

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
CIVIL ENGINEERING SERVICES  
PROJECT NAME: MARKET STREET CYCLE TRACK  
PROJECT NUMBER: 23-04062**

**STATE OF TEXAS                    }**  
**COUNTY OF BEXAR                }**  
**CITY OF SAN ANTONIO          }**

This Professional Services Agreement for Civil Engineering Services (“this Agreement” or “the Agreement”) is made and entered into in San Antonio, Bexar County, Texas, between City of San Antonio (“City), a Texas Municipal Corporation, and

**Pape-Dawson Consulting Engineers, LLC  
2000 NW Loop 410  
San Antonio, Texas 78213**

(“Consultant”), said Agreement being executed by City, pursuant to City Charter, Ordinances, and Resolutions of the San Antonio City Council, and by Consultant for Civil Engineering and Construction Administration Services as set forth herein in connection with the above designated solicitation for City.

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## ARTICLE I. DEFINITIONS

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

**I.1 “AGREEMENT”** is this written document signed by City and Consultant, including any other document itemized and expressly referenced in, or attached to, and expressly made part of this Agreement, to include Consultant’s proposal, to the extent accepted by City and not in conflict with the **ARTICLES** of this Agreement:

**I.2 “APPLICATION FOR COMPENSATION”** means written form for a request from Consultant to be paid for completed Work.

**I.3 “AMENDMENT”** is a written modification of the Contract prepared by City or Consultant and signed by City and Consultant (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Scope of Services or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.

**I.4 “CCMS”** means City’s Contract Management System whereby payments made by Consultants to Sub-Consultants and confirmed by Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and monitored by City for compliance.

**I.5 “CITY”** means City of San Antonio, Texas, and its authorized representatives.

**I.6 “CITY DESIGNATED REPRESENTATIVE”** means person designated by City to act for City.

**I.7 “CLAIM”** is a demand or assertion by one of the Parties seeking, as a matter of right, adjustment or interpretation of this Agreement’s terms, payment of money, and/or extension of time or other relief, with respect to the terms of this Agreement. The term “Claim” also includes other disputes and matters in question between City and Consultant arising out of, or relating to, this Agreement.

**I.8 “COMPENSATION”** means amounts paid for services under this Agreement.

**I.9 “CONSTRUCTION CONTRACTOR”** is the firm hired by City to construct the Project.

**I.10 “CONSTRUCTION DRAWINGS AND SPECIFICATIONS”** are the documents used to convey the intent of Consultant for the purposes of constructing the Project.

**I.11 “CONSTRUCTION DOCUMENTS,”** or “**CDS,**” are the complete set of Work documents accepted by City to complete the Project, including the Construction Drawings and Specifications as set out in **ARTICLE IV**.

**I.12 “CONSULTANT”** means **Pape-Dawson Consulting Engineers, LLC** and its officers, partners, employees, agents, and representatives, as well as all Sub-Consultants, if any, and all other persons or entities for which Consultant is legally responsible.

**I.13 “DESIGN GUIDANCE MANUAL (DGM)”** means the document that instructs design engineers on the procedures and formats to be followed in the design of capital improvement projects for the City of San Antonio. The DGM provides minimum standards for the project development process and deliverables.

**I.14 “DIRECTOR”** means the Director of City’s Public Works Department (hereafter referred to as “Public Works”) or his/her designee.

**I.15 “FEE SCHEDULE”** means the values allocated to materials and various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as City may require.

**I.16 “FINAL COMPENSATION”** means the final amounts paid by City to Consultant for completed services accepted by City under this Agreement.

**I.17 “INVOICE”** means written request for compensation from Consultant to City for services completed under this Agreement.

**I.18 “PLANS AND SPECIFICATIONS”** means the construction documents.

**I.19 “PRIMELINK”** means City’s internet-based project management software for submitting and approving Task Orders, Applications for Compensation, and all other forms of correspondence between City and Consultant.

**I.20 “PROJECT”** means the capital improvement or construction development undertaking of City.

**I.21 “PROJECT MANAGEMENT TEAM”** means the assigned City staff overseeing the management of the Project. The Project Management Team typically includes a Project Manager and his or her staff.

