KRH
04/30/15
Item No. 15B

AN ORDINANCE 2015-04-30-0342

APPROVING THE TERMS AND CONDITIONS AND AUTHORIZING THE EXECUTION OF A CONSTRUCTION MANAGER AT RISK AGREEMENT IN AN AMOUNT NOT TO EXCEED $10,500,000.00 WITH TURNER CONSTRUCTION COMPANY FOR THE RENOVATION AND EXPANSION OF THE COMMERCIAL FEDERAL INSPECTION STATION FACILITY AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * * *

WHEREAS, Federal law requires the United States Customs and Border Protection Agency (CBP) to process international visitors for both commercial and general aviation aircraft at designated airports through a federal inspection station; and

WHEREAS, the commercial federal inspection (FIS) station facility in Terminal A at San Antonio International Airport is undersized and does not support San Antonio's growing international air service, and this Agreement will provide for the renovation and expansion of the existing 25,000 square foot facility to 39,000 square feet allowing CBP to process up to 800 international passengers during peak hours; and

WHEREAS, the City received three responses to a Request for Qualifications (RFQ) for construction manager at risk for the commercial FIS facility renovation and expansion released in October 2014 and, based on the evaluation criteria established in the RFQ, an evaluation committee with representatives from the City Manager's Office, Transportation and Capital Improvements Department, the Aviation Department and an outside consultant reviewed the proposals and recommends awarding a construction manager at risk contract to Turner Construction Company; and

WHEREAS, it is necessary to authorize the execution of a Construction Manager at Risk Agreement in an amount not to exceed $10,500,000.00 with Turner Construction Company for the renovation and expansion of the commercial FIS at San Antonio International Airport; **NOW THEREFORE,**

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

SECTION 1. The terms and conditions of a Construction Manager at Risk Agreement with Turner Construction Company in an amount not to exceed $10,500,000.00 for the renovation and expansion of the commercial federal inspection (FIS) station facility at San Antonio International Airport are approved. The City Manager or her designee is authorized to sign the Agreement, a copy of which is set out in **Attachment I.**

SECTION 2. The amount of $7,662,318.00 is appropriated in SAP Fund 51013000, Airport Capital Improvement Fund, SAP WBS AV-00006-01-02-71, SAP GL account 6102100 - Interfund Transfer out entitled Transfer to 33-00096-90-11-01. The amount of $7,662,318.00 is authorized to be transferred to SAP Fund 51099000.

SECTION 3. The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00096, Terminal a Renovations and Refurbishment, shall be revised by increasing SAP WBS element 33-00096-90-11-01 entitled Transfer from AV-00006-01-02-71, SAP GL account 6101100 - Interfund Transfer In, by the amount $7,662,318.00.

SECTION 4. The amount of $5,060,000.00 is appropriated in SAP Fund 51005001, 2007 Airport Revenue, SAP WBS AV-00014-01-01-28, SAP GL account 6102100 - Interfund Transfer out entitled Transfer to 33-00096-90-13-01. The amount of $5,060,000.00 is authorized to be transferred to SAP Fund 51099000.

SECTION 5. The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00096, Terminal a Renovations and Refurbishment, shall be revised by increasing SAP WBS element 33-00096-90-13-01 entitled Transfer from AV-00014-01-01-28, SAP GL account 6101100 - Interfund Transfer In, by the amount $5,060,000.00.

SECTION 6. The amount of $412,000.00 is appropriated in SAP Fund 51005003, 2010 Airport Tan-Con, SAP WBS AV-00018-01-01-14, SAP GL account 6102100 - Interfund Transfer out entitled Transfer to 33-00096-90-03-01. The amount of $412,000.00 is authorized to be transferred to SAP Fund 51099000.

SECTION 7. The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00096, Terminal a Renovations and Refurbishment, shall be revised by increasing SAP WBS element 33-00096-90-03-01 entitled Transfer from AV-00018-01-01-14, SAP GL account 6101100 - Interfund Transfer In, by the amount $412,000.00.

SECTION 8. The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00096, Terminal a Renovations and Refurbishment, shall be revised by increasing the SAP WBS Elements as follows:

EXPENDITURES

WBS NO.	WBS NAME	G/L	G/L NAME	PLAN VERSION 0 REVISION/ Appropriation
33-00096-01-01	ASSESSMENT	5202020	CONTRACTUAL SERVICES	$ (514,682)
33-00096-01-02-01	CITY FUNDS	5203060	BINDING & PRINTING	5,000
33-00096-01-02-01	CITY FUNDS	5202020	CONTRACTUAL SERVICES	140,000
33-00096-01-02-01	CITY FUNDS	5201100	ARCHITECTURAL FEES	1,000,000
33-00096-04-01	CITY FUNDS	5202020	CONTRACTUAL SERVICES	10,000
33-00096-05-01	CONSTRUCTION	5201140	CONSTRUCTION SERVICES	10,500,000
33-00096-05-01	CONSTRUCTION	5202020	CONTRACTUAL SERVICES	734,182
33-00096-05-01	CONSTRUCTION	5402030	CAPITAL PROGRAMS ADMIN COST- DIRECT	280,000
33-00096-05-01	CONSTRUCTION	5402050	CAPITAL PROGRAMS ADMIN COST- INDIRECT	140,000
33-00096-05-06	CONTINGENCY	5202020	CONTRACTUAL SERVICES	839,818
			TOTALS	**$ 13,134,318**

KRH
04/30/15
Item No. 15B

SECTION 9. Payment in the amount not to exceed $10,500,000.00 in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00096, Terminal A Renovations and Refurbishment, is authorized to be encumbered and made payable to Turner Construction Company, for this Construction Manager at Risk Agreement.

SECTION 10. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 11. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 30th day of April, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**15B (in consent vote: 6, 7, 8, 9, 11, 12, 13, 14, 15A, 15B, 16A, 16B, 16C, 16D, 17, 18, 19A, 19B, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30)**
Date:	04/30/2015
Time:	11:00:22 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of a Construction Manager at Risk contract in the amount not to exceed $10,500,000.00, authorized payable to Turner Construction Company.
Result:	Passed

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

ATTACHMENT I

CITY OF SAN ANTONIO, TEXAS
CONSTRUCTION MANAGER AT RISK CONTRACT FOR THE RENOVATION AND EXPANSION OF THE COMMERCIAL FEDERAL INSPECTION STATION FACILITY AT SAN ANTONIO INTERNATIONAL AIRPORT PROJECT

PROJECT NUMBER: 33-00096

This Construction Manager at Risk Contract (hereafter referred to as "Agreement") is entered into by and between the City of San Antonio, Texas, a Texas Municipal Corporation and home-rule City (hereafter referred to as "City" or "Owner") by and through its City Manager, pursuant to Ordinance Number _____passed and approved by the San Antonio City Council on _ _____, and **Turner Construction Company** a corporation authorized to do business in the State of Texas (hereafter referred to as "CM@Risk" or "Construction Manager").

RECITALS

A. The City Manager of the City of San Antonio, Texas, is authorized and empowered to execute agreements for professional and construction services.

B. City intends to renovate and expand the Commercial Federal Inspection Station Facility at San Antonio International Airport as described in **Exhibit B** attached hereto and made a part hereof (hereafter referred to as the "Project").

C. To undertake the design of said Project, City has entered into a contract with **CNG Engineering, PLLC** (hereafter referred to as "Design Professional").

D. CM@Risk has represented to City the ability to provide pre-construction services and construction phase management services for the Project and, based on this representation, City engages CM@Risk to provide pre-construction services and construction phase management services for the Project. CM@Risk also may construct the Project or a portion thereof if qualified and selected for construction.

E. CM@Risk acknowledges and agrees that all of CM@Risk's employees, subcontractors, agents and other individuals under CM@Risk's control requiring access to the Construction Documents must execute and submit to City the Department of Homeland Security Non-Disclosure Agreement (DHS Form 11000-6(08-04)) prior to obtaining such access.

F. Based on this representation, City intends to enter into this Agreement with CM@Risk for the Pre-Construction Phase Services and the Construction Phase Management Services identified in this Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between City and CM@Risk as follows:

CM@Risk, to further the interests of City, shall perform the services required by this Agreement and in accordance with this Agreement, to the satisfaction of the Director of the Transportation and Capital Improvements Department (hereafter referred to as "Director"), its terms and conditions in a good and workmanlike manner exercising the degree of care, skill and judgment a professional contractor performing similar services in San Antonio, Texas, would exercise at such time and under

similar conditions. CM@Risk shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.

Attached hereto and incorporated herein, as if fully set out herein, unless specifically modified herein by this Agreement, are:

EXHIBIT A – PAYMENT AND PERFORMANCE BONDS
EXHIBIT B – PROJECT DEFINITION
EXHIBIT C – PRE-CONSTRUCTION SERVICES FEE BY TASK
EXHIBIT D – SUBMITTAL REQUIREMENTS FOR THE GMP
EXHIBIT E – SUBMITTAL REQUIREMENTS FOR THE FIXED PRICE PROPOSALS
EXHIBIT F – APPROVED FIXED PRICE PROPOSALS
EXHIBIT G – GENERAL CONDITIONS FOR CITY OF SAN ANTONIO BUILDING CONSTRUCTION CONTRACTS
EXHIBIT H – APPROVED GMP PROPOSAL
EXHIBIT I – TECHNICAL SPECIFICATIONS
EXHIBIT J – CONSTRUCTION DRAWINGS
EXHIBIT K – SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN FORM
EXHIBIT L – CM@RISK DESCRIPTION OF GENERAL CONDITIONS SUPPLEMENT
EXHIBIT M – ADDENDUM

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named on the date and year first above written.

CM@Risk agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s) and percentage(s), per the terms and conditions of the Agreement. See also **Exhibit H, Approved GMP Proposal.**

Pre-construction Fee: FIFTY-NINE THOUSAND, FIVE HUNDRED AND 00/100 DOLLARS ($59,500.00)

To include all personnel, material, and equipment expenses and profit through the design phase portion of the project.

Construction Fee: 3.29 % of Cost of the Work

To include all overhead, profit, direct and indirect costs.

Other Related Fees to Include Builder's Risk, General Liability Insurance, Pollution Liability, Umbrella Liability, Payment and Performance Bond Premiums: An estimated value, based on a construction cost of **TEN MILLION, FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($10,500,000.00).** Cost to be adjusted, based on final construction costs. The actual value paid by City for fees set out in Article 12, Insurance, will be the fixed rates established in Article 12, Insurance; for any other related fees, the actual value paid by City will be the straight pass-through cost incurred for other related fees without markup charged by CM@Risk.

General Conditions: ONE MILLION, ONE HUNDRED NINETY THOUSAND DOLLARS AND 00/100 ($1,190,000.00) as outlined in Exhibit L, CM@Risk Description of General Conditions Supplement. $940,000.00 of the General Conditions shall be payable in equal

monthly installments over the duration of the Progress Schedule agreed to in the GMP (number of months in the GMP Progress Schedule x monthly rate= $940,000.00) from acceptance of the GMP by City forward. $250,000.00 in Allowance ($50,000.00 for Work Requirements, Temporary Amenities and Site Cleanliness/Housekeeping; and $200,000.00 for Security Program) shall be payable as such expenses are incurred by CM@Risk over the duration of the GMP Progress Schedule from acceptance of the GMP by City forward. General Conditions Costs include, but are not necessarily limited to, the items listed on Exhibit L – CM@RISK DESCRIPTION OF GENERAL CONDITIONS COSTS attached hereto.

CITY OF SAN ANTONIO
CONSTRUCTION MANAGER-AT-RISK AGREEMENT

PAGE

RECITALS 1

ARTICLE 1 – TERMS AND DEFINITIONS 5

ARTICLE 2 – GENERAL PROVISIONS 8

ARTICLE 3 - CM@RISK'S PRE-CONSTRUCTION SERVICES AND RESPONSIBILITIES.11

ARTICLE 4–AMENDMENTS FOR UNANTICIPATED PRE-CONSTRUCTION SERVICES.21

ARTICLE 5 – CM@RISK'S CONSTRUCTION SERVICES AND RESPONSIBILITIES 21

ARTICLE 6 – CITY'S SERVICES AND RESPONSIBILITIES 25

ARTICLE 7 – CONTRACT TIME 28

ARTICLE 8 – PROCEDURE FOR PAYMENT 29

ARTICLE 9– CONTRACT SAVINGS, ALLOWANCES, REBATES AND REFUNDS 31

ARTICLE 10–PRE-EXISTING CONDITIONS AND DESIGN ERRORS AND OMISSIONS 32

ARTICLE 11 – OWNERSHIP OF DOCUMENTS 32

ARTICLE 12 – INSURANCE 34

ARTICLE 13 – INDEMNIFICATION 40

ARTICLE 14 – NOTICES 40

ARTICLE 15 – TERMINATION AND SUSPENSION 41

ARTICLE 16 – MISCELLANEOUS PROVISIONS 45

ARTICLE 17 – INTEREST IN CITY CONTRACTS PROHIBITED 48

ARTICLE 18 – CERTIFICATE REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT AND OTHER RESPONSIBILITY MATTERS 49

ARTICLE 19 – AIRPORT SECURITY 49

ARTICLE 20 – SBEDA COMPLIANCE PROVISIONS 50

EXHIBIT A – SURETY AND PAYMENT AND PERFORMANCE BOND FORMS
EXHIBIT B – PROJECT DEFINITION
EXHIBIT C –PRE-CONSTRUCTION SERVICES FEE BY TASK
EXHIBIT D – SUBMITTAL REQUIREMENTS FOR THE GMP AND SAMPLE TASK ORDER FORM
EXHIBIT E – SUBMITTAL REQUIREMENTS FOR THE FIXED PRICE PROPOSALS
EXHIBIT F – APPROVED FIXED PRICE PROPOSALS
EXHIBIT G – GENERAL CONDITIONS FOR CITY OF SAN ANTONIO BUILDING CONSTRUCTION CONTRACTS
EXHIBIT H – APPROVED GMP PROPOSAL
EXHIBIT I – TECHNICAL SPECIFICATIONS
EXHIBIT J - CONSTRUCTION DRAWINGS
EXHIBIT K –SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN FORM
EXHIBIT L - CM@RISK DESCRIPTION OF GENERAL CONDITIONS SUPPLEMENT
EXHIBIT M - ADDENDUM

ARTICLE 1. TERMS AND DEFINITIONS

1.1 Addenda – Written or graphic instruments issued after the submittal of the Guaranteed Maximum Price (hereafter referred to as "GMP") Proposal, which clarify, correct or change the GMP Proposal requirements and/or incorporated as part of this contract.

1.2 Value Engineering – Alternatives for design, means and methods or other scope considerations that are evaluated and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

1.3 Approved Fixed Price Proposal – The offer or proposal of CM@Risk submitted on the prescribed form, setting forth the prices for the entire Work or portions of the Work to be performed during the construction phase which has been approved by City and incorporated herein as part of **Exhibit F**.

1.4 Construction Contract Time(s) – The number of calendar days or the dates related to the construction phase within which Contractor is to achieve Substantial Completion of the Work.

1.5 Construction Cost Limitation (CCL) – The maximum monetary amount payable to CM@Risk for all Construction Phase services, materials, labor and other work required for completion of the Work, in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work and the Construction Fee. The CCL may be adjusted by the parties for City-directed or agreed upon changes in the scope of the Project before or after the acceptance of the GMP Proposal. The CCL does not include CM@Risk's Pre-Construction Phase Fee.

1.6 Construction Documents – Include this Agreement, City's General Conditions, City's Supplementary and Special Conditions, the Drawings/Plans, Specifications, details and other documents prepared by the Design Professional and its Sub-Consultants and by City's other consultants that describe the scope and quality of the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by City.

1.7 Construction Fee – A set percentage of the total cost of work, to include CM@Risk's administrative costs, direct and indirect costs and CM@Risk's home office overhead and profit, whether at CM@Risk's principal or branch offices.

1.8 Construction Manager at Risk (CM@Risk) – The firm, corporation, or other approved legal entity with whom City has entered into this Contract to provide services as detailed in this Contract.

1.9 CM@Risk's Representative – The person(s) designated by CM@Risk in writing with decision-making authority on behalf of CM@Risk.

1.10 Contingency – A fund to cover cost increases during the Project, to be used at the discretion of City, to address such costs that result from City directed changes, unanticipated project circumstances, unforeseen site conditions or related unanticipated costs. The amount of the Contingency will be set by City and will be in addition to the project costs included in CM@Risk's GMP and FPP packages.

1.11 Contract Documents – As defined in the General Conditions to include GMP Plans and Specifications and Fixed Price Proposals (hereafter referred to as "FPPs").

1.12 Cost of the Work – The direct costs incurred by CM@Risk in the proper performance of the Work. The Cost of the Work shall include, but is not necessarily limited to, direct labor costs, Subcontractor costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, building permit fees (if not paid for by City), materials testing (if not paid and/or provided by City) and related items. The Cost of the Work shall not include CM@Risk's Construction Fee, General Conditions Cost, Bond and insurance or taxes.

1.13 Critical Path Schedule/Method – The sequence of necessary and required activities from the start of the Work to the Substantial Completion of the Project, the delay in the completion of which may extend the Substantial Completion date.

1.14 Day – Calendar day, unless otherwise specifically noted in the Contract Documents.

1.15 Deliverables – The work products prepared by CM@Risk in performing the scope of Work described in this Contract.

1.16 Design Professional – The Architect, Engineer, or other qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project.

1.17 Design Services Phase – See Pre-Construction Phase Services herein.

1.18 Director – The Transportation and Capital Improvements Director or his/her identified designee.

1.19 Drawings or Plans – Documents which visually represent the scope, extent and character of the Work to be furnished and performed by CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and City. These include Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bid-ability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but *"not for construction"*. Shop Drawings are not Drawings included in this definition.

1.20 Fixed Price Proposal (FPP) - The offer or proposal of CM@Risk submitted on the prescribed form setting forth the proposed prices for the entire Work or portions of the Work to be performed during the construction phase.

1.21 Float - The number of Days by which the completion of an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

1.22 General Conditions Costs – Includes but is not limited to the types of costs for CM@Risk, as defined in **EXHIBIT L – CM@RISK DESCRIPTION OF GENERAL CONDITIONS COSTS** hereto during the construction phase. Note that the agreed upon General Conditions Costs shall be paid to CM@Risk beginning at the acceptance of the GMP by City through the established date for Substantial Completion, as shown on the CM@Risk's Notice to Proceed for construction.

1.23 Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the entire Work, including CM@Risk's Construction Fee, General Conditions Costs and sales tax(es) (if any).

1.24 GMP Plans and Specifications – The three sets of Design Development Documents Plans and Specifications provided, as defined in **Article 2** herein, upon which the Guaranteed Maximum Price Proposal is based.

1.25 Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of CM@Risk, submitted on the prescribed form, setting forth the GMP prices for the entire Work to be performed during the construction phase.

1.26 Notice to Proceed (NTP) – A written notice given by City to CM@Risk fixing the date on which CM@Risk will start to perform CM@Risk's obligations under this agreement and setting forth the date for Substantial Completion of the Work.

1.27 Pre-Construction Services - Services provided by CM@Risk as defined in **Article 3** herein.

1.28 Preliminary Budget – The total estimated cost of the Project, including design, construction, and other associated costs and services, that is established by City prior to the commencement of design.

1.29 Project – The services and work to be completed by CM@Risk, Subcontractors and/or Sub-Consultants pursuant to this Agreement as set forth in the Contract Documents.

1.30 Project Team – The Design Professional, CM@Risk, City and any others designated by City who are responsible for making decisions regarding the programming, design and construction of the Project. The members of the Project Team may be modified from time to time by City.

1.31 Schedule of Values (SOV) – Document specified in the General Conditions which divides the Approved Fixed Price Proposals into pay items, such that the sum of all pay items equals the Approved Fixed Price Proposal for the construction phase Work or for any portion of the Work having a separate specified Approved Fixed Price Proposal. City, at its discretion, may require that the SOV be output from the Progress Schedule, depending on whether the Progress Schedule is cost-loaded or not.

1.32 Sub-Consultant – A person, firm or corporation having a contract with CM@Risk to furnish services required as its independent professional associate or consultant, with respect to the Project.

1.33 Subcontractor – An individual or firm having a direct contract with CM@Risk or any other individual or firm having a contract with an individual or firm having a direct contract with

CM@Risk at any tier, who/which undertakes to perform a part of the Construction Phase Work at the site for which CM@Risk is responsible. Subcontractors shall be selected through the Subcontractor bid process described in this Agreement.

1.34 Substantial Completion – As defined in the General Conditions. The terms of Substantial Completion that apply to each FPP and GMP shall be listed in each Notice to Proceed Letter.

1.35 Work Packages – One or more packages (individually, referred to as a "Work Package") which identify a specific scope of Work and which will be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work.

ARTICLE 2. GENERAL PROVISIONS

2.1 Contract Documents

2.1.1 Contract Documents are defined in **Article 1** herein. Contract Documents include this Agreement and all of its Exhibits and attachments including, but not limited to, the General Conditions for City of San Antonio Construction Contracts, Plans, Specifications, Standard Specifications and Details, Special Provisions and Conditions, Addenda (if any), used as the basis for the Guaranteed Maximum Price Proposal (GMP), as accepted by City, Approved Fixed Price Proposals, Performance Bonds, Payment Bonds, Certificates of Insurance, Construction Documents and Change Orders, Amendments or Modifications (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.

