

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

TABLE OF CONTENTS

ARTICLE I. GENERAL PROVISIONS	6
I.1 CONTRACT DEFINITIONS	6
I.2 PRELIMINARY MATTERS.	13
I.3 OWNERSHIP, USE, AND RETENTION OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.	14
I.4. CORRELATION AND INTENT.	16
I.5 INTERPRETATION.	18
ARTICLE II. CITY	18
II.1 GENERAL.	18
II.2 INFORMATION AND SERVICES TO BE PROVIDED BY CITY.	18
II.3 CITY’S RIGHT TO STOP THE WORK.	19
II.4 CITY’S RIGHT TO CARRY OUT THE WORK.	19
ARTICLE III. CONTRACTOR	20
III.1 GENERAL.	20
III.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.	21
III.3 SUPERVISION AND CONSTRUCTION PROCEDURES.	22
III.4 LABOR AND MATERIALS.	23
III.5 WARRANTY.	26
III.6 TAXES.	27
III.7 PERMITS, FEES AND NOTICES.	27
III.8 ALLOWANCES.	28
III.9 SUPERINTENDENT/KEY PERSONNEL.	29

III.10	CONTRACTOR’S PROJECT SCHEDULES.	29
III.11	DOCUMENTS AND SAMPLES AT THE SITE.	37
III.12	SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.	38
III.13	USE OF SITE.	39
III.14	CUTTING AND PATCHING.	40
III.15	CLEANING UP.	41
III.16	ACCESS TO WORK.	42
III.17	PATENT FEES AND ROYALTIES.	42
III.18	INDEMNIFICATION.	42
III.19	JOINT LIABILITY.	43
III.20	REPRESENTATIONS AND WARRANTIES.	43
III.21	WORKERS’ COMPENSATION INSURANCE COVERAGE.	44
	ARTICLE IV. ADMINISTRATION OF THE CONTRACT	47
IV.1	ROLES IN ADMINISTRATION OF THE CONTRACT.	47
IV.2	CLAIMS AND DISPUTES.	48
IV.3	NO WAIVER OF GOVERNMENTAL IMMUNITY.	52
IV.4	INITIAL RECOMMENDATION OF CLAIM.	52
IV.5	ALTERNATIVE DISPUTE RESOLUTION.	53
IV.6	INTERNET-BASED PROJECT MANAGEMENT SYSTEMS.	54
	ARTICLE V. SUBCONTRACTORS	54
V.1	AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.	54
V.2	CONTINGENT ASSIGNMENT OF SUBCONTRACTS.	55
	ARTICLE VI. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTS	56
VI.1	CITY’S RIGHT TO PERFORM CONSTRUCTION AND AWARD SEPARATE CONTRACTS.	56
VI.2	MUTUAL RESPONSIBILITY.	57

VI.3	CITY’S RIGHT TO CLEAN UP.	57
	ARTICLE VII. CHANGES IN THE WORK	58
VII.1	GENERAL.	58
VII.2	CHANGE ORDERS.	58
VII.3	FIELD WORK DIRECTIVES.	59
VII.4	MINOR CHANGES IN THE WORK.	61
	ARTICLE VIII. TIME	62
VIII.1	PROGRESS AND COMPLETION.	62
VIII.2	DELAYS AND EXTENSIONS OF TIME.	62
	ARTICLE IX. PAYMENTS AND COMPLETION	63
IX.1	CONTRACT SUM.	63
IX.2	SCHEDULE OF VALUES.	63
IX.3	APPLICATIONS FOR PAYMENT.	63
IX.4	PAY APPLICATION APPROVAL.	64
IX.5	DECISIONS TO REJECT APPLICATION FOR PAYMENT.	65
IX.6	PROGRESS PAYMENTS.	66
IX.7	SUBSTANTIAL COMPLETION.	67
IX.8	PARTIAL OCCUPANCY OR USE.	68
IX.9	FINAL COMPLETION AND FINAL PAYMENT.	68
	ARTICLE X. PROTECTION OF PERSONS, PROPERTY AND ENVIRONMENT	70
X.1	SAFETY PRECAUTIONS AND PROGRAMS.	70
X.2	SAFETY OF PERSONS, PROPERTY AND ENVIRONMENT.	72
X.3	EMERGENCIES.	73
X.4	PUBLIC CONVENIENCE AND SAFETY.	73
X.5	BARRICADES, LIGHTS AND WATCHMEN.	74

X.6	PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.	74
X.7	TEMPORARY STORM SEWER AND DRAIN CONNECTIONS.	75
X.8	ADDITIONAL UTILITY ARRANGEMENTS AND CHARGES.	75
X.9	USE OF FIRE HYDRANTS.	76
X.10	ENVIRONMENTAL COMPLIANCE.	76
	ARTICLE XI. INSURANCE AND BONDS	77
XI.1	INSURANCE.	77
XI.2	PERFORMANCE BONDS AND PAYMENT BONDS.	78
	ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTION OF WORK	79
XII.1	INSPECTING WORK.	79
XII.2	UNCOVERING WORK.	80
XII.3	CORRECTION OF WORK.	80
XII.4	ACCEPTANCE OF NONCONFORMING WORK.	82
	ARTICLE XIII. TERMINATION OR SUSPENSION OF THE CONTRACT	82
XIII.1	TERMINATION BY CITY FOR CAUSE.	82
XIII.2	TEMPORARY SUSPENSION OF THE WORK.	84
	ARTICLE XIV. MISCELLANEOUS PROVISIONS	86
XIV.1	SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY.	86
XIV.2	GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS.	86
XIV.3	SUCCESSORS AND ASSIGNS.	86
XIV.4	RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY CITY.	86
XIV.5	INTEREST.	87
XIV.6	INDEPENDENT MATERIALS TESTING AND INSPECTION.	87
XIV.7	FINANCIAL INTEREST.	87
XIV.8	VENUE.	87

XIV.9	NON-DISCRIMINATION.	87
XIV.10	BENEFITS TO PUBLIC SERVANTS.	88
XIV.11	WAIVER OF LIEN.	88
XIV.12	ATTORNEY(S)' FEES.	88
	SPECIAL CONDITIONS FOR HORIZONTAL PROJECTS	90
	SPECIAL CONDITIONS FOR TASK ORDER CONTRACTS	96
EXHIBIT A	SOFTWARE REQUIREMENTS	
EXHIBIT B	CALENDAR	

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

ARTICLE I. GENERAL PROVISIONS

I.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.

- I.1.1 “ACT OF GOD”** is an accident or event resulting from natural causes, without human intervention or agency, and one that could not have been prevented by reasonable foresight or care—for example, fires occurring through natural circumstances, lightning, and earthquakes.
- I.1.2 “ALTERNATE”** means a variation in the Work in which City requires a price separate from the Base Bid. If an Alternate is accepted by City, 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 City, and later deleted, City shall be entitled to a credit in the full value of the Alternate as priced in Contractor’s Bid Proposal.
- I.1.3 “AMENDMENT”** is a written modification of the Contract prepared by City or Design Consultant and Signed by City and Signed by 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 Contract.
- I.1.57 “AS NECESSARY”** means all action essential or needed to complete the Work in accordance with the Contract Documents and all applicable laws, ordinances, construction codes and regulations.
- I.1.4 “BASE BID”** is the price quoted for the Work before Alternates are considered.
- I.1.5 “CHANGE ORDER”** is a written modification of the Contract both Signed by City and Signed by 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 Contract.
- I.1.6 “CITY”** is defined as The City of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County and identified as **“CITY”** or as **“OWNER”** in the Contract, and whenever the term “City” or “Owner” is found in this Contract or the Contract Documents, such term shall include City’s agents, elected officials, employees, officers, directors, authorized representatives, successors, and assigns. “City” is referred to throughout the Contract Documents as if singular in number.

- I.1.7 “CITY COUNCIL”** means the duly elected members of the City Council of the City of San Antonio, Texas.
- I.1.8 “CITY HOLIDAY”** is an observed holiday by City that is counted as a Day for contract time purposes but wherein work is not permissible unless approved at least 48 hours in advance by the City. City Holidays shall be accounted for in Contractor’s baseline Project Schedule and all Project Schedule updates and require Contractor to pay time and a half.
- I.1.9 “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 City and Contractor, arising out of, or relating to, the Contract. Claims must be initiated by Written Notice and within time constraints identified in the Contract.
- I.1.10 “CONSTRUCTION OBSERVER/INSPECTOR** (hereafter referred to as “**COI**”) is the authorized representative of the Director of the Public Works Department, or its designee department, assigned by City to observe and inspect any or all parts of the Project and the materials to be used therein. Also referred to herein as **Inspector** or **RESIDENT INSPECTOR**.
- I.1.11 “CONTRACT”** means the Contract Documents, which represent the entire and integrated agreement between City 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/Task Order, or Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind between:
- a.** Design Consultant and Contractor;
 - b.** City and a Subcontractor or Sub-Subcontractor; or
 - c.** any persons or entities other than City and Contractor.
- I.1.12 “CONTRACT DOCUMENTS”** means the construction contract between City and Contractor which consists of, but is not limited to, the following:
- a.** Solicitation Documents;
 - b.** Notice of Award;
 - c.** Enabling City of San Antonio Ordinance;
 - d.** General Conditions;
 - e.** ***Vertical*** and/or ***Horizontal*** specific General Conditions;
 - f.** Special Conditions included by Special Provisions or addenda;
 - g.** Drawings;
 - h.** Specifications;
 - i.** Addenda issued prior to the close of the solicitation period;

- j. other documents modifying the scope, time, and/or cost of Work as permitted by the Contract, including Field Work Directives, Change Orders and/or Amendments; and
- k. a written order for a minor change in the Work issued by Design Consultant and/or City, as described in **ARTICLE VII**.

The geotechnical and environmental reports, which City may have provided to Contractor, specifically are *excluded* from the Contract Documents.

- I.1.13 “CONTRACT SUM”** means the total maximum not-to-exceed amount, including all authorized adjustments, payable by City to Contractor for performance of the Work under the Contract Documents..
- I.1.14 “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. and Final Completion of the Work. When the plural (“**CONTRACT TIMES**”) is used, it refers to milestones designated in the work progress schedule.
- I.1.15 “CONTRACTOR”** means the entity entering into a Contract with City to complete the Work or the Contractor’s authorized representative(s), including, but not limited to, the Construction Manager at Risk and/or any other applicable entities performing work under a Contract with City.
- I.1.16 “CRITICAL PATH”** represents the driving activities in the Project Schedule which take the longest period of time to complete and must be completed sequentially.
- I.1.17 “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.
- I.1.18 “DESIGN CONSULTANT”** is a person registered as an Architect pursuant to Texas Occupations Code, Chapter 1051, a Landscape Architect pursuant to Texas Occupations Code, Chapter 1052, a person licensed as a Professional Engineer pursuant to Texas Occupations Code, Chapter 1001, and/or a firm employed by City to provide professional architectural or engineering services, 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, City shall employ a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant.
- I.1.19 “DEPARTMENT” OR “PWD”** means the Public Works Department of the City of San Antonio, Texas, designee department or the PWD Director.
- I.1.20 “DOCUMENTS AND TANGIBLE THINGS”** means papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations including all electronically generated and stored data in their native format and with all attachments.

- I.1.21 “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, and diagrams.
- I.1.22 “EVENT”** means a single, distinct occurrence that Contractor believes has had, or will have, an immediate impact on the completion of the Work according to the current schedule.
- I.1.23 “FIELD WORK DIRECTIVE”** is a written order, Signed by City, and, if necessary, Design Consultant, directing a change in the Work prior to agreement and adjustment, if any, in the Contract Sum and/or the Contract Time.
- I.1.24 “FORCE ACCOUNT”** is a payment method used for additional Work when City and Contractor cannot agree on pricing or there are unknown factors in the additional Work. Actual costs, as submitted by the Contractor and observed and reviewed by the City, will be utilized for establishing payment.
- I.1.25 “FLOOD”** is an overflowing of a large amount of water beyond its normal confines, especially over what is normally dry land.
- I.1.26 “INDEFINITE DELIVERY INDEFINITE QUANTITY (IDIQ) CONTRACT” or “TASK ORDER CONTRACT”** means the contractual agreement entered into between City and Contractor for, at the time of contracting, an unspecified quantity and undefined scope of work, with Work to be assigned on an “as needed” basis by City. Through an IDIQ/Task Order Contract, Contractor agrees to perform defined and assigned Work for negotiated and agreed upon pricing reflected in Contractor’s Unit Price Sheet within a timeframe specified in the Task Order. The said Price Sheet is submitted by Contractor and negotiated with City prior to Contractor’s selection, by City, for an IDIQ/Task Order Contract.
- I.1.27 “HAZARDOUS SUBSTANCE”** is defined to include the following:
- a.** any asbestos or any material which contains any hydrated mineral silicate, including chrysotile, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;
 - b.** any polychlorinated biphenyls (“PCBs”), or PCB-containing materials, or fluids;
 - c.** radon;
 - d.** any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
 - e.** any substance, 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. items identified in the Texas Water Code, 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.
- I.1.28 “LIQUIDATED DAMAGES”** reflect the daily monetary compensation, as designated in the Project’s solicitation documents, to be paid to City by Contractor for losses/damages incurred by City as a result of Contractor’s failure to achieve the contractual dates for Substantial Completion and/or Final Completion of the Project.
- I.1.29 “NOTICE TO PROCEED (HEREIN ALSO REFERRED TO AS “WORK PROJECT AUTHORIZATION” OR “NTP”)”** is a Written Notice given by City to Contractor, establishing the date on which the Contract Time shall begin and the date on which Contractor may begin performance of its contractual obligations.
- I.1.30 “OWNER’S DESIGNATED REPRESENTATIVE” (ODR)** means the person(s) designated by City to act for City.
- I.1.31 “PARTY”** shall refer to City or Contractor individually herein.
- I.1.32 “PARTIES”** shall refer to City and Contractor collectively herein.
- I.1.33 “PRELIMINARY BUDGET”** is an estimate that City utilizes, in advance of Project solicitation, to outline the expected costs of the Work to be performed. 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 City.
- I.1.34 “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.
- I.1.35 “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, which may include construction by City or by separate contractors.
- I.1.36 “PROJECT MANAGEMENT TEAM”** is made up of City, its representatives, Design Consultant and Program Manager (if any) for this Work.
- I.1.36 “QUALITY ASSURANCE”** describes actions taken by City to determine if the requirements of the contract have been met such as: inspection, sampling, testing, and other activities.

- I.1.37 “QUALITY CONTROL”** is the sampling, testing and other process control activities conducted by Contractor to ensure that services are performed according to the terms and conditions of the Contract.
- I.1.56 “QUALITY CONTROL PLAN (QCP)”** is a written set of policies and/or procedures describing activities required to ensure that Work meets the quality standards outlined in the Contract Documents.
- I.1.38 “REQUEST FOR INFORMATION (RFI)”** is a written communication to obtain instruction or clarification on contract documents and shall be submitted through the City’s Project Management System.
- I.1.39 “SAMPLE”** is a physical example of materials, equipment or workmanship representative of some portion of the Work, furnished by the Contractor to City, to assist City and Design Consultant in the establishment of workmanship and quality standards by which the Work shall be judged.
- I.1.42 “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, which illustrate and detail some portion of the Work.
- I.1.40 “SIGNED”** can mean hard copy signature, electronic signature, or an approval given in City’s Project Management System (also referred to as “*PRIMELink*”), by authorized personnel, for a specific item identified in the Contract.
- I.1.41 “SITE”** means the land(s) or area(s) as indicated in the Contract Documents, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and any such other lands which are designated for the use by Contractor if such lands are provided for in the Contract Documents.
- I.1.43 “SPECIAL CONDITIONS”** are terms and conditions of the Contract which 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 *Special Conditions* are made a part of these General Conditions and shall be used as applicable.
- I.1.44 “SPECIFICATIONS”** are those elements of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services, environmental permits for the project, and other technical requirements.
- I.1.45 “SUBCONTRACTOR”** is a person or entity that has a direct contract with the Contractor to supply materials or equipment for the Work or to perform a portion of the Work at the Site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor, Sub-Subcontractor, Sub-Consultant or an authorized

representative of Subcontractor, Sub-Subcontractor or Sub-Consultant. A Sub-Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to supply materials or equipment for the Work or to perform a portion of the Work at the Site. The term “Sub-Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-Subcontractor or an authorized representative of the Sub-Subcontractor.

- I.1.46 “SUBSTANTIAL COMPLETION”** is the stage in the progress of the Work when the Work – or a designated portion thereof, which City agrees to accept separately – is sufficiently complete in accordance with the Contract Documents so that City may occupy or utilize the Work, or a designated portion thereof, for its intended use with no inconvenience to City. City may, at its discretion, determine that incomplete pay items constitutes the Work insufficiently complete and the City inconvenienced. In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s)/Task Orders, City may withhold payment of sums necessary to pay the estimated Liquidated Damages due City. City shall be entitled, at any time, to deduct out of any sums due to Contractor any or all Liquidated Damages due City in accordance with the Contract between City and Contractor.
- I.1.47 “SUBSTITUTION”** means any change in materials or equipment to be utilized in performing the Work, in whole or in part. Any proposed Substitution must be made pursuant to Article III.4.3 herein.
- I.1.48 “TASK ORDER”** means the agreement, as part of a Task Order Contract, issued by City to Contractor reflecting City’s acceptance of Contractor’s submitted and negotiated proposal to perform assigned Work in a specific timeframe. In issuing a Task Order, City has accepted Contractor’s Task Order Proposal and timeline and, through an issued Task Order in City’s Project Management System, is authorizing the performance of said Work.
- I.1.49 “TASK ORDER PROPOSAL”** means the formal proposal submitted by Contractor, listing Contractor’s proposed price – subject to negotiation – for performing a scope of work within a specified time period, assigned to Contractor. Contractor shall include its cost estimate and schedule of Work to be accomplished in its proposal to City. By submitting a Task Order Proposal, Contractor agrees to perform the requested scope of work within the time stated in the proposed Task Order Request. In the event Contractor fails to achieve Substantial Completion and/or Final Completion of the Work by the dates established in the resulting issued Task Order, Liquidated Damages shall be assessed.
- I.1.50 “TASK ORDER REQUEST”** means, as Work is identified by City, a request submitted by City to Contractor to review City’s proposed scope of work to be performed and to submit a Task Order Proposal to City to perform the defined scope of work as part of a Task Order Contract.
- I.1.51 “TEMPORARY BENCH MARKS (TBM)”** are temporary, affixed marks set by Contractor’s surveyors which establish the exact horizontal and vertical location of a place. TBMs are used by surveyors in measuring Site horizontal and vertical locations or as a starting point for surveys.

- I.1.52 “THE 3D MODEL”** is a Building Information Model, prepared by Design Consultant, in the format designated, approved and acceptable to City, with databases of materials, products and systems available for use 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 City or Design Consultant.
- I.1.53 “WEATHER”** means adverse or destructive atmospheric conditions, such as heavy rain, rising water, wind-driven water, ice, hail, snow, drought, lightning, or high winds.
- I.1.54 “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.
- I.1.55 “WRITTEN NOTICE”** is any notice, payment, statement or demand required or permitted to be given under this Contract, by either Party to the other, and 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) Days after mailing.

I.2 PRELIMINARY MATTERS.

- I.2.1** Upon City Council’s passing of an Ordinance authorizing the issuance of a contract, a Notice of Award Letter shall be sent to Contractor notifying Contractor of the award of a contract. In its Notice of Award Letter, Contractor shall be informed of a date or timeframe by which Contractor’s bond(s) and evidence of insurance shall be delivered to City.

I.2.2 DELIVERY OF CONTRACT AND BONDS.

By no later than the Pre-Construction Conference, and prior to the commencement of any Work on the Project, Contractor shall deliver a fully executed Contract to City, 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.

I.2.3 DELIVERY OF EVIDENCE OF INSURANCE.