**I.22 “PROPOSAL”** means Consultant’s Proposal to provide services for a project.

**I.23 “SAMSA”** means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven (7) surrounding counties: Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson

**I.24 “SCOPE OF SERVICES”** means the services described in **Article III, Article IV, Article V, EXHIBIT A, EXHIBIT C, EXHIBIT E**, as well as any amendments or addenda to this Agreement.

**I.25 “SERVICES”** means those services performed by Consultant as described in the Scope of Services.

**I.26 “TOTAL COMPENSATION”** means the not-to-exceed amount of this Agreement.

## ARTICLE II. COMPENSATION

**II.1** The Total Compensation for all services defined by this Agreement, including Basic Services, Additional Services, and Reimbursables, is the not-to-exceed amount of **ONE MILLION FOUR HUNDRED NINETY-NINE SEVEN HUNDRED EIGHTY-SEVEN AND 40/100 DOLLARS (\$1,499,787.40)**. It is agreed and understood such amount shall constitute full compensation to Consultant for all Basic Services, Additional Services, and Reimbursables listed on Consultant's Scope of Services/Fee Schedule or otherwise referenced in **EXHIBIT A, EXHIBIT C, and EXHIBIT E** hereto and shall meet all requirements of City's Design Guideline Manual. The Scope of Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with and approval by City for each authorized service task and as provided in this Agreement. Such amount must be approved and appropriated by the City for expenditure under this Agreement. Unless and until City further makes appropriations for any additional services, not already included in this Agreement, the obligation of City to Consultant for Total Compensation in connection with this Agreement cannot and shall not exceed not-to-exceed amount without further amendment to this Agreement.

**II.2** The Fee Schedule attached as **EXHIBIT A** sets forth Consultant's compensation for each work phase. Consultant shall adhere to and be limited to the not to exceed amount for each work phase as set out in the Schedule of Payment by work phase. The Director, or his designee, has authority to reallocate funds and work between the phases set out in the aforementioned Schedule of Payment.

**II.3** Payments to Consultant shall be in the amount shown on the invoices and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed in accordance with the professional standard of care set forth in **Article III** and to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory, and which previously have not been approved by the Director. City may withhold Liquidated Damages as calculated in accordance with **Article VIII**. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted, and approved by City.

**II.3.1** Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service, as may be described in Compensation for Additional Professional Services.

**II.3.2** Monthly payments for services performed in the various additional services shall be reviewed by Director upon Consultant entering itemized invoices, with all required back-up, within **PRIMELink**. The invoice shall indicate the value of the additional services performed to date.

**II.4** Consultant shall, within ten (10) calendar days following receipt of Compensation from City, pay all bills for services performed and furnished by Sub-Consultants or vendors in connection with the Project and shall provide City with evidence of such payment through City's electronic

City of San Antonio Contract Management System (hereafter referred to as “CCMS”). Consultant’s failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid Sub-Consultant(s) or vendor(s) for their services or products. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on Sub-Consultants and vendors as are applicable to Consultant hereunder and require Sub-Consultants to provide confirmation to City of receipt of payments through CCMS and, if City so requests, then it shall provide copies of such payments to the Sub-Consultants and/or vendors. If Consultant has failed to make payment promptly to the sub-consultant for the services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City except in the event of a valid dispute between Consultant and that Sub-Consultant. While the aforementioned payment requirements meet the minimum requirements of 49 CFR 26.29, nothing in this Agreement shall be interpreted to waive or otherwise excuse compliance with the applicable Federal regulations.

**II.5** Consultant warrants title to all services covered by an invoice shall pass to City no later than the time of payment. Consultant further warrants, to the best of Consultant’s knowledge, information, and belief, that upon submittal of an invoice, all services included and covered by such invoice shall be free and clear of liens, claims, security interests, or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY CITY TO CONSULTANT.**

**II.6** Consultant may submit a request for Partial Compensation prior to the completion of services. A request for Partial Compensation must be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as reflected in the progress report and approved by the City. Partial payments are subject to the following:

- II.6.1** Prior to submittal of the current design phase, partial payments cannot exceed 70% of the allocated fee for the current design phase.
- II.6.2** Upon submittal of the current design phase, partial payment may be requested up to 90% of the allocated fee for the current design phase.
- II.6.3** 100% of the allocated fee for the current design phase may be requested upon approval of that design phase

Compensation also may be made based solely on the tasks and services completed and approved by City and the associated unit price for each Service/Project, as may be described in fee schedule and/or hourly rates included in “**EXHIBIT A**” hereto.