2.1.2 In the event of any inconsistency, conflict or ambiguity between or among the Contract Documents, the Contract Documents shall take the order of precedence as established in City's General Conditions. At no time will the Specifications be altered or amended through a submitted Fixed Price Proposal or the GMP. Specifications only may be changed through the procedure outlined in General Conditions.

2.1.2.1 On the drawings, the given dimensions shall take precedence over scaled measurements and large scale drawings shall take precedence over small-scale drawings.

2.1.2.2 Specifications take precedence over Plans.

2.1.3 The headings used in this Agreement or any other Contract Documents are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision or shall not be referenced in resolving questions of interpretation or construction.

2.1.4 The Contract Documents form the entire agreement between City and CM@Risk and, by incorporation herein, are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

2.2 If a fixed contract amount or Guaranteed Maximum Price (GMP) has not been determined at the time the contract is awarded, the penal sums of the Payment and Performance Bonds required to be delivered to the governmental entity must each be in the amount of **TEN**

MILLION, FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($10,500,000.00), an amount equal to the CCL in the amount of **TEN MILLION, FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($10,500,000.00)** unless CM@Risk furnishes a bid bond or other financial security acceptable to City to ensure that the CM@Risk will furnish the required performance and payment bonds when a GMP is established. Upon execution of this Agreement, City will accept a Surety Bond on the form provided on **Exhibit "A"** herein in the amount of one hundred percent (100%) of the CCL. The Surety Bond shall meet the same requirements as set forth for Payment and Performance Bonds.

2.3 Upon acceptance by City of a Guaranteed Maximum Price Proposal (GMP) or a Fixed Price Proposal, CM@Risk shall provide Payment and Performance Bonds on forms prescribed by City and in accordance with the requirements set forth in the General Conditions for the City of San Antonio Construction Contracts. The penal sum of the Payment and Performance Bonds shall be equal to the Guaranteed Maximum Price. If construction is phased or staged, with different Fixed Price Proposals established at different times, the penal sum of the bonds for the Guaranteed Maximum Price shall be reduced by the face amount of the Payment and Performance Bonds in effect for the ongoing Fixed Price Proposals No construction shall commence on any Fixed Price Proposal until the adequate Payment and Performance Bonds are delivered to City.

2.4 CONSULTATION AND COORDINATION

2.4.1 Program Evaluation: As a participating member of the Project Team, CM@Risk shall provide to City and Design Professional a written evaluation of City's Project Program and Project Budget, with recommendations as to the appropriateness of each within thirty (30) days of City issuing a Notice to Proceed to CM@Risk, unless the parties otherwise mutually agree in writing.

2.4.2 CM@Risk shall ensure all of CM@Risk's employees, subcontractors, agents and other individuals under CM@Risk's control requiring access to the Construction Documents execute and submit to City the Department of Homeland Security Non-Disclosure Agreement (DHS Form 11000-6(08-04)) prior to obtaining such access.

2.4.3 Project Meetings: CM@Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.

2.4.4 CM@Risk, when requested by City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings germane to the Project. CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project when their use is required or appropriate in any such public agency meetings.

2.4.5 CM@Risk will provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by City and shall be updated, at minimum, monthly during the Pre-construction Phase of the Project.

2.5 PROJECT SCHEDULE

2.5.1 As approved by City, the purpose of the Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members. The Project Team then will utilize that Deliverable as a basis for managing and monitoring all members' compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. CM@Risk shall develop and maintain the Project Schedule on behalf of and to be used by the Project Team, based on input from the other Project Team members. The Project Schedule shall use the Critical Path Method (hereafter referred to as "CPM") technique, unless required otherwise in writing by City. CM@Risk shall use scheduling software to develop the Project Schedule that is acceptable to City. If Project phasing, as described below, is required, the Project Schedule shall indicate milestone dates for the phases once those milestones are determined.

2.5.2 The Project Schedule shall include a CPM diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

2.5.3 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities and total Float times for all activities, except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

2.5.4 The CPM diagram schedule shall indicate all relationships between activities.

2.5.5 The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

2.5.6 The CPM diagram schedule shall be based upon activities which coincide with the Schedule of Values.

2.5.7 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

2.5.8 The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture, when those activities are interrelated with CM@Risk activities.

2.5.9 The schedule shall include anticipated rain delays during the performance of the contract for items of critical path activity. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service based out of San Antonio International Airport or other approved source.

2.5.10 The Project Schedule shall be updated and maintained by CM@Risk throughout the Pre-Construction Phase, such that it shall not require major changes at the start of the Construction Phase Services to incorporate CM@Risk's plan for the performance of the Construction Phase Work. CM@Risk shall provide updates and/or revisions to the Project Schedule for use by the Project Team whenever required, but no less often than at the monthly Project Team meetings. CM@Risk shall include with such submittals a

narrative describing its analysis of the progress achieved to date versus progress planned, any concerns regarding delays or potential delays and any recommendations regarding mitigating actions.

2.5.11 If phased construction is deemed appropriate and City and Design Professional approve, CM@Risk will review the design and shall make recommendations regarding the phased issuance of Construction Documents, to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CM@Risk shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability and any other factors pertinent to saving time and cost.

2.6 **Phases of Services and the Work.** The services and the Work to be performed by or through CM@Risk shall be divided into the Pre-Construction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Pre-Construction Phase is completed. However, no Work shall commence under the Construction Phase until a Notice to Proceed, with regard to such Work, has been issued by City in accordance with the terms of the Contract.

2.7 **Date of Commencement.** The Pre-Construction Phase Services shall commence after this Agreement has been executed fully by the parties and upon CM@Risk's receipt of City's Notice to Proceed, unless the parties otherwise mutually agree in writing. The Construction Phase Work shall commence upon the issuance of City's Notice to Proceed with the specific scope of the Work stated therein, unless the parties otherwise mutually agree in writing.

ARTICLE 3. CM@RISK'S PRE-CONSTRUCTION SERVICES AND RESPONSIBILITIES

The Pre-Construction Services Phase shall be deemed to commence upon the date specified in the Notice to Procéed with Pre-Construction Services, issued by City, and shall continue through completion of the Construction Documents or upon the delivery to City of a Guaranteed Maximum Price proposal. The duties of CM@Risk include those set forth in this **Article 3**.

3.1 GENERAL RESPONSIBILITIES

3.1.1 CM@Risk shall have overall responsibility for and shall provide complete Pre-Construction Services in accordance with this Agreement. CM@Risk shall cooperate with the Design Professional and endeavor to further the interests of City and the Project. CM@Risk shall furnish Pre-Construction Services in accordance with the Project Schedule in an expeditious and economical manner, consistent with the interests of City as set forth in this Agreement.

3.1.2 CM@Risk shall identify for City the employees and other personnel that it will assign to the Pre-Construction Services Phase and provide the hourly loaded salary rate, the amount paid for each and the number of hours each employee or other personnel is projected to work. CM@Risk also shall identify any Sub-Consultants that will be performing services during the Pre-Construction Services Phase. After execution of this Agreement by City, CM@Risk shall not remove or replace the persons or entities assigned to the Project except with City's written consent, which consent shall not be unreasonably withheld, and CM@Risk shall provide a written explanation to City for the requested removal or replacement of a person or entity. CM@Risk shall not assign

any person or entity to the Project or contract with any person or entity to which City has a reasonable objection. Upon receiving City's reasonable objection of any person or entity and direction, CM@Risk promptly shall remove and replace the objected person or entity. Following receipt of City's written consent or direction to remove or replace a person or entity, CM@Risk promptly shall update the list of persons and consultants no later than fifteen (15) calendar days after the change is made during the Pre-Construction Services Phase.

3.1.3 The Pre-Construction Services Phase of the Project shall commence upon the date specified in City-issued Notice to Proceed with Pre-Construction Services for the Project and, unless otherwise agreed, shall continue through 100% completion of the Construction Documents or the delivery of a Guaranteed Maximum Price proposal to City. If, however, it is deemed by the Director or his designee to be in the best interest of City, and upon written approval by City, the Construction Services Phase of the Project may commence before the Design Services Phase has been completed, in which case the direction to do so will be documented in writing and both phases shall proceed concurrently.

3.1.4 CM@Risk shall visit the site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions.

3.1.5 CM@Risk shall provide Pre-Construction Services described herein in a proactive manner and consistent with the most current Drawings and Specifications. CM@Risk promptly shall notify City in writing whenever CM@Risk determines that any Drawing(s) or Specification(s) is/are inappropriate for the Project and/or cause(s) changes in the Scope of Work requiring an adjustment in the Project Schedule and/or in the Contract Time for the Work, to the extent such are established.

3.1.6 CM@Risk shall provide evaluations, recommendations and information to the Project Team regarding: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of CM@Risk and City's separate Contractors, if any; cost factors, including costs of alternative materials, systems or designs, Preliminary Budgets and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to complete the Project in accordance with the Project Schedule and GMP.

3.1.7 The recommendations and advice of CM@Risk concerning design alternatives shall be subject to the review and approval of City and City's Consultants. It is not CM@Risk's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes and ordinances, building codes, rules and regulations. However, if CM@Risk has actual knowledge that portions of the Drawings and Specifications are at variance therewith, CM@Risk promptly shall notify the Design Professional and City in writing.

3.1.8 CM@Risk shall be responsible for reporting and assisting in remedying all discrepancies, errors and omissions in the Contract Documents of which CM@Risk has actual knowledge. In such case, CM@Risk's responsibilities include the review,

coordination and recommendation of a resolution of strategies (within budget constraints) but do not establish a liability for design.

3.1.9 CM@Risk's services shall be provided in conjunction with the services of a Design Professional. The terms of the Agreement between City and the Design Professional shall be available for inspection by CM@Risk upon request.

3.2 DESIGN DOCUMENT REVIEWS

3.2.1 CM@Risk periodically shall evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design and other factors that may impact the cost estimate, GMP Proposals, Fixed Price Proposals and/or the Project Schedule.

3.2.2 CM@Risk shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its opinion, are required to provide the reasonably necessary information for CM@Risk to construct the Project. Before CM@Risk's receipt of Notice to Proceed for Construction, CM@Risk may request additional investigations to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.

3.2.3 CM@Risk shall meet with the Project Team as required to review designs during their development. CM@Risk shall familiarize itself with the evolving documents through the construction document phase. CM@Risk proactively shall advise the Project Team and make recommendations on factors related to construction costs and its concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems and, labor and material availability. CM@Risk shall advise the Project Team on proposed site improvements and excavation and foundation considerations, as well as concerns with respect to coordination of the Drawings and Specifications. Where appropriate, CM@Risk shall recommend cost effective alternatives to Design Consultant and City.

3.2.4 CM@Risk routinely shall conduct constructability and bid-ability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency and coordination of Work of Subcontractors, Sub-Consultants and Suppliers.

3.2.5 Constructability Reviews: CM@Risk shall implement and conduct a constructability review to identify and document Project cost and schedule savings opportunities. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license.

3.2.6 CM@Risk shall prepare a "Constructability Report" that identifies items that, in CM@Risk's opinion, negatively may impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify known discrepancies that may generate Change Orders or claims once Construction Phase Services commence. CM@Risk shall evaluate whether:

(a) the Drawings and Specifications are configured to enable efficient construction;

(b) design elements are standardized;

(c) construction efficiency is properly considered in the Drawings and Specifications;

(d) module/preassembly design are prepared to facilitate fabrication, transport and installation;

(e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions;

(f) sequences of Work required by or inferable from the Drawings and Specifications are practicable; and

(g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.

3.2.7 CM@Risk shall identify equipment or material requiring extended delivery times and advise City on the need for expedited procurement of those items.

3.2.8 Bid-ability Reviews: CM@Risk shall check cross-references and complementary drawings and sections within the Specifications and, in general, evaluate whether:

(a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies;

(b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations;

(c) Specifications include alternatives in the event a requirement cannot be met in the field; and

(d) in its exercise of good judgment as the Project's CM@Risk, the Project is likely to be subject to differing site conditions.

3.2.9 The results of the reviews shall be provided to City in formal, written reports that clearly identify all discovered discrepancies and inconsistencies in the Drawings and Specifications with accompanying notations and recommendations made on the Drawings, Specifications and other documents. If requested by City, CM@Risk shall meet with City and Design Professional to discuss any findings and review reports.

3.2.10 CM@Risk's reviews shall be written from a Contractor's perspective and though it will seek to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CM@Risk.

3.2.11 Notification of Variance or Deficiency: CM@Risk agrees to assist the Design Professional in its efforts to ascertain whether the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If CM@Risk has actual knowledge that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it promptly will notify the Design Professional and City in

writing, describing the apparent variance or deficiency. Notwithstanding the foregoing, the responsibility for ensuring compliance with applicable laws, statutes, ordinances, building codes, rules and regulations rests solely with the Design Professional.

3.2.12 Alternate Systems Evaluations: The Project Team routinely shall identify and evaluate, using value engineering principles, any alternate systems, approaches and design changes that have the potential to reduce Project costs while still delivering a quality and functional product. The recommendations and advice of CM@Risk concerning design alternatives shall be subject to the review and approval of City and City's Consultants. If the Project Team agrees, CM@Risk, in cooperation with the Design Professional, shall perform a cost/benefit analysis of the alternatives and submit such analysis in writing to the Project Team. The Project Team shall decide, at the Project Team's sole discretion, which alternatives if any will be incorporated into the Project. The Design Professional shall have full responsibility for the incorporation of City's decided upon alternatives into the Drawings and Specifications. CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

3.3 COST ESTIMATES

3.3.1 Unless otherwise agreed upon by both parties, within fourteen (14) days after receipt of all documents for the various phases of design, CM@Risk shall provide a complete and detailed cost projection estimate and a written review of the documents. The cost estimate shall include all cost categories except Contingency to be included in the GMP Summary identified in **Exhibit C** hereto. The Design Professional and CM@Risk shall work to reconcile any disagreements on CM@Risk's estimate, to arrive at an agreed upon cost projection. If no consensus is reached by the Design Professional and CM@Risk, City shall make the final determination.

3.3.2 If any estimate submitted to City exceeds previously accepted Construction Cost Limitation (hereafter referred to as "CCL"), CM@Risk, City and/or Design Consultant shall make appropriate recommendations on methods and materials to City and Design Professional that each party believes will bring the Project back into the CCL.

3.3.3 In between the designated milestone estimates, issued by the Design Professional at designated phases of the design, CM@Risk periodically shall provide a tracking report that identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of CM@Risk to keep City and Design Professional informed as to the major trend changes in costs, relative to City's budget.

3.3.4 CM@Risk shall prepare a preliminary "cash flow" projection, based upon historical records of similar type projects, to assist City in the financing process.

3.3.5 Arrival at Net Reconciled Estimate. When requested by City, CM@Risk shall prepare and submit a Construction Manager Estimate (hereafter referred to as "CME") of the Cost of the Work and a Project Schedule for the Project. This CME will be compared and reconciled with the Design Professional Estimate (hereafter referred to as "DPE") for the Project, which will be prepared by the Design Professional. Through a process of negotiation and consultation between City, the Design Professional and CM@Risk, the CME and the DPE will be reconciled to arrive at an agreed Cost and Schedule for the Project (hereafter referred to as "Net Reconciled Estimate").

3.3.6 Bidding of Project.

3.3.6.1 Upon completion of the Construction Documents, or applicable "Bid Package" portion thereof, by the Design Professional, CM@Risk publically shall advertise, as prescribed for a governmental entity under the Local Government Code, and receive sealed bids or proposals from trade Contractors and/or Subcontractors for the performance of all major elements of the Work, other than the minor work that may be included in its General Conditions Costs. CM@Risk shall comply with City's SBEDA Ordinance and Procurement Program policies and procedures in evaluating the impact of each Subcontractor selection. CM@Risk shall follow this process in the development of each construction trades package for each Work Package. CM@Risk shall submit CM@Risk's standard form of subcontract for the Project to City for review and approval in order to verify that it contains provisions required by the Contract Documents that are protective of the interests of City and conforms to the requirements of the Contract Documents. Subcontracts shall not be awarded on the basis of cost of the work plus a fee without the prior written consent of City.

3.3.6.2 CM@Risk may perform portions of the Work itself if CM@Risk submits its bid or proposal for those portions of the Work in the same manner as other trade Contractors and/or Subcontractors and if City determines that CM@Risk's bid or proposal provides the best value for City. If CM@Risk intends to submit a proposal for such Work, it shall notify City prior to soliciting proposals and all such bids and/or sealed proposals shall be submitted directly to City or its designated representative.

3.3.6.3 CM@Risk shall instruct interested Subcontractors to review the Project Plans and Specifications from the approved list of plan review locations or purchase a copy from the Design Professional.

3.3.6.4 CM@Risk shall include specific notices of the following statutory requirements in the information to bidders:

3.3.6.4.1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406.

3.3.6.4.2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258.

3.3.6.4.3 A notice of the sales tax exemption for the Project and the procedure for obtaining any required exemption verification or certificates.

3.3.6.4.4 Other notices required, as set out in City's General Conditions or Special Conditions.

3.3.6.4.5 Nothing herein shall prevent CM@Risk from including other notices required or allowed by law.

3.3.6.5 Upon receipt of bids/proposals, CM@Risk and City (and/or its representative) jointly shall open and review all trade Contractor or Subcontractor bids or proposals, taking into consideration the criteria listed in Texas Local Government Code. Following this review, CM@Risk shall prepare, for City's review, a notebook that includes all bids/proposals received and a summary of the bids and/or proposals received. After discussion with City, CM@Risk shall

recommend to City the bidders/proposers that offer the best value to City and with whom CM@Risk desires to enter into a subcontract. At all times, City retains right to accept and/or reject all Subcontractors.

3.3.6.6 The bid/proposal review shall be handled in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by CM@Risk, the Design Professional, the Project Management Team or City.

3.3.6.7 All bids or proposals shall be made public after the award of the contract or not later than the seven (7) days after the date of final selection of bids or proposals, whichever is later.

3.3.6.8 If a specific bidder among those whose bids are delivered by CM@Risk to City and Design Professional

(1) is recommended to City by CM@Risk;

(2) is qualified to perform that portion of the Work;

(3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but City requires that another bid be accepted, then City shall compensate CM@Risk for the increased change in price, time or Guarantee Maximum Cost for any additional cost and risk that CM@Risk may incur related directly to City's requirement that another bid or proposal be accepted.

3.3.7 CM@Risk agrees, at its own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement, free and clear of all claims, liens and charges whatsoever in the manner and under the conditions specified within the time or times stated in the accepted GMP Proposal.

3.3.8 The Contract Price shall include the approved Guaranteed Maximum Price Proposal, to be attached hereto, incorporated herein and labeled as **Exhibit H,** and shall include Contingency in an amount which shall be determined and controlled by City upon the acceptance of the GMP, along with CM@Risk's Pre-Construction Services Fee.

3.3.9 CM@Risk is at risk to cover any additional Project costs in the performance of the Work in excess of GMP (less any contingency listed). Any amounts in excess of the actual Cost of the Work shall be paid by CM@Risk.

3.3.10 The General Conditions Costs and the Construction Fee may be fixed percentages that shall be applied to the actual Cost of the Work, as evidenced by the approved GMP, the FPPs and Payment Applications, but are subject to adjustments as permitted in the Contract Documents.

3.3.11 Contingency are funds to be used at the discretion of City to cover any increases in Project costs that result from City directed changes, unforeseen site conditions or related unanticipated project costs. Contingency shall be in addition to the GMP amount provided by CM@Risk, the sum of which will be the full contract price for

construction. Markups for Construction Fee may be applied by CM@Risk at the time that Contingency is elected to be used by City.

3.3.12 Approved Fixed Price Proposals are cumulative and the sum total of all Approved Fixed Price Proposals and the remaining costs to complete Work not addressed in Fixed Price Proposals shall not exceed the GMP total (less City's contingency). The amount of City-controlled Contingency for each Approved Fixed Price Proposal shall be negotiated separately.

3.3.13 If the GMP requires an adjustment due to changes in the Work or other causes, as allowed in the Contract Documents, the cost of such changes is determined subject to the General Conditions. Any markups that may be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

3.3.14 Prior to submitting its GMP Proposal, CM@Risk acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project Site and that it thoroughly has investigated those conditions, to the extent reasonably possible. CM@Risk confirms that its investigation of the Project Site was instrumental in preparing its GMP Proposal for the Work. CM@Risk shall not make or be entitled to any claim for any adjustment to the Contract Time, the GMP, Pre-construction Phase Services or for Construction Phase Services arising from Project conditions that CM@Risk discovered or, in the exercise of reasonable care, should have discovered in CM@Risk's investigation.

3.4 GMP Proposal Requirements. The GMP Proposal shall be consistent with the Guidelines to Prepare the GMP Proposal, attached hereto as **Exhibit D**, unless the Parties mutually agree in writing otherwise.

3.4.1 A proposed GMP for the Work, shall be the sum of:

(i.) CM@Risk's Cost of Work; and

(ii.) Indirect Costs, as defined in **Exhibit H – Approved GMP proposal** hereto.