By no later than the Pre-Construction Conference, and prior to the commencement of any Work under this Contract, Contractor shall deliver evidence of insurance to City by providing City an original, completed certificate of insurance and a complete copy of all insurance policies

containing all information and endorsements required by the Contract Documents, with such policies clearly labeled with the name of the Project. Contractor shall be prohibited from commencing the Work, and City shall have no duty to pay or perform under this Contract, until such evidence of insurance is delivered to City. No officer or employee, other than City's Risk Management Department, shall have authority to waive this requirement.

I.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 the 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.

I.2.5 SUBMISSION OF PROJECT SCHEDULE(S).

At least fourteen (14) Days prior to the Pre-Construction Conference, and prior to start of Work (unless otherwise specified elsewhere in the Contract Documents), Contractor shall submit the Project Schedule as required by **ARTICLE III.10** to PW Scheduling and ODR.

I.2.6 PRE-CONSTRUCTION CONFERENCE.

Before Contractor commences any Work on the Project, a Pre-Construction Conference attended by Contractor, Design Consultant, ODR, and others, as appropriate, shall be held to establish a working understanding among the Parties as to the Work and to discuss, at minimum: the Project Schedule referenced in this **ARTICLE I** and **ARTICLE III.10** herein; the procedures for handling Shop Drawings and other submittals; the processing of Applications for Payment; and Contractor's possession, use, retention, and maintenance of records as required by **ARTICLE 1.3** herein. The Notice to Proceed may be issued at the Pre-Construction Conference or at any other time at City's discretion. Said issuance of the Notice to Proceed shall not be unreasonably withheld by City.

I.3 OWNERSHIP, USE, AND RETENTION OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.

- I.3.1** The Drawings, Specifications and all other documents, including those in electronic form, prepared by Design Consultant or other Consultants retained by City for the Project, which describe the Work to be executed by Contractor (collectively referred to hereinafter as the "Construction Documents") are, and shall remain, the property of City, whether the Project for which they are made is executed or not. Neither Contractor nor any Subcontractor or Sub-Subcontractor shall own or claim a copyright in the Construction Documents. Submittal or distribution to meet official regulatory requirements, or for other purposes in connection with this Project, is not to be construed as publication.

I.3.2 Contractor, Subcontractors, and Sub-Subcontractors are authorized to use and reproduce the Construction Documents for use solely with respect to this Project. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Construction Documents. Contractor shall be permitted to retain one record set of the Construction Documents; however, on request and upon completion of the Work, all other copies of Construction Documents shall be returned, or suitably accounted for, to Design Consultant. Except with specific written consent of City, the Construction Documents and all copies of Construction Documents, are for use solely with respect to this Project. Any such use, without City's specific written authorization, shall be at the sole risk and liability of Contractor, Subcontractor and/or Sub-Subcontractor.

I.3.3 RETENTION OF DOCUMENTS AND TANGIBLE THINGS OF CONTRACTOR AND SUBCONTRACTOR & CITY'S RIGHT TO INSPECT, AUDIT AND/OR COPY DOCUMENTS AND TANGIBLE THINGS OF CONTRACTOR AND SUBCONTRACTOR.

- a. As used in this **ARTICLE I.3.3**, "Documents and Tangible Things regarding the Work and/or the Project" means Documents and Tangible Things as defined in **ARTICLE I.1.20** herein, including, but not be limited to: the Contract Documents; the Construction Documents; correspondence and other communications; job cost journals, ledgers, and/or reports; bids; proposals; subcontracts; sub-subcontracts; supplier agreements; purchase orders, bills, receipts, invoices, leases, vouchers, and other documentation of accounts payable and reimbursable expenses; inspection documents; testing data and laboratory reports; photographs and recordings; payment records; payroll records, including, but not limited to, time cards and/or time sheets, actual base hourly rates, and annual salary escalation records; daily and/or weekly reports, logs, and/or diaries of superintendents, foremen and/or any other persons providing on-site supervision and/or oversight of the Work; job meeting minutes; notes; books; memoranda; reports; files; federal and state tax filings for the Work and/or Project; and all other documents and data evidencing or establishing all other direct or indirect costs related to the bidding and performance of this Work.
- b. Contractor acknowledges and agrees that, during all phases of the Project and continuing until (i) four (4) years after final completion of the Work or (ii) final resolution of any dispute(s) regarding the Work and/or the Project that arises prior to the expiration of four (4) years after final completion of the Work, whichever is longer, Contractor shall retain, and shall require all of its Subcontractors to retain, all Documents and Tangible Things regarding the Work and/or the Project for inspection, examination, audit, and/or reproduction (as paper copies and/or as electronic copies) by City or any City designee(s) (including, but not limited to, any internal auditor and or any outside licensed professional or other representative engaged by City).
- c. Upon receiving a written request by City to inspect, examine, and/or audit Contractor's and/or Subcontractor(s)' Documents and Tangible Things, Contractor and/or its Subcontractor(s) shall, within 10 Days of receiving such written request, make their Documents and Tangible Things available to City and/or City's designee(s) during regular

business hours at an adequate and appropriate indoor work space reasonably necessary for City and/or City's designee(s) to conduct the requested inspection and/or audit.

- d. Upon receiving a written request by City to reproduce and obtain a legible and complete copy of any or all such Documents and Tangible Things of Contractor and/or its Subcontractor(s), the requested Documents and Tangible Things shall be provided by Contractor and/or its Subcontractor(s) to City and/or City's designee(s) for reproduction. To the extent that City requests reproduction of any such Documents and Tangible Things, City shall reimburse Contractor and Subcontractor for reasonable and necessary reproduction costs.
- e. During all phases of the Project and continuing to final completion of the Work, all Documents and Tangible Things regarding the Work and/or the Project of Contractor shall be maintained within Contractor's San Antonio offices, unless otherwise authorized by City. After expiration of this Contract, Contractor's Documents and Tangible Things may be archived in the Contractor's central record storage facility but shall remain accessible to City until (i) four (4) years after final completion or (ii) final resolution of any dispute(s) regarding the Work and/or the Project that arises prior to the expiration of four (4) years after final completion of the Work, whichever is longer.
- f. During all phases of the Project and continuing to final completion of the Work, all Documents and Tangible Things regarding the Work and/or the Project of Contractor's Subcontractors shall be maintained within the Subcontractors' San Antonio offices, unless otherwise authorized by City. After expiration of this Contract, Subcontractor's Documents and Tangible Things may be archived in each Subcontractors' central record storage facility but shall remain accessible to City until (i) four (4) years after final completion or (ii) final resolution of any dispute(s) regarding the Work and/or the Project that arises prior to the expiration of four (4) years after final completion of the Work, whichever is longer.
- g. Contractor agrees to, and shall include, this **ARTICLE I.3.3** in all contracts with its Subcontractors.

I.4. CORRELATION AND INTENT.

- I.4.1** The intent of the Contract Documents is to include all items required for the proper execution and completion of the Work As Necessary 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 to be As Necessary. In the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, Contractor shall provide the better quality or greater quantity of Work and shall comply with the more stringent requirements. Contract pricing shall be based on the better quality and greater quantity and the more stringent

requirements of Work indicated. In the event of the above-mentioned inconsistency, City shall determine the resolution of the inconsistency.

- I.4.2** Invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.
- I.4.3.** Organization of the Specifications into divisions, sections, articles, and the arrangement of Drawings shall not control Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- I.4.4** Unless otherwise stated in the Contract Documents, words having well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- I.4.5** 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 those most recent and 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.
- I.4.6** The most recently issued Contract Document takes precedence over previous issues of the same Contract Document. The order of precedence is as follows, with the highest authority listed herein as "a" and in descending order:
 - a.** Amendments and/or Modifications to the Project Contract Signed by Contractor, City and Design Consultant;
 - b.** Addenda, with those of later date(s) having precedence over those with earlier date(s);
 - c.** Special Conditions;
 - d.** Supplemental Conditions;
 - e.** General Conditions;
 - f.** Special Provisions;

- g. Special Specifications (including, but not limited to, minor changes in the Work under Article VII.4);
- h. Specifications;
- i. Detailed Drawings;
- j. Drawings.

I.4.7 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 City and Design Consultant.

I.5 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. CITY

II.1 GENERAL.

II.1.1 City shall designate, in writing, to Contractor an ODR who shall have express authority to bind City with respect to all matters concerning this Contract which require City’s approval or authorization.

II.1.2 Contractor acknowledges no lien rights exist with respect to public property.

II.2 INFORMATION AND SERVICES TO BE PROVIDED BY CITY.

II.2.1 City shall provide the Preliminary Budget and general schedule, if any, for the Project. The general schedule shall set forth City’s plan for milestone dates, if any, Substantial Completion, and Final Completion of the Project.

II.2.2 City shall endeavor to furnish surveys, if in existence and in City’s possession, describing physical characteristics, legal limitations, and utility locations. Contractor, however, shall be responsible for procurement and payment, at Contractor’s sole expense, of subsurface underground utility surveys, and the furnishing of surveys by the City shall not relieve Contractor of any of its duties under the Contract Documents or these General Conditions, including Contractor’s duties to confirm information provided by the City and to independently obtain subsurface utility surveys.

- II.2.3** Information or services required of City by the Contract Documents shall be furnished by City with reasonable promptness, following actual receipt of a written request from Contractor. It is incumbent upon Contractor to identify, establish, and maintain a current Project Schedule of latest dates for submittal and approval by City, as required in **ARTICLE III.10**, including when such information or services must be delivered. If City 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 City for all extra costs incurred by holding, storage, retention or performance, including redeliveries by City, in order to comply with the current schedule.
- II.2.4** Unless otherwise provided in the Contract Documents, Contractor shall be furnished, free of charge, up to three (3) 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.
- II.2.5** City's personnel may, but are not required to, be present at the construction Site during progress of the Work, to generally observe the quantity and quality of Contractor's work and to record 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 purposes of verification of Contractor's Applications for Payment and payroll records.
- II.2.6** City shall reimburse Contractor for the necessary Project-related approvals, fees, electricity, water and required permits with no markup paid to Contractor for these necessary Project-related costs unless said costs are stipulated in the Contract Documents as a part of Contractor's cost of Work.

II.3 CITY'S RIGHT TO STOP THE WORK.

If Contractor fails to correct Work deemed by City to be not in accordance with the requirements of the Contract Documents as required by **ARTICLE XII.3** herein, fails to carry out Work in accordance with the Contract Documents, has an unsafe working condition(s), or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, City 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 City to stop the Work shall not give rise to any duty on the part of City 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, City's rights under this Contract. City's issuance of an order to Contractor to stop the Work shall not give rise to any claim by Contractor for additional time, Work costs, or General Conditions costs.

II.4 CITY'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 City, to commence and

continue correction of such default, neglect, or failure with diligence and promptness, City may, without prejudice to other remedies City may have, correct such deficiencies, neglect, or failure with its own forces or other contractors. In such case, an appropriate Change Order may be issued, deducting from payments then or thereafter due Contractor, the reasonable cost of correcting such deficiencies, neglect, or failure of Contractor, including, but not limited to, all of City's incurred fees and expenses 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 City.

END OF ARTICLE II

ARTICLE III. CONTRACTOR

III.1 GENERAL.

- III.1.1** It is understood and agreed that the relationship of Contractor to City is and shall remain 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 City or create any partnership, joint venture, or other association between City and Contractor. No term or provision of this Contract shall be construed as making Contractor an agent, servant or employee of City or as making Contractor or any of Contractor's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance, and worker's compensation, that City provides to its employees. Any direction or instruction by City regarding or relating to the Work shall relate to the results City desires to obtain from the Work and shall in no way affect Contractor's independent contractor status.
- III.1.2** Contractor shall perform the Work in accordance with the Contract Documents. Contractor also shall perform the work in a good and workmanlike manner and in accordance with construction means and methods comprising industry standards of the highest degree of skill and attention of contractors on similar projects in San Antonio, Bexar County, Texas, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.
- III.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 City or any other persons or entities other than Contractor, including, but not limited to, inspections performed pursuant to **ARTICLE IX.9.1** herein.
- III.1.4** Contractor shall not be relieved of its obligations, responsibilities, or duties to perform the Work in accordance with the Contract Documents by any installment payments made by City, by final payment made by City, or by City's partial or entire use or occupancy of the Project. In addition, neither partial or final payment made by City nor partial or entire use or occupancy

by City shall, in any way, be deemed to be an approval and/or a final acceptance by City of any part of the Work not done in accordance with the requirements of the Contract Documents.

III.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.

III.2.1 Before starting each portion of the Work, Contractor shall review the Contract Documents to establish that (i) the information is sufficiently complete for Contractor to perform its scope of Work, (ii) there are no errors, inconsistencies, omissions or differences within or between the Contract Documents, and (iii) the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. It is recognized that Contractor's review of Contract Documents required herein is made in Contractor's capacity as a reasonably prudent contractor and not as a licensed design professional, unless otherwise specifically specified in the Contract Documents. Contractor is not responsible for the consequences of design defects in and may not warranty the accuracy, adequacy, sufficiency, or suitability of the Plans, Specifications, or other design documents provided to Contractor by a person other than Contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier; however, if, in making observations of the Plans, Specifications, or other design documents or the improvement to real property that a contractor would make in the reasonable preparation of a bid or fulfillment of its scope of Work under normal circumstances, Contractor discovers or reasonably should have discovered a defect, inaccuracy, inadequacy, or insufficiency in the Plans, Specifications, or other design documents, then Contractor shall, within a reasonable time of learning of any such defect, inaccuracy, inadequacy, or insufficiency, disclose same to City and to the Architect performing as Design Consultant for the Work in writing via a RFI in such form as City may require.

III.2.2 Because the Contract Documents are complementary, before starting each portion of the Work, Contractor carefully shall:

- a.** take field measurements of any existing conditions related to that portion of the Work; and
- b.** observe any conditions at the Site affecting the Work.

It is recognized that Contractor's review of Contract Documents required herein is made in Contractor's capacity as a reasonably prudent contractor and not as a licensed design professional, unless otherwise specifically specified in the Contract Documents. Contractor is not responsible for the consequences of design defects in and may not warranty the accuracy, adequacy, sufficiency, or suitability of the Plans, Specifications, or other design documents provided to Contractor by a person other than Contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier; however, if, in taking field measurements and/or making observations required herein, as a contractor would make in the reasonable preparation of a bid or fulfillment of its scope of Work under normal circumstances, Contractor discovers or reasonably should have discovered a defect, inaccuracy, inadequacy, or insufficiency in the Plans, Specifications, or other design documents in comparison to the conditions of the Site, then Contractor shall, within a

reasonable time of learning of any such defect, inaccuracy, inadequacy, or insufficiency, disclose same to City and to the Architect performing as Design Consultant for the Work in writing via a RFI in such form as City may require.

III.2.3 The exactness of existing grades, elevations, dimensions and/or locations given on any Drawings issued by Design Consultant, or of the work installed by other contractors, is not guaranteed by City. Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and/or locations. Any errors due to Contractor's failure to so verify all such grades, elevations, dimensions and/or locations promptly shall be rectified by Contractor without any additional cost to City.

III.2.4 In all cases of interconnection of its Work with existing conditions or with work performed by others, Contractor shall verify at the Site all grades, elevations, dimensions and/or locations relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, dimensions and/or locations promptly shall be rectified by Contractor without any additional cost to City.

III.2.5 If Contractor believes additional cost or time is involved because of clarifications or instructions issued by Design Consultant in response to a RFI or other Written Notice provided by Contractor, Contractor shall make Claims as provided in **ARTICLES IV.2.5** and **IV.2.6** herein. If Contractor fails to perform the obligations of **ARTICLES III.2.1** through **ARTICLE III.2.4** herein, Contractor shall pay such costs and damages to City, including applicable Liquidated Damages, as would have been avoided if Contractor had performed such obligations.

III.3 SUPERVISION AND CONSTRUCTION PROCEDURES.

III.3.1 Contractor shall supervise, inspect, and direct the Work competently and efficiently, exercising the skill and attention required to perform the Work As Necessary. Contractor solely shall be responsible for, and have control over, the means, methods, techniques, sequences, procedures, Quality Control, and coordination of all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, Contractor shall give timely Written Notice to City and Design Consultant, and Contractor shall propose alternative means, methods, techniques, sequences, or procedures. City and its Design Consultant shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction, and Contractor shall not proceed with that portion of the Work without further written instructions from City and/or its Design Consultant.

III.3.2 Contractor shall be responsible to City for the acts and omissions of Contractor's agents and employees, Subcontractors and their agents and employees, and all other persons or entities performing portions of the Work for, or on behalf of, Contractor or any of its Subcontractors.

- III.3.3** Contractor shall be responsible for inspection of portions of Work already performed, to determine that such portions are in proper condition to receive subsequent Work.
- III.3.4** Contractor shall bear responsibility for design, safety 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.
- III.3.5** 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 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.
- III.3.6** Where Contractor is constructing a building, during Contractor's performance of the Work, 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 City 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 the leak(s) is/are attributable to faulty workmanship or unauthorized or defective materials provided by Contractor or its Subcontractors.

III.4 LABOR AND MATERIALS.

- III.4.1** Contractor expressly acknowledges, understands, and agrees that this Contract and all other Contract Documents are entered into subject to and controlled by the Charter and Ordinances of the City of San Antonio, including, but not limited to, all Ordinances adopting all design and building-related codes applicable to the Work and the Project, and all applicable laws, rules and regulations of the State of Texas and the Government of the United States of America, and 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. With such acknowledgement, understanding, and agreement, unless otherwise provided in the Contract Documents, Contractor's Proposal shall incorporate, and 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.

III.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” as 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 shall be 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 City, sixty dollars (\$60.00) for each laborer, worker, or mechanic employed **for each 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 agreements entered into by Contractor or any Subcontractor employed on the Project.

III.4.3 SUBSTITUTIONS.

- a. Contractor’s proposed Substitutions and alternates may be rejected by City without explanation and shall be considered by City only under one or more of the following conditions:
 - i. the proposal is required for compliance with interpretation of existing code requirements or insurance regulations;
 - ii. specified products are unavailable through no fault of Contractor; and/or
 - iii. when, in the judgment of City or Design Consultant, a Substitution substantially would be in City’s best interests in terms of cost, time, or other considerations.
- b. When Contractor proposes a Substitution, Contractor shall submit to City and Design Consultant:

- i. a full explanation of the proposed Substitution and submittal of all supporting data to include technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the Substitution;
- ii. a written explanation of the reasons the Substitution is necessary, including the benefits to City and to the Work, in the event the Substitution is acceptable to City;
- iii. the adjustment, if any, in the Contract Sum;
- iv. the adjustment, if any, in the time of completion of the Contract and the construction schedule; and,
- v. in the event of a Substitution under this **ARTICLE III.4.3**, an affidavit stating:
 - Contractor's proposed Substitution conforms to and meets all the requirements of the pertinent Specifications and requirements shown on the Drawings; and,
 - Contractor accepts, and owes to City, all of the warranty and correction obligations in connection with the proposed Substitution as if originally specified by Design Consultant.
- c. Proposals for Substitutions shall be submitted to Design Consultant in sufficient time to allow Design Consultant no less than twenty-one (21) Days for review. No Substitutions shall be considered or allowed without Contractor's submittal of complete substantiating data and information unless the Substitution is at the request of City, at which time City may provide a timeline and Substitution submittal requirements appropriate for the nature of the requested Substitution.
- d. In the event of a Substitution submittal under this **ARTICLE III.4.3**, and whether or not any such proposed Substitution is accepted by City or Design Consultant, Contractor shall reimburse City, at City's reasonable discretion, for any fees incurred and charged by Design Consultant or other Consultants for evaluating each proposed Substitute.

III.4.4 Contractor shall provide to City and Design Consultant a list, which shall be updated as appropriate, identifying, by name, business address, best business telephone number, and person serving as primary point of contact, all Architects, Engineers, Subcontractors, and suppliers providing Work for the Project.

