration, cancellation, nonrenewal or material change in coverage it receives from its insurer.

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

11.5.1.4 That the policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The insurance coverage furnished by Design-Builder as required is considered to be primary insurance for purposes of the Project and the additional insureds named in the required policies.

11.5.1.5 That 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 by contractual liability coverage sufficient to include such obligations with the applicable liability policies.

11.5.2 Concerning the insurance to be furnished by the Design-Builder, it is a condition precedent to acceptability that:

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

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 the Owner's decision regarding whether any policy contains such provisions, 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 are otherwise acceptable to the Owner.

11.5.3 The Design-Builder agrees to the following special provisions:

11.5.3.1 The Design-Builder 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 the 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 11.

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

11.5.3.3 Approval, disapproval or failure to act by the Owner regarding any insurance supplied by the Design-Builder (or any Subcontractors) shall not relieve the Design-Builder 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 the Design-Builder's insurance company shall likewise not exonerate or relieve the Design-Builder from liability.

11.5.3.4 The Owner reserves the right to review the insurance requirements of this Article 11 during the effective period of this Contract and to adjust insurance coverages and their 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 the Design-Builder and the Subcontractors. The Design-Builder 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 the Owner, the Design-Builder shall exercise reasonable efforts to accomplish such changes in policy coverages, at the Owner's cost and expense.

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

11.5.4 Any insurance policies required under this Article may be written in combination with any of the other policies, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Article be limited or circumvented by doing so.

ARTICLE 12. UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered, conceled, or obstructed contrary to the Owner's or Owner's Consultant's written request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner or Owner's Consultant, be uncovered for the Owner's or Owner's Consultant's inspection and be properly replaced at the Design-Builder's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered, conceled, or obstructed which the Owner or Owner's Consultant has not specifically requested in writing to inspect prior to its being covered, the Owner or Owner's Consultant may request to inspect such Work and the Design-Builder shall uncover it. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Design-Builder shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Design-Builder shall promptly correct Work rejected by the Owner or Owner's 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. The Design-Builder shall bear costs of correcting such rejected Work, and all additional testing, inspections, and compensation for the Design-Builder's services and expenses made necessary thereby.

12.2.2 In addition to Design Builder'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 General Conditions the Design-Builder shall be specifically obligated correct it promptly at its own cost and expense any and all defective or nonconforming construction work for a period of twelve (12) months following Final Completion after receipt of written notice from the Owner's Consultant or the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance or waiver of the defect or nonconformity. The Design-Builder's obligation to correct defective or nonconforming Work remains in effect for:

12.2.2.1 one year after the date of Substantial Completion of the Work or designated portion of the Work;

12.2.2.2 one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Section 9.9.1; or

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

12.2.3 The one-year period described in Sections 12.2.2.1 and 12.2.2.2 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.

12.2.4 Owner's Option to Accept Defective Construction Work: **Owner may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. Owner shall be entitled to a reduction in the GMP regardless of whether Owner has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the GMP, if any, is insufficient to compensate Owner for the acceptance of defective or nonconforming Construction Work, Design-Builder shall, upon written demand from Owner, pay Owner such additional compensation for accepting defective or nonconforming Construction Work.**

12.2.5 The obligations of the Design-Builder under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Design-Builder promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Sections 12.2.2.1 and 12.2.2.2 does not limit the ability of the Owner to require the Design-Builder to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Design-Builder at the time the Work was performed or at the time of inspection for certification of Substantial Completion or final completion. The one year period also does not relieve the Design-Builder from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

12.2.6 The Design-Builder 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 the Design-Builder nor accepted by the Owner.

12.2.7 If the Design-Builder fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Design-Builder, the Owner may correct it in accordance with Section 2.4. If the Design-Builder does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Owner or the Owner's Consultant, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Design-Builder's expense. If the Design-Builder does not pay the costs of removal and storage within ten days after written notice by the Owner or the Owner's Consultant, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale

and shall account for the proceeds after deducting costs and damages that should have been borne by the Design-Builder, including compensation for the Owner's Consultant's services (if any) and expenses made necessary as a result of the sale. If the proceeds of sale do not cover the costs which the Design-Builder should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Design-Builder then or thereafter are not sufficient to cover the deficiency, the Design-Builder shall pay the difference to the Owner.

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

12.2.9 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Design-Builder might have under the Contract Documents. Establishment of the one-year time period as described in Section 12.2.2 relates only to the specific obligation of the Design-Builder 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, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

12.2.10 Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 The Owner may, in the Owner's sole discretion, accept Work which is not in strict accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable as determined by the Owner and the Owner's Consultant. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13. TERMINATION; TEMPORARY SUSPENSION

13.1 TERMINATION WITHOUT CAUSE.

13.1.1 This Contract may be terminated by the Owner at any time after issuance of the Notices to Proceed for Pre-construction Services or Construction Services, either for the Owner's convenience if the parties cannot agree to a mutually satisfactory GMP, or because of the Design-Builder's failure to fulfill the contract obligations. Upon receipt of such notice Design-Builder's services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Owner.

13.1.2 If the termination is for the convenience of the Owner, and following inspection and acceptance of Design-Builder's services properly performed prior to the effective date of termination, the Owner shall promptly pay Design-Builder for all services properly performed and all liabilities incurred up to the time of such termination. Design-Builder shall not, however, be entitled to lost or anticipated profit or payment on unperformed services should Owner choose to exercise this option to terminate, nor shall Design-Builder be entitled to compensation for any unnecessary or unapproved work, performed during time between the Design-Builder's receipt of the Owner's notice of termination and the actual termination date.

13.1.3 If the termination is due to Design-Builder's failure to fulfill its obligations, the Owner may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Design-Builder shall be liable to the Owner for any additional cost reasonably and necessarily occasioned to the Owner thereby.

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

13.2 **OPPORTUNITY TO CURE**: City may, in its sole discretion, upon the occurrence of an event of default, breach, or any other nonconformance with the Contract on the part of the Design Builder notify the Design Builder in writing of such event of default, breach, or nonconformance and will set out a specific period in which the Design-Builder must cure the listed event of default, breach, or nonconformance. The cure period specified in the aforementioned notice will be dependent on the event of default, breach, or nonconformance and will be solely determined by the City as it deems appropriate.