3.4.2 Negotiation of GMP Proposal. After submission of its GMP Proposal for the entire Work, CM@Risk and City promptly shall meet to discuss and review the Proposal. To the extent that the estimated Cost of the Work component of a GMP Proposal exceeds the Construction Cost Limitation as established herein, CM@Risk shall exercise its best efforts (as measured by its applicable standard of care under the Contract) to propose Value Engineering solutions and other cost-cutting measures to bring such construction costs within the applicable Limit. In the event that the estimated Cost of the Work component exceeds the applicable Construction Cost Limitation and such cost increase is not due to a change in the scope of the Work, CM@Risk shall not be entitled to any reimbursement for the time or expenses required to bring such construction costs within the applicable Limit. If City has any comments regarding the respective Proposal or finds any inconsistencies or inaccuracies in the information presented, it promptly shall give written notice to CM@Risk of such comments or findings. If appropriate, CM@Risk shall, upon receipt of City's notice, make appropriate adjustments to the respective Proposal. CM@Risk agrees that, to the best of its knowledge, the GMP Supporting

Documents at the time of the approval of the GMP are sufficient to enable it to determine the GMP for all the Work covered by such Contract Documents and that such Work can be completed in accordance with the Contract Documents for the GMP. By agreeing to a GMP, CM@Risk agrees with City that the Work required by the Contract Documents for the Work including, without limitation, construction means, methods, procedures, and techniques necessary to perform the Work, will be consistent with:

(i) good and sound practices within the construction industry;
(ii) generally prevailing and accepted industry standards applicable to the Work; and
(iii) requirements of any warranties applicable to the Work.

3.4.3 Following approval of a GMP Proposal by City, City shall authorize and cause the Design Professional to revise the Drawings and Specifications for the Project to the extent necessary, to reflect the agreed-upon assumptions and clarifications contained in CM@Risk Construction Phase Contract for the Project. Such Drawings and Specifications shall be furnished to CM@Risk in accordance with the schedules agreed upon by City, Design Professional and CM@Risk. CM@Risk promptly shall notify the Design Professional and City if it has actual knowledge that the revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

3.4.4 Following written approval of the GMP Proposal by City, CM@Risk without reimbursement shall pay any costs or expenses that would cause the GMP for applicable Project to be exceeded, except as otherwise provided by the Contract Documents.

3.4.5 At the end of the Project, GMP savings resulting from a lower actual project cost than anticipated by CM@Risk shall revert to City.

3.4.6 The GMP is subject to adjustments made in accordance with those allowed by this Agreement and by GMP amendments to this Agreement.

3.4.7 GMP amendments are cumulative. The amount of Contingency for each GMP amendment will be determined separately.

3.4.8 If the GMP requires an adjustment due to changes in the Work or other causes, as allowed in the Contract Documents, the cost of such changes is determined subject to the General Conditions. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP proposal.

3.5 Fixed Price Proposal Requirements. If CM@Risk elects and to utilize Fixed Price Proposal(s), and City accepts CM@Risk's utilization of Fixed Price Proposal(s), CM@Risk shall provide:

3.5.1 CM@Risk's Fixed Price Proposal that shall be an amount that includes CM@Risk's Costs of the Work and all City-proposed allowances, if any, a detailed and itemized statement of the Cost of the Work organized by trade categories, a list of all of City's allowances, if any, and a detailed and itemized statement of those allowances' basis.

3.5.2 The date of Substantial Completion, upon which the requested Fixed Price Proposal is based;

3.5.3 The Not-To-Exceed Construction Phase Fee, based on the agreed upon percentage;

3.5.4 The Not-To-Exceed General Conditions Costs and shall include bonds and insurance premiums, based on the Cost of The Work for construction (Note that City does not pay any fee or markup for CM@Risk's cost for bonds and insurance, as these are straight past-through costs);

3.5.5 A schedule for Construction Documents issuance dates, upon which the date of Substantial Completion is based;

3.5.6 A complete Schedule of Values with line item breakdowns of the calculations apportioned for the various divisions or phases of the Work. If City has agreed to accept one or more portions of the Work separately, there will be a separate Schedule of Values for each separate portion of the Project;

3.5.7 A list of the Drawings and Specifications, including all addenda thereto, and the Supporting Documents, which were used in preparation of the Fixed Price Proposal;

3.5.8 A list of the clarifications and assumptions made by CM@Risk in the preparation of the Fixed Price Proposal to supplement the information contained in the Supporting Documents;

3.5.9 A list of the trade packages that are supported by certified bids;

3.5.10 CM@Risk's SBEDA submittals documentation, to the extent required for the specific Project for which the Fixed Price is proposed; and

3.5.11 Any other Project information reasonably requested by City.

3.5.12 The Fixed Price Proposal(s) shall include no amount for sales or use taxes, for which City is exempt. Upon request by CM@Risk, City timely shall provide to CM@Risk an appropriate tax exemption certificate or other required verification of City's tax exempt status. Such taxes shall not be reimbursable costs.

3.6 The Fixed Price Proposal shall adopt and incorporate all of the terms and conditions of and all of the attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must clearly and conspicuously be identified to City in writing and specifically accepted in writing by City. In the event of a conflict between any term of the Fixed Price Proposal that was not clearly and conspicuously identified and approved by City, the terms of this Agreement and its attachments shall control.

3.7 CM@Risk shall not withdraw its Fixed Price Proposal for the Project for ninety (90) days, following submission to City.

3.8 Fixed Price Proposal(s) Review and Approval: CM@Risk shall meet with City and Design Professional to review the Fixed Price Proposal(s) and the written statement of its basis. As part of the statement of its basis, CM@Risk shall identify and justify any costs that are

significantly different than the latest cost estimate provided by CM@Risk. In the event City or Design Professional discovers inconsistencies or inaccuracies in the information presented, CM@Risk shall make adjustments as necessary to the GMP Proposal, its basis or both.

3.9 If CM@Risk's Fixed Price Proposal is greater than the independent third party or Design Professional's estimate, City may require CM@Risk to reconfirm its Fixed Price Proposal. CM@Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his Fixed Price Proposal or present a report to City within seven (7) days of a written request by City identifying, explaining and substantiating the differences. CM@Risk may be requested to, or at its own discretion may, submit a revised Fixed Price Proposal for consideration by City. At that time, City may accept CM@Risk original or revised Fixed Price Proposal, if it is within City's budget and CM@Risk's GMP, without comment.

3.10 City may accept or reject CM@Risk's Fixed Price Proposal or negotiate its terms with CM@Risk. The Fixed Price Proposal shall not be effective without written approval by City, documenting the agreement of the Parties to a Fixed Price Proposal

3.11 Prior to written approval of the Fixed Price Proposal by City, CM@Risk shall not incur any cost to be reimbursed as part of the Cost of Work for the Construction Phase Services of the Project, except as City may specifically authorize in writing.

ARTICLE 4. AMENDMENTS FOR UNANTICIPATED PRE-CONSTRUCTION SERVICES

4.1 CHANGE IN SCOPE

Before any altered or modified work begins, a Task Order, Change Order, Amendment or Modification shall be negotiated, approved and executed by City and CM@Risk. The compensation paid to CM@Risk may be adjusted by mutual agreement of the contracting parties, based on the hourly rates agreed to under this contract.

4.2 CLAIMS FOR EXTRA WORK

No claim for extra work performed and/or materials furnished by CM@Risk shall be allowed by City except as provided herein, nor will CM@Risk do any work or furnish any material(s) not covered by this Contract, unless such work or material first is authorized in writing by City. Pre-construction Services or material(s) furnished by CM@Risk without such prior written authorization shall be at CM@Risk's sole jeopardy, cost and expense. CM@Risk hereby agrees that, without prior written authorization from City, no claim for compensation for such work and/or materials furnished shall be made.

ARTICLE 5. CM@RISK'S CONSTRUCTION SERVICES AND RESPONSIBILITIES

5.1 GENERAL RESPONSIBILITIES.

5.1.1 The Work to be performed under the Construction Phase may commence before the Preconstruction Phase is completed. CM@Risk shall commence the Construction Phase on the date specified in the Notice to Proceed with Construction issued by City and shall continue until Final Completion of all Work on the Project. In implementation of the responsibilities and duties of CM@Risk for Construction Phase, CM@Risk shall provide the services described in this **Article 5**.

5.1.2 CM@Risk shall construct the Work in strict accordance with the Construction Documents and as required by City's General Conditions, Supplementary General Conditions (if any) and City's Specifications within the time required in and by the Project Schedule approved by City.

5.2 ADMINISTRATION

CM@Risk shall award and enter into, as a General Contractor, all subcontracts necessary and appropriate to provide all labor and materials for the Work. CM@Risk shall self-perform only General Conditions Work and other Project Work which has been awarded to CM@Risk in accordance with the requirements of Texas Government Code and this Agreement. City reserves the right to perform work related to the Project and to award separate contracts for work related to the Project.

5.3 CONTROL OF THE WORK

5.3.1 CM@Risk shall keep City informed of the progress and quality of the Project Work.

5.3.2 In accordance with City's General Conditions and Supplementary Conditions, CM@Risk shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and all other facilities and services necessary for the proper execution and completion of the Work, in strict accordance with the requirements of the Construction Documents.

5.3.3 CM@Risk shall coordinate delivery and installation of any and all City-procured material and equipment.

5.3.4 Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.

5.3.5 CM@Risk shall take field measurements and verify field conditions and carefully shall compare such field measurements, conditions and other information known to CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered immediately shall be reported to City.

5.3.6 Before ordering materials or doing Work, CM@Risk and each Subcontractor shall verify measurements at the Site and each shall be responsible for the correctness of such measurements. No increase to the approved GMP shall be allowed because of differences between actual dimensions and the dimensions indicated in the Design and/or Contract Documents. Dimension differences, which may be found, shall be submitted to City for resolution before proceeding with the Work.

5.3.7 CM@Risk solely shall be responsible for quality control throughout duration of project, to ensure compliance with plans, specifications, good workmanship and construction management.

5.4 CONTROL OF THE WORK SITE

5.4.1 CM@Risk shall provide a traffic control plan for approval by City, if required by City for execution of the work.

5.4.2 CM@Risk shall take all reasonable steps, procedures and means to prevent any dust nuisance on Site, due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of City and in accordance with all legal requirements.

5.4.3 CM@Risk shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

5.5 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

5.5.1 CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by City's and Design Professional's approval of Shop Drawings, Product Data, Samples or similar submittals, unless CM@Risk specifically has informed City in writing of such deviation at the time of submittal and City has given written approval to the specific deviation. CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by City's approval thereof.

5.5.2 CM@Risk shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by City or Design Professional on previous submittals.

5.5.3 Informational submittals, upon which City is not expected to take responsive action, shall be identified in the Contract Documents.

5.5.4 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

5.6 QUALITY CONTROL, INDEPENDENT MATERIALS TESTING AND INSPECTION

5.6.1 In compliance with Texas Government Code, City shall retain, independent of CM@Risk, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the facility by City. Such consultants shall be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of those independent consultants shall be described in the Agreements between City and those consultants. The provision of inspection services by City shall not reduce or lessen CM@Risk's responsibility for the Work or its duty to establish and implement a program to monitor and control the quality of construction, to guard City against defects and deficiencies in the Work, required by the Contract Documents. CM@Risk fully and solely is responsible for constructing the Project in strict accordance with the Construction Documents. When the first and subsequent tests indicate noncompliance with the Contract Documents, all associated costs associated with that noncompliance shall be paid by and are the responsibility of CM@Risk, including all costs for re-testing. Project Contingency shall not be utilized for the cost of re-testing.

5.6.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the original testing agency.

5.6.3 CM@Risk shall cooperate and coordinate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide all access to the Work at all times.

5.6.4 At the option of City, materials may be approved at the source of supply before delivery is started.

5.6.5 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by CM@Risk as a cost of the work, unless otherwise provided in the Contract Documents.

5.6.6 CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of CM@Risk and paid by CM@Risk.

5.7 PROJECT RECORD DOCUMENTS

5.7.1 At all times during the construction period, CM@Risk shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.

5.7.2 CM@Risk shall mark these drawings to indicate the actual installation, where the installation varies from the original Construction Documents, and give particular attention to information on concealed elements, which would be difficult to identify or measure and record at a later date. If applicable, items required to be marked include, but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Drawings.

5.7.3 CM@Risk shall, with red erasable colored pencil, mark completely and accurately the Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, CM@Risk shall show cross-references on the Construction Documents location.

5.7.4 CM@Risk shall note on the drawings RFI Numbers, ASI Numbers and Change Order numbers, etc., as required, identifying the source of the change to the Construction Documents.

5.7.5 CM@Risk shall, as a condition of Substantial Completion, submit Project Record Drawing and Shop Drawing prints to City or its representative for review and comment.

5.7.6 Upon receipt of the reviewed Project Record Drawings from City, CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to City within fourteen (14) Calendar Days:

5.7.6.1 CM@Risk shall, as a condition of Substantial Completion, submit to City or its representative a complete set of electronic Project Record Drawings prepared in a 3D Modeling format or in a format designated by City that is compatible with City technology. The Design Professional shall provide files of the original Construction Documents to CM@Risk for its use in preparing these final Project Record Drawings or CM@Risk may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

5.7.6.2 The original copy of the Project Record Drawings (redline mark-ups) shall be retained by City.

5.8 PROJECT SAFETY

The requirements in this Section are in addition to the **Article X** of City's General Conditions.

5.8.1 CM@Risk shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project, in addition to safety.

5.8.2 The Safety Representative shall make routine daily inspections of the Site and shall hold, at minimum, weekly safety meetings with CM@Risk's personnel, Subcontractors and others, as applicable.

5.8.3 CM@Risk immediately shall report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by legal requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

5.8.4 CM@Risk shall submit a project safety plan to City for approval, prior to initiating construction work.

ARTICLE 6. CITY'S SERVICES AND RESPONSIBILITIES

6.1 DUTY TO COOPERATE

6.1.1 City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations and services in a timely manner, to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.

6.1.2 City shall furnish, at CM@Risk's request and at no cost to CM@Risk, if in City's possession, a file of Construction Documents it possesses in a format compatible with City of San Antonio technology.

6.2 CITY'S DESIGNATED REPRESENTATIVE

The requirements in this Section are in addition to **Article II** of City's General Conditions.

6.2.1 City's Representative shall be responsible for providing City-supplied and/or City-requested information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.

6.2.2 City's Representative also shall provide CM@Risk with prompt notice if he/she observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents, specifying in such detail as is necessary to enable Contractor's prompt correction of same as required by the Contract Documents.

6.2.3 On or before issuing its Notice(s) to Proceed, City shall designate in writing to CM@Risk a representative who shall have express authority to bind City with respect to all matters requiring City's approval or authorization, other than matters that require the approval of the San Antonio City Council. To the extent permitted by law, City's representative shall have the authority to make decisions on behalf of City concerning estimates and schedules, construction budgets and changes in the Work and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of CM@Risk.

6.2.4 City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner, to permit CM@Risk to fulfill its obligations under the Contract Documents.

6.2.5 City's Representative also shall provide CM@Risk with prompt notice if he/she observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.

6.3 INFORMATION AND SERVICES

6.3.1 City, to the best of its abilities, shall provide full and accurate information within seven (7) calendar days of when a request is submitted in PRIMElink, regarding the requirements of the Project, including information which sets forth City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.

6.3.2 City shall provide a Preliminary Budget and general schedule information for the Project to CM@Risk in a timely manner. The Preliminary Budget shall include the anticipated construction cost, any City-controlled contingency for City-requested changes in the Work during construction and/or all other costs that are the responsibility of City. City shall set forth City's plan for milestone dates (if any) and the completion of the Project.

6.3.3 Structural and Environmental Tests, Surveys and Reports. In the Pre-Construction Phase, City shall furnish the following with reasonable promptness, **if in City's possession**, so as not to delay CM@Risk's performance of its services and/or Work, at City's expense:

6.3.3.1 Reports, surveys, drawings and tests accurately identifying the conditions at the Site which are required by law.

6.3.3.2 Surveys accurately identifying the physical characteristics, legal limitations and utility locations for the Site and a written legal description of the Site. The surveys and legal information may include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights of way, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and liens, both public and private, above and below grade, including inverts and depts. All information on the survey shall be referenced to a Project benchmark.

6.3.3.3 The services of competent Geotechnical Engineers, when such services reasonably are requested by CM@Risk and the City concurs that such services are needed. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

6.3.3.4 Accurate structural, mechanical, chemical, air and water pollution tests, tests for Hazardous Substances, and other laboratory and environmental tests, inspections and reports which are required by law.

6.4 LEGAL REQUIREMENTS: If known by City, City shall advise the Design Professional and CM@Risk of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project.

6.5 CORRECTION OF DEFECTIVE WORK: City shall have the right to reject any and all defective Work on the Project. Should CM@Risk refuse or neglect to correct any such defective Work within a reasonable time after its receipt of notice and a reasonable opportunity to cure, City may have the Work corrected and shall recover all reasonable and necessary expenses incurred from CM@Risk. If CM@Risk refuses to make a direct payment to City for the cost to correct defective work, CM@Risk grants City the authority to withhold or deduct such payments from CM@Risk's payment applications and/or Project retainage.

6.6 SEPARATE CONTRACTS

6.6.1 City may perform other work related to the Project with its employees, separate Contractors or vendors under its control. If City is performing other work with its employees, separate Contractors or vendors under its control, CM@Risk agrees to cooperate and coordinate its work with the work of City's employees, separate Contractors or vendors and City agrees to coordinate the work of City's separate Contractors or vendors with CM@Risk, so that the Project can be completed in an orderly and coordinated manner reasonably free of significant disruption to any party.

6.6.2 If the proper execution or results of any part of CM@Risk's work depends on work performed by City's employees, separate Contractors, vendors or employees, CM@Risk shall inspect such other work and promptly report to City and the Design Professional in writing any patent defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CM@Risk's Work. CM@Risk's

failure to so report shall constitute an acceptance of the other work as fit and proper for integration with CM@Risk's work, except with regard to latent or non- apparent defects and deficiencies in the other work.

6.6.3 CM@Risk shall do all cutting, fitting and patching of its Work that may be required to make its several parts of Work come together properly and integrate with such other work. CM@Risk shall not endanger any work of others by cutting, excavating or otherwise altering the others' work and will only cut or alter others' work with the written consent of City and Design Professional and the other party or parties whose work will be affected.

ARTICLE 7. CONTRACT TIME

7.1 GENERAL

7.1.1 Work Packages. It is anticipated that the Construction Phase Work may be divided into one or more packages (individually, a "Work Package") which, through a Fixed Price Proposal, identify a specific scope of Work and which may be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work.

7.1.2 Work Authorization. When the parties have identified the Work to be performed in a Work Package and have agreed on any applicable Contract Time Requirements for that Work Package and such other terms and conditions relating to that Work Package including, but not limited to, a Fixed Price Proposal for the Work Package, CM@Risk shall receive a Notice to Proceed from City and the Approved Fixed Price Proposal shall be incorporated as part of this Agreement. However, no Work shall commence under a Work Package or Fixed Price Proposal until a Notice to Proceed with regard to such Work has been issued in writing by City to CM@Risk in accordance with the terms of the Contract Documents.

7.1.3 Each Work Package established through an Approved Fixed Price Proposal may establish a separate commencement date and a date of Substantial Completion and a Performance Period. The Performance Periods are not required to be sequential and may run concurrently.

7.1.4 CM@Risk agrees that it shall commence performance of the Work upon receipt of Notice to Proceed and shall achieve the Performance Periods and Contract Time.

7.1.5 All of the times set forth in this **Article 7** shall be subject to adjustment in accordance with the General Conditions.

7.2 LIQUIDATED DAMAGES

7.2.1 CM@Risk understands that if Substantial Completion is not attained within the Contract Time as adjusted, City will suffer damages which are difficult to determine and accurately specify. CM@Risk agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay City **FIVE THOUSAND DOLLARS AND 00/100 ($5,000.00)** as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted.

7.2.2 CM@Risk and CM@Risk's surety shall be liable for and shall pay to City the sums stipulated in the Agreement as liquidated damages for each calendar day of delay until City grants Substantial Completion.

7.2.3 Upon attaining Substantial Completion CM@Risk will be given **30** calendar days to achieve Final Completion of the project. CM@Risk agrees that if Final Completion within 60 days from Substantial Completion, CM@Risk shall pay City **FIVE HUNDRED DOLLARS AND 00/100 ($500.00)** as liquidated damages for each day that Final Completion extends beyond 60 days from the date of achieving Substantial Completion.

ARTICLE 8. PROCEDURE FOR PAYMENT

8.1. CONTRACT PRICE

8.1.1 PAYMENTS FOR PRE-CONSTRUCTION PHASE SERVICES

8.1.1.1 Payments for Pre-construction Phase Services shall be made monthly, following presentation of CM@Risk's Application for Payment and the Schedule of Values, which is included herein labeled as **"Exhibit C"** and made a part of this Agreement, including all required attachments, and shall be in proportion to services performed. Retainage will not be withheld from payments for Pre-construction Phase Services. The scope and quantity of the services provided will be dependent upon services actually performed and authorized by City. Charges will be assessed only for actual services rendered.

8.1.1.2 Payment for services negotiated as an amount not-to-exceed shall be made in accordance with the percentage of work completed during the preceding month.