III.4.5 Except as otherwise stipulated in the Contract Documents or as required for safety or protection of persons, the Work and/or the Site or adjacent thereto, no Work shall be allowed by city from sundown to sunrise of the following calendar day unless directed by the ODR or requested in writing by Contractor and approved by City.

- III.4.6** Contractor shall, at all times, enforce strict discipline and good order among persons working on the Project. Contractor shall not employ or permit employment of any unfit person or any person not properly skilled in tasks assigned to them.
- III.4.7** City, at any time, may direct Contractor to remove any of Contractor's employees, Subcontractors, or any other persons whom Contractor allows to provide Work for the Project, who are a hindrance to the proper and/or timely execution of the Work or for any other good and reasonable cause; in response, Contractor promptly shall comply with City's direction without delay to the Project and at no additional cost to City. In addition, if Contractor receives Written Notice from City complaining about any employee, Subcontractor, or any other person whom Contractor allows to provide Work for the Project, who is a hindrance to the proper and/or timely execution of the Work or is the subject of any other good and reasonable cause for complaint, Contractor shall remedy such complaint without delay to the Project and at no additional cost to City. This provision shall be included in all contracts between Contractor and all Subcontractors of all tiers.
- III.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 **ARTICLE III.5.1** herein when the Work is Substantially Completed or City takes over use and occupancy, whichever is earlier.
- III.4.9** Contractor shall procure, and furnish to City, all spares, attic stock, and maintenance and operations manuals called for by the Specifications or which normally are provided by a manufacturer. The maintenance manuals 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.

III.5 WARRANTY.

- III.5.1** Contractor hereby warrants to City and Design Consultant that materials and equipment furnished and installed under the Contract shall be new and of good quality unless the Contract Documents require or permit otherwise. Contractor further warrants that the Work shall conform to the requirements of the Contract Documents, shall be done in a good and workmanlike manner and in accordance with construction means and methods comprising industry standards of the highest degree of skill and attention of contractors on similar projects in San Antonio, Bexar County, Texas, and shall be free from defects except for those inherent in the quality of the Work that the Contract Documents require or permit. Work not conforming to this warranty and these requirements, including Substitutions not properly approved and authorized by City, shall be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse unless such abuse is a result of Contractor, modifications to the Work not executed by the Contractor, improper or insufficient maintenance unless Contractor is required to provide maintenance in the Contract Documents, improper operation, or normal wear and tear and normal usage.

- III.5.2** A right of action by City for any breach of Contractor's express warranty at **ARTICLE III.5.1** herein shall be in addition to, and not in lieu of or in limitation of, any other remedies City may have under this Contract, by any applicable law, or in equity, regarding any defective Work.
- III.5.3** All warranties required by the Contract Documents shall be issued in the name of City or shall be transferable to City, and all such warranties also shall be assignable by City.
- III.5.4** All warranties required by the Contract Documents shall become effective on the date of Substantial Completion of the entire Work unless otherwise provided in any Certificate of Partial Substantial Completion or Letter of Conditional Approval regarding a designated portion thereof which City agrees to accept separately pursuant to the Contract Documents.
- III.5.5** Contractor agrees to assign to City, at the time of Final Completion of the Work, all manufacturer's warranties regarding and relating to materials and labor used in the Work, and Contractor further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties, provided such assignment shall contain a reservation of Contractor's right also to enforce the manufacturer's warranties.
- III.5.6** As a condition precedent to final payment, Contractor shall prepare and provide to City, in a form acceptable to City, a warranty notebook with reference tabs and a complete set of paper copies of all warranties provided by each Subcontractor, manufacturer, and supplier providing materials and labor for the Work as appropriate, with each warranty expressly containing the calendar date of the warranty's commencement date as required by the Contract Documents and with each warranty fully executed by each Subcontractor, manufacturer, or supplier as appropriate. Contractor also shall prepare and provide an electronic version in PDF of the warranty notebook to City.

III.6 TAXES.

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

III.7 PERMITS, FEES AND NOTICES.

- III.7.1** Unless otherwise provided in the Contract Documents, Contractor shall secure all permits, licenses, inspections, and approvals, including City Right-of-Way permits necessary for the proper execution and completion of the Work. City and Design Consultant may assist Contractor, when necessary and without relieving Contractor of its obligations herein, in obtaining such items.
- III.7.2** For both federally and non-federally funded construction projects, when applicable, Contractor shall prepare and submit the necessary paperwork to satisfy both Texas Pollutant

Discharge Elimination System (hereafter referred to as "TPDES") regulations of the Texas Commission on Environmental Quality (hereafter referred to as "TCEQ") and National Pollutant Discharge Elimination System (hereafter referred to as "NPDES") regulations of the U.S. Environmental Protection Agency (hereafter referred to as "EPA"), and to satisfy local authorities, if applicable, which require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for a Project. For federally funded construction projects, when applicable, the City shall secure inspections to satisfy TPDES and NPDES regulations. Contractor shall assist City in obtaining all permits and approvals and, at City's request, pay all fees and expenses, if any, associated with any such applicable TPDES regulations and/or NPDES regulations. For non-federally funded construction projects, when applicable, the Contractor shall secure inspections to satisfy TPDES and NPDES regulations. Inspections to satisfy TPDES and NPDES regulations shall be conducted by a certified inspector in accordance with local ordinances.

III.7.3 Contractor shall comply with and give all notices required by laws, statutes, ordinances, codes, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

III.7.4 Contractor's obligations under **ARTICLE III.7** herein do not require Contractor 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.

III.8 ALLOWANCES.

III.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 City may direct, but Contractor shall not be required to employ persons or entities to whom Contractor has reasonable objection. Use of Allowances requires City approval prior to expenditure.

III.8.2 Unless otherwise provided in the Contract Documents:

- a.** allowances shall cover the cost to Contractor of materials and equipment delivered at the Site less applicable trade discounts;
- b.** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- c.** 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 (i)

the difference between actual costs and the allowances under **ARTICLE III.8.2.a** and (ii) all changes in Contractor's costs under **ARTICLE III.8.2.b**.

- III.8.3** Materials and equipment under an allowance shall be approved by City within such time as is reasonably specified by Contractor to avoid any delay in the Work.

III.9 SUPERINTENDENT/KEY PERSONNEL.

- III.9.1** Contractor shall employ and assign a competent superintendent who is able to communicate fluently in English and any necessary assistant(s) (collectively referred to hereinafter as "Key Personnel") who shall be in attendance at the Site during performance of the Work. By no later than 14 Days after City issues Written Notice to Proceed, Contractor shall identify in writing to City the assigned superintendent and any necessary assistant(s). Contractor's designated superintendent shall represent Contractor at all times, and all communications and directions given to the superintendent shall be binding on Contractor.
- III.9.2** Contractor's designated Key Personnel shall not be employed on any other project prior to Final Completion of the Work without the written approval of City, which approval shall not be unreasonably withheld.
- III.9.3** Contractor's designated Key Personnel shall not be replaced without prior Written Notice to, and the approval of, City, which approval shall not be unreasonably withheld.
- III.9.4** In the event any person constituting Key Personnel leaves Contractor's employment, such person's replacement shall be subject to City's reasonable approval.

III.10 CONTRACTOR'S PROJECT SCHEDULES.

The purpose of City requiring the Project Schedule and updates to the Project Schedule (collectively referred to hereinafter as "Project Schedules") shall be, but is not limited to:

- a. ensuring adequate planning during the execution and progress of the Work in accordance with the allowable number of calendar days and all milestones;
- b. assuring coordination of efforts required of Contractor, City, Utilities, and others that may be involved in the Project;
- c. monitoring the progress of Work and evaluate proposed Contract changes;
- d. assisting in administering the Contract time requirements; and
- e. assisting with evaluation of requests for time extensions, if any.

City's review and acceptance of Contractor's Project Schedules only is for general conformance to Contract requirements and does not relieve Contractor of any of its responsibilities and duties owed under

the Contract Documents, nor does such review and acceptance expressly, or by implication, warrant, acknowledge, or admit the reasonableness of the logic, sequencing, duration, manpower, or equipment loading of Contractor's Project Schedules. In the event Contractor fails to define any element of Work, activity, or logic and City's review does not detect this omission or error, such omission or error, whether or when discovered by Contractor or City, shall be corrected by Contractor at the next monthly Project Schedule update and shall not affect the Project completion date.

Submittal of the baseline Project Schedule and of Project Schedule updates constitutes Contractor's representation to City, as of the date of the submittal, of the accurate depiction of all progress to date, and Contractor shall follow the most recently submitted Project Schedule and/or Project Schedule update in performing the Work.

Acceptance of Contractor's Project Schedules does not constitute City's consent to any changes, alter the terms of the Contract, waive Contractor's responsibility for timely completion, or waive City's right to damages.

III.10.1 PROJECT SCHEDULE METHOD.

Contractor shall create, maintain and submit a Critical Path Method (hereafter referred to as "CPM") Project Schedule. The Project Schedule is used to convey the Contractor's intended and completed Work, showing the manner of execution, which Contractor has followed or 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 accurate reporting of Work. Contractor shall timely provide the Project Schedule using project management scheduling software compatible with City's software. The work performed under this section will not be measured or paid for directly but will be subsidiary to pertinent items. City's current software and certain additional Project Schedule requirements are detailed at Exhibit "A" of these General Conditions.

III.10.2 SCHEDULING PERSONNEL.

Unless otherwise indicated in writing by City, Contractor shall designate an individual (referred to hereafter as "Scheduler") to create and maintain the Project Schedules. Scheduler shall be proficient in CPM analysis, possess sufficient experience to timely perform required tasks on the specified software, prepare and interpret reports from the software and make Site visits to create and maintain the Project Schedules. Scheduler shall be prepared and available to discuss, in detail, the proposed sequence of Work and methods of operation and how that information will be communicated through progress Project Schedules at construction meetings or in other City/Contractor discussions. The designated Scheduler shall not be replaced without prior Written Notice to, and the approval of, City, which approval shall not be unreasonably withheld.

III.10.3 PROJECT SCHEDULE SUBMISSION.

Unless otherwise indicated in writing by City, Contractor shall submit the entire baseline Project Schedule to City at least fourteen (14) Days prior to the Pre-Construction Conference. Monthly Project Schedule updates shall be submitted to City by no later than the 10th of the month or the date of the

prior month's Pay Request. If City requests any revisions or justifications of the Project Schedule required by City of Contractor, then Contractor shall submit the revised Project Schedule or requested justification to City within seven (7) Days of City's request. City has the right to withhold progress payments if the Project Schedule requirements and/or requests for justification are not met.

The Project Schedules shall be submitted via electronic mail or any other format acceptable to City, shall provide adequate detail so the Project Schedules are capable of measuring and forecasting the effect of delaying Events on completed and uncompleted activities, shall show the sequence and interdependence of activities required for total performance of the Work, shall show actual installation dates on completed Work, and shall conform to the following:

- a.** Shall include PDF plots of the schedule defining the Critical Path and two week look-ahead as well as the native compatible scheduling file format;
- b.** Shall show the order in which Contractor proposes to carry out the Work in accordance with the final, approved phasing plan and indicate the dates for starting and completing the various aspects/phases required to complete the Work, including lead times. At a minimum, the Project Schedules and all updates must include and take into account the following activities:
 - 1. submittals;
 - 2. Shop Drawings;
 - 3. Samples and/or approvals;
 - 4. mobilization;
 - 5. procurement;
 - 6. fabrication/manufacturing;
 - 7. equipment;
 - 8. installation;
 - 9. testing;
 - 10. inspection; and
 - 11. acceptance of Work.
- c.** Shall not exceed the time limits set forth in the Contract Documents;
- d.** Shall include a legend for all abbreviations used;

- e. Shall code activities so that organized plots of the Project Schedules may be produced. Typical activity coding includes traffic control phase, location, and work type. No fragnet (filtered) information is allowable;
- f. Shall show an estimated production rate per working Day for each Work activity. Activity durations shall be based on production rates shown;
- g. Each activity on the Project Schedules shall include:
 - 1. an activity number, utilizing an alphanumeric designation system agreeable to City;
 - 2. a concise description of the Work represented by the activity;
 - 3. activity durations in whole Work Days with a maximum of twenty-four (24) Work Days. Durations greater than twenty-four (24) Work Days may be used for non-construction activities (mobilization, submittal preparation, curing, etc.) and other activities mutually agreeable between City and Contractor; and
 - 4. float, where applicable, with all float time to inure to the benefit of the Project.
- h. The original and remaining Work duration shall be displayed. The grouping band shall, by default, report Work Days planned. One additional level of effort is an activity added to the Project Schedules 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;
- i. Work shall be scheduled based upon Contractor’s six (6) day work week consisting of Monday through Saturday during any given calendar week, with each working day measured from sunrise to sundown;
- j. Contractor shall designate all City Holidays as non-working days (holidays). The exact dates of the observance of the City Holidays will be confirmed during the Pre-Construction Conference but currently are those holidays identified in Exhibit “B” of these General Conditions. For dates comprising City Holidays beyond the then-current calendar year, Contractor shall request the COSA Calendar Template for the upcoming calendar year, which identifies all City Holidays for such calendar year;
- k. Shall assign working calendars for the days Contractor plans to work;
- l. Seasonal Weather conditions shall be considered and included for all work influenced by temperature and/or precipitation. Baseline Weather conditions shall be incorporated using the Weather Days identified in Exhibit “B” of these General Conditions. When overall actual inclement Weather Days do not exceed the Project’s cumulative inclement Weather Days, there shall not be a basis for a time extension claim. For dates comprising Weather Days beyond the then-current calendar year, Contractor shall request the COSA Calendar

Template for the upcoming calendar year, which identifies all Weather Days for such calendar year. In addition, Contractor shall take reasonable precautions to prevent loss caused by Weather-related events, erosion, rising water, and/or vandalism during the construction period, and it is the responsibility of Contractor to rectify such loss or damage to the extent required by City;

- m. Shall reflect Duration Percent complete as the percent complete type;
- n. Shall reflect Fixed Units as the duration type;
- o. Shall include submittals with a logical tie to what each drives;
- p. Proposed Change Order(s) shall be reflected as such and linked to the Project Schedules with logical ties, including approval by City. Upon approval of a Change Order, rename task, identifying Work performed and Change Order number, adding resources and Contract time extension, if any, to the Project Schedules;
- q. Shall only include constraints of the Work which are contained in the Contract Documents;
- r. Shall include activity milestones for material delivery;
- s. Shall include only actual Work performed and shall not include any default progress;
- t. If Contractor submits a Project Schedule or Project Schedule update for acceptance, based on a sequence of Work not shown in the Plans, Contractor shall notify City in writing of said sequence of Work separate from the Schedule submittal.
- u. Shall include a Narrative explaining the Project's progress, identifying all progress made out of sequence, defining the Critical Path, identifying any potential delays, and including other relevant data. A Narrative template is available from City, upon request.
- v. If any updated Project Schedule exceeds the time limits set forth in the Contract Documents for Substantial Completion of the Work, Contractor shall include, along with its updated Project Schedule, a statement of the reasons for the anticipated delay and Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If Contractor asserts the failure of City 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/required, from whom such information has been requested/required, the specific calendar dates upon which such information has been requested/required, and the specific method by which such information has been requested/required.
- w. If Contractor desires to make Major Changes in the Project Schedules, Contractor shall notify City in writing and shall submit the proposed Project Schedule revision. "Major Changes" are hereby defined as those affecting compliance with the contract requirements

and/or those that change the Project's Critical Path. Contractor's 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. All changes other than Major Changes may be accomplished through the monthly updating process without Contractor providing separate written notification.

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.

Contractor shall maintain a schedule of Shop Drawings and Sample Submittals, listing the expected time(s) for submitting, reviewing, and processing such submittals.

Upon City's receipt of a properly completed baseline Project Schedule in compliance with the requirements of **ARTICLE III.10** herein, City shall review the baseline Project Schedule within fourteen (14) Days of receipt for general compliance with the Specifications and shall notify Contractor of its acceptability. Upon City's receipt of a properly completed monthly Property Schedule update in compliance with the requirements of **ARTICLE III.10** herein, City shall review such updates within seven (7) Days of receipt for general compliance with the Specifications and shall notify Contractor of its acceptability.

Project Progress Meetings will be held between the Contractor & City periodically to review actual Project progress. The Meetings shall include discussions of Project Schedule activities to ensure the Project is progressing as indicated and any outstanding issues can be addressed.

III.10.4 COMPLETION OF WORK.

- a.** Contractor is accountable for substantially completing the Work in the Contract Time or as otherwise amended by Change Order.
- b.** If, in the sole judgment of City, a Project Schedule update reflects Work is behind schedule and the rate of performance of Work is inadequate to regain scheduled progress to ensure Contractor achieving any Project milestones (including, but not limited to, Substantial Completion) in accordance with the Project Schedule, City may, at its sole discretion and option, give Written Notice to Contractor and direct Contractor, at Contractor's sole expense, to propose and adopt a schedule recovery plan to accelerate the Work so the Work conforms to the Project Schedule and Project milestones previously agreed upon and to achieve Substantial Completion on or before the Contract Times.
- c.** Upon receiving City's Written Notice pursuant to **ARTICLE III.10.4.a** herein, Contractor shall take any and all action necessary to comply with City's directive. As part of its schedule recovery plan, Contractor may propose, but is not limited to, any of the following "Extraordinary Measures":
 - 1.** increasing Project labor forces;

2. increasing Project equipment or tools;
 3. increasing the hours of Work or number of shifts per Day with approval of City;
 4. expediting the delivery of Project materials;
 5. changing, with the approval of City, the schedule logic and Work sequences; and/or
 6. taking some other action as Contractor may propose, if acceptable to City.
- d. Within ten (10) Days after receiving such Written Notice from City, Contractor shall notify City 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 estimated date of 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 within the Contract Times.
- e. Should City deem Contractor's plan of action inadequate to achieve the desired acceleration to bring the Work back into compliance with the Contract requirements and achieve Substantial Completion on time, City shall have the right to order Contractor, at Contractor's sole expense, to take any corrective measures City deems necessary to expedite the progress of Work, including, without limitation, the "Extraordinary Measures" listed in **ARTICLE III.10.4.c** herein or any other measures that City may direct. Such Extraordinary Measures and any other measures that City directs shall continue until the progress of the Work complies with the milestone(s) required by the Contract Documents.
- f. City's right to require Extraordinary Measures and any other measures pursuant to this **ARTICLE III.10.4** is solely for the purpose of ensuring Project milestones and Substantial Completion of the Work are achieved within the Contract Times. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures and any other measures required by City under or pursuant to this **ARTICLE III.10.4** except as may be provided under the provisions of **ARTICLE IV.2.10** herein.
- g. City may exercise the rights furnished pursuant to this **ARTICLE III.10.4** as frequently as City deems necessary to ensure Contractor's performance of the Work is in compliance with any milestone date(s) or completion date(s) set forth in the Contract Documents.
- h. If reasonably required by City, 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.
- i. If Contractor believes it is entitled to an extension of any Contract Time(s) as to Work performed pursuant to **ARTICLE III.10** herein and Contractor properly has initiated a Claim for a time extension pursuant to the requirements of these General Conditions, City shall have the right, at City's sole discretion, to deny any portion of Contractor's Claim for an

extension of Contract Time(s) and to order Contractor to exercise its commercially reasonable efforts to achieve Substantial Completion on or before the Contract Time(s), but for the existence of the event giving rise to the Claim, by giving Written Notice to Contractor within fourteen (14) Days after receipt of Contractor's Claim. If City denies Contractor's Claim, in whole or in part, Contractor shall proceed to perform the Work in such a manner as to achieve Substantial Completion on or before the Contract Time(s). If, after initiating good faith acceleration efforts, Contractor shows that, through no fault of Contractor, Contractor fell behind on the approved Project Schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time(s), City shall not be entitled to Liquidated Damages.