13.3 TERMINATION BY THE OWNER FOR CAUSE: Upon the occurrence of any of the events listed below and following seven (7) days written notice to Design-Builder given in accordance with the notice provisions contained in these Owner's General Conditions and the Contract, Owner may immediately terminate this Contract, in whole or in part, "for cause":

13.3.1 Design-Builder makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to Owner in connection with this Contract or its performance hereunder; or

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

13.3.3 Design-Builder fails to cure, or initiate steps reasonably calculated to cure, a default within the time period required for cure; or

13.3.4 Design-Builder materially violates any rule, regulation or law to which Design-Builder is bound or shall be bound under the terms of this Contract; or

13.3.5 Design-Builder attempts the sale, transfer, pledge, conveyance or assignment of this Contract contrary to the terms of the Contract; or

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

13.3.7 Failure or refusal of the Design-Builder to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

13.3.8 A reasonable belief that the progress of the Work being made by the Design-Builder is insufficient to complete the Work within the specified time.

13.3.9 Failure or refusal of the Design-Builder to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

13.3.10 A reasonable belief that the Design-Builder has abandoned the Work.

13.3.11 A reasonable belief that the Design-Builder has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

13.3.12 Failure or refusal on the part of the Design-Builder to observe any material requirements of the Contract Documents or to comply with any written orders given by the Design-Builder or the Owner as provided for in the Contract Documents.

13.3.13 Failure or refusal of the Design-Builder to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by theOwner or Owner's Consultant.

13.3.14 A reasonable belief by the 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 the Owner in connection with the construction of Work under the Contract.

13.3.15 Repeated and flagrant violation of safe working procedures.

13.4 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.

13.5 **ORDERLY TRANSFER FOLLOWING TERMINATION:** Regardless of how this Contract is terminated, Design-Builder shall affect an orderly transfer to Owner or to such person(s) or firm(s) as the Owner may designate. However, if such termination is for Design-Builder's fault, such transfer shall be performed by Design-Builder at no additional cost to Owner. Upon the effective date of expiration or termination of this Contract, Design-Builder shall cease all operations of work being performed by Design-Builder, or any of its subcontractors, pursuant to this Contract. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Design-Builder, in connection with the services rendered by Design-Builder under this Contract, regardless of storage medium, shall be transferred to Owner. Such record transfer shall be completed within thirty (30) calendar days of the termination date at no additional cost to Owner if the termination is for Design-Builder's fault. Payment of compensation due or to become due to Design-Builder is conditioned upon delivery of all such documents.

13.5.1 Upon receipt of a notice of termination and prior to the effective date of termination, unless the notice otherwise directs or Design-Builder immediately takes action to cure a failure to perform under the cure period set out hereinabove, Design-Builder shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this Contract and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Contract. Within thirty (30) days after receipt of such notice of termination (unless Design-Builder has successfully cured a failure to perform) the Design-Builder shall submit a statement showing in detail the services performed under this Contract prior to the effective date of termination. The OWNER shall have the option to grant an extension to the time period for submittal of such statement.

13.5.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Contract prior to the effective date of termination shall be delivered to the OWNER, in the form requested by the OWNER as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in these Contract Documents.

13.5.3 Upon the above conditions being met, the OWNER shall promptly pay the Design-Builder that proportion of the prescribed fee which the services actually performed under this Contract bear to the total services called for under this Contract, less previous payments of the fee.

13.5.4 The OWNER, as a public entity, has a duty to document the expenditure of public funds. The Design-Builder acknowledges this duty on the part of the OWNER. To this end, the Design-Builder understands that failure of the Design-Builder to comply with the submittal of the statement and documents as required above shall constitute evidence of a waiver by the Design-Builder of any and all rights or claims to payment for services performed under this Contract by the Design-Builder.

13.5.5 Failure of the Design-Builder to comply with the submittal of the statement and documents as required above shall constitute evidence of a waiver by the Design-Builder of any and all rights

or claims to collect monies that Design-Builder may otherwise be entitled to for services performed under this Contract.

13.6 When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience the Design-Builder shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the Surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Design-Builder and the Surety or its authorized agents, assume the obligations of the Design-Builder for the Work or that portion of the Work which the Owner has ordered the Design-Builder to discontinue and may:

13.6.1 perform the Work with forces employed by the surety;

13.6.2 with the written consent of the 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

13.6.3 with the written consent of the Owner, tender and pay to the 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 the Owner for any other loss sustained as a result of Design-Builder's default.

In the event of termination for cause, the Surety shall assume the Design-Builder's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the 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 the Owner to deduct any costs, damages, or liquidated or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Design-Builder and attorneys fees, as a result of such termination..

13.7 The balance of the Contract Sum remaining at the time of the Design-Builder's default and of the 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 13.2.6, exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Design-Builder to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Design-Builder agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Design-Builder for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Design-Builder the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Design-Builder. The Design-Builder and the surety shall be liable to the 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 the Design-Builder and attorney's fees), and liquidated or actual damages, as the case may be, incurred as a result of the termination.

13.8 The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and the other damages. In case the Owner's costs and damages are less than the sum which would have been payable under the Contract if the same had been completed by the Design-Builder, then the Owner may pay to the Design-Builder (or the Surety, in the event of a complete termination for cause) the difference, provided that the Design-Builder (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 same had been completed by the Design-Builder, then the Design-Builder and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for the excess amount owed. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Section, the Design-Builder shall

continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

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

13.10 **ASSIGNMENT OF INTEREST IN SUBCONTRACTS AND PURCHASE ORDERS**: In further assurance of the orderly transfer of Work, Design-Builder hereby conditionally assigns to Owner (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by Design-Builder for performance of the payment for any part of the Work which assignment will be effective upon acceptance by Owner in writing, and only as to those subcontracts and purchase orders which Owner designates in said writing after termination. It is agreed and understood that Owner may accept said assignment at any time during the course of the Construction Phase of a Project prior to final completion. It is further agreed that all subcontracts and purchase orders shall provide that they are freely assignable by the Design-Builder to the Owner and assigns. It is further understood that such assignment is part of the consideration to Owner for entering into this Contract with Design-Builder and may not be withdrawn prior to completion.