8.1.1.3 The fees for CM@Risk and any Sub-Consultants shall be based upon the hourly rate schedule included as **Exhibit C** hereto, attached and presented with the Payment Application.

8.1.1.4 Payments from City are due and payable thirty (30) days from the date CM@Risk's accurate and complete Application for Payment invoice is received by City.

8.1.1.5 CM@Risk will pay all sums due Sub-Consultants for services and reimbursable expenses within ten (10) calendar days after CM@Risk has received payment for those services from City.

8.1.2 GUARANTEED MAXIMUM PRICE AND APPROVED FIXED PRICE PROPOSALS

8.1.2.1 This article shall be read and interpreted to complement the General Conditions not as a replacement to them.

8.1.2.2 For and in consideration of the faithful performance of the Work herein, as set forth in the Contract Documents and in accordance with the directions of City and to its satisfaction, City agrees to pay CM@Risk the actual Cost of the Work and any applicable General Conditions Costs, the costs for insurance and bonding without markup or fee and CM@Risk's Construction Fee, but in no event will City pay CM@Risk more than the GMP, as adjusted by any Change Orders. Payment for the specific Work under this Agreement shall be made in accordance with payment provisions detailed herein below. To the extent that the Construction Phase consists of multiple Work Packages, each such Work Package shall be subject to a Firm Fixed Price Proposal, as defined herein. The sum of the Firm Fixed Price Proposals for all Work Packages shall not exceed the Guaranteed Maximum Price for the Construction Phase.

8.1.2.3 At the Pre-Construction Conference prescribed in the General Conditions, CM@Risk shall submit for City's review and approval a Schedule of Values. The Schedule of Values will serve as the basis for monthly progress payments made to CM@Risk throughout the Work, in accordance with the General Conditions.

8.1.2.4 At least five (5) working days prior to the date established for a Payment Application, CM@Risk shall submit an updated Project Schedule and meet with City's Representative to review the progress of the Work as it shall be reflected on the Payment Application.

8.1.2.5 The Payment Application shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Application and that all Work will pass to City free and clear of all claims, liens, encumbrances and security interests upon the incorporation of the Work into the Project and payment therefore.

8.1.2.6 The Payment Application may request payment for stored equipment and materials if: (1) construction progress is in reasonable conformance with the approved Project Schedule and (2) said store equipment and materials have been verified by City in writing.

8.1.2.7 For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment therefore.

8.1.2.8 For materials and equipment stored off the Site and included in Payment Application, City must approve the storage in writing. The material and equipment must be stored within Bexar County and be accessible for City's inspection. CM@Risk must protect City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

8.1.2.9 All bonds and insurance required for stored materials shall name City as the loss payee, to the extent of its interest in the stored materials.

8.1.2.10 CM@Risk shall submit mathematically accurate Payment Applications for construction services to City electronically at minimum monthly, beginning with the first month after the construction Notice to Proceed.

8.1.2.11 Payment of Approved Pay Estimates - Payment for certified and approved Work shall be made by City no later than thirty (30) calendar days after the accurate Payment Application is received, but in each case less the total of payments previously made and less amounts properly retained under this **Section 8.**

8.1.2.12 City shall pay CM@Risk all amounts properly due. If City determines that CM@Risk is not entitled to all or part of a Payment Application, it will reject the Payment Application within seven (7) calendar days after the date Payment Application is received by City. City shall provide specific reasons and basis of rejection and the specific measures CM@Risk must take to rectify City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents.

8.1.2.13 Retention on GMP or FPP - City will retain ten percent (10%) of each Payment Application amount provided on contracts valued at $400,000 or less. City will retain five percent (5%) of each Payment Application amount provided on contracts valued at greater than $400,000.

ARTICLE 9. CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS

9.1 CREDITS

If the allowable amount of the cost of Cost of Work and General Conditions is less than the amount established for each of those line items in the originally approved GMP Proposal, the entire difference shall be credited to City as savings and the GMP amount shall be adjusted accordingly, including CM@Risk Fees.

9.2 DEDUCTIONS

City shall be entitled to request CM@Risk to deduct amounts for the following items from any Payment Application or from the request for Final Payment submitted by CM@Risk:

9.2.1 The fair market value of all tools, surplus materials, construction equipment and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by City. Upon completion of the Work or when no longer required, CM@Risk either shall credit City for the fair market value (as approved by City) for all surplus tools, construction equipment and materials retained by CM@Risk, at City's option or use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest price and credit the proceeds to City's account.

9.2.2 **Discounts earned by CM@Risk through advance or prompt payments funded by City** - CM@Risk shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. CM@Risk shall purchase materials for the Project in quantities that provide the most advantageous prices to City.

9.2.3. Rebates, discounts or commissions obtained by CM@Risk from material Suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

9.2.4 Deposits made by City and forfeited due to the fault of CM@Risk.

9.2.5 Balances remaining on any Allowances or any other identified contract savings.

9.3 RECOVERY OF SAVINGS

City shall be entitled to recognize and recover one hundred percent (100%) of any savings identified by cost review or audit at any time, before or after final payment.

ARTICLE 10. PRE-EXISTING CONDITIONS & DESIGN ERRORS & OMISSIONS

This **Article 10** shall be read and interpreted to complement the General Conditions not to replace them.

10.1 CM@RISK ACCESS TO PRE-EXISTING CONDITIONS - CM@Risk acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it thoroughly has investigated those conditions. CM@Risk's investigation was instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. CM@Risk shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction or Construction Phase Services arising from Project conditions that CM@Risk discovered or, in the exercise of reasonable care, should have discovered in CM@Risk's investigation.

10.2 ACKNOWLEDGEMENT OF PARTICIPATION IN CONSTRUCTION DOCUMENT PHASE - CM@Risk acknowledges that, as part of its Pre-construction Phase Services, it participated in the review of the Construction Documents. CM@Risk shall review the drawings, specifications and other Construction Documents and notify City of any errors, omissions or discrepancies in the documents or any issue that City should be aware. CM@Risk shall not make or be entitled to any claim for adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents that CM@Risk discovered or, in the exercise of reasonable care, should have discovered in CM@Risk's Pre-construction Phase design review process that CM@Risk did not bring to the attention of City and the Design Professional in a timely manner.

ARTICLE 11. OWNERSHIP OF DOCUMENTS

11.1 PROJECT DOCUMENTS AND COPYRIGHTS

11.1.1 City Ownership of Project Documents: 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 prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of City and are to be delivered to the Project Manager before final payment is made to CM@Risk. Nonetheless, these Projects Documents may altered, modified or adapted by City with or

without the written consent of CM@Risk, which consent CM@Risk will not unreasonably withhold.

11.1.2 Documents to Bear Seal: When applicable and if required by state law, CM@Risk and its Sub-Consultants shall endorse, by a Texas professional seal, all plans, works and Deliverables prepared by the CM@Risk or its Sub-Consultants for this Contract.

11.1.3 All previously owned documents, including the estimates, specifications and all other documents and data, will remain the property of CM@Risk as instruments of service. However, CM@Risk understands and agrees that City 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 CM@Risk will be at City's sole risk and without liability or legal exposure to CM@Risk.

11.1.4 CM@Risk acknowledges and agrees that, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and shall be used by City as City desires. Documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City upon request, termination or completion of this Agreement without restriction on future use. However, any reuse without specific written verification or adaptation by CM@Risk will be at City's sole risk and without liability or legal exposure to CM@Risk.

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

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

11.1.7 CM@Risk may make copies of any and all documents and items for its files. CM@Risk shall have no liability for changes made to or use of the drawings, specifications and other documents by other Architects, Engineers or other persons, subsequent to the completion of the Project. CM@Risk appropriately shall mark all changes or modifications made on all drawings, specifications and other documents by other Architects, Engineers or other persons, including electronic copies, subsequent to the completion of the Project.

11.1.8 Copies of documents for this Work that may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions that are submitted by CM@Risk. Files in editable electronic media format of text, data, graphics or other types, (such as DGN) that are furnished by CM@Risk to City only are for convenience of City or a utility. 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 CM@Risk will be at City's sole risk and without liability or legal exposure to CM@Risk.

11.1.9 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of CM@Risk including but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by CM@Risk or its Suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by CM@Risk to provide the services or protect deliverables to City 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 CM@Risk or its Suppliers.

ARTICLE 12. INSURANCE

1. CM@Risk shall cause each Subcontractor employed by CM@Risk to purchase and maintain primary Commercial General Liability, Workers Compensation, Employers Liability and Automobile insurance with the same coverages and limits as required of CM@Risk by this Contract. All other types of insurance, if any, shall be determined and required as per the terms of CM@Risk's subcontract. Subcontractors shall not be required to procure insurance coverage to meet the insurance requirements under the Agreement to the extent those insurance obligations are satisfied by the implementation of and participation in a Contractor Controlled Insurance Program (hereafter referred to as "CCIP"). Subcontractors shall remain responsible for procuring all insurance coverages required under the Agreement which are not covered by the CCIP or due to CM@Risk's exclusion of a Subcontractor from enrollment.

2. Prior to commencing the work, CM@Risk shall furnish City with certificates of insurance, executed by an authorized representative of each insurer, showing compliance with the contractual insurance requirements set forth in CM@Risk's contract with City.

3. All specifically requested endorsements contractually required of CM@Risk and Subcontractors shall be included with said certificates of insurance (i.e. additional insured and waivers of subrogation). If the requested endorsements are not immediately available, said endorsements shall be provided to City within thirty (30) days, evidencing a Subcontractor's coverage is effective the date of the contract with CM@Risk.

4. Failure by CM@Risk to review a Subcontractor's certificates of insurance and endorsements shall not relieve the CM@Risk from its contractual obligations .

5. Failure of City to request or demand a certificate of insurance or other evidence of full compliance with CM@Risk's contractual insurance requirements or the failure of City to identify deficiency from evidence City is provided shall not be construed as a waiver by City of CM@Risk's obligation to maintain such insurance.

6. Failure of CM@Risk to maintain the contractually-required insurance coverage may result in termination of the Contract, but only after written notice has been provided to CM@Risk and CM@Risk fails to cure the cited defect by purchasing the required insurance within thirty (30) days of the date of the written notice.

7. If CM@Risk or its Subcontractor(s) fails to maintain the insurance requirements set forth in CM@Risk's Contract with City, City shall have the right, but not obligation, to purchase insurance at CM@Risk/Subcontractor's expense.

8. With respect to insurance maintained after final payment by City to CM@Risk, in CM@Risk's compliance with contractual requirements, an additional certificate of insurance evidencing such coverage promptly shall be provided to City when requested.

9. CM@Risk/Subcontractor insurance policies shall provide thirty (30) days notice of cancellation and non-renewal to City and shall be provided by USPS certified mail.

10. Upon written request, City may obtain copies of CM@Risk's insurance policies, as required by the contract.

11. All insurance policies shall be written by an insurance company licensed to conduct business in Texas and shall have a Best Rating of A- VII or better. City reserves the right to approve all insurance companies utilized by CM@Risk.

12. To the extent applicable, the amounts and types of insurance shall conform to the minimum terms, conditions and coverage's of the Insurance Services Office (ISO) policies, forms and endorsements.

13. If CM@Risk has any self-insured retentions or deductibles under the required coverage's, CM@Risk shall, on the certificate of insurance, identify the nature and amount of such self-insured retentions or deductible and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductible shall be CM@Risk's sole responsibility, unless a claim arises out of the sole negligence of City, its agents or employees.

14. CM@Risk's liability policies shall be endorsed to provide cross-liability coverage, if the policy does not already contain such coverage.

15. It is understood and agreed by the Parties hereto the insurance required by CM@Risk's contract with City is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.

16. CM@Risk shall provide Subguard Default Insurance at a fixed rate of 1.4% of the Cost of Work on the Project. CM@Risk shall provide Builders Risk Insurance at a fixed rate of 0.22%

of the Total Guaranteed Maximum Price (hereafter referred to as "GMP") of the Project. Upon receipt of signature of the project's GMP, the CM@Risk shall invoice for the full amount of the Subguard Default Insurance and Builders Risk Insurance with no retainage. Upon completion of the final accounting of the Cost of Work and Total GMP a final invoice (+/-) will be submitted.

17. CM@Risk shall provide a 100% Payment and Performance Bond at a fixed rate of 0.95% of the Total GMP of the Project. Until a GMP is established, CM@Risk shall provide, at no cost to City, a bid bond in the amount of 10% of the projected Construction Cost Limitation to City, prior to the commencement of any Work. Upon receipt of signature of the project's GMP, the CM@Risk shall invoice for the full amount of the payment and performance bond with no retainage. Upon completion of the final accounting of the Cost of Work and Total GMP a final invoice (+/-) will be submitted.

Pre-Construction Phase

During the pre-construction phase of the Project, CM@Risk shall provide Commercial General Liability coverage with total limits of $10 million. Except with respect to limits, this coverage shall comply with the Commercial General Liability Requirements set forth below. Prior to the commencement of significant construction activities, CM@Risk shall implement a CCIP, as set forth below, including Commercial Liability Insurance satisfying all of the requirements set forth below.

Contractor Controlled Insurance Program

- CM@Risk will implement a Contractor Controlled Insurance Program (CCIP).
- CM@Risk shall assume the additional cost associated with the implementation of the CCIP, including the increased expense of any additional safety program required, administrative costs and claims costs.
- The CCIP Administrator shall provide City a Claim Report on a monthly basis, through the duration of the Project.
- CM@Risk shall provide the CCIP at a fixed rate of 1.95% of the Project's Total GMP and, upon finalization of the Project's GMP and the determination of the duration of the Project, shall invoice in the following manner:
    - Upon receipt of signature of the Project's GMP, 50% of the full amount of the CCIP with no retainage shall be invoiced.
    - Subsequent invoices for the remaining 50% shall occur on equal monthly installments for each month of the Project's duration with no retainage withheld until said CCIP costs have been satisfied.
    - Upon completion of the final accounting of the Total GMP, a final invoice (+/-) will be submitted.

The following coverages shall be provided by the CM@Risk through the CCIP or otherwise.

Workers' Compensation Requirements:

Workers' Compensation and Employer's Liability Insurance.

Workers Compensation Statutory Limits

Employers' Liability

Bodily Injury each employee	$1,000,000
Bodily Injury each employee – disease	$1,000,000
Bodily Injury policy period – disease	$1,000,000

Coverage shall include:

- Waiver of subrogation in favor of City and all City subsidiaries, officers, directors, public officials, employees, agents and assigns;

Commercial Automobile Liability Requirements:

CM@Risk shall maintain Commercial Auto Liability covering liability arising out of any auto (including owned, hired, and non-owned, & borrowed autos).

Combined Single Limit(CSL) $1,000,000

Coverage shall include:

- Additional Insured, primary and non-contributing;
- Waiver of subrogation;
- Contractual liability;
- Broadened pollution coverage (CA9948 or equivalent, if applicable);
- Pollution liability which includes upset, overturn and collision
- Motor Carrier Act Endorsement (MCS 90), if applicable.

If Airfield Operations Area (AOA) access is required CSL shall be increased to $5,000,000 for those vehicles.

Commercial General Liability Requirements:

CM@Risk and its Subcontractors shall maintain Commercial General Liability insurance covering all operations by or on behalf of CM@Risk on an occurrence basis against claims for, but not limited to:

- Premises Operations;
- Products Completed Operations;
- Independent Contractors;
- Contractual Liability;
- Personal Injury (including contractual liability);
- Advertising Injury (including contractual liability);
- Broad Form Property Damage (including completed operations);
- Extended Bodily Injury;
- Work Performed by Subcontractors;
- Severability of Interests;
- Work within fifty (50) feet of a railroad, if applicable;
- Work for municipalities, if applicable;

Such insurance shall have the following minimum coverage and limits or the equivalent in umbrella and/or excess coverage:

Each Occurrence $ 5,000,000

General Aggregate	$ 10,000,000
Personal Injury & Advertising Injury	$ 5,000,000
Products & Completed Operations Aggregate	$ 5,000,000

Coverage shall:

- Include dedicated Per Project Aggregate Limit
- Include dedicated Per Location Aggregate Limit
- Include coverage for X (explosion), C (collapse) or U (underground), to include blasting operations if warranted for the project
- Include a waiver of subrogation in favor of City and its subsidiaries, directors, officers, public officials, employees, agents and assigns.
- Include products and completed operations coverage must be in force for a period of at least ten (10) years following this Project (if construction). Evidence of such coverage shall be given to City on an annual basis by certificate of insurance and copy of endorsement.
- Include an additional insured endorsement naming City and its subsidiaries, directors, officers, public officials, employees, agents and assigns.
- Additional insured coverage must be primary and non-contributory.
- Additional insured coverage must include products and completed operations coverage.
- If the additional insured endorsement that CM@Risk and its Subcontractor(s) maintain(s) does not include completed operations coverage, CM@Risk shall purchase this coverage using ISO endorsement CG 20 37 – Additional Insured – Owners, Lessees, or Contractors – Completed Operations.
- If applicable by Project scope, coverage shall not include an exclusion for Exterior Insulation Finish Systems (or similar applications/products) on the policy without notifying City. City reserves the right to require CM@Risk to purchase such coverage if excluded on this policy and necessary for the Project.

Riggers Liability

CM@Risk shall ensure that Riggers Liability is endorsed under the Builders Risk policy.

Umbrella or Excess Coverage:

CM@Risk shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described above, which said umbrella/excess liability coverage being at least as broad as each and every one of the underlying policies. The amounts of insurance required may be satisfied by CM@Risk purchasing the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the $200,000,000 limits specified in the contract.

Coverage shall:

- Be occurrence based form;
- Follow the form of the primary coverage;
- Contain "pay on behalf" wording;
- Endorsed with concurrent effective dates to CM@Risk's primary coverage;
- Contain punitive damage coverage (where said coverage is not prohibited by law);
- Aggregate limits to apply where applicable in primary (i.e. per project and per location);

- Care, Custody and Control to follow form of the primary coverage;
- Waiver of subrogation to follow form of the primary coverage;
- Additional insured to follow form of the primary coverage;
- Contain drop down feature upon exhaustion of the per occurrence or aggregate limit of the underlying policy.

Contractors Pollution Liability

CM@Risk shall maintain a policy covering third-party injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from CM@Risk and its subcontractors' operations and completed operations. Completed operations coverage shall remain in effect for no less than (10) years after the final completion. The limits of coverage shall not be less than:

Limit $5,000,000 each occurrence
$5,000,000 aggregate

Coverage shall:

- Include owner as additional insured
- Retroactive date shall start before the work
- Include mold exposures

Builder's Risk Coverage

CM@Risk shall purchase and maintain builder's risk insurance on the entire work. Such coverage shall be written on the completed value basis and cover the full insurable replacement cost thereof.

Limits: Total limits for full replacement cost
Deductible: Contractor's sole responsibility

Coverage to include:

- All risk of physical loss
- Earthquake & Flood sublimit to be listed as applicable
- Water Intrusion
- Named Windstorm
- Expediting Expense
- Debris removal
- Transit
- Off-site storage
- Standard form of faulty workmanship/design exclusion with ensuing loss exception
- All parties shall sign a Waiver of subrogation
- Permission to occupy
- No coinsurance clause
- Performance/hot testing (until final acceptance)
- Collapse
- Sinkhole
- Soft costs coverage including per sublimit provided by the Owner
- Damage to existing property
- Owner and Subcontractors shall be listed as named insureds to the policy
- Owner shall be listed as Loss Payee to the policy

ARTICLE 13. INDEMNIFICATION

13.1 GENERAL INDEMNIFICATION: CM@Risk, whose professional services are the subject of this Agreement, covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, City and the elected officials, employees, officers, directors, volunteers and representatives of City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal or bodily injury, death and property damage, made upon City directly or indirectly arising out of, resulting from or related to CM@Risk's activities under this Agreement, including any acts or omissions of CM@Risk, any agent, officer, director, representative, employee, Sub-Consultant or Subcontractor of CM@Risk, their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this Article 13 shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death or property damage. IN THE EVENT CM@RISK AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

13.3 The provisions of this **Article XIII** solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CM@Risk shall advise City in writing within twenty four (24) hours of any claim or demand against City or CM@Risk known to CM@Risk related to or arising out of CM@Risk's activities under this Agreement.

ARTICLE 14. NOTICES

14.1 REPRESENTATIVES OF THE PARTIES

14.1.1 City's Designated Representative

City designates the individual listed below or his/her designee as its Senior Representative (hereafter referred to as "City's Senior Designated Representative"), which has the authority and responsibility for avoiding and resolving disputes under the provisions of this Agreement.

Mike Frisbie, P.E., Director
Transportation and Capital Improvements Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

14.1.2 CM@Risk's Designated Representative

CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which has the authority and responsibility for avoiding and resolving disputes under the provisions of this Agreement:

Name: Mike J. Kaiman
Title: Vice President and General Manager
Firm Name: Turner Construction
Address: 1077 Central Parkway South,
Suite 600
San Antonio, Texas 78232

ARTICLE 15. TERMINATION AND SUSPENSION

15.1 TERMINATION WITHOUT CAUSE.

15.1.1 This Agreement may be terminated by City at any time after issuance of the Notice to Proceed for Pre-Construction Services or the Notice to Proceed for Construction Services, either for City's convenience or because of CM@Risk's failure to fulfill the contract obligations. Upon receipt of such notice, CM@Risk's services immediately shall be discontinued (unless the termination notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, shall be delivered to City.