- j. City has the right to order acceleration of the Work for reasons other than schedule recovery issues caused by Contractor requiring City directive under **ARTICLE III.10.4.b**. If City orders Contractor to accelerate the Work for any reason(s) other than schedule recovery issues caused by Contractor, Contractor may be entitled to a time extension for a reason specifically allowed under the Contract Documents, and Contractor also may initiate a Claim for acceleration costs. Any resulting Claim for acceleration costs, properly and timely initiated by Contractor, shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary for Contractor to bring the Work back within the then-existing, approved Project Schedule. Direct costs of Contractor include, but are not limited to, the premium portion of overtime pay for additional crew, shift, or equipment costs requested in advance by Contractor and approved in writing by City. 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.** City shall not be liable for any costs related to an acceleration claim other than those described in this **ARTICLE III.10.4.j**.

III.10.5 PROJECT SCHEDULE AND TIME IMPACT ANALYSIS.

Contractor shall submit a notice of potential time impact or actual time impact when a Contract time extension or adjustment of milestone dates may be justified or when directed. Said notice shall be made by Contractor, in writing, to City by no later than the earlier of: (a) the date Contractor has knowledge of such potential or actual impact; (b) the date the Contractor reasonably should have known of such potential or actual impact; or (c) five (5) Days after the commencement of the impact giving rise to delay. This is STEP 2 in the process listed below.

Contractor acknowledges and agrees that Contractor's failure to provide timely Written Notice of a potential time impact compromises City's ability to mitigate an impact and Contractor forfeits Contractor's right to request a time extension or adjustment of milestone dates.

A Time Impact Analysis (“TIA”) shall follow and include the activities and information in the steps below:

- STEP 1.** Establish the status of the Work immediately prior to the impact.
- STEP 2.** Predict the effect of the impact on the Project Schedule used in Step 1 and advise City so any potential assistance can be provided to mitigate impacts.
- STEP 3.** Track the effects of the impact on the Project Schedule during its occurrence.
- STEP 4.** Establish the status of the Work after the impact’s effect(s) have ended and provide details identifying any mitigating actions or circumstances used to keep the Work ongoing during the impact period.

Contractor shall determine the actual time impact by comparing the status of Work before the impact (STEP 1) to the actual effect(s) of the impact (STEP 3). Unless otherwise approved by City, STEPS 1, 3 & 4 must be completed before consideration of a Contract time extension or adjustment of a milestone date will be provided. Time extensions will only be considered when delays that affect milestones dates or the Contract completion date are beyond the Contractor’s control, including Subcontractors.

Impacts within the Contractor’s, or Subcontractor’s control, shall not be included in a TIA. Separate impacts shall not be combined, without request of City, nor shall fragnet schedules be allowed in the TIA submittal.

Contractor shall electronically submit the information required by STEP 4 by no later than fourteen (14) Days after the end of the impacting Event. Contractor acknowledges and agrees that Contractor’s failure to provide a TIA within fourteen (14) Days after the end of the impacting Event shall waive Contractor’s right to subsequently request a time extension to recover Days.

Approval or rejection of each TIA by City shall be made within twenty-one (21) Days after receipt of a complete TIA submittal unless City determines that subsequent meetings and negotiations are necessary before City may approve or reject the TIA.

III.11 DOCUMENTS AND SAMPLES AT THE SITE.

Contractor shall maintain, on Site and for City’s use, one (1) record copy of the Contract Documents, in good order and marked currently to indicate all field changes and selections made during construction (including changes from Change Orders, Field Work Directives, and orders for a minor change in the Work), one (1) record copy of approved Shop Drawings, Product Data, Samples, and similar required submittals, and one (1) record copy of daily filed inspections and reports (all collectively referred to hereinafter as “Record Copies”). These Record Copies also shall be available to Design Consultant. Upon final completion of the Work, these Record Copies shall be Signed by Contractor certifying to Owner thereby that they show complete and “as-built” conditions of the Work and shall be delivered to Design Consultant for submittal to City. Contractor shall be responsible to recreate any lost Record Copies, at Contractor’s expense and without cost to the Project.

III.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

- III.12.1** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by Design Consultant is subject to the limitations of **ARTICLE IV.1.4** herein. Informational submittals upon which Design Consultant is not expected to take responsive action may be so identified in the Contract Documents. Submittals not required by the Contract Documents may be returned to the Contractor by the Design Consultant without action and without delay claim option.
- III.12.2** 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 City or of separate contractors.
- III.12.3** By submitting Shop Drawings, Product Data, Samples, and similar submittals, Contractor represents it has (i) reviewed and approved them, (ii) determined and verified materials, field measurements, field conditions and field construction criteria related thereto, or shall do so, and (iii) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- III.12.4** 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 has been approved by Design Consultant. Design Consultant shall review and return such submittals within a reasonable period so as to not delay the Project.
- III.12.5** The Work shall be in accordance with approved submittals. Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Design Consultants' or City's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor specifically has informed Design Consultant and City, in writing, of such deviation(s) at the time of submittal and:
- a.** Design Consultant has given written approval for the specific deviation(s) as a minor change in the Work; or
 - b.** a Change Order or Field Work Directive has been issued authorizing the specific deviation(s).

Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by Design Consultant's or City's approval thereof.

III.12.6 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.

III.12.7 Contractor shall not be required to provide professional services that 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/or procedures. Contractor shall not be required to provide professional services in violation of applicable law.

III.12.8 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, City and Design Consultant shall specify all performance and design criteria 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. City and Design Consultant shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed by such design professionals, provided City and Design Consultant have specified to Contractor the performance and design criteria that such services must satisfy. Design Consultant shall review, approve, or take other appropriate action on such submittals only for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents.

III.12.9 If the Contract Documents require Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to Design Consultant at the time and in the form specified by Design Consultant.

III.13 USE OF SITE.

III.13.1 Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to areas permitted by applicable laws, ordinances, permits, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the premises with equipment or materials.

III.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 or the community.

- III.13.3** Contractor shall abide by all applicable rules and regulations of City with respect to conduct including, but not limited to, smoking, parking of vehicles, security regulations, and entry into adjacent facilities owned by City.
- III.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 or as directed by City.
- III.13.5** Contractor shall erect on Site, and shall maintain, 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. Contractor further shall post complete Payment and Performance Bond information on the Project Bulletin Board, including listing point of contact names, business addresses and telephone numbers of Contractor's bonding and insurance agencies/providers.
- III.13.6** As applicable, City shall have appropriate control points set for Contractor to establish Temporary Bench Marks (hereafter referred to as "TBM") and a baseline (for both *horizontal* and *vertical projects*, as applicable). As of the date of the Notice to Proceed, it is Contractor's responsibility to protect, preserve and reestablish (if required) the control points, 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".
- III.13.7** As applicable, Contractor shall lay out its work from control points 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 lay out any part of the work. Contractor shall provide cut sheets to the COI a minimum of seven (7) 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 San Antonio Water System (SAWS) Work, if present. Contractor shall provide cut sheets for improvements where Sewer and/or Water profiles are provided for various phases of the Project, if applicable. Contractor shall provide staking and preparation of cut sheets after receiving Notice to Proceed from City. If present, Contractor shall provide SAWS with cut sheets at a minimum of seven (7) Days prior to commencement 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.
- III.13.8** At the end of construction of the Project, Contractor shall provide City a grade certificate prepared by a Registered Professional Land Surveyor that includes a table of critical elevations comparing design to built values. Through preparation of the certificate, the Surveyor shall validate and state the infrastructure is constructed in accordance with the Contract Documents.

III.14 CUTTING AND PATCHING.

III.14.1 Contractor shall be responsible for all cutting, fitting and/or patching required to complete the Work or to make its parts fit together properly.

III.14.2 Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of City or separate contractors by excavation, cutting, patching, or otherwise altering such construction. Contractor shall not cut or otherwise alter such construction by City or a separate contractor except with written consent of City and, if City so designates, of such separate contractor. Said consent shall not be unreasonably withheld. Contractor shall not unreasonably withhold, from City or City's separate contractors, Contractor's consent to cutting or otherwise altering the Work.

III.14.3 Any item or portion of the Work damaged by Contractor, either during installation or prior to Substantial Completion of the Work (or such earlier date established in **ARTICLE IX**, herein), shall be repaired by Contractor, at Contractor's expense, so as to be equal in quality, appearance, serviceability, and other respects, to an undamaged item or portion of the Work. Where such repair cannot fully be accomplished, a damaged item or portion shall be replaced by Contractor at Contractor's expense.

III.15 CLEANING UP.

III.15.1 During the progress of the Work, Contractor shall perform maintenance of the vegetation (weeds and grass and the like) at and immediately adjacent to the Project site in a manner acceptable to the City and shall keep the 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. If Contractor fails to do so, City may elect to do so and all costs incurred by City shall be paid by Contractor or withheld from any pending payments from City to Contractor.

III.15.2 At the time of Substantial Completion of the Work, Contractor shall perform maintenance of the vegetation (weeds and grass and the like) at and immediately adjacent to the Project site in a manner acceptable to the City and shall remove all waste materials, rubbish, and other debris from and about the premises, as well as all tools, appliances, construction equipment and machinery, and surplus materials, and Contractor shall leave the Project Site clean and ready for occupancy by City. If Contractor fails to do so, City may elect to do so and all costs incurred by City shall be paid by Contractor or withheld from any pending payments from City to Contractor.

III.15.3 During construction of the Project, if Contractor spills or releases any fuel, petroleum hydrocarbons, or hazardous substance(s), Contractor, at its own expense, must properly clean up the spill or release within 24 hours of the incident, with Contractor being fully responsible for meeting all applicable environmental regulations according to the TCEQ and to City's satisfaction. Contractor also must initiate all applicable and required regulatory reporting. City reserves the right to determine if the spill or release was cleaned according to TCEQ regulatory levels and the current Emergency Operation Plan of the City. If Contractor fails to clean the spill or release to regulatory levels and the City's current Emergency Operation

Plan, then City reserves the right to send a remediation contractor to clean the spill or release, and Contractor will be responsible for these expenses.

III.16 ACCESS TO WORK.

Contractor shall provide City and Design Consultant access to Work in preparation, and in progress, wherever located.

III.17 PATENT FEES AND ROYALTIES.

Contractor shall pay all license fees and royalties, and Contractor shall assume all costs incident to the use or incorporation of a particular invention, design, process, product, or device that is the subject of patent rights or copyrights held by others as part of the Work.

III.18 INDEMNIFICATION.

III.18.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, contractor or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it's officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, CONTRACTOR agrees to indemnify, defend, and hold City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

III.18.2 Contractor shall provide Written Notice to City within twenty-four (24) hours of any claim or demand against City or Contractor that is known to Contractor and regards, relates to and/or arises out of activities under this Contract.

III.18.3 Unless City expressly waives its right of approval in writing to Contractor, City shall have the right to approve defense counsel to be retained by Contractor in fulfilling its obligation in **ARTICLE III.18.1** herein to defend and indemnify City, and City's approval shall not be unreasonably withheld. Contractor shall retain City-approved defense counsel within ten (10) Days of City's Written Notice that City is invoking its right to Indemnification under this Contract. If Contractor fails to retain City-approved defense counsel within such time period, City shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all defense fees and costs incurred by City.

III.18.4 Without relieving Contractor of any of its obligations under **ARTICLE III.18** herein, City also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, and to participate in any defense provided by Contractor pursuant to **ARTICLE III.18** herein.

III.18.5 Contractor's indemnity obligations under **ARTICLE III.18** herein shall not be limited in any way by the limits of any insurance coverage or by any limitation on the amount or type of damages, compensation, or benefits payable by, for, or to Contractor, any Subcontractor, supplier, or any other person or entity under any insurance policy, workers' compensation acts, disability benefit acts, or other employee benefits acts.

III.19 JOINT LIABILITY.

In the event that Contractor and City are found to be 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 City under Texas law and without waiving any defenses of the parties under Texas law.

III.20 REPRESENTATIONS AND WARRANTIES.

Contractor represents and warrants the following to City (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to City to execute this Contract, and such representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

III.20.1 Contractor is financially solvent, able to pay its debts as they mature, and has sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

III.20.2 Contractor is able to furnish the 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;

III.20.3 The Contract Time is a reasonable period for performing the Work, and Contractor shall take necessary action, including, but not limited to, using an adequate amount of properly skilled labor and managing material requirements, to meet the Contract Time.

- III.20.4** Contractor is authorized to do business in the State of Texas and is licensed and/or certified, to the extent applicable and necessary, by all necessary governmental, public, and quasi-public authorities having jurisdiction over it, the Work, and the Site of the Project;
- III.20.5** Contractor is acting within its duly authorized powers to execute this Contract and timely execute the performance and obligations thereof; and
- III.20.6** Contractor has been provided unrestricted access to the existing improvements and conditions on the Project Site, has familiarized itself with the Site and with the local conditions under which the Work is to be performed, has thoroughly investigated the visible conditions at the Site as well as the general local conditions affecting the Work, and has correlated its observations with the requirements of the Contract Documents, and its investigation was instrumental in preparing its bid or proposal submitted to City to perform the Work; and
- III.20.7** Contractor understands and agrees that 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, including as part of the investigation activities identified in **ARTICLE III.20.6** herein.

III.21 WORKERS' COMPENSATION INSURANCE COVERAGE.

III.21.1 Definitions:

- a.** Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWV Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing service on a project for the duration of the project.
- b.** Duration of the project – includes the time from the beginning of the work on the project until Contractor's/person's work on the project has been completed and accepted by the governmental entity.
- c.** Persons providing services in the project ("subcontractor" in §406.096) – includes all persons or entities performing all or part of the services the contract has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- III.21.2** Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- III.21.3** Contractor must provide a certificate of coverage to the government entity prior to being awarded the contract.
- III.21.4** If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- III.21.5** Contractor shall obtain from each person providing services on a project, and provide to the government entity:
- a.** a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - b.** no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- III.21.6** Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- III.21.7** Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- III.21.8** Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- III.21.9** Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- a.** provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

- b. provide to Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- c. provide Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- d. obtain from each other person with whom it contracts, and provide to Contractor:
 - 1. a certificate of coverage, prior to the other person beginning work on the project; and
 - 2. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- e. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- f. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- g. contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

III.21.10 By signing this contract or providing or causing to be provided a certificate of coverage, Contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

III.21.11 Contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

END OF ARTICLE III

ARTICLE IV. ADMINISTRATION OF THE CONTRACT

IV.1 ROLES IN ADMINISTRATION OF THE CONTRACT.

IV.1.1 City and Design Consultant shall provide administration of the Contract as described in the Contract Documents, and Design Consultant shall be one of City's representatives:

- a.** during construction;
- b.** until final payment is due;
- c.** with City's concurrence; and
- d.** where necessary during the one (1) year period for correction of Work described in **ARTICLE XII** herein.

Design Consultant shall have authority to act on behalf of City only to the extent provided in the Contract Documents.

IV.1.2 City's instructions to Contractor may be issued through Design Consultant, and City reserves the right to issue instructions directly to Contractor or through other designated City representatives. Contractor understands City may modify the authority of such Design Consultant, as provided in the terms of its contractual relationship with Design Consultant, and City shall, in such event, be vested with powers formerly exercised by such Design Consultant.

IV.1.3 City 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 Work and Project. Communications by and with Design Consultant's consultants shall be through Design Consultant. Communications by and with Contractor's employees, Subcontractors and material suppliers shall be through Contractor. Communications by and with City's separate contractors shall be through City.

IV.1.4 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 general 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. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance 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 **ARTICLES III.3, III.5 and III.12** herein. Design Consultant's review shall not constitute approval of safety precautions or of 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.

- IV.1.5** Design Consultant shall issue its interpretation of the requirements of the Plans and Specifications on written request of City or Contractor, which shall be copied to the other. Design Consultant's response to such requests shall be made in writing within a time limit agreed upon by City, Contractor and Design Consultant or if no time limit is agreed upon, within ten (10) Days after written request is made to Design Consultant. 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 after the response deadline applicable to Design Consultant pursuant to this **ARTICLE IV.1.5**.
- IV.1.6** Design Consultant's interpretations and decisions 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.
- IV.1.7** Design Consultant's interpretations and decisions on matters relating to aesthetic effect shall be final if (a) they are consistent with the intent expressed in the Contract Documents and (b) they are not expressly overruled, in writing, by City.

IV.2 CLAIMS AND DISPUTES.

- IV.2.1** Except as contemplated by **ARTICLE VIII.2** herein, every Claim of Contractor 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. This **ARTICLE IV.2.1** does not require City to file a Claim in order to impose Liquidated Damages in accordance with the Contract Documents.

- IV.2.2** Contractor shall commence all Claims in accordance with the requirements of these General Conditions.

IV.2.3 CONTINUING CONTRACT PERFORMANCE.

Pending final resolution of a Claim, except as otherwise provided in these General Conditions or as otherwise agreed in writing by City and Contractor, Contractor shall proceed diligently with performance of the Contract, and City shall continue to make payments in accordance with the Contract Documents.

IV.2.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS.

If conditions are encountered at the Site that were not known to Contractor or should not have been reasonably discovered by Contractor, and that are either (1) subsurface or otherwise concealed physical conditions or (2) physical conditions of an unusual nature which differ materially from those ordinarily found to exist and are 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 City and Design Consultant, in writing, of such conditions before such conditions are disturbed and in no event, not later than three (3) Days after first observance of the conditions. Upon notification by Contractor, Design Consultant promptly shall investigate such conditions and report its findings to City. If City and Contractor cannot agree on an adjustment, if necessary, to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to **ARTICLE IV.5** herein.

IV.2.5 CLAIMS FOR ADDITIONAL COST.

If Contractor wishes to make a Claim for an increase in the Contract Sum, Written Notice pursuant to **ARTICLE I.1.54** herein and this **ARTICLE IV.2.5** shall be given to and accepted by City before proceeding to execute the Work, except that prior Written Notice is not required for Claims relating to an emergency endangering life or property. Except as specifically provided in this Contract, Contractor acknowledges and agrees that no profit or markups, other than labor burden, will be allowed. For damages, labor burden will be reimbursed at 35% unless the Contractor can justify higher actual costs via timely submission of Certified Public Account-prepared labor burden rates to City.

Contractor shall make a Claim in accordance with this **ARTICLE IV.2.5** if Contractor believes additional cost is involved for reasons including, but not limited to:

- a. a written interpretation from Design Consultant;
- b. an order by City to stop the Work where Contractor was not at fault;
- c. a written order for a minor change in the Work issued by Design Consultant;
- d. failure of payment by City for reasons other than those listed in the Contract Documents;
- e. termination of the Contract by City for convenience;
- f. City's suspension; or
- g. other reasonable grounds.

IV.2.6 CLAIMS FOR ADDITIONAL TIME.

If Contractor wishes to make Claim for an increase in the Contract Time that Contractor believes was necessitated by a specific occurrence that immediately impacted Contractor's ability to complete the Work pursuant to the current Project Schedule, Contractor shall submit a Time Impact Analysis in accordance with **ARTICLE III.10.5** herein. In the case of a continuing delay resulting from such occurrence, only one Claim is necessary. Multiple Claims for multiple occurrences cannot be combined into one Claim.

Only actual inclement Weather Days impacting the Critical Path, as assessed by City's Inspector, in excess of the Project's total, cumulative inclement Weather Days provided in Exhibit "B" of these General Conditions, will be considered for a time extension in accordance with **ARTICLE III.10.5** herein. Any time extension granted to Contractor under this **ARTICLE IV.2.6** shall be non-compensatory.

IV.2.7 CHANGE IN UNIT PRICES.

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 and unit prices to those quantities of Work proposed shall cause substantial inequity to City or Contractor. A "Major Bid Item" is defined as a single bid item constituting a minimum of five percent (5%) of the total contract value at time of original bid. 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. This section does not apply to completed Change Orders which have processed previously. However, if the item is removed, no adjustment shall be given.

IV.2.8 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 City:

- a.** 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;
- b.** 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 man loading to actual man loading, or on any other similar analysis used to show total cost or other damages;
- c.** No recovery shall be based on a fragnet or fragmented schedule;
- d.** 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;
- e.** 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.