**II.7** Project Close Out and Final Payment. Final billing shall indicate “Final Bill – no additional compensation is due to Consultant”.

**II.8** City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

- II.8.1** Delays in the performance of Consultant's Services
- II.8.2** Third party Claims filed or reasonable evidence indicating a probable filing of such Claims unless security acceptable to City is provided by Consultant;
- II.8.3** Failure of Consultant to make payments properly to Sub-Consultants or vendors for labor, materials, or equipment;
- II.8.4** Reasonable evidence that Consultant's Services cannot be completed for the amount unpaid under this Agreement;
- II.8.5** Damage to City or Construction Contractor;
- II.8.6** Persistent failure by Consultant to carry out the performance of its Services in accordance with this Agreement; and/or
- II.8.7** Payment of Liquidated Damages in accordance with **Article VIII**.

**II.9** When the above reasons for withholding are removed or remedied by Consultant, Compensation of the amount withheld shall be made within a reasonable time. City shall not be deemed in default by reason of withholding Compensation, as provided for in this **Article II**.

- II.9.1** In the event of any dispute between the Parties regarding the amount of Compensation for any Phase or as final Compensation, or regarding any amount withheld by City, Consultant shall be required to make a Claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for resolution of such dispute. In the event Consultant does not initiate and follow the Claims procedures provided in this Agreement, in a timely manner and as required by the terms, as cited in **Article XIX**, any such rights shall be deemed to have been waived.
- II.9.2** City shall make final compensation of all sums due Consultant not more than thirty (30) calendar days after Consultant's execution and delivery of a final Pay Application.
- II.9.3** Request of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.
- II.9.4** Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in

computer) for a period of not less than four (4) years after completion of Services or the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records, and shall have the right to audit same.

**II.9.5** Final payment does not relieve Consultant of the responsibility of correcting any errors or omissions resulting from their negligence.

**II.10 Reimbursable Expenses.** City maintains the right of prior approval of any reimbursable expenditure by Consultant and shall not pay any expenses not agreed upon and accepted in writing by City prior to the execution of the Services. If Consultant, Sub-Consultant, or vendor of Consultant should make an expenditure which, prior to its occurrence, had not been approved in writing by City, either prior to or after the execution of this Agreement, those costs shall be the sole responsibility of Consultant and not City. When authorized by City in writing, Consultant shall be entitled to reimbursement at actual cost incurred for services and related expenses for the following:

**II.10.1** Travel outside SAMSA only if approved in writing by City prior to such travel. If approved by City, reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of Service under this Agreement. Travel costs are limited to the rates set annually by the Federal Government's General Services Administration. Consultant shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed the amount noted in attached **EXHIBIT A** Scope of Services without further approval of City. City shall not pay for Consultant's travel and parking within SAMSA.

**II.10.2** Mailing, courier services, and copies of documents requested in writing by City in excess of the copies which are to be provided under the Agreement. These costs shall not exceed the amount noted in attached **EXHIBIT A** Scope of Services without further approval of City.

**II.10.3** Graphics, physical models, and presentation boards requested in writing by City in excess of those which are to be provided under this Agreement. These costs shall not exceed the amount noted in attached **EXHIBIT A** Scope of Services/Fee Schedule without further approval of City.

**II.10.4** City shall not allow a markup on any of the above reimbursable items and only shall reimburse actual costs incurred with City's written approval.

**II.10.5** City shall not pay a markup to Consultant for Sub-Consultant work.

## **ARTICLE III. CONSULTANT RESPONSIBILITIES**

**III.1** Consultant shall provide the services listed on Consultant's Scope of Services on **EXHIBIT A** hereto and shall meet all requirements of City's Design Guidance Manual.

**III.2** Consultant shall hold periodic conferences with Director or his/her representatives through the end of the Project, so Consultant has the full benefit of City's experience and knowledge of existing needs and facilities and the Project is consistent with City's current policies and standards. To assist Consultant in this coordination, within reason, City shall make available for Consultant's use in planning and designing the Project all existing plans, maps, statistics, computations, and other data in its possession relative to existing facilities and to this particular Project at no cost to Consultant. However, any and all such information shall remain the property of City and be returned by Consultant upon termination or completion of the Project or if instructed to do so by the Director.