13.11 **CLAIMS FOR OUTSTANDING COMPENSATION**: Within forty-five calendar days of the effective date of completion, termination or expiration of this Contract, Design-Builder shall submit to Owner its claims, in detail, for the monies owed by Owner for services performed under this Contract through the effective date of termination. Failure by Design-Builder to submit its claims within said forty-five calendar days shall constitute evidence of a Waiver by Design-Builder of any and all right or claims to collect moneys that Design-Builder may rightfully be otherwise entitled to for services performed pursuant to this Contract.

13.12 **TERMINATION NOT SOLE REMEDY:** In no event shall Owner's action of terminating this Contract, whether for cause or otherwise, be deemed an election of Owner's remedies, nor shall such termination limit, in any way, at law or at equity, Owner's right to seek damages from or otherwise pursue Design-Builder for any default hereunder or other action.

13.13 **TEMPORARY SUSPENSION OF THE WORK**

13.13.1 The Work or any portion of the Work may be temporarily suspended by the Owner, for a time period not to exceed one hundred twenty (120) days, immediately upon written notice to the Design-Builder for any reason, including but not limited to:

13.13.1.1 the causes described in Sections 13.3.1.1 through 13.3.1.6 above;

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

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

13.13.1.4 other unforeseen conditions or circumstances.

13.13.1.5 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, the Design-Builder shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Contract and shall proceed to promptly suspend all existing orders and contracts insofar as such orders and contracts are chargeable to this Contract.

13.13.1.6 Design-Builder shall prepare a statement showing in detail the services performed under this Contract prior to the effective date of suspension.

13.13.1.7 Copies of all completed or partially completed designs, plans and specifications prepared under this Contract prior to the effective date of suspension shall be prepared for possible delivery to the Owner but shall be retained by the Design-Builder until such time as Design-Builder may exercise the right to terminate.

13.13.1.8 Any documents prepared in association with this Contract shall be delivered to the Owner as a pre-condition to final payment.

13.13.1.9 Upon the above conditions being met, the Owner shall promptly pay the Design-Builder that proportion of the prescribed fee which the services actually performed under this Contract bear to the total services called for under this Contract, less previous payments of the fee, together with all liabilities incurred by Design-Builder as a result of such suspension or termination.

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

13.13.1.11 Per this Article 24.8 and Article 13.4 of the Owner's General Conditions, the Owner reserves the right to suspend this Contract for the convenience of the Owner by issuing a signed, written notice of suspension (citing this paragraph and Article 13.4 of the General Conditions) which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way guarantee what the total number of days of suspension will occur. Such suspension shall take effect immediately upon receipt of said notice of suspension by the Design-Builder.

13.13.1.12 The Design-Builder is hereby given the right to terminate this Contract in the event such suspension extends for a period in excess of one hundred twenty (120) days. Design-Builder may exercise this right to terminate by issuing a signed, written notice of termination (citing this paragraph) to the OWNER after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination (under this paragraph) shall become effective immediately upon receipt of said written notice by the OWNER. In such event, the Owner shall promptly pay the Design-Builder that proportion of the prescribed fee which the services actually performed under this Contract bear to the total services called for under this Contract, less previous payments of the fee, together with all liabilities incurred by Design-Builder as a result of such suspension or termination.

13.13.1.13 In the event that Design-Builder exercises the right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt by the OWNER of Design-Builder's notice of termination, Design-Builder shall promptly cancel all existing orders and contracts insofar as such orders and

contracts are chargeable to this Contract and shall submit the above referenced statement showing in detail the services performed under this Contract prior to the effective date of suspension.

13.13.2 The Design-Builder shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Design-Builder arising from a temporary suspension due to a cause described in Article 13.12 above; provided, however, that in the case of a temporary suspension for any of the reasons described under Articles 13.2.1 through 13.2.15 where the Design-Builder 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 the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Design-Builder in strick compliance with Article IV.

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

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

13.13.2.3 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 shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14. MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

14.1.1 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.

14.1.2 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. The Design-Builder shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.1.3 Waivers: Except for the Claims and Disputes Provision in the General Conditions, **no delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Contract shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Contract shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Contract.**

14.1.4 **Governing Law and Venue:** This Contract and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Bexar County shall be the sole place of venue for any legal action arising from or related to this Contract or the Project in which the City is a party.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Design-Builder respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the

Contract Documents. The Design-Builder shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without the written consent of the Owner. If the Design-Builder attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Design-Builder shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Design-Builder, except where assignment is compelled by court order or other operation of law.

14.3 **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 or by mail, postage prepaid, or by overnight delivery to an officer, management level employee,, or other designated representative of either party. Mailed 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) days after mailing.

14.4 **RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER**

14.4.1 The duties and obligations imposed on the Design-Builder by the Contract Documents and the rights and remedies available to the 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.

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

14.5 **INTEREST**

The 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 Section 9.6.1 of these General Conditions.

14.6 **INDEPENDENT MATERIALS TESTING AND INSPECTION.**

In some circumstances, the City will retain, independent of the Design-Builder, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the Project by the City. Such consultants will be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties, and responsibilities of those independent consultants will be described in the agreements between the City and those consultants. The provision of inspection services by City shall not reduce or lessen Design-Builder's responsibility for the Work or its duty to establish and implement a program to monitor the quality of construction to guard the City against defects and deficiencies in the Work, required above. Design-Builder is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

14.7 **OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER**

14.7.1 In addition to the Officers or Employees of the Owner Not to Have Financial Interest in Any Contract of the Owner Provision in the General Conditions: No officer or employee of the Owner shall have a financial interest, directly or indirectly, in any contract with the Owner, or shall be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or service, except on behalf of the Owner as an officer or employee. This prohibition extends to the City Public Service Board, the SAWS, and other CITY boards and commissions,

which are more than purely advisory. The prohibition also applies to subcontracts on CITY projects.

14.7.2 Design-Builder acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in 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: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. The Design-Builder warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. The Design-Builder further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City'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, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7.3 Design-Builder must disclose if they are associated in any manner with a CITY Official or employee in a business venture or business dealings. Failure to do so will constitute a violation of the City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with the officer or employee, having a contract with the officer or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a CITY officer or employee also owns at least 10%, or having an established business relationship as client or customer.