- f. No damages shall be allowed for home office overhead or any other home office charges or for any Eichleay formula calculation, except as expressly authorized by the Contract Documents; and
- g. No profit shall be allowed on any damage Claim except as expressly authorized by the Contract Documents.

IV.2.9 SUBCONTRACTOR PASS-THROUGH CLAIMS.

In the event any Subcontractor of Contractor asserts a Claim to Contractor that Contractor seeks to pass through to City under the Contract Documents, any entitlement to submit and assert the Claim as to City shall not be reviewed unless the following items are confirmed, and Claim shall be subject to:

- a. the requirements of **ARTICLE IV.2** of these General Conditions; and
- b. the following additional three (3) requirements listed below, which shall be conditions precedent to the entitlement of Contractor to seek and assert such Claim against City:
 - i. Contractor shall:
 - have direct legal liability as a matter of contract, common law, or statutory law to Subcontractor for the claim Subcontractor is asserting; or
 - have entered into a written liquidating agreement with Subcontractor prior to the Claim's occurrence, under which Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such Claim against City 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 City at the time such Claim is submitted to City, and a copy of any liquidating agreement shall be included by Contractor in the Claim submittal materials;
 - ii. Contractor shall have reviewed the Claim of the Subcontractor prior to its submittal to City 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 City it has made a review, evaluation, and determination that the Claim is being made in good faith and the claim is believed to be valid, along with the pricing thereof; and
 - iii. Subcontractor making the Claim to Contractor shall certify, to both Contractor and City, that it has compiled, reviewed, and evaluated the merits of such Claim and 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;

Contractor acknowledges and agrees that any failure of Contractor to comply with any of the foregoing requirements and conditions precedent regarding any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim,

Contractor further acknowledges and agrees that City's receipt and review of a Claim under this **ARTICLE IV.2.9** shall not be construed as a waiver of any defenses to the Claim available to City under the Contract Documents or at law.

IV.3 NO WAIVER OF GOVERNMENTAL IMMUNITY.

Nothing in this contract shall be construed to be a waiver of City's Governmental Immunity available to City under Texas Law (including, but not limited to, immunity from a lawsuit), with Governmental Immunity being expressly retained to the extent it is not clearly and unambiguously waived by State law.

IV.4 INITIAL RECOMMENDATION OF CLAIM.

IV.4.1 A Claim by Contractor against City, and a Claim by City against Contractor, excluding those alleging an error or omission by Design Consultant and those arising under **ARTICLE X.** herein, shall be referred initially to Design Consultant for consideration and initial recommendation to City.

IV.4.2 An initial recommendation by Design Consultant shall be required as a condition precedent to mediation or any other alternative dispute resolution process of any Claim by Contractor or City arising prior to the date final payment is due, unless ten (10) Days have passed after the Claim has been referred to Design Consultant with no action having been taken by Design Consultant as outlined in **ARTICLE IV.4.3** herein.

IV.4.3 Design Consultant shall review the referred Claim and, within ten (10) Days of receipt of the referred Claim, take one or more of the following actions:

- a.** request additional supporting data from the Party making the Claim;
- b.** issue an initial recommendation; or
- c.** advise the Parties that Design Consultant is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

IV.4.4 If Design Consultant requests any Party to provide a response to a Claim or to furnish additional supporting data, such requested Party shall, within 14 Days of receiving such request, either provide a response or the requested supporting data to Design Consultant or advise Design Consultant that no response or supporting data shall be furnished.

IV.4.5 Upon the expiration of time permitted a Party under **ARTICLE IV.4.4** herein, Design Consultant shall, within ten (10) Days after expiration of the time permitted under **ARTICLE IV.4.4** herein, take one of the following actions:

- a. issue an initial recommendation; or
- b. advise the Parties that Design Consultant is unable to issue an initial recommendation due to lack of sufficient information or conflict of interest.

IV.4.6 Following receipt of Design Consultant's initial recommendation or advisement of inability to issue an initial recommendation regarding a Claim, City and Contractor shall attempt to reach an 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 **ARTICLE IV.5**.

IV.5 ALTERNATIVE DISPUTE RESOLUTION.

IV.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.

IV.5.2 REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.

City and Contractor agree that, if the Initial Recommendation of Claim process required by **ARTICLE IV.4** herein fails to resolve a Claim or if there is no Design Consultant to provide an Initial Recommendation, then as a condition precedent to mediation or any other alternative dispute resolution process, the Parties to this Contract 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. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) Days after a Party delivers a Written Notice of such dispute to the other and invocation of negotiations required by this **ARTICLE IV.5.2**, then the Parties shall proceed with the alternative dispute resolution process. All negotiations conducted pursuant to **ARTICLE IV.5** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

IV.5.3 MEDIATION.

In the event that City and/or Contractor cannot reach a resolution of a Claim or other dispute of any kind, as a condition precedent to any other alternative dispute resolution process, either Party shall request mediation of the dispute with the following requirements:

- a. Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) Days following the date of the request except upon agreement of both Parties.

- b. In the event that City and Contractor are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) Days following the date of the request for mediation, all conditions precedent in this **ARTICLE IV.5.3** shall be deemed to have occurred, unless Parties have agreed otherwise.
- c. City and Contractor shall share the mediator's fee equally. Mediation 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.

IV.6 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS.

At its option, City 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 correspondence, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders, and other administrative activities. When such a management system is employed, City shall administer the software, shall provide training to Project Team Members, and shall make the software accessible via the Internet to all Project Team Members once proper Business and User Agreements have been provided.

END OF ARTICLE IV

ARTICLE V. SUBCONTRACTORS

V.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

- V.1.1** Regarding any proposed first-tier Subcontractors for the Work, Contractor shall, prior to entering into an agreement with any such Subcontractor, notify City in writing of the names of all proposed first-tier Subcontractors for the Work.
- V.1.2** Contractor shall not employ any Subcontractor, whether initially or as a substitute, against whom City may have reasonable objection. A Subcontractor identified in writing to City prior to the Notice of Award, and not objected to in writing by City prior to the Notice of Award, shall be deemed acceptable to City. Contractor shall not be required to employ any Subcontractor, other person, or organization, against whom Contractor has reasonable objection.
- V.1.3** Nothing in the Contract Documents shall create any contractual relationship between City and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall the Contract Documents create any obligation on the part of City to pay, or to see to the payment of, any monies due any Subcontractor or other person or organization except as may otherwise be required by law. City 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 and/or Payment and Performance Bond information for the Project.

V.1.4 All Work performed for Contractor by a Subcontractor shall be performed pursuant to a written agreement. As part of each subcontract agreement, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents and to assume toward Contractor all the obligations and responsibilities (including the responsibility for safety of the Subcontractor's Work) that Contractor, by these Contract Documents, assumes toward City and Design Consultant. Each subcontract agreement shall preserve and protect the rights of City and Design Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, 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 the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors similarly shall make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors. Each subcontract agreement shall require Subcontractor's active participation in Work progress by way of materials, labor, assessment and/or oversight, including, but not limited to, Police Officers hired for traffic and/or safety.

V.1.5 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 City. City reserves the right, at any time during the term of this Contract, to request additional information, documentation, or verification of payments made to such Subcontractors and suppliers in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of canceled checks paid to SBEDA or DBE Subcontractors and suppliers and/or confirmation inquiries directly to the SBEDA or DBE participants. Proof of payments, such as copies of canceled checks, properly must identify the Project name or Project number to substantiate a SBEDA or DBE payment for the Project.

V.1.6 SMALL BUSINESS SUBCONTRACTOR SUBSTITUTIONS. Contractor shall reference SBEDA or DBE Requirements in the Project's Supplementary Conditions for Substitution of Subcontractors. Failure to follow such procedures is an event of default by Contractor under its Contract and may be grounds for termination.

V.2 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.

V.2.1 Each Subcontractor agreement for a portion of the Work is assigned by Contractor to City, provided that:

- a. assignment is effective only after termination of the Contract by City and only for those Subcontractor agreements which City accepts by notifying Subcontractor and Contractor in writing; and
 - b. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.
- V.2.2** When City accepts the assignment of a subcontract agreement, City assumes Contractor's rights and obligations under the subcontract agreement, provided, however, that (a) such assignment shall not constitute a waiver by City of any of its rights against Contractor because of defaults, delays, and/or defects for which a Subcontractor may be liable and (b) City does not assume Contractor's obligations or liabilities for defaults occurring prior to City's assumption or for payment to the Subcontractor or Subcontractor's Sub-subcontractors or suppliers for Work occurring prior to City's assumption, as all such liabilities or obligations shall remain with the Contractor.
- V.2.3** Upon any such assignment, if the Work has been suspended for more than thirty (30) Days, Subcontractor's compensation shall be equitably adjusted for increases in costs resulting from the suspension.
- V.2.4** Upon assignment to City under **ARTICLE 5.2** herein, City may further assign the subcontract to a successor contractor.

END OF ARTICLE V

ARTICLE VI. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTS

VI.1 CITY'S RIGHT TO PERFORM CONSTRUCTION AND AWARD SEPARATE CONTRACTS.

- VI.1.1** City reserves the right to perform construction or operations related to the Project with City'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 City, Contractor shall make a Claim as provided in **ARTICLES IV.2.5** and **IV.2.6** herein.
- VI.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 City-Contractor contract.
- VI.1.3** City shall provide for coordination of the activities of City's own forces and of each separate contractor with the Work of Contractor, who shall fully cooperate with them. Contractor shall participate with any separate contractors, and City, in reviewing all construction

schedules. 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 City until subsequently revised.

- VI.1.4** Unless otherwise provided in the Contract Documents, when City and City's own forces perform construction or operations related to the Project, City shall have the same obligations and rights that Contractor has under these General Conditions and the Contract Documents.

VI.2 MUTUAL RESPONSIBILITY.

- VI.2.1** Contractor shall afford City and City's separate contractor(s) reasonable opportunity for introduction and storage of materials and equipment and performance of their activities, and Contractor shall connect and coordinate Contractor's construction and operations with theirs as required by the Contract Documents.

- VI.2.2** If proper execution or results of a portion of Contractor's Work depends upon the construction or operations performed by City or a separate contractor, Contractor shall, prior to proceeding with its portion of Work, promptly notify City of discrepancies and/or defects in such other construction or operations rendering it unsuitable for Contractor's Work where such discrepancies and/or defects are either (a) apparent to Contractor or (b) reasonably should be discovered by Contractor in making observations of the Plans, Specifications, or other design documents and/or such other construction or operations that a contractor would make in the reasonable fulfillment of its scope of Work under normal circumstances. Failure of Contractor to notify City of such discrepancies and/or defects shall constitute an acknowledgment that City's or separate contractor's completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not apparent or then reasonably discoverable.

- VI.2.3** Contractor shall reimburse City for costs incurred by City which are payable to a separate contractor because of Contractor's delays, improperly timed activities, or defective construction. City shall be responsible to Contractor for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of City's separate contractor(s).

- VI.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 City or City's separate contractor(s). Such remedies shall not wait until the end of the Project or be added to punchlist items.

- VI.2.5** City and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in **ARTICLE III.14** herein.

VI.3 CITY'S RIGHT TO CLEAN UP.

If a dispute arises among or between Contractor, City's separate contractor(s), and City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials, rubbish, and other debris, City may clean up and those costs shall be allocated to those parties responsible.

END OF ARTICLE VI

ARTICLE VII. CHANGES IN THE WORK

VII.1 GENERAL.

VII.1.1 Subject to the limitations stated in **ARTICLE VII** herein and elsewhere in the Contract Documents, changes in the Work may be accomplished after the execution of the Contract, and without invalidating the Contract, by Change Order, Field Work Directive, or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum.

VII.1.2 A Change Order shall be based upon agreement between City and Contractor; a Field Work Directive requires a directive by City 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 alone by either City or Design Consultant.

VII.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.

VII.2 CHANGE ORDERS.

VII.2.1 Methods used in determining adjustments to the Contract Sum may include those listed in **ARTICLE VII.3.3** herein.

VII.2.2 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, the cost, and additional time, if any.

VII.2.3 City shall prepare a Change Order, after a Proposal Request Negotiation is submitted in *PRIMELink* by Contractor, or other designated party, and negotiations have been finalized by all required Parties.

VII.2.4 Contractor and Subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by the Contract Documents.

VII.2.5 Contractor hereby acknowledges and agrees that acceptance of a Change Order by Contractor shall constitute a full accord and satisfaction for any and all Claims of any kind, whether direct or indirect, including, but not limited to, impact, delay, and/or acceleration damages arising from the subject matter of the Change Order. Contractor hereby waives and releases any and all Claims against City for additional time and/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.

VII.2.6 TIME REQUIRED TO PROCESS CHANGE ORDERS.

VII.2.6.1 All responses by Contractor to proposal requests from City or Design Consultant shall be accompanied by a complete itemized breakdown of costs, including back-up documentation to non-unit price costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow City and Design Consultant a minimum of thirty (30) Days after receipt by City 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.

VII.2.6.2 All Change Orders resulting in a change to the Contract value beyond statutory thresholds require written approval by either City, City Council, joint-bid authority or its council, or where authorized by the state law and City ordinance, by City's City Manager or designee pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) Days after submission to City in final form with all supporting data. Receipt of a submission by City does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal shall be authorized by City, City Council Resolution, joint-bid authority or its council, 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 City.

VII.3 FIELD WORK DIRECTIVES.

VII.3.1 City 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 **ARTICLE VII.3** herein.

VII.3.2 A Field Work Directive specifying use of Force Account shall be used in the absence of total agreement on the terms of a Change Order. City shall issue a Field Work Directive to Contractor with a defined Not-To-Exceed dollar amount for the scope of Work defined.

VII.3.3 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:

- a. mutual acceptance of an agreed-to sum which is properly itemized and supported by sufficient substantiating data to permit evaluation;
- b. unit prices stated in the Contract Documents or subsequently agreed upon; or
- c. cost to be determined in a manner agreed upon by City and Contractor and a mutually acceptable fixed or percentage fee, with Contractor to present and maintain, in such form as City may prescribe, an itemized and detailed accounting of the cost, together with appropriate supporting data and documentation;

VII.3.4 Upon receipt of a Field Work Directive, Contractor promptly shall proceed with the change in the Work involved, and within five (5) Days, advise City in writing 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. If Contractor disagrees with the method, Contractor's written advisement to City shall include the basis for Contractor's disagreement.

VII.3.5 If Contractor does not respond promptly or timely 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, Contractor shall keep and present, in such form as City may prescribe, an itemized and detailed accounting, together with appropriate supporting data and documentation. Unless otherwise provided in the Contract Documents, or covered in other Work costs, costs for the purposes of this **ARTICLE VII.3.5** shall be limited to the following:

- a. costs of all labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;
- b. costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;
- c. 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;

- d. expenses incurred in accordance with Contractor's standard personnel policy for travel, approved in writing by City in advance;
- e. costs of premiums for all bonds and insurance, permit fees, and allowable sales, use or similar taxes directly related to the change;
- f. all additional costs of supervision and field office personnel directly attributable to the change; and
- g. all payments made by the Contractor to Subcontractors.

VII.3.6 The amount of credit provided by Contractor to City for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost of the deleted or changed 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 City. 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 the net increase or decrease, if any, with respect to that change.

VII.3.7 If City 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 Proposal Request Negotiation followed by a Change Order.

VII.3.8 If City determines that City and Contractor cannot agree on both the adjustment in the Contract Sum and the Contract Time associated with an issued Field Work Directive, City unilaterally shall file a Proposal Request Negotiation followed by Change Order, listing City'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 **ARTICLE IV.5** herein.

VII.4 MINOR CHANGES IN THE WORK.

City and Design Consultant both shall have authority to order minor changes in the Work (including, but not limited to, Architect's Supplemental Instructions) that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or extension of the Contract Time. Such changes shall be effected by written order and shall be binding on City and Contractor. Contractor promptly shall carry out such written orders and record such changes in the as-built Plans to be part of the Record Copies of Contractor.

END OF ARTICLE VII

ARTICLE VIII. TIME

VIII.1 PROGRESS AND COMPLETION.

Contractor shall perform the Work from sunrise to sundown, Monday through Saturday, unless negotiated otherwise with City. Nothing in this **ARTICLE VIII.1.2** shall be construed as prohibiting the Contractor from working on Sundays. If Contractor desires to work on a Sunday, Contractor shall provide to the City Written Notice of intent at least forty-eight (48) hours in advance from the Sunday so that a City representative also may be scheduled.

VIII.2 DELAYS AND EXTENSIONS OF TIME.

VIII.2.1 Excluding unusually severe Weather separately addressed in **ARTICLE IV.2.6** herein, if Contractor is delayed at any time in the commencement or progress of the Work by reason of fire, act of God, riot, strike, or any other cause beyond City's control, then Contractor shall timely and properly make a written Claim for additional time in accordance with **ARTICLE IV.2.6** herein. If Design Consultant, Program Manager (if any), and City verify and approve Contractor's Claim and corresponding Time Impact Analysis provided in support of such Claim, then Contractor shall receive an extension of the Contract Time equal to the verified delay. Under no circumstances shall City be liable to pay Contractor any compensation for any such delay.

VIII.2.2 If the Critical Path of Contractor's Work is delayed solely by the act, negligence, or default of City or Design Consultant and additional costs to Contractor could not have been reasonably anticipated at the time of Contractor's bid, then Contractor shall timely and properly make a written Claim for additional time in accordance with **ARTICLE IV.2.6** herein. If Design Consultant, Program Manager (if any), and City verify and approve Contractor's Claim and corresponding Time Impact Analysis provided in support of such Claim, then Contractor shall receive an extension of the Contract Time equal to the verified delay. In addition, Contractor, upon timely notice to City, with substantiation by City and Design Consultant and upon approval of City, shall be compensated for its Project facilities and field management expenses on a per diem basis for the particular Project delayed and for the period of the Critical Path delay solely attributable to a City-caused or Design Consultant-caused Event. In no event shall Contractor be entitled to home office overhead or other charges and/or other off-site expenses or damages. Contractor's compensable per diem includes the costs incurred by Contractor to administer its Work but 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's critical path shall be separate and apart from the per diem cost due and payable to the Contractor and subject to **ARTICLE IV.2.9** herein.

VIII.2.3 Claims relating to Contract Time shall be made in accordance with applicable provisions of **ARTICLE IV.2.6** herein.

VIII.2.4 Except as otherwise provided in the Contract Documents, this Contract does not permit the recovery of damages by Contractor for delay, disruption, or acceleration.

END OF ARTICLE VIII

ARTICLE IX. PAYMENTS AND COMPLETION

IX.1 CONTRACT SUM.

The Contract Sum is defined in **ARTICLE I.1.13** herein. 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 and the sale of future City of San Antonio Certificates of Obligation and/or General Obligation Bonds in accordance with adopted budgets. If funds are not available and/or appropriated, then, at City's discretion, this Contract may be immediately terminated.

IX.2 SCHEDULE OF VALUES.

Before the first Application for Payment, Contractor shall submit to City and Design Consultant a Schedule of Values for all of the Work that (a) shall include quantities and prices of items which, when added together, equal a contract Price and (b) subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable or allowable per Contract, overhead and profit shall be included as a separate line item. Any changes made by Contractor to the Schedule of Values shall be timely submitted to City and Design Consultant along with data and documentation reasonably detailing and substantiating the accuracy and necessity of any changes. Unless objected to by City or Design Consultant, the Schedule(s) of Values submitted by Contractor shall be used as a basis for reviewing Contractor's Applications for Payment.

IX.3 APPLICATIONS FOR PAYMENT.

IX.3.1 During the Project, Contractor shall electronically submit an Application for Payment to City at a minimum of every thirty (30) Days, provided the Work is completed and inspected and provided that all data and documentation required by City and/or joint-bid agency to substantiate Contractor's right to payment is provided (including, but not limited to, copies of requisitions from Subcontractors and material suppliers reflecting retainage, and/or signed scratch sheets). For Vertical Projects, City may elect to create Electronic Applications for Payment, and if City so elects, Electronic Applications for Payment will be created by City at a minimum of every thirty (30) Days. For Horizontal Projects, City will create Electronic Applications for Payment at a minimum of every thirty (30) Days, provided the Work is completed and inspected and provided that all data and documentation required by City and/or joint-bid agency to substantiate Contractor's right to payment is provided. The Application for Payment shall reflect a deduction for Liquidated Damages, if applicable. The Application 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.