**III.3** The Director or his/her representative shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions, with respect to materials, equipment, elements, and systems pertinent to Consultant's services.

**III.4** City promptly shall give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services, or any development affecting the scope or timing of Consultant's services.

**III.5** Unless otherwise required by City, Consultant shall apply for and assist City in obtaining permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for the completion of the Project. City shall provide Consultant reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by City, pursuant to other provisions of this Agreement.

**III.6** Consultant warrants Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently and professional license practicing under similar circumstances in Bexar County, Texas. Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**III.7** Consultant further warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement and that for the purpose of soliciting or securing this Agreement it has not paid or agreed to pay any company or person a commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this Consultant's Warranty, City shall have the right to terminate this Agreement under the provisions of **Article XII** herein.

**III.8** Consultant shall be represented by a registered professional Civil Engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including, but not limited to, scope meetings, review meetings, pre-bid meetings, and preconstruction meetings. Consultant acknowledges The Texas Board of Professional Engineers, 1917 IH-35

South, Austin, Texas 78741, (512) 440-7723 and/or the Texas Board of Architectural Examiners, 505 E. Huntland Dr., Austin, Texas 78752, (512) 305-9000 have licensing jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.

**III.9** Except with City’s knowledge and consent, Consultant shall not engage in any activity or accept any employment, interest, or contribution that would reasonably appear to compromise Consultant’s professional judgment with respect to this Project.

**III.10** Consultant shall prepare and/or coordinate Change Orders and Field Work Directives and, with concurrence of City, have authority to order minor changes in the Work not involving an adjustment in the Total Compensation or an extension of the time for construction. Such changes shall be affected by written order which the Construction Contractor shall carry out promptly and record on the as-built record documents.

**III.11** Acceptance of the final plans by City shall not constitute or be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents, or Sub- Consultants for the accuracy, completeness, and competency of designs, drawings, specifications, or other documents and Services. Such acceptance shall also not be deemed an assumption of responsibility or liability by City for any defect in the designs, working drawings, specifications, or other documents and Work prepared by said Consultant, its employees, Sub-Consultants, and agents.

**III.12** Consultant shall be responsible for the accuracy of their professional services and shall promptly make necessary revisions or corrections to their work product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. City shall determine Consultant’s responsibilities for all questions arising from design errors and/or omissions.

**III.13** City shall administer its services through an Internet-Based Project Management System (hereafter referred to as “PRIME*Link*”). As such, Consultant shall conduct all electronic communication through PRIME*Link* and perform all Project-related functions utilizing this system with the exception of Sub-Consultant payment monitoring activities to be conducted through City’s Contract Management System (hereafter referred to as CCMS). Communication includes correspondence, submittals, requests for information, vouchers, invoices, payment requests and processing, amendments, change orders, and other administrative activities. City shall administer the PRIME*Link* software, provide training to Project Team Members, and make the software accessible via the Internet to all Project Team Members.

**ARTICLE IV. SCOPE OF SERVICES**  
**[SUBJECT TO REVISION AS APPLICABLE]**

**IV.1** Consultant shall provide Engineering Services and include in its Scope of Services all associated services required for Consultant to provide such Services pursuant to this Agreement, along with all Services which normally would be required by law or common due diligent practice.

**IV.2** Consultant shall comply with the standards of City’s Design Guidance Manual throughout the duration of the subject Project and this Agreement, unless specifically and explicitly excluded from doing so in the approved Scope of Services attached hereto, incorporated by reference herein

and labeled as “**EXHIBIT A**” and as described in this **ARTICLE IV**.

**IV.3** Consultant shall adhere to the requirements of the design phases described in City’s Design Guidance Manual, to include performing the tasks and submitting deliverables as described therein, unless specifically and explicitly excluded in the approved Scope of Service in “**EXHIBIT A**” hereto and as described in this **ARTICLE IV**.

**IV.4** Consultant acknowledges and accepts its responsibilities, as defined and described in City’s General Conditions for City of San Antonio Construction Contracts, attached hereto, incorporated by reference herein and labeled as “**EXHIBIT C**”.

**IV.5** Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

**IV.6** Consultant shall not commence service on any Work authorized under this Agreement until being thoroughly briefed on the scope of the project and being notified in writing to proceed. Should the scope subsequently change, either Consultant or City may request a review of the anticipated services, with an appropriate adjustment in compensation.