14.8 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Design-Builder is that of an independent contractor. The Design-Builder shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling 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 the Design-Builder an agent, servant, or employee of the Owner, or making the Design-Builder or any of the Design-Builder's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.9 NONDISCRIMINATION

As a condition of this Contract, the Design-Builder covenants that he will take all necessary actions to insure that, in connection with any Work under this Contract, the Design-Builder and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Design-Builder shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Design-Builder shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.10 **GIFTS TO PUBLIC SERVANTS**

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

14.10.2 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.

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

ARTICLE 15. RIGHT TO AUDIT DESIGN-BUILDER'S RECORDS

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

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

Design-Builder must include this audit clause in any subcontractor, supplier or vendor contract.

EXHIBIT D
SBEDA PLAN

ATTACHMENT A. SBEDA NARRATIVE

SBEDA EXPERIENCE

As one of the nation's largest construction companies (2009 ENR Rankings: #1 - Government, #9 - Design-Build), Hensel Phelps Construction Co. (Hensel Phelps) is very concerned with the long-term health and growth of all diverse communities. We have, therefore, maintained a leadership role in creating an environment that supports M/WBEs. To that end, we work hard to subcontract to as many M/WBE businesses as possible on each of our projects, regardless if an M/WBE goal is in place. We fully understand the importance of supporting local businesses and will maximize our local resource utilization on the City of San Antonio Public Safety Headquarters through our project specific MBE/WBE Outreach and Compliance Plan.

To ensure our progress and continue to improve our record, Hensel Phelps has a designated MBE Coordinator, Charles Eaton, who reports directly to Chairman Jerry Morgensen. Our M/WBE Opportunity Policy Statement follows:

M/WBE OPPORTUNITY POLICY STATEMENT

Hensel Phelps Construction Co. (Hensel Phelps) is dedicated to the utilization of minority and women-owned businesses to the highest level practicable on all of the construction projects the company undertakes. Hensel Phelps is firmly committed to providing the maximum level practicable opportunity for Minority and Women Owned Business Enterprises ("MBE" and "WBE" respectively, and "M/WBE" collectively) to be awarded subcontracts and purchase agreements through the competitive bid and selection processes utilized for such procurements, and to assist such companies where feasible through programs and relationships that support their long-term growth.

Hensel Phelps employees responsible on all projects for the procurement of materials, labor, and equipment, either through subcontracts or purchase agreements, will dedicate their efforts to offer any qualified M/WBE full opportunity to bid or propose on such procurements. Hensel Phelps will implement the program outlined herein to implement this policy and to meet or exceed the fixed or negotiated utilization goals on its projects with fixed goals. The company has incorporated numerous monitoring activities to measure and track compliance with these policies and procedures.

Charles Eaton, Director of Corporate Diversity, shall be the Corporate Minority and Woman Owned Business Liaison Officer (MBO) responsible for full implementation of and adherence to the Hensel Phelps Construction Co. M/WBE Opportunity Policy Statement and Procedures. The Chief Estimator in each district shall be the District MBO responsible for implementation of and adherence to the Hensel Phelps M/WBE Policy Statement and Procedures within the District. Charles Eaton will report directly to me regarding the implementation of this program.

Please report any apparent violation of the above-stated policy to either your District MBO or the Corporate MBO, PO Box 0, Greeley, Colorado 80632, telephone 970.352.6565. Collect calls will be accepted.

Jerry L. Morgensen, Chairman
Hensel Phelps Construction Co.

Hensel Phelps' involvement with and pursuit of M/WBE businesses does not lie exclusively with the top tier of management. Company-wide, from field engineers to the President, our M/WBE goals are continuously re-evaluated and stressed.

With each project, Hensel Phelps either meets or exceeds client's recommendations for M/WBE participation. Frequently, however, the client does not issue an M/WBE goal, but Hensel Phelps still follows the exact same procedures for subcontractor solicitation – regardless if the goal is 50% or 0%.

Hensel Phelps' M/WBE goals and actual percentages are tracked for each project in our corporate database, where they are easily downloaded into a report that analyzes trends and project goals for the future. Hensel Phelps then examines their subcontractor participation and reviews strategies on what works and what doesn't. Brainstorming for innovative strategies is undertaken to increase participation.

The specific written objectives for Hensel Phelps employees responsible for purchasing are explicitly defined in their corporate M/WBE Opportunity Policy statement, including:

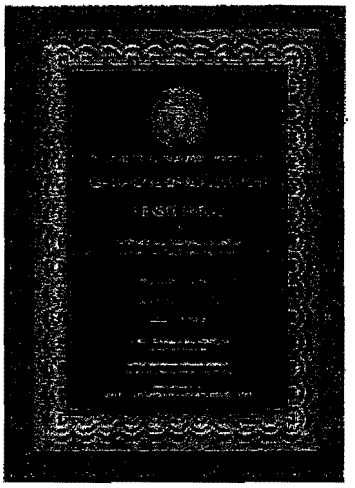
- Utilize minority- and women-owned businesses to the highest possible level on all construction projects Hensel Phelps undertakes.
- Provide the maximum level of opportunity for M/WBEs to be awarded subcontracts and purchase agreements through the competitive bid and selection processes used for such procurements.
- Assist M/WBEs where feasible through programs and relationships that support their long-term growth.
- Meet or exceed the fixed or negotiated utilization goals on all Hensel Phelps projects with fixed goals.
- Incorporate monitoring activities to measure and track compliance with these procedures and policies.

The following are specific recent examples of Hensel Phelps' commitment to diversity and history of meeting and exceeding MBE/WBE goals, regardless of whether a MBE/WBE goal was stated by the Client, as well as a summary of our success on all Federal projects over the past four years:

Project Name	Goal	Actual
Spring Condominiums, Austin, TX	None	18.56%
The University of Texas at Austin Dell Pediatric Research Institute, Austin, TX	26.10%	27.30%
Fifth & Baylor, Austin, TX	None	21.41%
Mercantile Place on Main, Dallas, TX	25.00%	31.00%
The Methodist Hospital Outpatient Care Center, Houston, TX	None	22.00%
Summary of All Combined Federal Projects (past 4 years)	**Goal**	**Actual**
Small Business Concerns	46%	55.6%
Small Disadvantaged (SDB) Concerns	13%	30%
Women-Owned Small Business (WOSB) Concerns	10%	26.2%
HUBZONE Small Business (HUBZone SB) Concerns	2%	8.8%
Veteran-Owned Small Business	2%	5.3%
Service-Disabled Veteran-Owned Small Business Concerns	1%	3.1%