15.1.2 If the Agreement termination is for the convenience of City, following City's inspection and acceptance of CM@Risk's services properly performed prior to the effective date of termination, City promptly shall pay CM@Risk for all services properly performed and all liabilities incurred up to the time of such termination. CM@Risk shall not, however, be entitled to any lost or anticipated profit or to any payment on unperformed services, should City choose to exercise this option to terminate, nor shall CM@Risk be entitled to compensation for any unnecessary or unapproved Work performed during the time between CM@Risk's receipt of City's Notice of Termination and the actual termination date.

15.1.3 If the Agreement termination is due to CM@Risk's failure to fulfill its obligations, City may take over the work and prosecute the same to completion by contract or otherwise. In such event, CM@Risk shall be liable to City for any and all additional costs reasonably and necessarily occasioned to City thereby.

15.1.4 The rights and remedies of City provided in this **Section 15** are in addition to any other rights and remedies provided by law or under this contract.

15.1.5 **DEFAULTS WITH OPPORTUNITY FOR CURE:** Should CM@Risk fail to satisfactorily perform the Pre-Construction Services set out in **Article 3** herein, or comply with any covenant required by the Contract Documents, such failure shall be considered an Event of Default. In such Event of Default, City shall deliver written notice of said default in accordance with the notice provisions contained in this Agreement, specifying the specific Event(s) of Default and the action necessary to cure such defaults. CM@Risk shall have a reasonable period of time of not more than seven (7) calendar days after receipt of the written notice to cure such default.

CM@Risk shall continue working during the seven (7) days to cure such default. If CM@Risk fails to cure the default within such seven-day cure period or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part, as City deems appropriate, and to contract with another CM@Risk or other party to complete the work required by this Agreement. City also shall have the right to offset the cost of said new agreement with a new CM@Risk or other party against CM@Risk's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses. The party not in default of this Agreement must issue a signed, written notice of default and termination (citing this **Section 15.2**) to the other party declaring the other party to be in default and stating the reason(s) why it is in default. Upon receipt of such written notice of default and termination, the party in receipt shall have a period of not more than seven (7) days to cure any failure to perform under this Agreement. Upon the completion of such seven-day period, commencing upon receipt of notice of default termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

15.2 **CM@RISK TERMINATION FOR CAUSE:** Upon the occurrence of any of the events listed in **Article 13** of City's General Conditions or one or more of the following events, and following written notice to CM@Risk given in accordance with the notice provisions contained in this Agreement, City immediately may terminate this Agreement, in whole or in part, "for cause":

15.2.1 CM@Risk, either directly or indirectly through its employees or representatives, makes any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or

15.2.2 CM@Risk violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

15.2.3 CM@Risk fails to cure or initiate steps reasonably calculated to cure a default listed in **Section 9.3** herein, within the time period required for cure; or

15.2.4 CM@Risk materially violates any rule, regulation or law to which CM@Risk is bound or shall be bound under the terms of this Agreement; or

15.2.5 CM@Risk attempts the sale, transfer, pledge, conveyance or assignment of this Agreement, contrary to the terms of the Agreement; or

15.2.6 CM@Risk 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 CM@Risk's assets or properties.

15.3 **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 Agreement shall automatically terminate as of the effective date of such prohibition.

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

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

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

15.4.3 Upon the above conditions being met, City promptly shall pay CM@Risk that proportion of the prescribed fee which the Work and/or services actually performed under this Agreement bear to the total Work and/or services called for under this Agreement, less any and all previous payments of the fee.

15.4.4 City, as a public entity, has a duty to document the expenditure of public funds. CM@Risk acknowledges this duty on the part of City. To this end, CM@Risk understands that failure of CM@Risk to comply with the submittal of the statement and documents, as required above, shall constitute evidence of a waiver by CM@Risk of any and all rights or claims to payment for services performed by CM@Risk under this Agreement.

15.4.5 Failure of CM@Risk to comply with the submittal of the statement and documents as required herein shall constitute evidence of a waiver by CM@Risk of any and all rights or claims to collect monies to which CM@Risk may otherwise be entitled for services performed under this Agreement.

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

15.6 **CLAIMS FOR OUTSTANDING COMPENSATION:** Within forty-five (45) calendar days of the effective date of completion, termination or expiration of this Agreement, CM@Risk shall submit to City its claims, in detail, for any monies owed by City to CM@Risk for services performed under this Agreement through the effective date of termination. Failure by CM@Risk to submit its claims within said forty-five (45) calendar days shall constitute evidence of a Waiver by CM@Risk of any and all right or claims to collect monies CM@Risk rightfully may otherwise be entitled to for services performed pursuant to this Agreement.

15.7 **TERMINATION NOT SOLE REMEDY:** In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity City's right to seek damages from or otherwise pursue CM@Risk for any default hereunder or any other action.

15.8 **SUSPENSION:** The Work may be suspended by City as provided in City's General Conditions; in such case the compensation, as established by this Agreement, may be increased as provided in the General Conditions except that the term "Cost of Performance of the Contract" in the General Conditions shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Phase Fee.

15.8.1 Upon receipt of written Notice of Suspension, which date shall also be the effective date of the suspension, CM@Risk shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed promptly to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.

15.8.2 CM@Risk shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

15.8.3 Copies of all completed or partially completed design, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to City and shall be retained by CM@Risk until such time as CM@Risk may exercise the right to terminate as defined herein.

15.8.4 If a Notice of Suspension is issued by City, CM@Risk may exercises its right to terminate this Agreement as outlined in **Section 15.9.8** herein. If CM@Risk elects to terminate this Agreement and notifies City in writing of its intent via a Notice of Termination, within thirty (30) days after receipt by City of CM@Risk's Notice of Termination, CM@Risk promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the

above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

15.8.5 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.

15.8.6 Upon the above conditions being met, City promptly shall pay CM@Risk that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee, together with all liabilities incurred by CM@Risk as a result of such suspension or termination.

15.8.7 City reserves the right to suspend this Agreement at the end of any phase for the convenience of City by issuing a signed, written Notice of Suspension citing this **Section 15.8,** which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way will guarantee what the total number of days the suspension will occur. Such suspension shall take effect immediately upon receipt of said Notice of Suspension by CM@Risk.

15.8.8 CM@Risk hereby is given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) days. CM@Risk may exercise this right to terminate by issuing a signed, written Notice of Termination, citing this **Section 15.8.8**, to City 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 City. In such event, City promptly shall pay CM@Risk that proportion of the prescribed fee which the Work and/or services actually performed under this Agreement bear to the total Work and/or services called for under this Agreement, less previous payments of the fee, together with all liabilities incurred by CM@Risk as a result of such suspension or termination.

ARTICLE 16. MISCELLANEOUS PROVISIONS

16.1 **DISPUTE RESOLUTION:** All disputes against City that arise from this Agreement and any Project shall be resolved in accordance with the procedures and limitations of Texas Local Government Code Subchapter I, Chapter 271.151et.seq., and City's General Conditions. City designates the Director of Transportation and Capital Improvements or his/her designee as its officer(s) for examining, negotiating and resolving claims and counterclaims. City hereby waives sovereign immunity only in accordance with Section 271.152 of the Local Government Code for its obligations to CM@Risk arising under this Agreement.

16.2 **ASSIGNMENT:** This Agreement is a personal service contract for the services of CM@Risk, and CM@Risk's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without City's written consent.

16.3 **TITLE TO WORK:** Immediately upon the performance of or payment for any part of the Work, as between CM@Risk and City, title thereto shall vest in City; provided, however, the vesting of title shall not impose any obligations on City or relieve CM@Risk of any of its obligations hereunder.

16.4 **AUDIT RIGHTS:** **ARTICLE 15, The Right to Audit Contractor's Record** in City's General Conditions is superseded by the following provision: CM@Risk agrees that City may review any and all Work performed by CM@Risk under this Agreement. City is granted the right to audit, at City's election, all of the records and billings related to performance of this Agreement. CM@Risk agrees to retain such records for a minimum of four (4) years following completion of this Agreement. Any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to City's rights as may be disclosed by such audit."

16.5 The following supplements **Section 3.4 LABOR AND MATERIAL** of City's General Conditions: Records of expenses pertaining to 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 City or City's authorized representative on reasonable notice.

16.6 **TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION:** Pursuant to Section 231.006, Texas Family Code, CM@Risk certifies that it is eligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

16.7 **FRANCHISE TAX CERTIFICATION:** As corporation or limited liability company, CM@Risk certifies that: 1) it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code; or 2) that the corporation or limited liability company is exempt from the payment of such taxes; or 3) 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.

16.8 **PAYMENT OF DEBT OR DELINQUENCY TO CITY:** It is the policy of City that any person or entity doing business with City shall, at all times, remain in financial good standing with all City Departments. In that regard, CM@Risk warrants that it has no outstanding obligations to any City Department at the time of the execution of this Agreement and hereby covenants that it timely will 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 Agreement, or CM@Risk's operation under this Agreement.

16.9 **CONTRACT DOCUMENTS; MERGER:** The Agreement Documents form the entire and integrated Contract Agreement between City and CM@Risk and supersede all prior negotiations, representations or agreements, written or oral. This Agreement 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 CM@Risk and City.

16.10 **CAPTIONS:** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

16.11 **GOVERNING LAW AND VENUE**: This Agreement 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 Agreement or the Project in which City is a party.

16.12 **WAIVERS:** Except for the Claims and Disputes Provision in City's 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 Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

16.13 **SUCCESSORS AND ASSIGNS**: This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

16.14 **RECORDS**: Records of CM@Risk's costs, reimbursable expenses pertaining to the Project and payments shall be available to City or its authorized representative during normal business hours and shall be retained for four (4) years after final Payment to CM@Risk or CM@Risk's termination and/or abandonment of the Project, unless City otherwise instructs CM@Risk in writing.

16.15 **NOTICES:** In addition to the written Notice Provision in City's 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 CM@Risk or City 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; transmitted by fax machine to the last know business fax number of the designated representative or sent via electronic mail (e-mail) to the last known e-mail address. 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. E-mail is deemed effective at the time sent. Notices of claims or disputes or other legal notices required by this Agreement 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
Transportation and Capital
Improvements Department
Attention: Debbie Sittre, Assistant
Director
P. O. Box 839966
San Antonio, Texas 78283-3966

If to CM@Risk:
Turner Construction
Attn.: Mike J. Kaiman
Vice President and General
Manager
1077 Central Parkway
South,
Suite 600
San Antonio, Texas 78232

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

16.17 **ILLEGAL DUMPING:** CM@Risk shall ensure that it and all of its Sub-Consultants, Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

16.18 **EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION:** CM@Risk shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

16.19 **INDEPENDENT CONTRACTOR:** In addition to the Independent Contractor Provision in City's General Conditions, CM@Risk is an independent Contractor and not an agent of City. CM@Risk shall be liable to City for acts and omissions of CM@Risk and CM@Risk's Sub-Consultants, Subcontractors and Suppliers of any tier, and their agents, employees and parties in privy of this Agreement with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work, directly or indirectly, under contract with CM@Risk, including any design professionals and their consultants and Sub-Consultants of any tier, to the extent of its liability for same.

16.20 **SUB-CONSULTANT AND SUBCONTRACTOR CONTRACT REQUIREMENTS:** In addition to the Sub-Contractual Relations Provision in City's General Conditions, CM@Risk shall require each Sub-Consultant and Subcontractor, to the extent of the Work to be performed by the Sub-Consultant and Subcontractor, to be bound to CM@Risk by the terms of the Contract Documents and to assume, toward CM@Risk, all the obligations and responsibilities that CM@Risk, by these Documents, assumes toward City. Each sub-consultant and subcontract agreement shall preserve and protect the rights of City under the Contract Documents, with respect to the Work to be performed by the Sub-Consultant and Subcontractor, so that sub-consulting and subcontracting thereof will not prejudice such rights. Where appropriate, CM@Risk shall require each Sub-Consultant and Subcontractor to enter into similar agreements with its sub-Sub-Consultants and sub-Subcontractors. CM@Risk shall make available to each proposed Sub-Consultant and Subcontractor, prior to the execution of a Subconsultant and/or Subcontract agreement, copies of the Contract Documents to which the Subconsultant and/or Subcontractor will be bound, and, upon written request of the Subconsultant or Subcontractor, identify to the Sub-Consultant and/or Subcontractor terms and conditions of the proposed sub-consultant and subcontract agreement that may be at variance with the Contract Documents. Sub-Consultants and Subcontractors similarly shall make copies of applicable portions of such documents available to their respective proposed sub-Sub-Consultants and sub-Subcontractors. CM@Risk shall provide City with a copy of each Sub-Consultant and Subcontractor agreement, upon request.

ARTICLE 17. INTEREST IN CITY CONTRACTS PROHIBITED

17.1 In addition to the **Officers or Employees of City Not to Have Financial Interest in Any Contract of City** provision in City's General Conditions: No officer or employee of City shall have a financial interest, directly or indirectly, in any contract with City, or shall be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to 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.

17.2 CM@Risk acknowledges that it is informed that the Charter of City and its Ethics Code prohibit a City officer or employee, as those terms are defined in City's Ethics Code, from having a financial interest in any contract with City or any City agency, such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to 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 Subconsultant or Subcontractor on a City contract, a partner or a parent or subsidiary business entity.

17.3 CM@Risk warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents neither are officers nor employees of City. CM@Risk further warrants and certifies that is has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

17.4 CM@Risk must disclose if it is 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 City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with City official or employee, having a contract with City official or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a City official or employee also owns at least 10%, or having an established business relationship with a City official or employee as client or customer.

ARTICLE 18. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

18.1 By execution of this Agreement, the undersigned authorized representative of Consultant certifies, and the City relies thereon, that neither Consultant., nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department; "Principals", for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

18.2 Consultant shall provide immediate written notice to City, in accordance the notice provisions of this Agreement, if, at any time during the term of this Agreement, including any renewals hereof, Consultant learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

18.3 Consultant's certification is a material representation of fact upon which the City has relied in entering into this Agreement. Should City determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the City may terminate this Agreement in accordance the terms of this Agreement.

ARTICLE 19 AIRPORT SECURITY

19.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it. Consultant is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history

record checks, as the Aviation Director, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Consultant must promptly report any information in accordance with those regulations promulgated by the FAA, the TSA and the City. Consultant must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement.

19.2 Consultant must comply with, and require compliance by its Subcontractors, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Aviation Director, Consultant must adopt procedures to control and limit access to the Airport Premises utilized by Consultant and its Subcontractors in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Consultant must have in place and in operation a security program for the Airport Premises utilized by Consultant that complies with all applicable laws and regulations. All employees of Consultant that require regular access to sterile or secure areas of the Airports must be badged in accordance with City and TSA rules and regulations.

19.3 Gates and doors located in and around the Airport Premises utilized by Consultant that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Consultant at all times when not in use, or under Consultant 's constant security surveillance. Gate or door malfunctions must be reported to the Aviation Director or the Aviation Director's designee without delay and must be kept under constant surveillance by Consultant until the malfunction is remedied.

19.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing. Consultant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

ARTICLE 20. SBEDA COMPLIANCE PROVISIONS

A. SBEDA Program

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

expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

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

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

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

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

attainment of S/M/WBE utilization goals, and CM@Risk and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Contractors or Respondents.

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

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

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

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

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

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

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

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

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

> African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
>
> Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
>
> Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
>
> Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

Payment – dollars actually paid to CM@Risk and/or Subcontractors and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

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

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio

Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

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

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

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

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

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

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

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

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

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

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

Subcontractor – any vendor or Contractor that is providing goods or services to a Prime CM@Risk or Contractor in furtherance of the Prime CM@Risk's performance under a contract or purchase order with the City. A copy of each binding agreement between CM@Risk and its Subcontractors shall be

submitted to City prior to execution of this contract agreement and any contract modification agreement.

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

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

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

C. SBEDA Program Compliance – General Provisions

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

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

2. CM@Risk shall cooperate fully with any City or SBO investigation (and

shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CM@Risk or its Subcontractors or suppliers;

3. CM@Risk shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CM@Risk shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CM@Risk's Subcontractor/Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CM@Risk to replace the Subcontractor/Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CM@Risk of work previously designated for performance by Subcontractor or Supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or Suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CM@Risk shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.

6. CM@Risk shall retain all records of its Subcontractor payments for this contract for a minimum of four (4) years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in CM@Risk's Subcontractor/Supplier Utilization Plan, CM@Risk shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and CM@Risk and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 1. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Contractor affirms that if it is presently certified as an SBE, Contractor agrees not to subcontract more than 49% of the contract value to a non-SBE firm, **and**

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is also being awarded pursuant to the M/WBE Subcontracting Program. CM@Risk agrees to subcontract at least **nineteen percent (19%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor/Supplier Utilization Plan which CM@Risk submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CM@Risk on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CM@Risk to attain this Subcontractor goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law, **and**

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. Contractor agrees to subcontract at least **two percent (2%)** of its prime contract value to certified African American Business Enterprise (AABE) firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This two percent (2%) subcontracting goal will also count toward the aforementioned nineteen percent (19%) M/WBE subcontracting goal. The Subcontractor / Supplier Utilization Plan that Contractor submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified AABE Sub-contractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each AABE Sub-contractor, and documentation including a description of each AABE Sub-contractor's scope of work and confirmation of each AABE Sub-contractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this subcontracting goal for AABE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon AABE subcontracting goal, and/or shall be subject to any

other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 19% and AABE subcontracting goal of 2% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system for the month of August 2014, African-American owned firms represent approximately 2.51% of available sub-contractors, Hispanic-American firms represent approximately 17.10%, Asian-American firms represent approximately 1.09%, Native American firms represent approximately 0.32%, and Women-owned firms represent approximately 5.01% of available construction sub-contractors.

E. Commercial Nondiscrimination Policy Compliance

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

F. Prompt Payment

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

G. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of CM@Risk or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon City Council approval).

---------- *Signature Page to Follow* ----------

BY THEIR SIGNATURES BELOW, the respective and represented parties have executed and bound themselves to this Agreement as of the_____ day of _____, 2015.

CITY OF SAN ANTONIO, TEXAS

By: _____
Sheryl Sculley
City Manager

TURNER CONSTRUCTION COMPANY

By: _____
Mike J. Kaiman
Vice President and General Manager

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A – SURETY AND PAYMENT AND PERFORMANCE BOND FORMS

SURETY BOND

Surety Bond No._____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____§

That we,_____., as Principal, and_____, as Surety, are hereby held and firmly bound unto City OF SAN ANTONIO as Obligee in the penal sum of $_____ Percent (__%) of _____ the Construction Cost Limitation (CCL) for the Project, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Whereas the Principal has submitted a proposal in response to a Request for Proposals dated November 1, 2010 for a Construction Manager at Risk, for **the Renovation and Expansion of the Commercial Federal Inspection Station Facility at San Antonio International Airport Project, Project No. 33-00096**, (the "Project").

Whereas, the Agreement allows the Work to be performed in incremental components of the Work (each, individually, a "Work Package") with the scope of Work and an Approved Fixed Price Proposal to be established for each such Work Package, and further requires the Principal to provide Performance and Payment Bonds in the amount of 100% of each such Fixed Price Proposal within 10 days after the approval of each Fixed Price Proposal and prior to the Notice to Proceed for each Work Package.

NOW THEREFORE, the condition of this obligation is such that, if a fixed contract amount or Guaranteed Maximum Price (GMP) has not been determined at the time the contract is awarded the penal sums of the performance and payment bonds required to be delivered to the governmental entity must each be in the amount of _____ and No/100 Dollars ($_____), an amount equal to the Construction Cost Limitation, as specified in the request for qualifications **unless** the Construction Manager at Risk furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established. When the aforesaid Principal furnishes the Performance and Payment Bonds, after a Guaranteed Maximum Price is established, as required by the Contract, to secure the performance of the terms and conditions of the Contract, then this obligation shall be null and void; otherwise the principal and surety shall pay unto the Obligee the penal sum hereof.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals this _____day _____ of in the year_____, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

_____
Principal

ATTEST:

By:_____

By: _____

_____
(Typed Name and Title)

_____
(Typed Name and Title)

(SEAL)

_____
Surety

ATTEST:

By:_____

By: _____

_____
(Typed Name and Title)

_____
(Typed Name and Title)

(SEAL)

_____
Surety

PAYMENT BOND

STATE OF TEXAS)
COUNTY OF BEXAR) Know all men by these presents:
CITY OF SAN ANTONIO)

1. That we _____, as Principal,
and _____
as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of $_____ 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

_____

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 **the Renovation and Expansion of the Commercial Federal Inspection Station Facility at San Antonio International Airport Project, Project Number: 33-00096**

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 City, nor by the exercise or failure to exercise by or on behalf of 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 _____.

_____
(_____)

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 _____, as Principal,
and _____,
as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of $_____ 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

_____

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 the **Renovation and Expansion of the Commercial Federal Inspection Station Facility at San Antonio International Airport Project, Project Number: 33-00096**

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 City, nor by the exercise or failure to exercise by or on behalf of 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 _____.