IX.3.2 Unless otherwise provided in the Contract Documents, payments may be considered for materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work **or** for materials and equipment suitably stored off the Site at a location agreed upon in writing for subsequent incorporation in the Work if: (a) subsequent incorporation will be greater than 30 Days; (b) the invoiced cost is greater than \$1000; (c) the materials or equipment were specifically ordered for the Project; and (d) the materials and equipment are verified by City. At a minimum, the actual invoice outlining City's specific Project name and costs of requested items are required for payment. Payment for materials and equipment stored on or off the Site shall be conditioned upon Contractor's compliance with the foregoing requirements herein and with procedures reasonably satisfactory to City to establish City's title to such materials and equipment or otherwise protect City's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage, and transportation of City personnel to the off-site location for verification of materials and equipment.

IX.3.3 Contractor hereby acknowledges and agrees that, by submission of an Application for Payment, Contractor certifies and warrants as follows:

- a.** as of the date of the currently submitted Application for Payment, there are no known liens, claims, security interests, or encumbrances in favor of Contractor, any Subcontractors, suppliers, or other persons or entities providing labor, materials, and equipment relating to Work for which Contractor already has received payment from City;
- b.** title to all Work covered by the currently submitted Application for Payment shall pass to City no later than the time of payment by City for such Work;
- c.** all due and payable bills with respect to Work covered by the currently submitted Application for Payment have been paid to date or are included in the amount requested in the current Application;
- d.** except for bills for Work included in the currently submitted Application for Payment that have not yet been paid, there is no known basis for the filing of any liens, claims, security interests, or encumbrances in favor of Contractor, any Subcontractors, suppliers, or other persons or entities providing labor, materials, and equipment relating to Work; and
- e.** releases from all Subcontractors and suppliers 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 City to Contractor.

IX.4 PAY APPLICATION APPROVAL.

IX.4.1 Within five (5) business days after the electronic receipt of a Contractor's Application for Payment through *PRIMELink*, Design Consultant shall either approve the Application for Payment or reject the Application for Payment, and provide electronic notice of same to

Contractor and City. If Design Consultant rejects Contractor's Application, Design Consultant's electronic notification shall state Design Consultant's reasons for withholding approval as provided in **ARTICLE IX.5.1** herein.

IX.4.2 Design Consultant's electronic notice of approval of a Contractor's Application for Payment to City and Contractor shall constitute a representation by Design Consultant to City, based on Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that, to the best of Design Consultant's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and Contractor is entitled to payment in the amount certified. 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. However, Design Consultant's approval shall not be a representation that Design Consultant has (a) made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work; (b) **reviewed construction means, methods, techniques, sequences, or procedures;** (c) **reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by City to substantiate Contractor's right to payment;** or (d) made an examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

IX.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT.

IX.5.1 An Application for Payment may be rejected to protect City for any of the following reasons:

- a. work not performed or defective;
- b. third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder, unless security acceptable to City is provided by Contractor;
- c. failure of Contractor to make payments properly to Subcontractors or suppliers for labor, materials, or equipment;
- d. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum and Contractor has failed to provide City adequate assurance of its continued performance within a reasonable time after demand;
- e. damage to City or another contractor;
- f. 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;

- g. repeated failure by Contractor to carry out the Work in accordance with the Contract Documents;
- h. applicable Liquidated Damages were not included in the Application for Payment;
- i. billing for unapproved/unverified materials stored off Site;
- j. improper or missing Documents and Tangible Things reasonably requested by City, Design Consultant and/or joint-bid agency regarding the Work; or a complete and current updated Project Schedule meeting the requirements of **ARTICLE III.10** herein has not been submitted by Contractor.

IX.5.2 City shall not be deemed in default by reason of rejecting Application for Payment as provided for in **ARTICLE IX.5.1** herein.

IX.6 PROGRESS PAYMENTS.

IX.6.1 After the final approval of an Application for Payment, City may make payment in the manner and within the time provided in the Contract Documents.

IX.6.2 During the latter part of each month, as the Work progresses on all City Contracts, regardless of Contract Sum, City and Contractor shall determine completed Work and the applicable Contract line items of costs associated with the completed Work during that month as well as the actual invoiced costs of Contractor-acquired materials stored on Site and/or within approved off-Site storage facilities.

IX.6.3 For Contracts with a Contract Sum totaling four hundred thousand dollars (\$400,000.00) or less, upon receipt of a complete and mathematically accurate Application for Payment from Contractor, or created by City pursuant to **ARTICLE IX.3** herein, and upon approval by applicable personnel in the workflow, City shall, within thirty (30) Days of approval, make payments in accordance with **ARTICLE IX** herein to Contractor based upon the cost determination pursuant to **ARTICLE IX.6.2** herein 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 City until the Final Completion/Acceptance.

IX.6.4 For Contracts with a Contract Sum exceeding four hundred thousand dollars (\$400,000.00), upon receipt of a complete and mathematically accurate Application for Payment from Contractor, or created by City pursuant to **ARTICLE IX.3** herein, and upon approval by applicable personnel in the workflow, City shall, within thirty (30) Days of approval, make payments to Contractor at the rate of ninety-five percent (95%) of each monthly invoice. The remaining five percent (5%) retainage shall be held by City until Final Completion/Acceptance.

IX.6.5 Within ten (10) Days after receipt of payment from City, Contractor shall pay all bills for labor and materials performed and supplied by others in connection with the Work and shall, if requested, provide City with written evidence of such payment(s). Contractor's failure to

make payment(s) or to provide written evidence of such payment(s) shall constitute a material breach of this contract, unless Contractor is able to demonstrate to City 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 payment obligation and written evidence obligation on its Subcontractors as are applicable to Contractor hereunder

IX.6.6 City and/or Design Consultant shall, if practicable and upon request, furnish to any of Contractor's Subcontractors or suppliers information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by City and Design Consultant on account of portions of the Work done by such Subcontractor.

IX.6.7 Neither City nor Design Consultant shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

IX.7 SUBSTANTIAL COMPLETION.

IX.7.1 At a minimum of fourteen (14) Days prior to Contractor substantially completing the Work, or a designated portion thereof which City agrees to accept separately by Contract, Contractor shall request Substantial Completion in *PRIMELink*, attaching its 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. The Inspections or Project Management Team may reject the request if it is evident that the Project is not Substantially Complete.

IX.7.2 Upon receipt of Contractor' request and list of items to be completed or corrected, City, Design Consultant, joint-bid agency and others affiliated with the Project shall schedule a Site inspection to determine whether the Work or a designated portion thereof is Substantially Complete. If the Substantial Completion inspection discloses any item, whether or not included on Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that City may occupy or utilize the Work or a designated portion thereof for its full intended use, Contractor shall, before issuance of the Certificate of Substantial Completion (for Vertical Projects) or Letter of Conditional Approval (for Horizontal projects), complete or correct such item(s) upon written notification by City or Design Consultant. In such case, Contractor then shall re-submit a request for Substantial Completion in *PRIMELink* which requires another inspection by City, Design Consultant, joint-bid agency and others affiliated with the Project to determine Substantial Completion, and Contractor shall be responsible for all costs incurred and associated with re-inspection, including all fees and costs of Design Consultant to conduct such re-inspection.

IX.7.3 When the Work, or a designated portion thereof which City agrees to accept separately per Contract, is Substantially Complete, Design Consultant or City shall prepare a Certificate of Substantial Completion (for Vertical Projects) or a Letter of Conditional Approval (for Horizontal Projects) that shall:

- a. 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);
- b. establish responsibilities of City and Contractor, as agreed to by City and Contractor, for outstanding punchlist items, security, maintenance, heat, utilities, damage to the Work, and insurance; and
- c. fix the time limit by which Contractor shall complete all items on the list of outstanding items accompanying the Certificate/Letter.

IX.8 PARTIAL OCCUPANCY OR USE.

City may occupy or use any completed or partially completed portion of the Work at any stage when such portion of the Work is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer as required and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not such portion of the Work is Substantially Complete, provided City and Contractor have accepted in writing the responsibilities assigned to each of them for insurance, security, maintenance, heat, utilities, and damage to such portion of the Work, and provided City and Contractor have agreed, in writing, concerning the period for correction of such portion of the Work and commencement of warranties required by the Contract Documents. When Contractor considers such portion of the Work to be Substantially Complete, Contractor shall be subject to and comply with **ARTICLE IX.7** herein.

IX.9 FINAL COMPLETION AND FINAL PAYMENT.

IX.9.1 “Final Completion” is when all of the Work finally is completed and ready for final inspection. When Contractor achieves Final Completion, Contractor shall request Final Completion in *PRIMELink*. Thereafter, City, Design Consultant, joint-bid agency and others affiliated with the Project shall inspect the Work, and if they find the Work acceptable under the Contract Documents and the Contract fully performed, the final Application for Payment may be submitted. If City, Design Consultant, joint-bid agency and others affiliated with the Project are unable to approve the final Application for Payment for reasons for which Contractor is responsible, Contractor shall re-submit a request for Final Completion in *PRIMELink* which requires another inspection by City, Design Consultant, joint-bid agency and others affiliated with the Project to determine Final Completion, and Contractor shall be responsible for all costs incurred and associated with re-inspection, including all fees and costs of Design Consultant to conduct such re-inspection.

IX.9.2 Contractor shall not be entitled to payment of retainage unless and until Contractor submits all documents required in the Retainage Checklist to City. Retainage Checklist shall include, but is not limited to:

- a. a complete and accurate set of Contractor’s Record Copies;

- b. an affidavit that all payrolls, invoices for materials and equipment, and other liabilities, to include Liquidated Damages, connected with the Work for which City or City's property might be responsible or encumbered, fully have been paid or otherwise satisfied or shall be paid from final payment;
- c. releases and waivers of all liens, claims, security interests, or encumbrances arising out of the Work from all of Contractor's Subcontractors and suppliers and any and all other parties required by Design Consultant or City that either are unconditional or conditional on receipt of final payment;
- d. certificates of insurance evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and a written statement Signed by Contractor's authorized agent or representative confirming that Contractor knows of no reason that such insurance will not be renewable to cover the period required by the Contract Documents and that such insurance will not be canceled or allowed to expire until at least 30 Days' prior written notice has been given to City;
- e. the warranty notebook and corresponding electronic version required by **ARTICLE III.5.6** herein;
- f. all maintenance and operations manuals and other documentation required by **ARTICLE III.4.9** herein;
- g. consent of Surety to final payment; and
- h. any other Documents and Tangible Things that may be reasonably requested by City, Design Consultant or joint-bid agency regarding the Work and/or the Project.

IX.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, City 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.

IX.9.4 Acceptance of final payment by Contractor, Subcontractor, or a supplier shall constitute a waiver of all claims by that payee against City except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

END OF ARTICLE IX

ARTICLE X. PROTECTION OF PERSONS, PROPERTY AND ENVIRONMENT

X.1 SAFETY PRECAUTIONS AND PROGRAMS.

- X.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 and health program applicable to the Site and the Work, shall review such program with City in advance of beginning the Work, and shall 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. City 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, the Work Site and Subcontractors.
- X.1.2** Contractor shall notify City immediately, by telephone, with prompt confirmation in writing, of all injuries and fatalities. As part of its Written Notice to City, Contractor shall provide complete copies of all reports and any other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.
- X.1.3** Contractor recognizes, accepts, and hereby acknowledges the Project Site is a public facility representing the City of San Antonio. 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). Contractor shall prohibit the misuse of legitimate prescription drugs prescribed to laborers performing the Work, shall prohibit possession, use, or sale of alcohol, illegal controlled drugs and/or drug paraphernalia, tobacco, and any weapons on the Project Site regardless of whether there exists a valid permit for carrying a weapon, 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, employees of Subcontractors or suppliers, employees or Consultants of City, or of any visitor to the Project Site by Contractor, employee(s) of Contractor, any Subcontractor, employee(s) of any Subcontractor, any supplier, or employee(s) of any supplier strictly is forbidden. Any person providing Work on Site who is found to have engaged in any of the foregoing prohibited conduct shall be subject to appropriate disciplinary action by Contractor and/or City, including the removal and exclusion of the violating person from the Project Site and, if City so elects, termination from the Project.
- X.1.4.** At any time that reasonable cause exists to suspect alcohol or drug use by any person providing Work at the Site, City further reserves the right to require Contractor to immediately remove such person from the Site. In such case, such person only may be considered for return to work after Contractor certifies that such person was in compliance with this Contract based upon results of a for-cause test conducted immediately following

removal from the Site. Contractor shall not employ any individual and shall not accept any Subcontractor employee or supplier employee providing Work who either refuses to take, or tests positive in, any alcohol or drug test.

- X.1.5** When the heat index for the San Antonio, Texas equals or exceeds 95 degrees Fahrenheit, Contractor is required to take all of the following actions for all on-Site workers working in outdoor or unconditioned spaces:
- a.** Mandate at least a fifteen (15) minute rest break for every four (4) hours worked. No employee may be required to work more than 3.75 continuous hours without a rest break. These rest breaks are in addition to and shall not take the place of other required or otherwise provided rest breaks;
 - b.** Provide a heat relief station at the Site with a shaded area and water;
 - c.** Train supervisors and workers to recognize heat hazards and take appropriate actions; and
 - d.** Post a sign with City requirements in English and Spanish within the Site where notices to employees are customarily posted. City will prescribe the size, content, and location of signs within applicable design guidance manuals.
- X.1.6** Both City 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 **ARTICLE X** herein by Contractor shall be a material and substantial breach of this Contract. In the event that City shall determine that Contractor has breached or violated **ARTICLE X** herein, then City 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 City is satisfied that the safety provisions hereof shall not be breached or violated thereafter. If City terminates the Contract as a result of such breach or violation, City and Contractor shall complete their obligations hereunder to one another in accordance with **ARTICLE XIII.1**.
- X.1.7** Nothing contained in this **ARTICLE X** shall be interpreted as creating or altering the legal duty of City to Contractor or to Contractor's agents, employees, Subcontractors, suppliers or third parties, or altering the status of Contractor as an independent contractor.
- X.1.8** Notwithstanding the above provisions, or whether City exercises its rights, City 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 City warrant that the proper enforcement of Contractor's policy shall ensure that no accidents or injuries shall occur. In addition, any action by City under these provisions in no way diminishes any of Contractor's obligations under applicable law or the Contract Documents.

X.2 SAFETY OF PERSONS, PROPERTY AND ENVIRONMENT.

X.2.1 Contractor shall take reasonable precautions for safety of, and shall provide training and reasonable protection to prevent damage, injury, or loss to:

- a.** employees performing the Work and other persons who may be affected thereby;
- b.** the Work and materials and equipment to be incorporated therein, whether in storage on or off Site, under the care, custody or control of Contractor or Contractor's Subcontractors or Sub-Subcontractors;
- c.** other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, driveways, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- d.** the contents of a building or structure, when Contractor is working in, on or around an existing/operating City facility.

X.2.2 Contractor shall give notices and shall comply with all 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.

X.2.3 Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying City and users of adjacent sites and utilities of the safeguards.

Contractor shall submit a health and safety plan that includes heat illness measures as required by City of San Antonio Ordinance No. 2023-08-31-0585.

X.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. In addition, prior to the storage or use of any explosives, Contractor shall submit a written blasting plan, shall obtain City's approval, and shall comply with City's requirements for such use.

X.2.5 Contractor shall designate a responsible member of Contractor's organization at the Site, whose duty shall be the coordination of safety and prevention of accidents. This person shall be Contractor's superintendent assigned by Contractor pursuant to **ARTICLE III.9.1** herein unless Contractor designates some other person in writing to City and Design Consultant. This person must have all required training and certifications to fulfill the role of safety.

X.2.6 Notwithstanding the delivery of any surveys and/or other documents by City, 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 surveys and/or other documents provided by City are not guaranteed and may not be completely accurate. Contractor further acknowledges and agrees that, prior to beginning any Work, Contractor shall locate and verify any and all utilities and associated service lines. Contractor further understands and agrees that Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines during Work done by or on behalf of Contractor and/or Contractor's Subcontractors and suppliers.

X.3 EMERGENCIES.

- X.3.1** In an emergency affecting safety of persons or property, Contractor shall exercise its best efforts 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 **ARTICLES IV.2.5** and **IV.2.6** herein.
- X.3.2** If Contractor causes damage resulting in an issue of safety and/or security of a property, Contractor immediately shall repair any damage caused. If Contractor fails to do so, City shall act to repair the damage caused and deduct all costs associated with the repair from Contractor's Contract Sum.

X.4 PUBLIC CONVENIENCE AND SAFETY.

- X.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 City. Sidewalks or streets shall not be obstructed except by special permission of City. Excavated materials and equipment and materials 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.
- X.4.2** City reserves the right to remedy any neglect on the part of Contractor regarding public convenience and safety which may come to City's attention after twenty-four (24) hour notice in writing to Contractor. In case of an emergency, City shall have the right, without notice to Contractor, to immediately remedy any neglect. In either case, the cost of any work done by or for City to remedy Contractor's neglect shall be deducted by City from Contractor's Contract Sum.
- X.4.3** Contractor shall notify City, City's Right-of-Way Management Division, and Design Consultant, by telephone call and in writing, when any street is to be closed or obstructed, and Contractor shall obtain a Right-of Way permit from City. In the case of major thoroughfares or streets upon which transit lines operate, Contractor shall provide such notice at least forty-eight (48) hours in advance of the closure or obstruction. City 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 City or Design Consultant, keep any street in condition for unobstructed use by City 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.

X.4.4 During performance of the Work, Contractor shall limit airborne dust and debris throughout the Project Site. 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 of streets under construction and to detour streets, to maintain sufficient moisture control in the surface layers of such streets for dust control.

X.4.5 City's Office of Sustainability continues to work on City's Air Quality Control Strategies Plan in its ongoing efforts to lower emissions throughout the City, including City's Project sites. To assist City in these goals, Contractor shall strive to:

- a. reduce fuel use by directing Contractor's employees and Subcontractors to reduce vehicle idling, to maintain equipment utilized on the Project, and to replace or repower equipment with current technologies;
- b. conserve electricity used to provide power to Contractor's offices and throughout the Project Site, including as to lighting, tools, and Contractor's construction trailer; and
- c. recycle Site materials, such as asphalt, steel, concrete, and other recyclable metals.

All costs associated with acquisition and installation of emission control technology by Contractor and its Subcontractors shall be considered incidental costs of the Project; as such, no additional compensation shall be provided by City to Contractors and its Subcontractors.

X.5 BARRICADES, LIGHTS AND WATCHMEN.

If the Work is 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 all such other precautionary measures as are reasonable and necessary for the protection of persons and property and 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 **ARTICLE X.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 Contractor's failure to comply with this **ARTICLE X.5**, and City or Design Consultant may order the damage immediately be removed, repaired and/or replaced by Contractor at Contractor's sole cost and expense. Contractor's responsibilities under this **ARTICLE X.5** shall not cease until the Project has been finally accepted by City and joint-bid agencies, if any.

X.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.

In case it is necessary for Contractor to change or move the property of City or of any telecommunications or public utility, such property shall not be touched, removed, or interfered with until ordered to do so by City. City reserves the right to grant any public or private utility personnel the authority to enter upon the Site for the purpose of making such changes or repairs to its property that may become necessary during the performance of the Work. City reserves the right of entry upon the 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 City's property. City's actions shall conform to Contractor's current and approved Project Schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to City by Contractor.

X.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 so that the Work under construction shall be adequately protected.

X.8 ADDITIONAL UTILITY ARRANGEMENTS AND CHARGES.