Hensel Phelps' has received numerous National Awards for Outstanding Support of Small Business Concerns, including the following over the last five years:

- 2010 Pro Patria Award, Presented on Behalf of the Men and Women of America's reserve Force for outstanding Service to the National Defense through continuing support of the National Guard and Reserve
- 2009 Small Business Administration, Dwight D. Eisenhower Award of Excellence
- 2009 Downtown San Diego Partnership, Alonzo Award
- 2008, 2007, 2006 Black CEO Summit and African American Business Forum, Diversity Trailblazer Award
- 2008 City of Baltimore, Maryland First Annual Small Majority Firm Partnering for Success Award, M/WBE Awards Breakfast
- 2008 City of Baltimore, Certificate of Recognition, Charles E. Eaton (Hensel Phelps), 2008 Majority Firm "Partnering for Success" Award
- 2007 Construction News Award , Historically Underutilized Business
- 2007 Certificate of Achievement for Outstanding Accomplishment of Historically Underutilized Business Participation, University of Texas at Austin Almetris Duren Residence Hall
- 2007 Minority Enterprise Development Week, Corporation of the Year
- 2007 Hispanic Contractor of Colorado, General Contractor of the Year
- 2007 Minority Business Advisory Council for Outstanding Leadership
- 2007 Maryland Washington Minority Contractors Association, Prime Contractor of the Year
- 2007 Maryland Minority Contractors Association, Best Practices in Contracting



- 2008, 2007, 2004, 2002, 2003, 2000, 1999, 1994 Dallas/Fort Worth Minority Business Council, Construction Company of the Year – North Texas Chapter "E" Awards
- 2006 Greater Baltimore Committee, Bridging the Gap Award (Leadership role in creating an environment that supports the inclusion of minority and women-owned businesses)
- 2006 Maryland Minority Contractors Association, Best Practices in Contracting
- 2006 NAACP, President's Award Maryland NAACP
- 2006 City of Austin Diversity Awareness, Going the Extra Mile Award, Austin City Hall and Public Plaza
- 2005 Certificate of Achievement for Outstanding Accomplishment of Historically Underutilized Business Participation, University of Texas at M.D. Anderson Cancer Center Lowry and Peggy Mays Ambulatory Clinical Building

EMERGING-DIVERSITY BUSINESS PLAN

For this project we have retained the services of Cloteal Davis Haynes, Managing Partner of Haynes-Eaglin-Waters (HEW) to supplement and manage our MBE/WBE Outreach participation. As introduced previously in Tab 6 of this RFQ response, Ms. Haynes will serve as a consultant to Hensel Phelps as our MBE/WBE Outreach Coordinator. She will work closely with Project Manager Jeff Balthrop to implement our Outreach Program. Hensel Phelps has a long-standing and successful working relationship with HEW in this capacity as well as a formal mentor/protégé relationship. As a team, we will exhaust all possible avenues to maximize Diversity Participation and exceed the MBE/WBE goals for this project, including the following methods:

- Utilize the Hensel Phelps M/WBE database and other recognized M/WBE resources in conjunction with the South Central Texas Regional Certification Agency to solicit subcontractors and suppliers.
- Collaborate with the City of San Antonio's Small Business Outreach Office of the Economic Development Department to establish local marketing, outreach and recruiting strategies.
- Break down portions of work into feasible economic units to facilitate increased M/WBE participation.
- Inform and assist M/WBE subcontractors and suppliers about the availability of plans, specifications, bidding instructions, and job information policy brochures.
- Coordinate with minority and women trade organizations, development centers and local plan rooms.
- Establish pre-proposal/bid meetings and networking sessions.
- Encourage and work with M/WBE subcontractors and suppliers to bid on items of work they can successfully achieve.
- Work with bonding companies and agents to assist in the ability of M/WBE subcontractors to provide a bond of their work.
- Establish a prompt payment application process for minority and women-owned business enterprises.

SBEDA UTILIZATION

Our team is committed to the success of this program and the long-term vitality of all diverse communities. A Pre-Construction Project Team has been assembled to exceed all goals established by the City by and achieve 32% Minority Business Enterprise (MBE), 20% Women Business Enterprise (WBE) and 2.3% African-American Business Enterprise (AABE). Proposed team members include the following:

- Saenz + Bury Engineering, LLC (MBE/WBE): Survey, Civil, Landscape, Traffic, Mechanical, Plumbing and Electrical
- Lopez Salas Architects (MBE): Architectural
- StructuresPE / Haynes Waley (MBE): Structural
- Protection Development, Inc. (SBE): Life Safety and Fire Protection
- Artcom Associates (MBE): Low Voltage
- Haynes-Eaglin-Waters (MBE/WBE/AABE): MBE/WBE Outreach Coordinator

ECONOMIC IMPACT

Hensel Phelps currently maintains two project offices in San Antonio on Fort Sam Houston with a combined local staff of approximately 66 for the three projects being managed in those offices. We have established relationships with local subcontractors, suppliers and equipment providers that will be maintained and expanded upon with this project. All bid packages will be advertised locally, as well as coordinated with local plan rooms and minority and women trade organizations.

An additional local San Antonio project office will be opened for the Public Safety Headquarters to house an expected local and relocated project staff of approximately 25 employees. Project management will report to the Hensel Phelps' District Office in Austin, Texas. Key team staff members are identified as follows:

Position	Company	Name	Location	% Local
Project Manager	Hensel Phelps Construction Co.	Jeff Balthrop, LEED AP	San Antonio	100%
Project Executive	Hensel Phelps Construction Co.	Jim Pappas	Austin	50%
Project Superintendent	Hensel Phelps Construction Co.	Jay Herzing	San Antonio	100%
Project Estimator	Hensel Phelps Construction Co.	Larry Gonda, LEED AP	Austin	25%
Principal in Charge	Fentress Architects	Jeff Olson, AIA	Denver	25%
Project Manager	Fentress Architects	Andre Vite, AIA, LEED AP	Denver	40%
Project Manager	Saenz + Bury Engineering, LLC	Heidi Cisneros	San Antonio	100%
President	Lopez Salas Architects, Inc.	Robert Lopez	San Antonio	100%
President	StructuresPE / Haynes Waley	Gerard Garcia	Austin	25%
Senior Fire Protection Engineer	Protection Development, Inc.	Peter Vallone, P.E.	San Antonio	100%
Project Manager	Walker Parking Consultants	James Warner, P.E.	Houston	25%
President	Artcom & Associates, Inc.	Art Flores, III	San Antonio	100%
MBE/WBE Outreach Coordinator	Haynes-Eaglin-Waters	Cloteal Haynes	Austin	75%