**IV.7** Consultant, in consideration for the compensation herein described, shall render the professional services described in this **ARTICLE IV** as well as in other Contract Documents necessary for the advancement of the Project through Substantial Completion to Final Completion.

**IV.8** For each design phase submittal, Consultant shall submit the required number and type of deliverables as defined in the Design Guidance Manual, addressed to the City’s Project Management Team, for use by City.

**IV.9** Prior to the actual printing of the final Construction Documents (the Project Plans and Specifications), one (1) advance copy shall be submitted to City. Upon review and approval of said Construction Documents (hereafter referred to as “CDs”), Consultant shall provide and submit same to City as follows:

**IV.9.1** Consultant shall submit the required number and type of Construction Documents as defined in the Design Guidance Manual and the General Conditions for City of San Antonio Construction Contracts, addressed to the City’s Project Management Team, for use by City. In addition, Consultant shall submit the required number and type of Construction Documents to the Contractor for use by the Contractor as defined in the General Conditions for City of San Antonio Construction Contracts.

**IV.9.2** Consultant further shall deliver digital and/or print copies of the final City accepted CDs to plan rooms during the bidding process. A listing of plan rooms will be provided by the City.

**IV.9.3** Consultant accepts and agrees at Project closeout that Consultant is responsible for and shall post the Project's As-Built final Plans and Specifications to City's Internet-Based Project Management System.

**IV.10** After Final Approval, Consultant shall, without additional compensation, perform any work required as a result of Consultant's development of the work which is found to be in error or omission due to Consultant's negligence.

## **ARTICLE V. ADDITIONAL SERVICES**

**V.1** Additional Professional Services are not included in Scope of Services described in **Article IV** and **EXHIBIT A** but may be required for the delivery of the Project. All Additional Services, including the cost thereof, shall be listed in **EXHIBIT E** hereto and, if such Additional Services are to be performed by Subcontractors or Sub-Consultants, then Consultant shall list such Subcontractors or Sub-Consultants, including their legal names, addresses, and telephone numbers. The cost of Additional Services shall be included in the not-to-exceed Total Compensation for this Contract.

**V.2** If during the performance of the Project further services are required of Consultant, then Consultant shall promptly notify City to explain the reasons for the further services. Any further services shall be negotiated, agreed-upon, and added to this Agreement by a written amendment executed by both Parties hereto. The Scope of Additional Professional Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with and approval by City for each authorized service task and as provided in this Agreement.

**V.3** Compensation for Additional Professional Services, which includes pre-priced tasks and/or hourly rates, is described in **EXHIBIT E** hereto. Consultant may submit a request for Partial Compensation prior to the completion of Additional Professional Services. A request for Partial Compensation must be accompanied by a progress report detailing the Additional Professional Services performed. Any partial payment made shall be in proportion to the Additional Professional Services performed, as reflected in the progress report and approved by the City.

**V.4** If additional services are required because of incomplete design documents, then Consultant will provide services without additional cost to City.

## **ARTICLE VI. TIME AND PERIOD OF SERVICE**

**VI.1** The term of this Agreement shall commence upon its approval by the San Antonio City Council and its execution by both Parties.

**VI.2** Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the services under this Agreement in as expeditiously a manner as is prudent considering the ordinary professional skill and care of a competent engineer, so as to not delay the Project. City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the Project.

**VI.3** Within seven (7) calendar days from the occurrence of any event, for which time for performance by Consultant shall be significantly extended under this provision, Consultant shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City determines Consultant is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement.

**VI.4** This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract and the completion of the Project, including any extra work and any required extensions thereto, unless terminated, as provided for elsewhere in this Agreement.

**ARTICLE VII. RESERVED**

**ARTICLE VIII. LIQUIDATED DAMAGES**

**VIII.1** Consultant acknowledges that City will sustain damages if Consultant fails to furnish the Services and Deliverables as required and specifically set forth in Consultant’s Scope of Services under this Agreement. Consultant agrees that it is difficult to estimate City’s damages, and as a result the Parties agree City may withhold payment for liquidated damages as a reasonable forecast of just compensation, and not as a penalty. The Parties agree that liquidated damages under this Agreement shall be calculated as an amount for each day beyond the required day for completion and acceptance, as determined by the following schedule with that amount to be withheld and deducted from any amount due or owing Consultant:

Value of City Basic Design Services	Cost of Liquidated Damages Per Day
Less Than or Equal To \$250,000.00	\$100.00
\$250,000.01 - \$500,000.00	\$150.00
\$500,000.01 - \$750,000.00	\$200.00
\$750,000.01 - \$1,000,000.00	\$300.00
Greater Than \$1,000,000.00	\$400.00

**VIII.2** Liquidated Damages will not be assessed at any time after approval of completed CDs. Liquidated Damages will be assessed only after the expiration of the contract time, and not for failure to meet Project phase deadline identified and agreed to by the Parties.