_____

(_____)

By:_____

(Typed Name) _____

_____
(Surety)

By:_____

(SEAL)

(Typed Name) _____

_____

_____
Address of Surety for Service Purposes

EXHIBIT B – PROJECT DEFINITION

To be incorporated at a later date after execution of the Agreement.

EXHIBIT C –PRE-CONSTRUCTION SERVICES FEE BY TASK

The Pre-construction Fee includes all preconstruction services required pursuant to the Agreement including estimating services, procurement services, scheduling services, community outreach and delivery of GMP for execution.

The Pre-construction Fee, broken down by task, is as follows:

Fixed Price for Services Provided During Schematic Design Phase	$14,500
Fixed Price for Services Provided During Design Development Phase	$20,000
Fixed Price for Delivery of a Guaranteed Maximum Price Phase	$25,000
Total Preconstruction Fee	**$59,500.00**

EXHIBIT D – SUBMITTAL REQUIREMENTS FOR THE GMP

The proposed Cost of the Work will be developed as set out herein.

The Stipulated Sum proposal must be submitted in a binder and entitled, "Proposal for the Cost of the Work for the Renovation and Expansion of the Commercial Federal Inspection Station Facility at San Antonio International Airport Project, Project Number: 33-00096, and must include a date on the cover. Proposal pages must be numbered. Proposals must include all specified items and components of the GMP as required by the Agreement, Sections must be divided by tabs for ease of reference. Please include:

- transmittal letter
- table of contents

Tab 1 Executive Summary – brief general summary

Tab 2 A list of Drawings and Specifications and any other Contract Documents upon which the proposed prices were based.

Tab 3 Description of Variations, Substitutions proposed to the Drawings and Specifications

- Specification listing – provide a detailed listing of Specifications by division and section, which describes exclusions, substitutions, modifications, etc. If no changes are proposed for a particular section, insert "as per specifications"
- Qualifications and Assumptions – a narrative summary of all qualifications and assumptions included in the Specification listing
- Exclusions – a summary of all exclusions included in the Specification listing, plus any exclusions not related to the Specifications
- Value Engineering recommendations – if applicable
- Allowance Schedule – if applicable

Tab 4 Proposed Cost of Work Breakdown:

- Estimated Cost of the Work shall be broken down into the standard 16 CSI Divisions and such sections as directed by City prior to the submission of the GMP Proposal
- Cost breakdown will be a lump sum for each Division and section with information on proposed Subcontractors and pricing supporting such costs, to include a schedule of Unit Prices if applicable.

Tab 5 Proposed Indirect Costs Breakdown

- Construction Fee and General Conditions each as a percentage of the Cost of Work
- Cost break down for Payment and Performance Bonds, Builder's Risk Insurance, General Liability Insurance, and applicable Sales Tax

Tab 6 Progress Schedule

- The Progress Schedule for the GMP Proposal must include detailed activities for all events, milestones, and Substantial Completion dates included in Construction Phase.
- Additionally, the Progress Schedule update must include detailed, logic driven activities for all Construction Phase activities
- All paths in the Progress Schedule must lead to milestone activities to ultimately achieve Substantial Completion on or before the Milestone for Substantial Completion.
- If applicable, a Schedule of Values based on the timeline in the Progress schedule.
- The Progress Schedule must be provided in hard copy form in the binder and also in an electronic format attached to the binder.

Tab 7 SBEDA Plan

EXHIBIT E – SUBMITTAL REQUIREMENTS FOR FIXED PRICE PROPOSALS

CM@Risk will first submit one copy of the Fixed Price Proposal submittal for review. Two copies will be requested by the Transportation and Capital Improvements (TCI) Department prior to contract execution.

Table of Contents:

1. Scope of Work
2. Summary of the Fixed Price Proposal
3. Schedule of Values – summary spreadsheet and backup documents
4. List of Plans and Specifications used for Fixed Price Proposal
5. List of clarification and assumptions
6. Project Schedule
7. SBEDA required documents

1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that CM@Risk and City must be aware of pertaining to the scope (normally one paragraph is sufficient.)

2. A summary of the Fixed Price Proposal with a total for each of the components of the Fixed Price Proposal as listed in its definition in **Article 1** herein, as shown in the table below:

The general conditions fee includes bond and insurance cost. All costs should be listed individually for future use. **(CM@Risk shall not acquire bond or insurance until notified by the TCI Department.)**

PROJECT #: **DATE:**
PROJECT NAME:

FPP Summary				**AMOUNT**
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			$
				$
B.	Total Cost of Work			$
INDIRECT COSTS			RATE	
C.	Construction Fee			$
D.	General Conditions			$
E.	Payment and Performance Bond	$		
F.	Builder's Risk Insurance	$		
G.	General Liability Insurance	$		
H.	Sales Taxes			$0.00
		I. TOTAL FPP		**$**
		J. City-Controlled Contingency		**$**
		K. Total:		**$**

Formulas:

Total **FPP**: A+B+C+D+E+F+G+H = I

Dollar Amounts for C & D are calculated by multiplying the rate by the total cost of the work.
Dollar Amounts for E, F, G and H are calculated by multiplying the rate by the total contract amount.

3. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and CM@Risk's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.

4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the Fixed Price Proposal. The plans used for the Fixed Price Proposal must be date stamped and signed by CM@Risk, Design Consultant and Project Manager using the format below.

Plans Used For Preparation of Fixed Price Proposal No. ____

CM@Risk	Date
Design Consultant	Date
Project Manager	Date

5. A list of the clarifications and assumptions made by CM@Risk in the preparation of the Fixed Price Proposal, to supplement the information contained in the documents.

6. A Critical Path Method (CPM) diagram construction schedule.

7. SBEDA required documents.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final Fixed Price Proposal submittal will consist of the following:

1. Two (2) copies of the Fixed Price Proposal.

2. One (1) copy of the plans and technical specifications used to arrive at the Fixed Price Proposal (signed by Design Consultant, CM@Risk and Project Manager).

For questions regarding the submittal requirements, kindly contact the Transportation and Capital Improvements Department at (210) 207-2121.

EXHIBIT F – CM@RISK SUBMITTED AND CITY APPROVED FIXED PRICE PROPOSALS

EXHIBIT G – GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

TABLE OF CONTENTS

ARTICLE I. GENERAL PROVISIONS 5

1.1 CONTRACT DEFINITIONS 5
1.2 PRELIMINARY MATTERS 10
1.3 CONTRACT DOCUMENTS 11

ARTICLE II. OWNER 15

2.1 GENERAL 15
2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER 15

ARTICLE III. CONTRACTOR 17

3.1 GENERAL 17
3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR 17
3.3 SUPERVISION AND CONSTRUCTION PROCEDURES 19
3.4 LABOR AND MATERIALS 20
3.5 WARRANTY 24
3.6 TAXES 27
3.7 PERMITS, FEES AND NOTICES 27
3.8 ALLOWANCES 28
3.9 SUPERINTENDENT 28
3.10 CONTRACTOR'S PROJECT SCHEDULES 29
3.11 DOCUMENTS AND SAMPLES AT THE SITE 39
3.12 SHOP DRAWINGS, PRODUCE DATA AND SAMPLES 40
3.13 USE OF SITE 42
3.14 CUTTING AND PATCHING 43
3.15 CLEANING UP 44
3.16 ACCESS TO WORK 44
3.17 PATENT FEES AND ROYALTIES 44
3.18 INDEMNITY PROVISIONS 45
3.19 REPRESENTATIONS AND WARRANTIES 48
3.20 BUSINESS STANDARDS 49

ARTICLE IV. ADMINISTRATION OF THE CONTRACT 49

4.1 DESIGN CONSULTANT 49
4.2 ROLES ADMINISTRATION OF THE CONTRACT 49
4.3 CLAIMS AND DISPUTES 51
4.4 RESOLUTION OF CLAIMS AND DISPUTES 57
4.5 ALTERNATIVE DISPUTE RESOLUTION 59

ARTICLE V. SUBCONTRACTORS 60

5.1 DEFINITION 60
5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK 60
5.3 SUB-CONTRACTUAL RELATIONS 61
5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS 62

ARTICLE VI. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS 62

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS 62
6.2 MUTUAL RESPONSIBILITY 63
6.3 OWNER'S RIGHT TO CLEAN UP 64

ARTICLE VII. CHANGES IN THE WORK 64

7.1 GENERAL 64
7.2 CHANGE ORDERS 64
7.3 FIELD WORK DIRECTIVES 65
7.4 MINOR CHANGES TO THE WORK 67
7.5 TIME REQUIRED TO PROCESS CHANGE ORDERS 67

ARTICLE VIII. TIME 68

8.1 PROGRESS AND COMPLETION 68
8.2 DELAYS AND EXTENSIONS OF TIME 68

ARTICLE IX. PAYMENTS AND COMPLETION 69

9.1 CONTRACT SUM 69
9.2 SCHEDULE OF VALUES 70
9.3 APPLICATIONS FOR PAYMENT 70
9.4 PAY APPLICATION APPROVAL 71
9.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT 72
9.6 PROGRESS PAYMENTS 73
9.7 SUBSTANTIAL COMPLETION 74
9.8 PARTIAL OCCUPANCY OR USE 75
9.9 FINAL COMPLETION AND FINAL PAYMENT 76

9.10 ADDITIONAL INSPECTIONS 77

ARTICLE X. PROTECTION OF PERSONS AND PROPERTY 77

10.1 SAFETY PRECAUTIONS AND PROGRAMS 77
10.2 SAFETY OF PERSONS AND PROPERTY 79
10.3 EMERGENCIES 81
10.4 PUBLIC CONVENIENCE AND SAFETY 81
10.5 BARRICADES, LIGHTS AND WATCHMEN 82
10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED 82
10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS 82
10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER/ELECTRICITY FOR THE PROJECT/WIRELESS ACCESS 83
10.9 USE OF FIRE HYDRANTS 83
10.10 ENVIRONMENTAL COMPLIANCE 83

ARTICLE XI. INSURANCE AND BONDS 85

11.1 CONTRACTOR'S LIABILITY INSURANCE 85
11.2 PROPERTY INSURANCE 86
11.3 PERFORMANCE BOND AND PAYMENT BONDS 87
11.4 'UMBRELLA' LIABILITY INSURANCE 89
11.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS 89

ARTICLE VII. INSPECTING, UNCOVERING AND CORRECTING OF WORK 92

12.1 INSPECTING WORK 92
12.2 UNCOVERING WORK 92
12.3 CORRECTING WORK 92
12.4 ACCEPTANCE OF NONCONFORMING WORK 94

ARTICLE XIII. COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION .. 94

13.1 FINAL COMPLETION OF CONTRACT 94
13.2 WARRANTY FULFILLMENT 94
13.3 TERMINATION BY THE OWNER FOR CAUSE 95
13.4 TEMPORARY SUSPENSION OF THE WORK 98

ARTICLE XIV. MISCELLANEOUS PROVISIONS 99

14.1 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY 99
14.2 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS 99
14.3 SUCCESSORS AND ASSIGNS 99
14.4 WRITTEN NOTICE 99
14.5 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER 99

14.6 INTEREST 100

14.7 INDEPENDENT MATERIALS TESTING AND INSPECTION 100

14.8 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER 100

14.9 VENUE 101

14.10 INDEPENDENT CONTRACTOR 101

14.11 NONDISCRIMINATION 101

14.12 GIFTS TO PUBLIC SERVANTS 101

ARTICLE XV. AUDIT 102

15.1 RIGHT TO AUDIT CONTRACTOR'S RECORDS 102

ARTICLE XVI. ATTORNEY FEES 102

SPECIAL CONDITIONS FOR HORIZONTAL PROJECTS 104

GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

ARTICLE I. GENERAL PROVISIONS

1.1 CONTRACT DEFINITIONS

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

1.1.1 **"ALTERNATE"** means a variation in the Work in which Owner requires a price separate from the Base Bid. If an Alternate is accepted by Owner, the variation shall become a part of the Contract through award of the Contract and the Base Bid shall be adjusted to include the amount quoted as stated in the Notice of Award to Contractor. If an Alternate is accepted by Owner, and later deleted, Owner shall be entitled to a credit in the full value of the Alternate as priced in Contractor's Bid Proposal.

1.1.2 **"AMENDMENT"** is a written modification of the Contract prepared by Owner or Design Consultant and signed by Owner and Contractor, (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Work (specifically the services) or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.

1.1.3 **"BASE BID"** is the price quoted for the Work before Alternates are considered.

1.1.4 **"CHANGE ORDER"** refer to **Article VII** herein for definition.

1.1.5 **"CITY COUNCIL"** means the duly elected members of the City Council of the City of San Antonio, Texas.

1.1.6 **"CONSTRUCTION OBSERVER/INSPECTOR** (hereafter referred to as "COI") is the authorized representative of the Director of Transportation and Capital Improvements (hereafter referred to as "TCI"), or its designee department, assigned by Owner to observe and inspect any or all parts of the Project and the materials to be used therein. Also referred to herein as Resident Inspector.

1.1.7 **"CONTRACT"** means the Contract Documents which represent the entire and integrated agreement between Owner and Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only in writing by a Field Work Directive, Change Order or Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind between:

(1) Design Consultant and Contractor;

(2) Owner and a Subcontractor or Sub-Subcontractor; or

(3) any persons or entities other than Owner and Contractor.

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

(1) General Conditions;

(2) Vertical and/or Horizontal specific General Conditions and Special Conditions included by Special Provisions or addenda;

(3) Drawings;

(4) Specifications;

(5) addenda issued prior to the close of the solicitation period; and

(6) other documents listed in the Contract, including Field Work Directives, Change Orders and/or Amendments;

(7) a written order for a minor change in the Work issued by Design Consultant and/or Owner, as described in **Article VII** herein.

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

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

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

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

1.1.12 **"DEPARTMENT"** means the Department of Transportation and Capital Improvements (hereafter referred to as "TCI"), City of San Antonio, Texas or Director of TCI.

1.1.13 **"DESIGN CONSULTANT"** unless the context clearly indicates otherwise, means an Engineer, Architect or other Design Consultant in private practice, licensed to do work in Texas and retained for a specific project under a contractual agreement with Owner.

1.1.14 **"DRAWINGS"** (also referred to herein as **"Plans"**) are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of Work, generally including elevations, sections, details, schedules and diagrams.

1.1.15 **"FIELD WORK DIRECTIVES" OR "FORCE ACCOUNT"** is a written order signed by Owner directing a change in the Work prior to agreement an adjustment, if any, in the Contract Sum and/or Contract, as further defined in **Section 7.3** herein.

1.1.16 **"HAZARDOUS SUBSTANCE"** is defined to include the following:

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

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

(c) radon;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 PRELIMINARY MATTERS

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

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

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

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

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

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

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

1.3 CONTRACT DOCUMENTS

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

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

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

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

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

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

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

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

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

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

(4) General Conditions and Supplemental Conditions;

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

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

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

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

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

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

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

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

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

3. Special Conditions;

4. General Conditions;

5. Special Provisions (Horizontal Projects);

6. Specifications;

7. Drawings;

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

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

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

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

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

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

ARTICLE II. OWNER

2.1 GENERAL

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

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

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER

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

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

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

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

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

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

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

ARTICLE III. CONTRACTOR

3.1 GENERAL

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

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

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

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

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

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

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

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

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

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

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

3.2.3 Any design errors or omissions noted by Contractor during its review promptly shall be reported to Owner, but it is recognized that the Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain if Contact Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to Contractor promptly shall be reported both to Owner and Design Consultant.

3.2.4 If Contractor believes additional cost or time is involved because of clarifications or instructions issued by Design Consultant, in response to the Contractor's Notices or Requests for Information, Contractor shall make Claims as provided in **Section 4.3.6** and **Section 4.3.7** herein. If Contractor fails to perform the obligations of **Section 3.2.1** and **Section 3.2.2** herein, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had performed such obligations. Contractor shall not be liable to Owner or Design Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents, unless Contractor recognized or should have recognized such error, inconsistency, omission or differences and knowingly failed to report it to Owner and Design Consultant, as required by this **Section 3.2.4**.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

3.3.3 Contractor shall be responsible for inspection of portions of Work already performed, to determine which such portion are in proper condition to receive subsequent Work.

3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq.

3.3.5 It is understood and agreed the relationship of Contractor to Owner shall be of an independent contractor. Nothing contained or inferable in the Contract documents shall be read, deemed or construed to make Contractor the agent, servant or employee of Owner or create any partnership, joint venture or other association between Owner and Contractor. Any direction or instruction by Owner, in respect of the Work, shall relate to the results the Owner desires to obtain from the Work and shall in no way affect Contractor's independent contractor status, as described herein.

3.3.6 Contractor shall review Subcontractor(s) written safety programs, procedures and precautions in connection with performance of the Work. However, Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations and ordinances, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this **Section 3.4.6** are not intended to impose upon Contractor any additional obligations Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations or statutes pertaining to the Occupational Safety and Health Administration.

3.4 Labor and Materials

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

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

3.4.3 SUBSTITUTIONS

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

(a) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing;

(b) specified products are unavailable through no fault of Contractor; and

(c) when in the judgment of Owner or Design Consultant, a substitution substantially would be in Owner's best interests in terms of cost, time or other considerations.

3.4.3.2 Contractor shall submit to Owner and Design Consultant:

(a) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating

procedures and other like information necessary for a complete evaluation of the substitution;

(b) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and to the Work, in the event the substitution is acceptable to Owner;

(c) the adjustment, if any, in the Contract Sum;

(d) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and

(e) in the event of a substitution under **Section 3.4.2.1** herein, an affidavit stating:

(1) Contractor's proposed substitution conforms to and meets all the requirements of the pertinent Specifications and requirements shown on the Drawings; and

(2) Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by Design Consultant.

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

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

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

3.4.4 Contractor shall, at all times, enforce strict discipline and good order among persons working on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the assigned work. Contractor shall be liable for and responsible to Owner for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone who Contractor may allow to perform any Work on the Project and their respective officers, agents, employees, and Consultants who Contractor may allow to come on the job site, with the exception of Owner or Owner's Designee. Owner, at any time, for any reason or for no reason, may direct Contractor to remove any employee, Subcontractor, material supplier or anyone else from the Project and Contractor promptly shall comply with Owner's direction. In addition, if Contractor receives written notice from Owner complaining about any Subcontractor, employee or anyone who is a hindrance to proper or timely execution of the Work, Contractor shall remedy such complaint without delay to the Project and at no additional cost to Owner. This provision shall be included in all contracts between the Contractor and all Subcontractors of all tiers.

3.4.5 Contractor recognizes and acknowledges that the Project Site is a public facility representing the City of San Antonio. As such, Contractor shall prohibit the possession or use of alcohol, controlled substances, tobacco and any prohibited weapons on the Project Site and shall require appropriate dress of Contractor's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Contractor or any Subcontractor, employees or Consultants of Owner or any visitor to the site by employees of Contractor or a Subcontractor strictly is forbidden. Any employee of Contractor or a Subcontractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Contractor, including removal from the Project Site.

3.4.6 Contractor only shall employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project.

3.4.7 All materials and installed equipment shall be as specified in the Contract Documents, and if not specified, shall be of good quality and shall be new, except as otherwise provided in the Contract Documents. If required by Owner or Design Consultant, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment installed. Contractor may make substitutions only with the consent of Owner, after Contractor's compliance with **Section 3.4.2** herein.

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

3.4.9 Contractor shall procure and furnish to Owner all guarantees, warranties, spares and maintenance manuals called for by the Specifications or which normally are provided by a manufacturer. The maintenance manual shall include a catalog for any equipment, materials, supplies or parts used in the inspection, calibration, maintenance or repair of the equipment and items in the catalog shall be readily available for purchase.

3.4.10 During construction of the Work and for four (4) years after final completion or longer if, during the duration of this Contract or during the four (4) years after the final completion of the Work, a dispute between any parties to this Project exists, Contractor shall retain and shall require all Subcontractors to retain for inspection and audit by Owner all books, accounts, reports, files, time cards, material invoices, payrolls and evidence of all other direct or indirect costs related to the bidding and performance of this Work. Upon request by Owner, a legible copy or the original of any or all such records shall be produced by Contractor at the administrative office of Owner. To the extent that it requests copies of such documents, Owner shall reimburse Contractor and its Subcontractors for copying costs. Contractor shall not be required to keep records of or provide access to the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers.

3.5 Warranty

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

3.5.2 A right of action by Owner for any breach of Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Contract at law or in equity, regarding any defective Work.

3.5.3 The warranty provided in **Section 3.5.1** herein shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Such warranty shall be interpreted to require Contractor, upon written timely demand by Owner, to replace defective materials and equipment and re-execute any defective Work disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the applicable Work or, in the event of a latent defect, within one (1) year after discovery thereof by Owner.