SBEDA NARRATIVE

SBEDA UTILIZATION

As one of the nation's largest construction companies, Hensel Phelps Construction Co. (Hensel Phelps) is very concerned with the long-term health and growth of all diverse communities. We have, therefore, maintained a leadership role in creating an environment that supports M/WBEs. To that end, we work hard to subcontract to as many M/WBE businesses as possible on each of our projects, regardless if an M/WBE goal is in place. We fully understand the importance of supporting local businesses and will maximize our local resource utilization on the City of San Antonio Public Safety Headquarters through our project specific MBE/WBE Outreach and Compliance Plan.

Our team is committed to the success of this program and the long-term vitality of all diverse communities. A Preconstruction Project Team has been assembled to exceed all goals established by the city by and achieve **36% Minority Business Enterprise (MBE), 24% Women Business Enterprise (WBE)** and **2.3% African-American Business Enterprise (AABE)**. Proposed team members include the following M/WBE firms as certified by the South Central Texas Regional Certification Agency (SCTRCA).

- Saenz + Bury Engineering, LLC (MBE/WBE): Survey, Civil, Landscape, Traffic, Mechanical, Plumbing and Electrical
- Lopez Salas Architects, Inc. (MBE): Architectural
- Structures PE / Haynes Waley (MBE): Structural
- Protection Development, Inc. (SBE): Life Safety and Fire Protection
- Artcom Associates (MBE): Low Voltage
- Haynes-Eaglin-Waters (MBE/WBE/AABE): MBE/WBE Outreach Coordinator

Our Preconstruction Project Team, including Hensel Phelps and designers from Fentress Architects, will be housed in a local San Antonio Design Studio only blocks from the Santa Rosa project site to facilitate seamless coordination of the design effort with both the City of San Antonio and our local design partners.

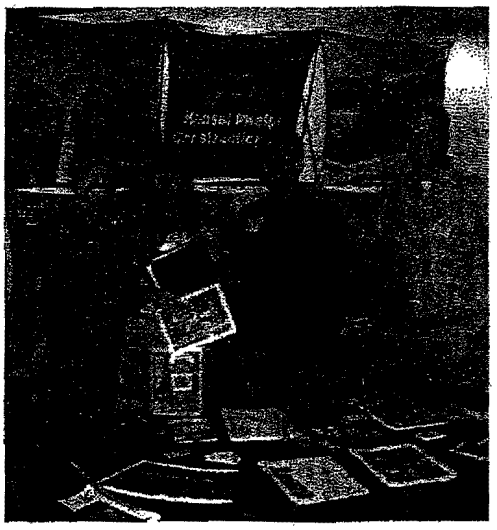
EMERGING-DIVERSITY BUSINESS PLAN

Hensel Phelps currently maintains two project offices in San Antonio on Fort Sam Houston with a combined local staff of approximately 66 for the three projects being managed in those offices. We have established relationships with local subcontractors, suppliers and equipment providers that will be maintained and expanded upon with this project. All bid packages will be advertised locally, as well as coordinated with local plan rooms and minority and women trade organizations. An additional local San Antonio project office will be opened for the Public Safety Headquarters to house an expected local and relocated project staff of approximately 25 employees.

For this project we have retained the services of Cloteal Davis Haynes, Managing Partner of Haynes-Eaglin-Waters (HEW) to supplement and manage our MBE/WBE Outreach participation. As introduced previously in Tab 6 of our RFQ response, Ms. Haynes will serve as a consultant to Hensel Phelps as our MBE/WBE Outreach Coordinator. She will work closely with Project Manager Jeff Balfhrop to implement our Outreach Program. Hensel Phelps has a long-standing and

successful working relationship with HEW in this capacity as well as a formal mentor/protégé relationship. As a team, we will exhaust all possible avenues to maximize Diversity Participation and exceed the MBE/WBE goals for this project, including the following methods:

- Utilize the Hensel Phelps M/WBE database and other recognized M/WBE resources in conjunction with the South Central Texas Regional Certification Agency to solicit subcontractors and suppliers.
- Collaborate with the City of San Antonio's Small Business Outreach Office of the Economic Development Department to establish local marketing, outreach and recruiting strategies.
- Break down portions of work into feasible economic units to facilitate increased M/WBE participation. This will include setting aside the Fuel and Wash Station package for bidding by local San Antonio Minority and Women-Owned Business Enterprises only.
- Inform and assist M/WBE subcontractors and suppliers about the availability of plans, specifications, bidding instructions, and job information policy brochures.
- Coordinate with minority and women trade organizations, development centers and local plan rooms.
- Advertise in trade associations and minority-focus media concerning subcontracting opportunities.
- Promote minority subcontracting opportunities as a member of the Hispanic Contractors Association de San Antonio.
- Establish pre-proposal/bid meetings and networking sessions.
- Encourage and work with M/WBE subcontractors and suppliers to bid on items of work they can successfully achieve.
- Work with bonding companies and agents to assist in the ability of M/WBE subcontractors to provide a bond of their work.
- Establish a prompt payment application process for Minority and Women-Owned Business Enterprises.



SABOC 2010 WORKSHOP

Hensel Phelps has a long-standing history of reaching out to small and diverse businesses. We have a strong local presence in the Central Texas area and we participate in and organize hundreds of outreach events nationwide every year. We are also specifically committed to the local San Antonio Minority and Women-Owned Business Enterprises. Details of some of our most recent San Antonio outreach efforts are provided below.