**VIII.3** Consultant further acknowledges that the amount of liquidated damages is fixed and agreed upon by and between the Parties because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages that City would sustain, and City will retain that amount.

**VIII.4** To the fullest extent permitted by applicable Texas law, for liquidated damages that are attributable to Consultant, the total liability in the aggregate of Consultant and its directors, officers, employees, agents, associates, sub-consultants, or subcontractors and of them to City will be limited to one hundred percent (100%) of the total amount of fees paid to Consultant under this Agreement. **This paragraph will survive the early termination or expiration of this**

**Agreement.**

**VIII.5** Consultant will not be liable or responsible for, and there will be excluded from the computation of the periods of time set out in the agreed upon project schedule, any delays due to a cause or incident which is beyond Consultant's reasonable control and not resulting from, arising out of, or caused by the negligence or willful misconduct of Consultant, any of its subconsultants, or any of their respective employees, contractors, agents, or representatives.

**VIII.5.1** Consultant will not be held responsible for delays in submittals caused by City, SAWS, CPS, or other utility agencies necessary to continue design work.

**VIII.5.2** Consultant will not be held responsible for delays caused by City direction to suspend work.

**VIII.5.1** For purposes of calculating liquidated damages, Consultant time will not commence until the Agreement is executed by the Parties.

**VIII.6** Within thirty (30) days from the occurrence of any event for which time for performance by Consultant should be significantly extended under this provision, Consultant must give written notice thereof to City stating the reason for such extension and the actual or estimated time needed. City is not obligated to grant the requested extension or to grant the extension for the full period of time requested if it disagrees with the Consultant's request.

**VIII.7** Prior to assessing liquidated damages, the Project Manager will meet with the Consultant to review the project history time and determine whether liquidated damages are appropriate and warranted under the circumstances.

**ARTICLE IX. RESERVED**

**ARTICLE X. REVISIONS TO DOCUMENTS**

**X.1** Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents, as may be required to meet the needs of City and which are within its Scope of Services. After the written approval by City of drawings, reports or other documents at the end of each phase of Services, any revisions, additions or other modifications made at City's request, which involve extra services and expenses to Consultant, shall require an Amendment to incorporate such services and associated compensation into this Agreement.

**X.2** Any Amendments must be approved in writing by City prior to commencing work.

**X.3** Revisions to the drawings, reports, or other documents, including additional submittals, that result from the Consultant not complying with the requirements of the Design Guidance Manual or not adhering to a level of quality consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances shall be made at no additional expense to the City.

## ARTICLE XI. OWNERSHIP OF DOCUMENTS

**XI.1** All documents, including any original drawings, estimates, specifications, and all other documents and data previously owned by Consultant, shall remain the property of Consultant as instruments of service. However, the understanding is that City shall have free access to all such information and City is granted the right to make and retain copies of Consultant's drawings, estimates, specifications, and all other documents and data. Any reuse of Consultant's information without specific written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to Consultant.

**XI.2** Consultant acknowledges and agrees that City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data, immediately shall be delivered to City at no additional cost to City, upon request or termination or completion of this Agreement without restriction on its future use.

**XI.3** Consultant agrees and covenants to protect any and all proprietary rights of City in any materials provided to Consultant. Such protection of proprietary rights by Consultant shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Consultant by City shall not be released to any third party without the consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City.