- X.8.1** When Contractor desires to use City's water in connection with the Work, Contractor shall make complete and satisfactory arrangements with San Antonio Water System 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 City ordinance, or where no ordinance applies, payment shall be based on estimates made by representatives of San Antonio Water System.
- X.8.2** Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with City 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.
- X.8.3** If Contractor elects, or is required by City, to place and operate out of a construction trailer or office on the Site, all related costs shall be borne by Contractor, and Contractor shall provide for an electronic device to exchange data wirelessly via a local area computer network, to include secure, high-speed internet connections (commonly known as "Wi Fi access") for City personnel's use while on the Site for the duration of the Project.

X.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 City, unless duly authorized in writing to do so, by City.

X.10 ENVIRONMENTAL COMPLIANCE.

X.10.1 Contractor and its Subcontractors must 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) regarding and/or relating to the environment and/or Hazardous Substances or exposure to Hazardous Substances, including, but not limited to: the Clean Water Act; the Endangered Species Act; 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.

X.10.2 If Contractor encounters on Site any materials reasonably believed to be a Hazardous Substance that has not been rendered harmless, Contractor immediately shall stop Work in the affected area and immediately shall report, by telephone call and in writing, the facts of such encounter to City. The notification must include station numbers for Horizontal Projects and facility and room numbers for Vertical Projects. Work in the affected area shall not thereafter be resumed except by written order of City and written consent of Contractor, unless and until the suspected Hazardous Substance either (a) is determined not to be a Hazardous Substance or (b) is confirmed to be a Hazardous Substance and is remediated as follows:

- a.** If the Hazardous Substance is not part of the scope of Work required under the Contract Documents and/or is not due to fault or negligence of Contractor or its Subcontractors or suppliers, City shall remediate the Hazardous Substance with a separate contractor or through a Change Order with Contractor;
- b.** If the Hazardous Substance exists in the affected area due to the fault or negligence of Contractor or any of its Subcontractors or suppliers, then Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and/or disposal of the Hazardous Substance at the sole expense of Contractor. Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation and disposal of the Hazardous Substance. Prior to undertaking any abatement, cleanup, control, removal, remediation and/or disposal, Contractor shall notify City so that they may observe the activities; however, it shall remain Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing such activities. If applicable,

such remediation shall be in accordance with Contractor's Spill Remediation Plan to be included in their safety and health program and in accordance with TCEQ regulatory levels;

- c. An extension of the Contract Time for any delay in the Project Schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by City only if the Project Critical Path is affected and the Hazardous Substance is not due to the fault or negligence of Contractor and/or its Subcontractors or suppliers. 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 **ARTICLE IV.2.6** and **ARTICLE VIII** herein.

X.10.3 Contractor shall be responsible for complying with PWD's Capital Project Soil Relocation Policy and Communication Plan for all capital improvements projects, as set forth in Contract Documents. Contractor shall provide no more than three (3) soil disposal sites to the City fourteen (14) Days prior to commencement of hauling any excess soil or fill material. Contractor shall provide required documentation regarding disposal or reuse sites, flood plain verification, storm water pollution measures information, and compliance with applicable federal, state, and local regulations. Contractor shall not proceed with hauling activities of excess soils until it receives approval from City.

X.10.4 For Vertical Projects, City performs asbestos, lead and mold surveys, and in most instances, abatement is performed prior to construction; however, if during construction, additional asbestos, lead and/or mold is discovered, Contractor immediately shall stop Work in the affected area and immediately shall report the facts of such encounter to City by telephone call and in writing. Unless the Contractor is otherwise directed by the City, City will mobilize an abatement contractor to assess the affected area and to remove the affected area.

X.10.5 For Horizontal Projects, in most instances, pipe consisting of asbestos-cement products, including those known under the brand name Transite and/or the generic name transite ("AC"), has been identified in the Plans, and City has set up procedures addressing the AC pipe removal. However, in some instances, during construction of the project, AC pipe may be discovered as an unforeseen condition to the project. Prior to removal of the AC pipe, Contractor is responsible for submitting an abatement plan to the City for approval, and as part of its plan, Contractor shall identify, as part of its abatement team, a contractor currently and properly licensed or registered pursuant to requirements of the Texas Department of State Health Services ("TDSHS") that shall provide the asbestos abatement.

END OF ARTICLE X

ARTICLE XI. INSURANCE AND BONDS

XI.1 INSURANCE.

Contractor agrees that Contractor shall purchase and maintain, without interruption, insurance that adheres to all insurance requirements as stated in these General Conditions and any other Contract Documents. Contractor further agrees to require, by written contract, each of Contractor's Subcontractors providing

goods or services for the Project to purchase and maintain, without interruption, insurance that adheres to all insurance requirements as stated in these General Conditions and any other Contract Documents, including the City's "Insurance Requirements" document hereby referenced and specifically made part of the Contract Documents by such reference.

XI.2 PERFORMANCE BONDS AND PAYMENT BONDS.

XI.2.1 Subject to the provisions of **ARTICLE XI.2.2** herein, Contractor shall, with the execution and delivery of the Contract, furnish and file with City, in the amounts required in **ARTICLE XI** herein, the Surety Bonds described in **ARTICLE XI.2.1.a** and **ARTICLE XI.2.1.b** 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 **ARTICLE XI.2.3** herein and approved by City. The Surety Bonds shall be accompanied by an appropriate Power-of-Authority clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

a. PERFORMANCE BOND.

A good and sufficient Performance 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 City. This Performance Bond also shall 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 City, or lesser or longer periods as otherwise may be designated in the Contract Documents.

b. PAYMENT BOND.

A good and sufficient Payment 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.

XI.2.2 If the Contract Sum, including City-accepted Alternates and allowances, if any, is greater than \$100,000.00, a Payment Bond and a Performance Bond equaling one hundred percent (100%) of the Contract Sum are mandatory and shall be provided by Contractor. If the Contract Sum is greater than \$50,000.00 but less than or equal to \$100,000.00, only a Payment Bond equaling one hundred percent (100%) of the Contract amount is mandatory; provided, however, 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 \$25,000.00, Contractor may elect not to provide Performance and Payment Bonds; provided, in such event, no money shall be paid by City to Contractor until Final Completion of all Work. If Contractor elects to provide the required Performance Bond and Payment Bond, the Contract

Sum shall be payable to Contractor through progress payments in accordance with these General Conditions.

XI.2.3 No surety shall be accepted by City that is in default, delinquent on any bonds or that is a party to any litigation against City. All bonds shall be made and executed on City's standard forms, shall be approved by City 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 City. 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 surety.

XI.2.4 The person(s) or entity(ies) to whom the Contract is awarded shall, within ten (10) Days after such award, sign the required Contract with City and provide the necessary bond(s) as required by the Contract Documents. No Contract shall be binding on City until:

- a. it has been approved as to form by City's City Attorney;
- b. it has been executed by City's City Manager (if required);
- c. the bond(s) required by the Contract Documents have been furnished to City by Contractor; and
- d. a fully executed Contract has been delivered to Contractor (if required).

XI.2.5 Contractor understands and agrees that the failure of Contractor to execute the Contract (if required) and timely deliver the required bond(s) and evidence of insurance shall, at City's option, constitute a material breach of Contractor's bid proposal and City may rescind the Contract award and collect or retain the proceeds of the bid security. Contractor further understands and agrees that, by reason of the uncertainty of market prices for materials and labor and it being impracticable and difficult to accurately determine the amount of damages occurring to City by reason of Contractor's failure to execute the Contract within ten (10) Days and to timely deliver bonds and copies of all insurance policies required to be obtained by Contractor, the filing of a bid proposal shall constitute Contractor's acceptance and agreement to this **ARTICLE XI.2.5**. In the event City should re-advertise for bids, the defaulting Contractor shall not be eligible to bid.

END OF ARTICLE XI

ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTION OF WORK

XII.1 INSPECTING WORK.

Whenever City, its representatives, joint-bid agencies (if any), or Design Consultant consider it necessary or advisable, inspection and/or testing of the Work shall be conducted, in accordance with this **ARTICLE**

XII, whether or not such Work is fabricated, installed, or completed. City, its representatives, joint-bid agencies (if any), and Design Consultant shall have authority to reject Work that does not conform to the Contract Documents, including, but not limited to, materials with non-conforming test results. Any costs for re-inspection or re-testing due to Contractor's non-conformance with Contract requirements may be deducted from any Contract Sum due Contractor.

XII.2 UNCOVERING WORK.

XI.2.1 If a portion of the Work is covered, concealed and/or obstructed, contrary to requirements specifically expressed in the Contract Documents, it must be uncovered for City, its representatives, joint-bid agencies (if any), and/or Design Consultant's inspection and properly be replaced at Contractor's expense without any change in the Contract Time or Sum.

XI.2.2 If a portion of the Work has been covered, concealed and/or obstructed prior to inspection by City, its representatives, joint-bid agencies (if any), and/or Design Consultant, City, its representatives, joint-bid agencies (if any), and Design Consultant retain the right to inspect such Work and, when directed by City, 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 City. 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 City or City's separate contractor, in which event City shall be responsible for payment of actual costs incurred by Contractor.

XII.3 CORRECTION OF WORK.

XII.3.1 Contractor promptly shall correct any Work rejected by City, its representatives, joint-bid agencies (if any), and/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 all costs of correcting such rejected Work, along with all costs for additional testing, inspections and compensation for services and expenses made necessary thereby.

XII.3.2 In addition to Contractor's warranty obligations under **ARTICLE III.5** herein, if, within one (1) year after (a) the date of Substantial Completion of the Work or a designated portion thereof, (b) the date for commencement of warranties established under **ARTICLE IX.8**, or (c) the stipulated duration of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of Written Notice from City, its representatives, joint-bid agencies (if any), and/or Design Consultant to do so, unless City previously has given Contractor a written acceptance or waiver of such condition.

XII.3.3 The one (1) year period for correction of Work 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 that portion of the Work.

- XII.3.4.** No earlier than 60 Days and no later than 30 Days prior to the expiration of the correction of work period specified in Article XII.3.2 herein, Contractor and City and/or Design Consultant shall make a detailed inspection of the Work, and City and/or Design Consultant shall provide written notice to Contractor of items requiring correction or work pursuant to Article XII.3 herein.
- XII.3.5** Contractor shall remove from the 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 City.
- XII.3.6** If Contractor fails to correct any nonconforming Work within what City deems a reasonable time after City, its representatives, joint-bid agencies (if any), and/or Design Consultant gives written notice to correct to Contractor, City may remove or replace the defective or nonconforming Work and store the salvageable materials and/or equipment at Contractor's expense. City shall provide Written Notice to Contractor of the costs of removal, replacement and/or storage, and Contractor shall have ten (10) Days after Contractor's receipt of such Written Notice to directly pay or reimburse City for such costs. If Contractor fails to timely pay or reimburse such costs, City shall provide ten (10) Days Written Notice of City's intent to sell the salvaged materials and/or equipment at auction and/or private sale, and thereafter, City may sell the salvaged materials and/or equipment at auction or at private sale. City shall account to Contractor for the proceeds, after deducting all costs and damages that should have been borne by Contractor to correct the nonconforming Work, including all compensation for 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 City.
- XII.3.7** Contractor shall bear the cost of correcting destroyed or damaged construction of City, City's separate contractors, or the public, whether the construction is completed or partially completed, caused by Contractor's correction or removal of Work pursuant to **ARTICLE XII.3** herein.
- XII.3.8** Nothing contained in ARTICLE XII.3 herein shall be construed to establish a period of limitation with respect to other obligations Contractor has under the Contract Documents. The establishment of the one (1) year period for correction of Work as described in ARTICLE XII.3 herein 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 ARTICLE XII.3 herein. The corrective remedies set forth in ARTICLE XII.3 herein are not exclusive and shall not deprive City of any action, right, or remedy otherwise available to it for Contractor's breach of any of the provisions of the Contract Documents.

XII.4 ACCEPTANCE OF NONCONFORMING WORK.

City may, in City'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 City, and such deduction will be provided in writing. Any adjustment shall be accomplished whether or not final payment has been made.

END OF ARTICLE XII

ARTICLE XIII. TERMINATION OR SUSPENSION OF THE CONTRACT

XIII.1 TERMINATION BY CITY FOR CAUSE.

XIII.1.1 Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by City for any good cause after giving seven (7) Days advance written notice to terminate for cause to Contractor and Contractor's Surety. Good cause includes, but is not limited to, the following:

- a.** failure or refusal of Contractor to start the Work within ten (10) Days after the date the Notice to Proceed is issued by City to Contractor;
- b.** a reasonable belief of City and/or Design Consultant that the progress of the Work being made by Contractor is insufficient to complete the Work within the specified Contract Time;
- c.** failure or refusal of Contractor to provide sufficient and proper materials, equipment and/or construction forces to execute the Work in accordance with the requirements of the Contract Documents.
- d.** a reasonable belief Contractor has abandoned the Work;
- e.** a reasonable belief Contractor has become insolvent, bankrupt, or otherwise is financially unable to carry on the Work;
- f.** failure or refusal on the part of Contractor to comply with any written orders given by City or Design Consultant as provided for in, or pursuant to, the Contract Documents;
- g.** a reasonable belief by City that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontract or that a fraud is being perpetrated on City in connection with the Work under the Contract; and/or
- h.** repeated and flagrant violation of safe working procedures.

XIII.1.2 When the Work or any designated portion of the Work is terminated for any of the causes itemized in **ARTICLE XIII.1.1** herein, or for any other cause except termination for convenience pursuant to **ARTICLE XIII.1.6** herein, Contractor shall, as of the date specified by City, immediately discontinue the Work or portion of the Work as City shall designate. Within fifteen (15) Days after the written notice to terminate for cause has been served upon Contractor and Contractor's Surety, Surety shall assume the obligations of Contractor for the Work or that designated portion of the Work which City has ordered Contractor to discontinue, and Surety shall:

- a. perform the Work with forces employed by the Surety, pursuant to City review that said forces are sufficiently trained/experienced for remaining Work;
- b. with the written consent of City, tender a replacement contractor with sufficient training, experience, and certifications/approvals as may be required by the Contract 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 or 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
- c. with the written consent of City, tender and pay to City 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 City for any other loss sustained as a result of Contractor's default.

In the event that the Surety is unable to obtain City's written consent required under **ARTICLES XIII.1.2.b.** and **XIII.1.2.c.** above within 15 Days, then the Surety shall perform the Work pursuant to **ARTICLE XIII.1.2.a.** above.

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.

XIII.1.3 If the Surety does not, within the time specified in **ARTICLE XIII.1.2** herein, exercise its obligation to assume the obligations of the Contract or that designated portion of the Work which City has ordered Contractor to discontinue, then City shall have the power to complete the Work by contract or otherwise as City may deem necessary and elect. Contractor agrees that City shall have the right to:

- a. take possession of or use any or all of the materials, tools, equipment, supplies and property of every kind to be provided by Contractor for the purpose of the Work;
- b. procure other materials, tools, equipment, and labor for the completion of the Work at Contractor's expense; and
- c. charge to the account of Contractor all of the expenses incurred by City to achieve completion of the Work, including for materials, tools, equipment, labor, and incidental expenses.

City shall not be required to obtain the lowest bid for completing the Work pursuant to this **ARTICLE XIII.1.3**, 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 **ARTICLE XIII.1.4** herein.

XIII.1.4 All expenses incurred by City to complete the Work shall be deducted by City out of the balance of the Contract Sum remaining unpaid to or unearned by Contractor for those Work items. Contractor and the Surety shall be liable to City for the costs to complete and/or correct the Work incurred in excess of the balance of the Contract Sum of the completed Work and for any other costs, damages, fees and/or expenses (including, but not limited to, additional fees and expenses of Design Consultant(s) and attorneys), and liquidated or actual damages incurred as a result of the termination and completion of the Work. Unearned Contract amounts for non-outstanding line items cannot be used to fund outstanding line items, unless City provides written approval and consent regarding specific line items.

XIII.1.5 When only a particular part of the Work is being carried out by City, by contract or otherwise under the provisions of this **ARTICLE XIII**, 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 City and/or its other contractors.

XIII.1.6 The right to terminate this Contract for the convenience of City (including, but not limited to, non-appropriation of funding) expressly is retained by City. In the event of a termination for convenience by City, City shall provide at least ten (10) Days advance Written Notice to Contractor of the termination for convenience. 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. Less all amounts previously paid for the Work, City shall, in accordance with the Contract Documents, pay Contractor the following only for Work properly executed and in place at the date of termination:

- a. the actual labor costs incurred;
- b. the actual cost of all materials installed;
- c. the actual cost of all materials stored at the Project Site or away from the Project Site as approved in writing by City, but not yet paid for and which cannot be returned;
- d. reasonable and applicable overhead and profit; and
- e. actual, reasonable and necessary costs for demobilization, if any, paid by Contractor as a direct result of City's termination for convenience.

XIII.2 TEMPORARY SUSPENSION OF THE WORK.

XIII.2.1 City may, upon Written Notice to Contractor, immediately suspend, delay, or interrupt the Work or any portion of the Work for a time period not to exceed ninety (90) Days, unless otherwise provided in the Contract Documents, for any reason, including, but not limited to:

- a.** the causes described in **ARTICLE XIII.1.1.a** through **ARTICLE XIII.1.h**;
- b.** conditions or circumstances of the Site not known to Contractor and not reasonably discoverable to Contractor in making observations of the Plans, Specifications, or other design documents or the improvement to real property that a contractor would make in the reasonable preparation of a bid or fulfillment of its scope of Work under normal circumstances;
- c.** under other provisions in the Contract Documents that require or permit temporary suspension of the Work; or
- d.** situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security.

XIII.2.2 Contractor immediately shall resume the temporarily suspended, delayed, or interrupted Work when ordered to do so in writing by City. City shall not, under any circumstances, be liable for any Claim of Contractor arising from a temporary suspension, delay, or interruption due to a cause described in **ARTICLE XIII.4.1.a through ARTICLE XIII.4.1.d** herein; however, as to a reason under **ARTICLE XIII.2.1.c** herein where the provision of the Contract Documents does not specifically provide that the suspension is at no cost to City and as to a reason under **ARTICLE XIII.2.1.d** where Contractor is not a contributing cause of the threat, City shall make an equitable adjustment for the following items provided that a Claim properly is made by Contractor under **ARTICLE IV.2.5** herein or under **ARTICLE IV.2.6** herein:

- a.** an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension, delay, or interruption as determined by City and Design Consultant;
- b.** 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
- c.** if it becomes necessary to move equipment from the Site and then return it to the 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 for use.

END OF ARTICLE XIII

ARTICLE XIV. MISCELLANEOUS PROVISIONS

XIV.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.

XIV.2 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS.

XIV.2.1 This Contract shall be governed and interpreted in accordance with 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, Texas law being the choice of law for the Contract and all Contract Documents.

XIV.2.2 This Contract is entered into, subject to, and controlled by the Charter and Ordinances of the City of San Antonio, including, but not limited to, all Ordinances adopting all design and building-related codes applicable to the Work and the Project, 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.

XIV.3 SUCCESSORS AND ASSIGNS.

City 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 City. If Contractor attempts to make an assignment, transfer, or conveyance without City's written consent, Contractor nevertheless shall remain legally responsible for all obligations under the Contract Documents. City 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.

XIV.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY CITY.

XIV.4.1 The duties and obligations imposed on Contractor by the Contract Documents and the rights and remedies available to City 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.

XIV.4.2 No action or failure to act by City shall constitute a waiver of a right afforded City under the Contract, nor shall any action or failure to act by City 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.

XIV.5 INTEREST.

City 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.

XIV.6 INDEPENDENT MATERIALS TESTING AND INSPECTION.

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

XIV.7 FINANCIAL INTEREST.

Officers or employees of the City shall not have financial interest in any contract of the City. 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 City or any City agency, such as City-owned utilities.