Date	Recent Local San Antonio Outreach Efforts
August 10, 2010	Silver Sponsor & Exhibitor, San Antonio Business Opportunity Council (SABOC) 2010 Workshop
August 19 & 20, 2010	Free OSHA 10-Hour Training Course offered thru the Minority Association of Contractors and Business
October 5-25, 2010	Public Safety Headquarters project advertised with the Hispanic Contractors Association de San Antonio
October 7, 2010	Attended Small Business Economic Development Advocacy (SBEDA) Training
October 8 – Nov. 19, 2010	Free OSHA 30-Hour Outreach Training offered thru the Hispanic Contractors Association de San Antonio
October 20, 2010	Attend the Hispanic Contractors Association de San Antonio October General Meeting
October 22, 2010	Sponsor, Hispanic Contractors Association de San Antonio Fall Golf Tournament
Monthly	Attend the Small Business Development Center Network Event

EXHIBIT E
PAYMENT AND PERFORMANCE BOND FORMS

PAYMENT BOND

STATE OF TEXAS)
COUNTY OF BEXAR) Know all men by these presents:
CITY OF SAN ANTONIO)

That we **HENSEL PHELPS CONSTRUCTION CO.**, as Principal, and

_____

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of $44,725,000.00 for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said

HENSEL PHELPS CONSTRUCTION CO.

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

Public Safety Headquarters Project to be located at 313 Santa Rosa St., including the related Fueling Station and Car Wash, to be located at 515 Frio St., in the City of San Antonio, County of Bexar, Texas

and for the performance and observance of diverse other matters and things in connection with said work, and, interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect: and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this ____day of _____ A.D. 20 _____.

HENSEL PHELPS CONSTRUCTION CO.

By:_____

(Typed Name)

_____

_____

(Surety)

By:_____

(SEAL) (Typed Name)

_____

_____

_____

Address of Surety for Service Purposes

PERFORMANCE BOND

STATE OF TEXAS)
COUNTY OF BEXAR) Know all men by these presents:
CITY OF SAN ANTONIO)

1. That we **HENSEL PHELPS CONSTRUCTION CO.**, as Principal, and

_____,

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of **$44,725,000.00** for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said

HENSEL PHELPS CONSTRUCTION CO.

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

Public Safety Headquarters Project to be located at 313 Santa Rosa St., including the related Fueling Station and Car Wash, to be located at 515 Frio St., in the City of San Antonio, County of Bexar, Texas and for the performance and observance of diverse other matters and things in connection with said work; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation.

3. NOW THEREFORE, if Contractor, the principal party to this obligation shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all included instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said structures, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy pro vided by the contract or specifications or by any law or ordinance.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this _____day of _____ A.D. 20 _____.

HENSEL PHELPS CONSTRUCTION CO.
(Contractor)

By:_____

(Typed Name)

_____

_____
(Surety)

By:_____
(Typed Name)

(SEAL)

_____
_____
_____
Address of Surety for Service Purposes

Item 13: Public Safety Headquarters (PSHQ) Project

Police/Fire Administration Building & Parking Garage

December 16, 2010
City Council A Session
Erik Walsh
Mike Frisbie

1

Agenda

- Project Background
- Selection Process
- Schedule
- Budget
- Next Steps

2

Background

- New Federal Courthouse
- Performing Arts Center
- FY08 Adopted Budget

3

Project Goals

- Provide a centralized location for the Police and Fire Departments
- Provide a new state-of-the-art facility for the Police and Fire Departments
- Create a new public front/community image for both the Police and Fire Departments
- Provide much improved space for Police and Fire administrative functions

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Divisions Included in Building

SAPD

- Administration & Support Services
- Investigative Units
- Fusion Center
- Night Patrol Command
- Tactical Operations

SAFD

- Administration & Support Services
- Arson Investigations
- Fire Operations
- Community Safety

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PSHQ Project History

Sept. 2007	PSHQ approved as part of FY 08-13 Capital Budget
Nov. 2008	Contract Awarded to Facility Programming and Consulting, Inc. in the amount of $1,025,000 for programming and master planning services
Jan. 2010	Contract Awarded to Ford, Powell & Carson Architects & Planners, Inc in the amount of $3,820,373 for bridging documents
June 2, 2010	HDRC approval of Concept
July 18, 2010	Request for Qualifications for Design/Build issued with responses due August 20, 2010
Aug. 11, 2010	"B" Session update to City Council
Sept. 20, 2010	Request for Proposal for Design/Build issued with responses due October 20, 2010

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Project Update

- Kmart site demolition process underway
- Selection process for Design/Build contractor completed
- Council consideration of award of Design/Build contractor scheduled for December 16, 2010

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Selection Process

- Two step process
- Evaluation Committee
  - Erik Walsh, Assistant City Manager
  - Mike Frisbie, Director, CIMS
  - William McManus, Police Chief
  - Charles Hood, Fire Chief
  - Patrick Howard, Director, Planning and Community Development
  - Betty Feldman, City Architect
  - Cathleen Crabb, City Project Architect
  - Ben Brewer, President, Downtown Alliance
  - John Mize, Architect, Ford, Powell and Carson, Inc.

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Request for Qualifications (RFQ)

- RFQ was issued July 18, 2010
  - 14 teams responded
  - Described two step process and points allocated for RFP phase
- Evaluation Criteria:

Background, Experience and Qualifications of Design-Build Team	20 points
Background, Experience and Qualifications of Key Project Personnel	20 points
Project Approach/Management Plan	30 points
Evaluation of Financial Statements	10 points
SBEDA	20 points

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Request for Proposals (RFP)

- Two-step process designed to identify only the most qualified firms to proceed
- Five teams shortlisted:
  - Bartlett Cocke, L.P./Rehler Vaughn & Koone, Inc./Durand-Hollis Rupe Architects Inc.
  - Hensel Phelps Construction Company
  - Skanska USA Bldg, Inc.
  - Turner Construction Company
  - Zachry Construction Corporation
- RFP was issued September 20, 2010

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Request for Proposals (RFP)

- Evaluation Criteria:
  - Background, Experience and Qualifications of Key Project Personnel — 10 points
  - Project Approach/Management Plan — 15 points
  - Pricing/GMP — 55 points
  - SBEDA — 20 points
- Criteria were outlined in July 18, 2010 RFQ
- Hensel Phelps Construction Co. recommended for Design/Build contract