3.5.4 All warranties shall be assignable by Owner. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

3.5.5 Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law or by manufacturer, all warranties shall be at minimum for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to Owner. Owner and Contractor acknowledge that the Project may involve construction work on more than one (1) building or section of infrastructure of Owner's. Each building, section of infrastructure or approved phase of each section of infrastructure may have its own separate and independent date of Substantial Completion or Final Completion. If separate dates for Substantial Completion and Final Completion are granted by Owner, Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion and dates upon which the one (1) year warranty on each building, phase or section of infrastructure that achieved Substantial Completion shall expire. If separate dates are granted, Contractor agrees to provide notice of the warranty expiration date(s) to Owner and Design Consultant at least one (1) month prior to the expiration of the one (1) year warranty period on each building, section of infrastructure or each phase of the section of infrastructure which has achieved Substantial Completion. Prior to termination of any one (1) year warranty period, Contractor shall accompany Owner and Design Consultant on re-inspection of the building, section of infrastructure or phase of the section of infrastructure and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building, section of infrastructure or phase of the section of infrastructure observed and/or reported during the re-inspection. For extended warranties required by the Contract Documents, Owner shall notify Contractor of deficiencies and Contractor shall start remedying these defects within seven (7) calendar days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by Owner and Design Consultant, even though such prosecution may extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date and conduct the required walk through with Owner, Contractor's warranty obligations described in this **Section 3.5.5** shall continue until such inspection is conducted and any deficiencies found in the inspection is corrected.

3.5.6 Warranties shall become effective on a date established by Owner in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment and those occurrences addressed in **Section 3.5.4** herein. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to Final Completion shall become effective on the later of the date the Work is completed or corrected and accepted by Owner and Design Consultant or the date of final completion of the Work.

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

3.5.8 Contractor agrees to assign to Owner, at the time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties, provided that such assignment shall contain a reservation of Contractor's right also to enforce the manufacturer's warranties. As a condition precedent to final payment, Contractor shall prepare a notebook with reference tabs and submit three (3) copies of the notebook to Owner that includes a complete set of warranties from Subcontractors, manufacturers or suppliers, as appropriate, and executed by and between Contractor and Owner, as required under this Agreement, with a specified warranty commencement date, as required by the Contract Documents. Copies of the complete set of warranties from Subcontractors, manufacturers and/or suppliers, as appropriate, executed by Contractor as required by the Contract Documents, with and between Owner and Contractor. A specified warranty commencement date, as required by the Contract Documents, also shall be submitted to Owner in an electronic format (PDF) on a Compact Disc (CD).

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

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

3.7 PERMITS, FEES AND NOTICES

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

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

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

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

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

3.8 ALLOWANCES

3.8.1 Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as Owner may direct, but Contractor shall not be required to employ persons or entities to whom Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1 Allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

3.8.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses, contemplated for stated allowance, shall be included in the allowances;

3.8.2.3 Whenever actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect both the difference between actual costs and the allowances under **Section 3.8.2.1** herein and all changes in Contractor's costs under **Section 3.8.2.2** herein.

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

3.9 SUPERINTENDENT/KEY PERSONNEL

3.9.1 At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who is able to communicate fluently in English, along with any necessary assistant(s) who is/are satisfactory to Owner. Any superintendent designee shall be identified in writing to Owner promptly after Owner issues written Notice to Proceed. The superintendent shall represent Contractor at all time and all directions given to the superintendent shall be binding on Contractor. The designated superintendent shall not be replaced without written notice to and the approval of Owner, which approval shall not be unreasonably withheld, except with good reason (including any termination or disability of the superintendent) or under extraordinary circumstances. The superintendent may not be employed on any other project prior to Final Completion of the Work without the approval of Owner, which approval shall not be unreasonably withheld.

3.9.2 Contractor shall furnish a list to Design Consultant and Owner of all Architects, Engineers, Consultants, Sub-Consultants, job-site superintendents, Subcontractors and suppliers involved in the Project construction. Design Consultant also shall provide said information to Owner.

3.9.2.1 Owner, upon the showing of good and reasonable cause, may reject or require removal of any Architect, Engineer, Consultant, sub-Consultant, job superintendent, employee of the Contractor, Subcontractor or sub-Subcontractor and/or supplier involved in the Project.

3.9.2.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to remove from the Project any employee(s) Owner, at its sole discretion, deems incompetent, careless, insubordinate, unnecessary or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, sub-Subcontractors and their employees.

3.9.2.3 Owner reserves the right to utilize one or more of its employees or Consultants to function in the capacity of Owner's Inspector, whose primary function shall be daily inspections, checking pay requests or construction timelines and the verification of the storage of supplies and materials.

3.9.2.4 Contractor shall not change any key personnel or key Subcontractors without the prior written consent of Owner, which consent shall not be unreasonably withheld. In the event key personnel leaves Contractor's employment, such key personnel's replacement shall be subject to Owner's reasonable approval.

3.10 CONTRACTOR'S PROJECT SCHEDULES

3.10.1 **PROJECT SCHEDULE METHOD.** Contractor shall create and maintain a Critical Path Method (hereafter referred to as "CPM") Project Schedule, showing the manner of execution of Work which Contractor intends to follow, in order to complete the Project within the allotted time. The Project Schedule shall employ computerized CPM for the planning, scheduling and reporting of Work, as described in this **Section 3.10**. Contractor shall create and maintain the Project Schedule using project management scheduling software compatible with Owner's project management scheduling software. The observance of the requirements herein is an essential part of the Work to be performed under the Contract.

3.10.2 **SCHEDULING PERSONNEL.** Unless otherwise indicated in writing by Owner, Contractor shall provide an individual, who shall be referred to hereafter as "Scheduler", to create and maintain the Project Schedule. Scheduler shall be proficient in CPM analysis, possess sufficient experience to be able to perform required tasks on the specified software and able to prepare and interpret reports from the software. Scheduler shall be made available for discussion or meetings when requested by Owner.

3.10.3 **PROJECT SCHEDULE SUBMISSION**

3.10.3.1 Unless indicated otherwise, Contractor shall submit Project Schedule(s) for the Work in relation to the entire Project to Owner and Design Consultant at least fifteen (15) calendar days prior to the pre-construction conference.

3.10.3.2 All Project Schedule submittals shall be in the electronic form to include PDF plots of the schedule, a PDF plot defining the Critical Path and two week look-ahead, and include the native compatible scheduling file format. Contractor shall submit the schedule to Owner and Design Consultant via electronic mail, CD-Rom or any other electronic format acceptable to Owner.

3.10.3.3 This initial schedule shall indicate the dates for starting and completing the various aspects/phases required to complete the Work, including mobilization, procurement, installation, testing, inspection and acceptance of all the Work of the Contract, including any contractually mandated milestone dates. The Project Schedule shall not exceed the time limits set forth in the Contract Documents. Contractor shall organize the Project Schedule and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

3.10.3.4 The Project Schedule shall show the order in which Contractor proposes to carry out the Work in accordance with the final approved phasing plan, if any, and the anticipated start and completion dates of each phase of the Work. The Project Schedule shall be in the form of a time scaled work progress chart, to indicate the percentage of Work scheduled for completion at various critical milestones.

3.10.3.5 Contractor shall maintain a schedule of Shop Drawings and Sample Submittals and each submitted Shop Drawing and Sample Submittal shall list each required submittal and the expected time(s) for submitting, reviewing and processing such submittal.

3.10.3.6 Owner shall review the Project Schedule within fifteen (15) calendar days for compliance with the specifications and notify Contractor of its acceptability.

3.10.4 **PROJECT SCHEDULE SEQUENCING.** The Project Schedule shall show the sequence and interdependence of activities required for complete performance of the Work. Contractor shall be responsible for assuring all Work sequences are logical and show a coordinated plan of Work in accordance with the sequence of work outlined in the plans. The purpose of Owner requiring the Project Schedule shall be to:

3.10.4.1 Ensure adequate planning during the execution and progress of the Work in accordance with the allowable number of calendar days and all milestones;

3.10.4.2 Assure coordination of the efforts of Contractor, Owner, utilities and others that may be involved in the Project and those activities are included in the Schedule highlighting coordination points with others;

3.10.4.3 Assist Contractor and Owner in monitoring the progress of the Work and evaluating proposed changes to the Contract; and

3.10.4.4 Assist Owner in administering the Contract time requirements.

3.10.5 **PROJECT SCHEDULE ACTIVITIES.** Contractor shall provide Owner a legend for all abbreviations used. The activities shall be coded so that organized plots of the Project Schedule may be produced. Typical activity coding includes traffic control phase, location and work type. Contractor shall show an estimated production rate per working day for each Work activity. Activity durations shall be based on production rates shown. Each activity on the Project Schedule shall include:

3.10.5.1 An activity number utilizing an alphanumeric designation system that is agreeable to Owner;

3.10.5.2 A concise description of the Work represented by the activity; and

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

3.10.6 **PROJECT SCHEDULE WORK DURATION AND RESOURCES**

3.10.6.1 The Project Schedule layout shall be grouped by Project and then by Work Breakdown Structure (hereafter referred to as "WBS") for organizational purposes.

3.10.6.2 The original and remaining Work duration shall be displayed. The grouping band shall, by default, report Work days planned. One additional level of effort activity shall be added to the schedule as a "time calculator" with a seven (7) day calendar without holidays reflected. The calculation of days should be reflected in the appropriate duration columns.

3.10.6.3 Work shall be scheduled based upon Contractor's standard five (5) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software.

3.10.6.4 Assign working calendars for the days Contractor plans to work. Contractor shall designate all twelve (12) Owner holidays as non-working days (holidays). For dates beyond the then-current calendar year, Contractor shall assume Owner holidays are the same as the current calendar year.

3.10.6.5 Seasonal weather conditions shall be considered and included in the Project Schedule for all work influenced by temperature and/or precipitation. Seasonal weather conditions shall be determined by an assessment of average historical climatic conditions. Average historical weather data is available through the National Oceanic and Atmospheric Administration (hereafter referred to as "NOAA"). These effects shall be simulated through the use of work calendars for each major work type (i.e., earthwork, concrete paving, structures, asphalt, drainage, etc.). Project and work calendars should be updated each month to show days actually able to work on the various work activities.

3.10.6.6 Only Owner-responsible delays in activities that affect milestone dates or the Contract completion date, as determined by CPM analysis, shall be considered for a time extension.

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

3.10.7.1 have all Work coded and organized by WBS. An example of an acceptable WBS shall be provided, upon written request, by Owner to Contractor;

3.10.7.2 reflect Duration Percent complete as the percent complete type;

3.10.7.3 reflect Fixed Units as the duration type;

3.10.7.4 include submittals with a logical tie to what each drives;

3.10.7.5 add proposed Change Order(s) and those Change Order(s) shall be reflected on the Schedule as proposed Change Order(s). This task shall be linked to the schedule with logical ties and approved by Owner. Upon approval of a Change Order, a task shall be renamed and shall identify Work performed and Change Order number and resources shall be added to the task;

3.10.7.6 only have constraints in accordance with the plans;

3.10.7.7 include activity milestones for material delivery;

3.10.7.8 disallow default progress; and

3.10.7.9 include a detailed explanation in the Project narrative, if Work is performed out of sequence.

3.10.8 PROJECT SCHEDULE JOINT REVIEW AND ACCEPTANCE

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

3.10.8.2 Within fifteen (15) calendar days of receipt of Contractor's proposed Project Schedule, Owner shall evaluate the Schedule for compliance with this specification and notify Contractor of its findings. If Owner requests a revision or justification, Contractor shall provide satisfaction to Owner within seven (7) calendar days. If Contractor submits a Project Schedule for acceptance, based on a sequence of work not shown in the plans, Contractor shall notify Owner in writing of said sequence of work, separate from the Schedule submittal.

3.10.8.3 Owner's review and acceptance of Contractor's Project Schedule only is for conformance to the requirements of the Contract Documents. Review and acceptance by Owner of Contractor's Project Schedule does not relieve Contractor of any of its responsibility for the Project Schedule, Contractor's ability to meet interim milestone dates (if so specified) or meeting the Contract completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of Contractor's Project Schedule. In the event Contractor fails to define any element of Work, activity or logic and Owner's review does not detect this omission or error, such omission or error, whether or when discovered by Contractor or Owner, shall be corrected by Contractor at the next monthly schedule update and shall not affect the Project or Contract completion date.

3.10.8.4 Acceptance of the Project Schedule, or update and/or revision thereto, does not indicate any approval of Contractor's proposed sequences and duration.

3.10.8.5 Acceptance by Owner of the Project Schedule or updated Project Schedule which exceeds contractual time does not alleviate Contractor from meeting the contractual completion date.

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

3.10.8.7 Contractor's scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract time.

3.10.8.8 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to Owner, as of the date of the submittal, of the accurate depiction of all progress to date and that Contractor shall follow the schedule as submitted in performing the Work.

3.10.9 PROJECT SCHEDULE UPDATES AND REVISIONS

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

3.10.9.2 The Project Schedule update shall be submitted no later than the date the pay application is submitted.

3.10.9.3 Contractor shall meet with Owner each month, at a scheduled Project Schedule update meeting, to review actual progress made through the data date of the schedule update, as determined by Owner. The review of progress shall include dates of activities actually started and/or completed, the percentage of Work completed, the remaining duration of each activity started and/or completed and the amount of Work still to complete, with an analysis of the relationship between the remaining duration of the activity and the quantity of material to install over that given period of time with a citation of past productivity.

3.10.9.4 The monthly Schedule Update shall include a progress narrative, explaining the Project's progress, identifying all progress made out of sequence, defining the Critical Path, identification of any potential delays, and other relevant data. A Project Schedule Narrative template shall be required for the narrative. Upon request, Owner shall supply said template to Contractor.

3.10.9.5 Each Schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by Contractor, Owner and Design Consultant. The Project Schedule layout shall be grouped first by Project then by WBS. The layout shall include the following columns:

(1) Activity ID

(2) Activity Description

(3) Original Durations

(4) Remaining Durations

(5) Early Start and Early Finish Dates

(6) Late Start and Late Finish Dates

(7) Total Float

(8) Performance Percent Complete

(9) Display logic and target bars in the Gantt bar chart view

3.10.9.6 Each schedule shall include activities representing manufacturing, fabrication or ordering lead time for materials, equipment or other items for which Design Consultant is required to review submittals, shop drawings, product data or samples.

3.10.9.7 Each schedule, other than the initial schedule, shall:

(1) indicate the activities, or portions thereof, which have been completed;

(2) reflect the actual time for completion of such activities; and

(3) reflect any changes to the sequence or planned duration of all activities.

3.10.9.8 If any updated schedule exceeds the time limits set forth in the Contract Documents for Substantial Completion of the Work, Contractor shall include, along with its updated schedule, a statement of the reasons for the anticipated delay in achieving Substantial Completion of the Work and Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If Contractor asserts that the failure of Owner or Design Consultant to provide requested and required information to Contractor as the reason for anticipated delay in completion,

Contractor also shall specify what information has been requested and is required from Owner or Design Consultant.

3.10.9.9 Neither Owner nor Contractor shall have exclusive ownership of float time in the schedule and all float time shall inure to the benefit of the Project.

3.10.9.10 Submission of any schedule under this Contract constitutes a representation by Contractor that, as of the date of the submittal:

(1) the schedule represents the sequence in which Contractor intends to prosecute the remaining Work;

(2) the schedule represents the actual sequence and duration used to prosecute the completed Work;

(3) to the best of its knowledge and belief, Contractor is able to complete the remaining Work in the sequence and time indicated; and

(4) that Contractor intends to complete the remaining work in the sequence and time indicated.

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

3.10.10 **COMPLETION OF WORK**

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

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

(1) increasing Project work forces;

(2) increasing Project equipment or tools;

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

(4) expediting the delivery of Project materials;

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

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

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

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

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

(2) supplying additional manpower, equipment and facilities;

(3) re-sequencing the Work;

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

(5) other similar measures Owner may direct (hereafter **(1)** – **(5)** herein collectively referred to as "Extraordinary Measures").

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

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

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

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

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

3.10.11 **PROJECT SCHEDULE TIME IMPACT ANALYSIS**

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

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

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

(1) Establish the status of the Project before the impact using the most recent Project Schedule Update prior to the impact occurrence.

(2) Predict the effect of the impact on the most recent Project Schedule Update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.

(3) Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing and mitigation efforts.

(4) Compare the status of the work prior to the impact **(#1 above)** to the prediction of the effect of the impact **(#2 above)**, and to the status of the work during and after the effects of the impact are over **(#3 above)**. Note that if an impact causes a lack of access to a portion of the Project, the effects of the impact may extend to include a reasonable period for remobilization.

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

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 Contractor shall maintain, on Site and for Owner's use, one record copy of the Drawings, Specifications, Addenda, Change Orders and other Amendments, in good order and currently marked, to record field changes and selections made during construction, along with one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These record copies also shall be available to Design Consultant and shall be delivered to Design Consultant for submittal to Owner upon completion of the Work.

3.11.2 Contractor shall at all times maintain job records including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries and job meeting minutes applicable to the Project. Contractor shall make such reports and records available for inspection by Owner, Design Consultant and/or their respective agents, during normal business hours if requested by Owner.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared and furnished by Contractor or its agents, manufacturers, suppliers or distributors and which illustrate and detail some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical samples of materials, equipment or workmanship that are representative of some portion of the Work, furnished by the Contractor to Owner to assist Owner and Design Consultant in the establishment of workmanship and quality standards by which the Work shall be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittals is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Design Consultant is subject to the limitations of **Section 4.2.8** herein. Informational submittals, upon which Design Consultant is not expected to take responsive action, may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Design Consultant without action.

3.12.5 Contractor shall review for compliance with the Contract Documents, approve and submit to Design Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by Design Consultant without action.

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

3.12.7 Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal and review has been approved by Design Consultant. Design Consultant shall review and return such submittals within ten (10) calendar days or within a reasonable period so as to not delay the project.

3.12.8 The Work shall be in accordance with approved submittals, except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Design Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor specifically has informed Design Consultant in writing of such deviation at the time of submittal and:

(1) Design Consultant has given written approval in the specific deviation as a minor change in the Work; or

(2) a Change Order or Field Work Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Design Consultant's approval thereof.

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

3.12.10 Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services specifically are required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment specifically are required of Contractor by the Contract Documents, Owner and Design Consultant shall specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly Texas-licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Design Consultant. Owner and Design Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Design Consultant have specified to Contractor all performance and design criteria that such services

must satisfy. Pursuant to this **Section 3.12.10**, Design Consultant shall review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Documents. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

3.13.2 Contractor shall not load nor permit any part of any structure to be loaded in any manner that shall endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that shall endanger it.

3.13.3 Contractor shall abide by all applicable rules and regulations of Owner with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by Owner.

3.13.4 Contractor shall provide access to residents and businesses affected by the construction of this Project to the greatest extent possible, including providing temporary base and asphalt as needed.

3.13.5 Contractor shall erect and maintain on Site a Project Bulletin Board, accessible to all Contractor and Subcontractor employees, upon which Contractor shall post and maintain, throughout the Project's duration, all employment and safety information required by law and Contractor shall include information listing Contractor's bonding and insurance agencies/providers, to include agency contact names, address and telephone numbers.

3.13.6 As applicable, Owner shall have appropriate Temporary Bench Marks (hereafter referred to as "TBM") and a baseline (for both horizontal and vertical projects, as applicable) established. As of the date of the Notice To Proceed, it shall be Contractor's responsibility to protect, preserve and reestablish (if required) the TBM and/or baseline. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5".

3.13.7 As applicable, Contractor shall layout its work from an established baseline and TBM indicated on the drawings and shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout any part of the work. Contractor shall provide cut sheets to Owner's inspector at minimum seven (7) calendar days prior to construction of street and drainage work. Contractor shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for SAWS Work, if present. Contractor shall provide cut sheets for improvements where Sewer profiles are provided for various phases of the project and cut sheets for Water profiles, if applicable. Contractor shall provide staking and preparation of cut sheets after receiving notice to proceed from Owner. If present, Contractor shall provide SAWS with cut sheets at minimum (7) calendar days prior to commence of SAWS work. Contractor shall be responsible for maintaining and preserving a baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, Contractor shall replace them at its own expense. At the end of construction of the Project, Contractor shall provide Owner a grade certificate prepared by a Registered Professional Land Surveyor. This certificate shall state that the infrastructure is constructed in accordance to the construction documents or as approved by Owner and the Engineer of Record, which is noted on the record plan set.

3.14 CUTTING AND PATCHING

3.14.1 Contractor shall be responsible for all cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 Contractor shall not damage or endanger a portion of the Work or a fully or partially completed construction by either Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and, if Owner so designates, of such separate contractor and said consent shall not be unreasonably withheld. Contractor unreasonably shall not withhold from Owner or a Owner's separate contractor Contractor's consent to cutting or otherwise altering the Work.

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

3.15 CLEANING UP

3.15.1 During the progress of the Work, Contractor shall keep the Project Site and surrounding area including, but not limited to, creeks, drainage channels, easements and private property free from accumulations of waste materials, rubbish and other debris resulting from the Work. As applicable, Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. If Contractor fails to clean up as provided in the Contract Documents, Owner may elect to do so and all costs incurred by Owner shall be paid by Contractor.

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

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

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

3.18 INDEMNITY PROVISIONS

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

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

accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law. In the event Contractor and Owner are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively, in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the parties under Texas law.

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

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

(1) procure for Owner the right to continue using said deliverable and/or materials;

(2) modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect Owner's intended use of the deliverable and/or materials as contemplated hereunder);

(3) replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to Owner; or

(4) if none of the foregoing alternatives is reasonably available to Contractor, upon written request, Owner shall return the deliverable and/or materials in question to Contractor and Contractor shall refund all monies paid by Owner, with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this **Section 3.18** shall fail to satisfy the third-party claimant, these actions shall not relieve Contractor from its defense and indemnity obligations set forth in this **Section 3.18**.