**XI.4** **CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK TO CITY THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS AGREEMENT, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, PROJECT LOGOS, DRAWINGS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS, PRODUCED IN WHOLE OR IN PART UNDER THIS AGREEMENT, SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY CONSULTANT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF CITY (EXCLUDING ANY INSTRUMENT OF SERVICES, AS OTHERWISE SPECIFIED HEREIN). CONSULTANT SHALL, AT ITS OWN EXPENSE, DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND CONSULTANT SHALL PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION AGAINST CITY, INsofar AS THE SAME IS BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

**XI.5** Consultant may make copies of any and all documents and items for its files. Consultant

shall have no liability for changes made to or use of the drawings, specifications, and other documents by other engineers or other persons subsequent to the completion of the Project. City requires that Consultant appropriately mark all changes or modifications on all drawings, specifications, and other documents by other engineers or persons, including electronic copies, subsequent to the completion of the Project.

**XI.6** Copies of documents, which may be relied upon by City, are limited to the printed copies (also known as hard copies) and PDF electronic versions. Files in editable electronic media format of text, data, graphics, or other types, (such as DWG or DGN) that are furnished by Consultant to City are only for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

**XI.7** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including, but not limited to, any computer software (object code and source code), tools, systems, equipment, or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by Consultant to provide the services or protect deliverables to City, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.

**XI.8** Upon request by the City, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement, which are the sole property of the City, shall be delivered at no cost to the City without restriction on future use. City shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense.

## **ARTICLE XII. RIGHT OF REVIEW AND AUDIT**

**XII.1** Consultant grants City, the Federal Highway Administration (FHWA), the U.S. Department of Transportation's (DOT) Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Work under this Agreement, including but not limited to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audit, examination, excerpts, and transcriptions. This right shall continue during the term of this Agreement and retention period herein.

**XII.1.1** The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the Agreement which last beyond the four-year retention period, then, such retention

period shall extend until final resolution of the dispute.

**XII.1.2** "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

**XII.1.3** City agrees that it will exercise the right to audit, examine or inspect Consultant's records only during regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, Consultant's facilities and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

**XII.1.4** Consultant must include this audit clause in any subcontractor, supplier or vendor Agreement.

**XII.2** Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the City, or any of their duly authorized representatives, access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

**XII.3** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to, drawings, estimates, specifications, documents, data, any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the services hereunder, and any know-how, methodologies or processes used by Consultant, to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers. However, it is to be understood City shall have free access to all such information and hold the right to make and retain copies of drawings, estimates, specifications and all other documents and data. Any reuse, without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.

**XII.4** Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein.

Consultant understands and agrees that City will process and handle all such requests.

**XII.5** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and Consultant agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

### **ARTICLE XIII. TERMINATION OF AGREEMENT**

#### **XIII.1 RIGHT OF EITHER PARTY TO TERMINATE FOR DEFAULT.**

**XIII.1.1** This Agreement may be terminated by either Party for substantial failure by the other Party to perform in accordance with the terms of this Agreement through no fault of the terminating Party and for a failure to cure such substantial failure as provided in this **Article XIII**.

**XIII.1.2** The Party not in default shall issue a written and signed Notice of Termination (citing this **Article XIII.1.2**) to the other Party declaring the other Party to be in default and stating the reason(s) why the other Party is in default. Upon receipt of such written Notice of Default, the Party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten-day (10-day) period, commencing upon receipt of said Notice of Termination, if such Party has not cured any failure to perform, then such termination shall become effective without further written notice.

#### **XIII.2 RIGHT OF CITY TO TERMINATE.**

**XIII.2.1** City reserves the right to terminate this Agreement for reasons other than substantial failure by Consultant to perform by issuing a signed Notice of Termination (citing this **Article XIII.2.1**) which shall take effect on the twentieth (20th) calendar day following receipt by Consultant of said Notice of Termination and/or upon the scheduled completion date of the performance phase of a project on which Consultant then currently working, whichever effective termination date occurs first.

#### **XIII.3 PROCEDURES CONSULTANT SHALL FOLLOW UPON RECEIPT OF NOTICE OF TERMINATION.**

**XIII.3.1** Upon receipt of a Notice of Termination from City and prior to the effective date of termination unless the Notice otherwise directs or Consultant immediately takes action to cure a failure to perform under the cure period set forth herein, Consultant shall immediately begin the phaseout and discontinuance of all services in connection with the performance of this Agreement and promptly proceed to cancel all existing orders and contracts insofar as said orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of said Notice of Termination (unless Consultant successfully has cured its cited failure to perform), Consultant shall submit a statement showing in detail the

services performed under this Agreement prior to the effective date of termination. City retains the option to grant Consultant an extension to the 30-day time period for submittal of such statement.