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RFP Scoring

Scoring Criteria	Max Pts	Hensel Phelps	Zachry	Turner Const.	Skanska USA	Bartlett Cocke
Background, Exp. & Qual. of Key Project Personnel	10	9.00	9.44	6.33	7.11	8.11
Project Approach/ Mgmt. Plan	15	14.33	14.44	11.22	12.11	12.67
Price Proposal	55	55.00	15.97	9.37	3.84	0.00
Subtotal	80	78.33	39.86	26.92	23.07	20.78
SBEDA Subtotal	20	13.00	15.00	19.00	19.00	20.00
TOTAL	100	91.33	54.86	45.92	42.07	40.78

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Pricing/Guaranteed Maximum Price

- Good documents allow for accurate pricing
  - 50% design and all building specs in Bridging Documents
- Short listed firms already qualified to complete work
- Scoring methodology:
  - Explained in RFP
  - Used for Café College and PSAP
  - Rewards firms with low prices
  - $\frac{\text{(Highest proposal – firm proposal)}}{\text{(Highest proposal – lowest proposal)}}$ x 55 pts

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Pricing

Firm	Price Proposals	Score	Rank
Hensel Phelps	$ 47,175,000	55.00	1
Zachry	$ 54,235,615	15.97	2
Turner	$ 55,429,986	9.37	3
Skanska	$ 56,428,903	3.84	4
Bartlett Cocke/ RVK/DHR	$ 57,124,268	0.00	5

- Based on current scoring a firm with a GMP of $48M would have received 50.44 points

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Hensel Phelps Pricing

- Staff proactively reviewed Hensel Phelps pricing to ensure everything was included
- Reasons for good pricing
  - Design-Build Team experience working together
  - Desire to win this project given status of present and future work in San Antonio
  - Amount of local subcontractors involved in pricing

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SBEDA

- Twenty points set by 2007 Ordinance
- Scores carried over from Phase I
  - Firms could submit addendums between phases to increase scores
- SBEDA Scoring
  - Economic Impact
  - SBEDA Experience
  - SBEDA Utilization (design team)
  - Emerging Diversity Business Plan
- All companies committed to meeting or exceeding goals for construction

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SBEDA

Subconsultant percentages for design services

Firms	MBE	WBE	AABE
Goal	31.0%	10.0%	2.2%
Hensel Phelps	61.5%	25.3%	2.3%
Zachry	33.2%	32.2%	2.2%
Turner	73.9%	10.1%	16.4%
Skanska	38.4%	12.8%	4.0%
Bartlett Cocke	43.6%	23.0%	2.5%

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Hensel Phelps

- 56 Projects with Fentress Architects ($4.5B)
  - 28 Design/Build projects
  - 62 Design/Build awards for excellence
- In 2010, Engineering News Record ranked Hensel Phelps as #1 firm nationally for Government work
- Established Central Texas Office in 1972 with annual Texas volume of $400M
- 200 hundred employees in Texas with two San Antonio offices with 66 employees

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Hensel Phelps

- 4 projects in San Antonio over last 3 years
  - 1.49M sq. ft. valued at $346M
  - Over $125M in subcontracts to SBEDA firms
- Public Safety Headquarters
  - Committed to meeting City timeline
  - 235 local subcontractors and suppliers contacted
  - Downtown design studio 4 blocks from project site
  - Will meet or exceed SBEDA goals for project construction
  - Exceeding SBEDA design goals

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Hensel Phelps Subcontractors

% of Work	Firm	Location	Certification	Design Services	Project Highlight
23%	Lopez Salas Architects *	San Antonio	SBE/MBE	Architecture	Kendall County Courthouse
23%	Saenz + Bury Engineering *	San Antonio	SBE/MBE/ WBE	Civil/MEP/ Landscape	USAA Building Expansion
12%	Structures P.E.	Austin	SBE/MBE	Structural	Austin Police and Municipal Court
1%	Artcom Associates *	San Antonio	SBE/MBE	Low Voltage	Have been in business for over 20 years
2.3%	Haynes-Eaglin-Waters	Austin	SBE/MBE/ WBE/AABE	SBEDA Outreach	Austin ISD Bond Small Bus. Program
2.6%	Protection Development *	San Antonio	SBE	Life Safety & Fire Protection	University Hospital/COSA DSD
	Fentress Architects	Denver, CO.	N/A	Architecture	Have worked w/ H-P on 28 D/B projects

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* Local 49%

Hensel Phelps Contract

- Contract includes various safeguards to ensure a quality project is completed at the proposed price
  - Guaranteed Maximum Price
  - Specifications already completed
    - Utilizing different materials must be approved by City
  - SBEDA Participation included in contract
  - Timeline in contract
    - Liquidated damages

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Project Schedule

Demolition of K-mart Building	December 2010
Design/Build Team RFCA Approval	December 2010
Groundbreaking	January 2011
Construction Start	February 2011
Owner Occupancy	August 2012
Demolition of Existing SAPD HQ	August-December 2012
Turn Over Existing SAPD HQ Site to GSA	December 2012

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Updated Program Budget

Demolition	$6,240,960
Radio Tower	$4,480,000
Parking Garage/Surface Parking/ Police & Fire Admin Building/ Fueling Station/Vehicle Wash	$62,029,970*
Furniture/ Fixtures/Equipment	$12,776,000
TOTAL	**$85,526,930**

*Based on Hensel Phelps GMP

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Headquarters Budget

Hensel Phelps GMP	$47,175,000
Allowances	$3,500,000
Contract Total	**$50,675,000**
Contingency	$4,839,335
Programming and Design	$4,953,951
Cap Admin	$2,160,000
Environmental Costs	$310,664
Design Enhancement	$500,000
Other (Permit/Mat. Testing/Moving)	$872,675
Kmart Demo costs:	$168,345
Total	**$62,029,970**

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Contract Allowance

- Separate from selection process and GMP pricing
- Staff was recommending allowance
- For elements not yet designed/priced, e.g. solar panel array
- B-Session feedback
  - Eliminate allowance
  - Comeback to Council for approval if additional items recommended.

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Next Steps

- City Council approval of Design/Build team
- If approved, Hensel Phelps to complete design of the project in December - June
- Complete demolition of Kmart Site
- Construction to begin in February

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Summary

- Well planned process
  - Programming, Bridging Documents, Design/Build
- Objective, transparent selection process
- Great team, great local impact, great pricing
- Staff recommendation to select Hensel Phelps

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Item 13: Public Safety Headquarters (PSHQ) Project

Police/Fire Administration Building & Parking Garage

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