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

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

3.18.7 **OTHER PROVISIONS REGARDING INDEMNITY**

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

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

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

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

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

3.19.1 is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

3.19.2 is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

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

3.19.4 is acting within its duly authorized powers to execute this Contract and execute the performance and obligations thereof; and

3.19.5 had directed its duly authorized representative(s) to visit the Site of the Work, familiarize itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

3.20 **BUSINESS STANDARDS.** Contractor, in performing it's obligations under this Contract, shall establish and maintain appropriate business standards, procedures and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees, Subcontractors and agents in their relations with Owner's employees, Consultants, agents, representatives, vendors, Subcontractors, other third parties and those relating to the placement and administration of purchase orders and subcontracts.

ARTICLE IV. ADMINISTRATION OF THE CONTRACT

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

4.2 **ROLES IN ADMINISTRATION OF THE CONTRACT**

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

(1) during construction;

(2) until final payment is due; and

(3) with Owner's concurrence, from time to time during the one-year period for correction of Work described in **Article XII** herein.

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

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

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

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

4.2.5 Owner and Contractor shall endeavor to communicate with each other directly, through Design Consultant and/or through the ODR about matters arising out of or relating to the Contract. Communications by and with Design Consultant's Consultants shall be through Design Consultant. Communications by Owner and Design Consultant with Contractor's employees Subcontractors and material suppliers shall be through Contractor. All communications by and with Owner's separate contractors shall be through Owner.

4.2.6 Design Consultant shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Design Consultant shall perform these reviews in a timely fashion so as to not delay the Work. Design Consultant promptly shall respond to submittals such as Shop Drawings, Product Data and Samples pursuant to the procedures set forth in the Project Specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. Design Consultant's review of Contractor's submittals shall not relieve the Contractor of the obligations under **Sections 3.3, 3.5** and **3.12** herein. Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Design Consultant, any construction means,

methods, techniques, sequences or procedures. Design Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.7 Upon written request of Owner or Contractor, Design Consultant shall issue its interpretation of the requirements of the plans and specifications. Design Consultant's response to such requests shall be made in writing within a time limit agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of Design Consultant shall be furnished in compliance with this **Section 4.2**, then no delay shall be recognized on account of any failure by Design Consultant to furnish such interpretations except for actual substantiated delays, for which Contractor is not responsible, occurring more than fifteen (15) calendar days after written request is made for the interpretations.

4.2.8 Interpretations and decisions of Design Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

4.2.9 Design Consultant's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by Owner.

4.3 CLAIMS AND DISPUTES

4.3.1 **DEFINITION.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief, with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. Except as contemplated by **Section 8.2** herein, every Claim of Contractor, whether for additional compensation, additional time or other relief including, but not limited to, claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Contractor by his/her signature) of Contractor, verifying the truth and accuracy of the Claim. The responsibility to substantiate a Claim shall rest with the party making the Claim.

4.3.2 **TIME LIMIT ON CLAIMS.** Except for those Claims resulting from unusually severe weather, as addressed in **Section 4.3.6** herein, Contractor Claims must be initiated within fifteen (15) calendar days after occurrence of the event giving rise to such Claim. Claims by Contractor must be submitted by written notice to both Owner and Design Consultant. Claims by Owner must be submitted by written notice to Contractor. Failure by Contractor to submit written notice of the claim within fifteen (15) calendar days shall constitute a waiver of such claim.

4.3.3 **CONTINUING CONTRACT PERFORMANCE.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in **Sections 4.5.1, Section 9.7.1** and **Article 14** herein, Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 **CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS.** If conditions are encountered at the Site which either are subsurface or are otherwise concealed physical conditions which were not known to Contractor and which differ materially from those indicated in the Contract Documents or in the reports of investigations and tests of subsurface and latent physical conditions provided by Owner to Contractor prior to the preparation by Contractor of its Bid, as referred to above, or are unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents in the general vicinity of the Project site, then Contractor promptly shall notify Owner and Design Consultant of such conditions before conditions are disturbed, and in no event more than three (3) workdays after first observation of the conditions. Upon notification by Contractor, Design Consultant promptly shall investigate such conditions and report its findings to Owner. If Owner and Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to **Section 4.5** herein.

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

(1) a written interpretation from Design Consultant;

(2) an order by Owner to stop the Work where Contractor was not at fault;

(3) a written order for a minor change in the Work issued by Design Consultant;

(4) failure of payment by Owner;

(5) termination of the Contract by Owner for convenience;

(6) Owner's suspension; or

(7) other reasonable grounds.

4.3.6 **CLAIMS FOR ADDITIONAL TIME**

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

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

4.3.7 **INJURY OR DAMAGE TO PERSON OR PROPERTY.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party or an act or omission of others for whose acts such other party legally is responsible (including, with respect to Owner, the acts or omissions of Owner's separate contractors), written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) calendar days after the discovery of the injury or damage. The written notice shall provide sufficient detail to enable the other party to investigate the injury or damage.

4.3.8 **CHANGE IN UNIT PRICES.** As applicable, if unit prices are stated in the Contract Documents or subsequently agreed upon by Owner and Contractor and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive so that application of such unit prices to quantities of Work proposed shall cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.9 **CLAIMS FOR CONSEQUENTIAL DAMAGES.** Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply both to Claims by Contractor and to Claims by Owner:

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

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

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

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

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

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

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

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

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

(1) Contractor shall:

(a) have direct legal liability as a matter of contract, common law, or statutory law to Subcontractor for the claim that Subcontractor is asserting; or

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

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

(3) Subcontractor making the Claim to Contractor shall certify to both Contractor and Owner that it has compiled, reviewed and evaluated the merits of such Claim and that the Claim is believed in good faith by Subcontractor to be valid. A copy of the certification by Subcontractor shall be included by Contractor in the Claim submittal materials.

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

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

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

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

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

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

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

4.4 RESOLUTION OF CLAIMS AND DISPUTES

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

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

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

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

(2) issue an initial recommendation;

(3) suggest a compromise; or

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

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

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

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

(1) issue a recommendation;

(2) suggest a compromise; or

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

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

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

4.5 ALTERNATIVE DISPUTE RESOLUTION

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

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

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

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

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

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

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

ARTICLE V. SUBCONTRACTORS

5.1 DEFINITION

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

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

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

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

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

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

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

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

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

5.3 SUB-CONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, Contractor shall require each Subcontractor, to the extent of the Work to be performed by Subcontractor, to be bound to the Contractor by terms of the Contract Documents and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of Subcontractor's Work and workers, which Contractor, by these Documents, assumes toward Owner and Design Consultant.

Each Subcontractor agreement shall preserve and protect the rights of Owner and Design Consultant under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof shall not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of all Subcontractor agreement(s), copies of the Contract Documents to which Subcontractor(s) shall be bound. Subcontractors similarly shall make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

ARTICLE VI. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS

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

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

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

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

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

6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

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

ARTICLE VII. CHANGES IN THE WORK

7.1 GENERAL

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

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

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

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

7.2 CHANGE ORDERS

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

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

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

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

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

7.3 FIELD WORK DIRECTIVES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.3.5.7 all payments made by the Contractor to Subcontractors.

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

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

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

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

7.5 TIME REQUIRED TO PROCESS CHANGE ORDERS

7.5.1 All responses by Contractor to proposal requests from Owner or Design Consultant shall be accompanied by a complete itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow Owner and Design Consultant a minimum of thirty (30) calendar days after receipt by Owner to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in Contractor's response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution or other grounds for seeking extra

compensation or additional time under the Contract Documents, without reservation or further recourse.

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

ARTICLE VIII. TIME

8.1 PROGRESS AND COMPLETION

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

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

8.1.3 Nothing in this **Article VIII** shall be construed as prohibiting Contractor from working on Saturdays if it so desires and giving Owner at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday, Sunday and holidays so that Owner's representative may be scheduled to observe/inspect said Work and only if Contractor has performed work on the Project during the same week of the requested Saturday, Sunday or holiday.

8.2 DELAYS AND EXTENSIONS OF TIME

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

Contractor any compensation for such delays. Note that any request for an extension of time due to delays or disruption caused by unusually severe weather are addressed in **Section 4.3.6.2** herein.

8.2.2 Should Contractor be delayed solely by the act, negligence or default of Owner or Design Consultant, and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and Owner, Contractor shall receive an extension of the Contract Time equal to the verified delay or portion thereof if a written claim is made within five (5) calendar days of the act, negligence or default of Owner or Design Consultant and granted by Owner. In addition, Contractor, upon timely notice to Owner, with substantiation by Owner and Design Consultant and upon approval of Owner, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs incurred by Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or supplier to administer their Work. Compensation for Subcontractor's and supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to the Owner-caused event. In no event shall Contractor be entitled to home office or other off-site expenses or damages.

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

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

ARTICLE IX. PAYMENTS AND COMPLETION

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

9.2 SCHEDULE OF VALUES

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

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

9.3 APPLICATIONS FOR PAYMENT

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

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

9.3.3 Contractor warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS,**

CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY OWNER TO CONTRACTOR.

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

9.4 PAY APPLICATION APPROVAL

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

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

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

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

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

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

9.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT

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

9.5.1.1 Work not performed or defective ;

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

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

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

9.5.1.5 damage to Owner or another contractor;

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

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

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

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

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

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

9.6 PROGRESS PAYMENTS

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

9.6.2 During the latter part of each month, as the Work progresses on all Owner Contracts regardless of Contract Sum, Owner and Contractor shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Contractor-acquired materials stored on the Project Site, and/or within off-site storage facilities either owned or leased by Contractor. Upon receipt of a complete and mathematically accurate Application for Payment from Contractor, Owner shall make payments, in accordance with **Article IX** herein, to Contractor within thirty (30) calendar days on Contracts totaling four hundred thousand dollars ($400,000.00) or less, based upon such cost determination and at the Contract prices in a sum equivalent to ninety percent (90%) of each such invoice. The remaining ten percent (10%) retainage shall be held by Owner until the Final Completion. However, where the Contract amount exceeds four hundred thousand dollars ($400,000.00), installments shall be paid to Contractor at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of Owner receipt of a complete and mathematically accurate Application for Payment from the Contractor, and the retainage held until Final Completion shall be five percent (5%).

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

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

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

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

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

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

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

9.7 SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

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

9.8 PARTIAL OCCUPANCY OR USE

9.8.1 Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer as required under **Section 11.4.1.5** herein and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided Owner and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion of the Work to be Substantially Complete, Contractor shall prepare and submit a list of items to be completed or corrected

prior to Final Completion and final payment and submit such list to Owner and Design Consultant, as provided under **Section 9.8.2** herein. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between Owner and Contractor or, if no agreement is reached, by the decision of Design Consultant.

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

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

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

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

9.9 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

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

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

ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

right, but not the obligation, to inspect and verify Contractor's compliance with Contractor's responsibility for protecting the safety and health of its employees and Subcontractor.

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

10.1.3 Contractor has adopted or shall adopt its own policy to assure a drug and alcohol free work place while performing the Work. Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell illegal, illicit and/or prescribed controlled drugs or drug paraphernalia or misuse legitimate prescription drugs while on Site or performing the Work. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell alcoholic beverages while performing the Work or while on Site or performing the Work. Contractor shall remove any of its employees or Subcontractor employees from performing the Work or from the Site any time there is suspicion of alcohol and/or drug use, possession or impairment involving such employee and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Contractor's or Subcontractor's employees only may be considered for return to work after Contractor certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Contractor shall not employ any individual, or shall not accept any Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.

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

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

such breach or violation, Owner and Contractor shall complete their obligations hereunder to one another in accordance with **Section 14.2** herein.

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

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

10.2 Safety Of Persons And Property

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

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

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

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

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

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

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

10.2.5 Contractor promptly shall remedy any and all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). Contractor also shall HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND Owner, its elected officials, employees, officers, directors, volunteers and representatives of Owner, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of Contractor and of Owner) referred to in **Section 10.2.1.2** and **Section 10.2.1.3** herein, but only to the extent caused in whole or in part by the acts, omissions and/or negligence of Contractor, its agents, servants and employees, its Subcontractor(s) and its/their agents, servants and employees, anyone directly or indirectly employed by Contractor or Subcontractor and/or by any other person or entity for which Contractor or Subcontractor may be responsible under the Contract Documents in connection with the Work to be performed, services to be rendered or materials to be furnished under this Contract including, but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without, however, waiving any governmental immunity available to Owner under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of Contractor are in addition to Contractor's obligations under **Section 3.18** herein. In the event Contractor and Owner are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively, in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the parties under Texas law.

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

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

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

10.3 EMERGENCIES.

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

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

10.4 PUBLIC CONVENIENCE AND SAFETY

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

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

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

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

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

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS. When existing storm sewers or drains have to be taken up or removed, Contractor shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Contractor also shall provide for all storm sewage and drainage which shall be received from these storm drains and sewers. For this purpose, Contractor shall provide and maintain, at Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. Contractor shall, at Contractor's own expense, construct such troughs, pipes or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm

sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by Design Consultant. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction shall be adequately protected.

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

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

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

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

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

10.10 ENVIRONMENTAL COMPLIANCE

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

U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances or rules of common law including, but not limited to, any judicial or administrative order, consent decree or judgment affecting the Project.

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

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

ARTICLE XI. INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

11.1.1.2 Commercial General Liability Insurance, Personal Injury Liability, Independent Contractor's Liability and Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (and/or Subcontractor's) liability for injury to or death of Owner's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of $1,000,000 per occurrence, $2,000,000 annual aggregate. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. Owner shall be named as additional insured by using endorsement CG 20 26 or broader. The general liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement CG2503

amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the Project in question.

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

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

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

11.2 PROPERTY INSURANCE

11.2.1 In addition to the insurance described in **Section 11.1** and **Section 11.4** herein, Contractor shall obtain at its expense and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, Owner shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be in the name of Contractor and naming Owner, Design Consultant and Subcontractors, as well as any Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

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

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

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

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

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

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

11.3 PERFORMANCE BOND AND PAYMENT BONDS

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

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

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

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

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

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

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

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

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

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

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

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

11.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

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

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

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

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

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

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

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

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

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

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

11.5.3 Contractor agrees to the following special provisions:

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

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

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

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

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

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

ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK

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

12.2 UNCOVERING WORK

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

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

12.3 CORRECTING WORK

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

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

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

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

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

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

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

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

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

the Contract Sum shall be reduced by the deficiency. If payments due to Contractor then or thereafter are not sufficient to cover the deficiency, Contractor shall pay the difference to Owner.

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

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

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

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

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

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

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

13.3 TERMINATION BY THE OWNER FOR CAUSE

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

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

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

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

13.3.1.4 A reasonable belief that Contractor has abandoned the Work.

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

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

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

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

13.3.1.9 Repeated and flagrant violation of safe working procedures.

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

13.3.2.1 perform the Work with forces employed by the surety;

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

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

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

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

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

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

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

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

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

13.3.6 The right to terminate this Contract for the convenience of Owner (including, but not limited to, non-appropriation of funding) expressly is retained by Owner. In the event of a termination for convenience by Owner, Owner shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Contractor. Upon Contractor's receipt of such written notice, Contractor immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Contractor shall then be paid by Owner, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred, the actual cost of all materials installed and the actual cost of all materials stored at the Project site or away from the Project site, as approved in writing by Owner but not yet paid for and which can not be returned, plus applicable overhead, profit, and actual, reasonable and documented termination costs, if any, paid by Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents up to the date of

termination for convenience, less all amounts previously paid for the Work. No amount ever shall be paid to Contractor for lost or anticipated profits on any part of the Work not performed.

13.4 TEMPORARY SUSPENSION OF THE WORK

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

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

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

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

13.4.1.4 other unforeseen conditions or circumstances.

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

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

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

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

ARTICLE XIV. MISCELLANEOUS PROVISIONS

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

14.2 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

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

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

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

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

14.5 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

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

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

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

14.7 INDEPENDENT MATERIALS TESTING AND INSPECTION

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

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

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

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

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

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

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

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

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

14.11 NON-DISCRIMINATION. As a party to this Contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless Contractor is exempted by state or federal law, or as otherwise established herein. Contractor covenants that it shall take all necessary actions to insure that, in connection with any Work under this Contract, Contractor and its Subcontractor(s) shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, either directly, indirectly or through contractual or other arrangements. Contractor also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or Work performed there under, for a minimum period of four (4) years from Final Completion, unless there is an ongoing dispute under the Contract; then, such retention period shall extend until final resolution of the dispute, with full access allowed to authorized representatives of Owner upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.12 GIFTS TO PUBLIC SERVANTS

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

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

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

ARTICLE XV. AUDIT

15.1 RIGHT TO AUDIT CONTRACTOR'S RECORDS

15.1.1 By execution of the Contract, Contractor grants Owner the right to audit, examine, inspect and/or copy, at Owner's election at all reasonable times during the term of this Contract and for a period of four (4) years following the completion or termination of the Work, all of Contractor's written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by an Owner designee, which may include its internal auditors or an outside representative engaged by Owner. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute. As used in these General Conditions, "Contractor written and electronically stored records" include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Contractor written and electronically stores records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in Owner's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

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

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

ARTICLE XVI.
ATTORNEY FEES

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

Special Conditions for Horizontal Projects

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.2.5.1 Labor

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

7.2.5.2 Materials

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

7.2.5.3 Equipment

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

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

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

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

7.2.5.4 Subcontractor Markups

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

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

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

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

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

No more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty (40) hours shall be paid per week for standby time and no more than one hundred and seventy six (176) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Rental Rate Blue Book for Construction Equipment and shall be calculated by dividing the monthly rate found in the Blue Book by 176, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT H – APPROVED GMP PROPOSAL

PROJECT #:
PROJECT NAME:

DATE:

GMP Summary				**AMOUNT**
A.	Cost of the Work (Labor, Materials, Equipment, Warranty – To include all Fixed Price Proposals, if any)			
B.	Total cost of work			
INDIRECT COSTS			RATE	
C.	Construction Fee			
D.	General Conditions			
E.	Payment and Performance Bond	$		
F.	Builder's Risk Insurance	$		
G.	General Liability Insurance	$		
H.	Sales Taxes			
		I. TOTAL GMP		
		J. City-Controlled Contingency		
		K. Total Contract Amount		

Formulas:

Total GMP: A+B+C+D+E+F+G+H = I

Rates for C, D are calculated by dividing each amount by the total cost of the work.
Rates for E, F, and G are calculated by dividing each by the total contract amount.

EXHIBIT J – CONSTRUCTION DRAWINGS

To be incorporated at a later date after execution of the Agreement.

Three sets of construction drawings, as referenced herein, are on file with the:

- Design Professional
- City Project Manager
- CM@Risk Contractor

EXHIBIT K – SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN FORM

To be incorporated at the time the GMP is accepted by City.

Breakdown of General Conditions
Turner's proposal ($990,000) is made up of the following:

Exhibit L – Construction Management Labor

Staff Title	Duration	Cost/mo	% time	
Project Manager	30 mo	$16,000/mo	40%	$192,000
Project Superintendent	30 mo	$13,360/mo	100%	$400,800
QA/QC (Straightline)	30 mo	$10,000/mo	25%	$ 75,000
Misc Staff*	30 mo	$ 3,500/mo		$105,000
				$772,800

*Safety Manager, Admin and Cost/Accounting

Exhibit L – Work Requirements, Temporary Amenities and Site Cleanliness / Housekeeping

Allowance $ 50,000

Exhibit L – CM@Risk Office Expenses
As discussed in the interview process the synergies with the ConRAC cause a majority of these items outlined to be overlapped, therefore, items specific to the staff assigned to the FIS are:

Reproduction Services	$ 4,000
Staff Computers/Phones/Software	$ 39,000
Postage and Courier	$ 6,000
Scheduling Expense	$ 30,000
Meeting Expense (60 mtgs., flip charts, food/beverage, etc.)	$ 15,000
Project Specific Signage	$ 3,000
Construction Redline Drawings/BIM Services	$ 65,000
	$162,000

Exhibit L – Construction Trade Training Program and Health and Safety Program
No cost for these items will be allocated to the FIS Project

Exhibit L – Security Program
The cost for getting Turner Staff badged is included in the Construction Management Labor line item. Turner has included an Allowance of $200,000 for project security/off duty officers which represents an officer 5 days a week x 8 hrs/ day x 2.5 yrs x 52 wks/yr x $38.50/hr.

$200,000

Exhibit L – Project Information and Documentation	$ 5,200
Total General Conditions	$1,190,000

Item 1 - Electronic Version of the Plans and Specifications

Section 2.2.3 of the General Conditions for City of San Antonio Construction Contracts attached hereto as Exhibit G is hereby deleted in its entirety and replaced with the following:

2.2.3 Unless otherwise provided in the Contract Documents, Contractor shall be furnished, free of charge, one electronic version of the Plans and Specifications by Design Consultant. If Contractor requests hard copies of the Plans and Specifications, Design Consultant shall furnish such Plans and Specifications to Contractor at reproduction cost.

Item 2 – Insurance

With the exception of Section 11.3.3, Article 11, Insurance and Bonds, of the General Conditions for City of San Antonio Construction Contracts attached hereto as Exhibit G is hereby deleted in its entirety and replaced with Article 12, Insurance, contained in this Agreement.