Pursuant to this **ARTICLE XIV.7**, Contractor warrants and certifies, and this Contract is made in reliance thereon, that Contractor has reviewed and made itself familiar with the provisions of the current Section 2-52 of the City of San Antonio Ethics Code, and Contractor, its officers, employees and/or agents are neither officers nor employees of City. Except with City's low-bid contract awards, Contractor warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code. Any violation of this article shall constitute malfeasance in office and any officer or employee of City guilty thereof shall forfeit his/her office or position. Any violation of this **ARTICLE XIV.7** with the knowledge, express or implied, of the person, persons, partnership, company, firm, association, or corporation contracting with City shall render a Contract voidable by City's City Manager or City Council.

XIV.8 VENUE.

This Contract is performable entirely in Bexar County, Texas, and if legal action is necessary to interpret or enforce this Contract, exclusive venue shall lie in Bexar County, Texas.

XIV.9 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. Contractor covenants that it shall take all necessary actions to ensure 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.

XIV.10 BENEFITS TO PUBLIC SERVANTS.

XIV.10.1 City 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.

XIV.10.2 For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

XIV.10.3 Notwithstanding any other legal remedies, City may require Contractor to remove any employee of Contractor, any Subcontractor, or any employee of any Subcontractor from the Project who has violated the restrictions of **ARTICLE XIV.11** herein or any similar State or Federal law, and City 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.

XIV.11 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.

XIV.12 ATTORNEY(S)' FEES.

The Parties hereto expressly agree that, in the event of litigation, all Parties waive rights to payment of attorney(s)' 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(ies)'s fees.

END OF ARTICLE XIV

END OF THE GENERAL CONDITIONS

SPECIAL CONDITIONS FOR HORIZONTAL PROJECTS

- 1. ARTICLE III.2.5 is hereby added to ARTICLE III REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

III.2.6 DIFFERING SITE CONDITIONS.

Contractor promptly shall, before such discovered conditions and/or structures are disturbed, notify City 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.

City 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 City reasonably determines 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 City.

- a.** No claim of Contractor under this **ARTICLE III.2.5** shall be allowed unless Contractor has given the written notice called for above, prior to disturbing the discovered conditions and/or structures.
- b.** No Contract adjustment shall be allowed under this **ARTICLE III.2.5** for any effects caused on unchanged work.

- 2. ARTICLE IV.4.5 MATERIAL TESTING is hereby added to ARTICLE IV ALTERNATIVE DISPUTE RESOLUTION**

IV.4.7 MATERIAL TESTING.

Materials not meeting Contract requirements or do not produce satisfactory results shall be rejected by City, unless City or Design Consultant approves corrective actions. Upon rejection, Contractor immediately shall remove and replace rejected materials. If Contractor does not comply with these requirements, City may remove and replace defective material and all costs incurred by City 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 City or Design Consultant before delivery is started and, at the option of City, may be sampled and tested by City for determining compliance with the governing Specifications before delivery is started. If it is found after trial 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 City 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 City or Design Consultant by sampling, testing or other means, and Contractor decides to change to a different material requiring additional sampling and testing by City for approval, Contractor shall pay for any expense incurred by City for such additional sampling and testing and the costs incurred by City shall be deducted from any money due or owed to Contractor.

3. CHANGE TO ARTICLE IV.2.8. UNIT PRICES.

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 constituting 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.

As applicable, if unit prices are stated in the Contract Documents or subsequently are agreed upon by City and Contractor and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive, such that the application of such unit prices to quantities of Work proposed shall cause substantial inequity to City or Contractor, the applicable unit prices shall be equitably adjusted.

4. ARTICLE VII.2.5 ALLOWABLE MARKUPS is hereby added to ARTICLE VII.2 CHANGE ORDERS

VII.2.5.1 Maximum allowable markups for Change Order pricing, when said pricing is not determined through unit prices, are established as follows:

- a. 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, shall be the established maximum allowable labor burden cost. No charge for superintendence shall be made unless considered necessary and approved by City or a Change Order includes an extension of the Contract Time.

- b. 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.
- c. 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. City reserves the right to limit the hourly rate to comparable Blue Book rates. When the invoice specifies 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 the equipment is involved in the Work and an additional maximum of fifteen percent (15%) may be added as compensation.

- d. SUBCONTRACTOR MARKUPS.** Contractor shall be allowed administrative cost only when extra Work, ordered by City, 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.

5. ARTICLE XII.3.8.k DIRECTIVE ALLOWABLE MARKUPS is hereby added to ARTICLE XII.3. FIELD WORK DIRECTIVES

Maximum allowable markups for **FIELD WORK DIRECTIVES** shall follow the **ALLOWABLE MARKUPS** established in **ARTICLE VII.2.4.**

6. ARTICLE VIII.2.2.a STANDBY EQUIPMENT COSTS is hereby added to ARTICLE VIII.2 DELAYS AND EXTENSIONS OF TIME

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

7. ARTICLE X.11 ROAD CLOSURES AND DETOUR ROUTES is hereby added to ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

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 City 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.

8. ARTICLE X.12 USE OF STREETS is hereby added to ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

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 City's streets unless being transported on pneumatic-tired vehicles. Any damage to City'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 City's Specifications and direction. If Contractor cannot or refuses to repair street damage caused by Contractor and/or Contractor's equipment, City may perform the repairs and all expenses incurred by City in performing the repairs shall be deducted for any money due or owed to Contractor.

9. ARTICLE X.13 MAINTENANCE OF TRAFFIC is hereby added to ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

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

- a. Keep existing roadways open to traffic or construct and maintain detours and temporary structures for safe public travel;
- b. Maintain the Work in passable condition, including proper drainage, to accommodate traffic;
- c. Provide and maintain temporary approaches and crossings of intersecting roadways in a safe and passable condition;
- d. Construct and maintain necessary access to adjoining property as shown in the Plans or as directed by City; and
- e. 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 City, unless otherwise stated in the Plans and Specifications. City shall notify Contractor if Contractor fails to meet the above traffic requirements. City may perform the work necessary for compliance, but any action n by City shall not change the legal responsibilities of Contractor, as set forth in the Task Order Contract Documents. Any costs incurred by City for traffic maintenance shall be deducted from money due or owed to Contractor.

10. ARTICLE X.14 ABATEMENT AND MITIGATION OF EXCESSIVE OR UNNECESSARY CONSTRUCTION NOISE IS hereby added to ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

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

11. ARTICLE X.15 INCIDENTAL WORK, CONNECTIONS, AND PASSAGEWAYS is hereby added to ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

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

- a.** 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;
- b.** Contractor shall provide passageways or leave open such thoroughfares in the Work Site as may be reasonably required by City; and
- c.** Contractor shall protect and guard same at its own risk and continuously shall maintain the Work Site in a clean, safe and workmanlike manner.

**END OF SPECIAL CONDITIONS FOR
HORIZONTAL PROJECTS**

SPECIAL CONDITIONS FOR TASK ORDER CONTRACTS

1. When applying these General Conditions for City of San Antonio Construction Contracts to Task Order contracts:

- 1.1 **ARTICLE IX.3 APPLICATION FOR PAYMENT** of the City's General Conditions for City of San Antonio Construction Contracts hereby are "**DELETED**" in its entirety and is "**REPLACED**" with:

IX.3 APPLICATION FOR PAYMENT/CONTRACTOR BILLING.

IX.3.1 Under an issued Task Order contract with City, Contractor shall not be required to submit an application for payment to City for materials and work performed. Instead, City, shall calculate the accrual of materials utilized for the subject payment period and submit a request for payment from City on Contractor's behalf.

IX.3.2 City, through its on-site Project Inspector, shall calculate the daily total of materials utilized by Contractor performing *horizontal* work through an issued Task Order contract. Inspector's daily total of utilized materials shall be confirmed daily by Contractor. Inspector also shall keep a monthly running total of work performed and materials utilized as agreed upon, for each day of Work, by Contractor.

IX.3.3 Inspector, at minimum every thirty (30) days throughout the Project's duration, then shall submit in writing, on Contractor's behalf, the agreed upon total materials utilized by Contractor for the outstanding days, up to the date of Inspector's submittal, to City's PW Fiscal Department for payment to Contractor.

IX.3.4 City's PW Fiscal Department then shall issue payment to Contractor, within thirty (30) days of receipt of Inspector's and Contractor's agreed upon total materials utilized, calculated at the rate for the utilized materials reflected in Contractor's Task Order contract with City.

IX.3.5 Unless otherwise provided in the Task Order contract documents, payments by City 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 City. If approved in advance in writing by City, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by City. Payment for materials

and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to City to establish City's title to such materials and equipment or otherwise protect City'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.

IX.3.7 Contractor warrants, upon Contractor's approval of its Payment Request to City, all Work for which payment previously has been received from City, to the best of Contractor's knowledge, information and belief, is 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 CITY 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 CITY TO CONTRACTOR.**

IX.3.8 By Contractor's approval of its Payment Request to City and by its concurrence with said submission, Contractor certifies there are no known liens or bond claims outstanding as of the date of said Application for Payment, 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 releases from all Subcontractors and Contractor's material men 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 City 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.

IX.3.9 Contractor accepts and agrees, by its submittal of a Payment Request to City, Contractor approves of said Payment Request and Contractor has performed all of the Work and assumes all contractual and legal responsibilities associated with the submittal and approval of said Payment Request.

- 1.2** **ARTICLE IX.4 PAY APPLICATION APPROVAL** of the City’s General Conditions for City of San Antonio Construction Contracts hereby are “**DELETED**” in its entirety and is “**REPLACED**” with:

IX.4 PAYMENT APPROVAL.

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

IX.4.1 Made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

IX.4.2 Reviewed construction means, methods, techniques, sequences or procedures;

IX.4.3 Reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by City to substantiate Contractor’s right to payment; or

IX.4.4 Made any examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

- 1.3** **ARTICLE IX.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT** of the City’s General Conditions for City of San Antonio Construction Contracts hereby are “**DELETED**” in its entirety and is “**REPLACED**” with:

IX.5 DECISIONS TO REJECT PAYMENT TO CONTRACTOR

IX.5.1 A request for payment by Contractor may be rejected at any time by City to protect City for any of the following reasons:

- IX.5.2** Work not performed or is defective;
- IX.5.3** Third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder, unless security acceptable to City is provided by Contractor;
- IX.5.4** Failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- IX.5.5** Reasonable evidence the Work cannot be completed for the unpaid balance of the Contract Sum and Contractor has failed to provide City adequate assurance of its continued performance within a reasonable time after demand;
- IX.5.6** Damage to City or another contractor;
- IX.5.7** Reasonable evidence the Work shall not be completed within the time allotted on the issued Task Order and the unpaid balance on the issued Task Order would not be adequate to cover actual or Liquidated Damages for the anticipated delay;
- IX.5.8** Persistent failure by Contractor to carry out the Work in accordance with the issued Task Order and/or Contract Documents;
- IX.5.9** The applicable Liquidated Damages were not included in the City-submitted Application for Payment;
- IX.5.10** Billing for unapproved/unverified materials stored off Site; or
- IX.5.11** A current schedule update has not been submitted by Contractor to City.
- IX.5.12** City shall not be deemed in default by reason of rejecting Application for Payment as provided for in **ARTICLE IX.5.1**.

1.4 ARTICLE IX.6 PROGRESS PAYMENTS of the City's General Conditions for City of San Antonio Construction Contracts hereby are "**DELETED**" in its entirety and is "**REPLACED**" with:

IX.6 PROGRESS PAYMENTS.

- IX.6.1** City's payment of installments shall not, in any way, be deemed to be a final acceptance by City of any part of the Work, shall not prejudice City in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work provided.

- IX.6.2** Contractor shall, within ten (10) calendar days following receipt of payment from City, 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 City 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 City 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 City so requests, shall provide copies of such Subcontractor payments to City. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which City has made payment to the Contractor, City shall be entitled to withhold payment to Contractor to the extent necessary to protect City.
- IX.6.3** City 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 City on account of portions of the Work done by such Subcontractor.
- IX.6.4** City shall not have any obligation to pay or to see to the payment of money to a Subcontractor, except as otherwise may be required by law, if any.
- IX.6.5** Payments to material suppliers shall be treated in a manner similar to that provided in **ARTICLE IX.6.3** and **ARTICLE IX.6.4** regarding Subcontractors.
- IX.6.6** A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by City shall not constitute acceptance of Work not performed or furnished in accordance with the Task Order Contract Documents.
- IX.6.7** Contractor shall, as a condition precedent to any obligation of City under this Contract, provide to City payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

1.5 ARTICLE IX.9 FINAL COMPLETION AND FINAL PAYMENT of the City's General Conditions for City of San Antonio Construction Contracts hereby are "**DELETED**" in its entirety and is "**REPLACED**" with:

IX.9 FINAL COMPLETION AND FINAL PAYMENT.

IX.9.1 When all of the Work on an issued Task Order finally is complete and ready for final inspection, Contractor shall notify City in writing. Thereupon, City shall make final inspection of the Work and, if the Work is complete in full accordance with the issued Task Order and, pursuant to this Contract, fully has been performed, Contractor shall submit a final Application for Payment. If City is unable to approve the final Application for Payment for reasons for which Contractor is responsible and City is required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by City from the Contractor's final payment.

IX.9.2 If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and City so confirms, City shall, upon application by Contractor and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. Request for final payment by Contractor shall constitute a waiver of all claims against City, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

IX.9.3 For all payments made through an issued Task Order contract, City shall not withhold any retainage from payments made to Contractor.

1.6 ARTICLE XI.3.1 PERFORMANCE BONDS AND PAYMENT BOND of the City's General Conditions for City of San Antonio Construction Contracts hereby are "**DELETED**" in their entirety and collectively "**REPLACED**" with the following replacement **ARTICLE(S)**:

XI.3 PERFORMANCE BONDS AND PAYMENT BONDS.

XI.3.1 Subject to the provisions of **ARTICLE XI.3.1**, Contractor shall, with the execution and delivery of the Task Order Contract, furnish and file with City, in the amounts required in this **ARTICLE XI**, the surety bonds described in **ARTICLE XI.3.1.a** 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 **ARTICLE XI.3.3** and approved by City. 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:

Unless otherwise stipulated by City, Payment and Performance Bonds are required for entire Task Order Contract Sum. City may elect at time of solicitation to stipulate other bonding requirements.

- a. PERFORMANCE BOND.** Contractor shall furnish a Performance Bond to City. Unless otherwise stipulated by City, Contractor shall furnish:
 - i.** A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total Task Order Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with issued Plans, Specifications and all other Task Order Contract Documents, including any extensions thereof, for the protection of City. This Performance Bond also shall 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 Task Order Work by City, or lesser or longer periods, as may be otherwise designated in the issued Task Order.
- b. PAYMENT BOND.** Contractor shall furnish a Payment Bond to City. Unless otherwise stipulated by City, Contractor shall furnish:
 - i.** A good and sufficient Payment Bond in an amount equal to 100% of the total Task Order 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.

XI.3.2 No surety shall be accepted by City that is in default, delinquent on any bonds or that is a party to any litigation against City. All bonds shall be made and executed on City's standard forms, shall be approved by City 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 City. 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 surety ship.

2.1 In addition to the General Conditions replacement Sections listed herein, the following definitions, terms and conditions shall apply to City's Task Order Contracts and hereby are added to and made a part of the General Conditions for City of San Antonio Construction Contracts:

ARTICLE XVII ISSUANCE OF TASK ORDERS

XVII.1 Unless otherwise stated in the Contract solicitation documents, Task Order Contracts shall commence upon the date of the issuance of the first Task Order by the City of San Antonio.

XVII.2 With the exception of emergencies, any Work required by City shall be ordered through the issuance of a formal written Task Order containing the approved Task Order Proposal, along with a City issued Task Order through *PRIMELink*.

XVII.3 Request by City for Task Order Proposals shall be submitted to City at no additional cost. In the event Task Order Contracts are awarded to multiple Contractors, City may elect and often shall, at its own discretion, to solicit Task Order Proposals from one or more of the awarded Contractors, depending upon the estimated value and/or complexity of the proposed project. Determination to solicit multiple proposals from the awarded Contractors or from only one awarded Contractor shall be on a case- by-case, as deemed in the best interest of City.

XVII.4 Upon review of the received Task Order Proposal(s), City shall have the right to reject all proposals, solicit a proposal from one or more Contractors, cancel the proposed project, rebid the Work under any permissible procedure or perform the Work utilizing City personnel. City shall not be responsible for payment or costs

incurred by the awarded Contractor(s) for the preparation and submission of a Task Order Proposal, regardless of project outcome.

XVII.5 In the event design services, construction drawings and/or plans are required, City either shall obtain said professional design services from City resources or from a third party, as deemed in City's best interest.

XVII.6 The current RS Means Unit Price Book shall serve as a basis for establishing the maximum price for and the value of the Work to be performed. Each selected Contractor's Task Order Proposal shall be submitted to City and negotiated under the contractual agreement.

XVII.7 The Task Order Contract shall be for a fixed unit price, with an indefinite delivery and quantity regarding the performance of a broad range of construction services, to include, but not limited to, minor repairs, rehabilitation, reconstruction and professional supervision on an as-needed basis. Contractor acknowledges, accepts and agrees it is not and will not be guaranteed a minimum or maximum amount of work. Specific Work requirements shall be identified in individual Task Orders as deemed necessary by City. If there is an item of Work not included in the fixed unit pricing negotiated for an issued Task Order, City and Contractor shall negotiate the cost for the non-included item and, upon agreement of the cost for the Work, shall execute a Change Order through PRIMELink reflecting the agreed upon cost.

XVII.8 Contractor shall be responsible for providing all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, insurance, subcontracts, bonds, supervision, management, reports, incidentals and quality control necessary to perform construction management and construction for each issued and accepted Task Order, unless otherwise authorized by City.

XVII.9 Any Task Order awarded by City shall not include professional services required by a licensed architect or engineer, as contemplated by Chapters 1051 and 1001 of the Texas Occupations Code.

XVII.10 Contractor shall be responsible for complying with all federal, state, county and City laws, codes and ordinances applicable to the performance of any Work under the Task Order contract awarded. Special attention is called to, but not limited to, local environmental ordinances. In addition, Contractor shall comply with Texas Government Code Chapters 2258 and 2253. Ignorance on the part of Contractor shall in no way relieve Contractor from responsibility under this clause and contract. City may request to see all Subcontractor bids and City may, at any time, participate in a bid opening and may audit Task Order bid documents.

ARTICLE XVIII

SCHEDULING OF WORK ON ISSUED TASK ORDERS

- XVIII.1** The first day of performance shall be the effective date specified in the Task Order. No Work shall commence any earlier than the issuance date of the first Task Order. No Work shall be performed by Contractor or any Subcontractor prior to the issuance of a Task Order. Any preliminary Work started, materials ordered or purchases made, prior to receipt of City's Task Order Notice to Proceed, shall be at Contractor's risk and expense.
- XVIII.2** Contractor meticulously shall prosecute the Work to completion within the time set forth in the Task Order. The period of performance shall include allowance for the mobilization, holidays, weekend days, inclement weather and cleanup; therefore, claims for delay, based upon said elements, shall not be allowed.
- XVIII.3** Contractor shall ensure the purchase, delivery and storage of materials and equipment shall be made without interference to City operations and personnel.
- XVIII.4** Contractor shall take all necessary precautions to ensure no damage shall result from operations to private or public property. All damages shall be repaired or replaced by Contractor at no additional cost to City. Contractor also shall be responsible for providing all necessary traffic control, to include, but not limited to, street blockages, traffic cones, flagmen, etc., as required for each Task Order. Proposed traffic control methods shall be submitted to City for approval prior to the commencement of Work.
- XVIII.5** Contractor shall be responsible for obtaining all required permits applicable to performance under any single order placed against this contract. City shall be responsible for the cost of any and all required City permits.
- XVIII.6** Contractor shall allow authorized City personnel to inspect and audit any books, documents, papers, data and records relating to Contractor's performance throughout the term of said Task Order/IDIQ contract. City reserves the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by City to be incomplete or erroneous.

END OF SPECIAL CONDITIONS FOR THE GENERAL CONDITIONS