**XIII.3.2** Copies of all completed or partially completed documents and all reproductions of all completed or partially completed documents prepared pursuant this Agreement prior to the effective date of termination, immediately delivered to City in a form requested by City as a precondition to a final payment to Consultant. These documents shall be subject to the restrictions and conditions set forth in **Article XI** herein.

**XIII.3.3** Upon the above conditions being met, City shall promptly pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement less any previous payments of any fee.

**XIII.3.4** As a public entity, City has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that the failure of Consultant to comply with the submittal of the required statement(s) and document(s) as cited herein shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed by Consultant under this Agreement.

**XIII.3.5** Failure of Consultant to comply with the submittal of the required statement and documents as outlined herein shall constitute a waiver by Consultant of any and all rights or claims to collect monies that Consultant otherwise may be so entitled for services performed under this Agreement.

#### **ARTICLE XIV. SUSPENSION OF WORK UNDER AGREEMENT**

##### **XIV.1 RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF CONSULTANT TO TERMINATE.**

**XIV.1.1** City reserves the right to suspend this Agreement at the end of any phase of a project for the convenience of City by issuing a signed, written Notice of Suspension (citing this **Article XIV.1**) which shall outline City's reasons for the suspension and the expected duration of the suspension. Such expected duration shall in no way guarantee what the total number of days of suspension shall be. Such suspension shall take immediate effect upon Consultant's receipt of said Notice of Suspension.

**XIV.1.2** Consultant hereby is given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) days. Consultant may exercise this right to terminate by issuing a signed, written Notice of Termination (citing this **Article XIV.1.2**) to City after the expiration of one hundred twenty (120) days from the effective date of a suspension. Termination

(under this **Article XIV.1.2**) shall become effective immediately upon receipt of said written notice by City.

**XIV.2 PROCEDURES CONSULTANT SHALL FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION.**

- XIV.2.1** Upon Consultant's receipt of a written Notice of Suspension where the date of receipt shall be the effective date of suspension, Consultant shall immediately begin to phase out and discontinue all services in connection with the performance of this Agreement unless the Notice directs otherwise and promptly proceed to suspend all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement, and shall proceed promptly to cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.
- XIV.2.2** Consultant shall prepare a detailed statement showing the services performed under this Agreement prior to the effective date of suspension.
- XIV.2.3** Copies of all completed or partially completed designs, plans, and specifications and models prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to City but be retained by Consultant until such time as City may exercise the right to terminate this Agreement.
- XIV.2.4** In the event that Consultant exercises its right to terminate one hundred twenty (120) days after the effective date of suspension, within thirty (30) days after receipt of City's Notice of Termination, Consultant shall promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement and submit the above-referenced, detailed statement showing the services performed under this Agreement prior to the effective date of suspension.
- XIV.2.5** Any documents prepared in association with this Agreement shall be delivered to City as a precondition to final payment.
- XIV.2.6** Upon the above conditions being met, City shall promptly pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement less any previous payments of any fee.
- XIV.2.7** As a public entity, City has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that failure of Consultant to substantially comply with the submittal of the required statement(s) and document(s) as outlined above shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

## ARTICLE XV. NON-DISCRIMINATION POLICY

**XV.1** As a Party to this Agreement, Consultant understands and agrees to comply with the *Non-Discrimination Policy* of City contained in Chapter 2, Article X of the City Code. Consultant shall also not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability unless exempted by state or federal law or as otherwise established herein. Consultant represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement-award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring, or commercial treatment of Sub-Consultants, vendors, suppliers, or commercial customers. Consultant shall also not retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors, and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Consultant shall incorporate this clause into each of its sub-consultant and supplier agreements entered into, pursuant to City agreements/contracts.

**XV.2** Consultant acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This **Article XV.1** is not enforceable by or for the benefit of any third party. This **Article XV.1** also does not create any obligation to any third party.

**XV.3** Upon execution of this Agreement by Consultant, Consultant shall provide City a detailed outreach and diversity plan for approval by City, including Consultant's list of Sub-Consultants, and require all its Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through City's web site. Consultant shall obtain approval in writing from City prior to adding, substituting, or deleting any listed and approved Sub-Consultant from a project.

**XV.4** Consultant agrees to comply with the Standard DOT Title VI Assurances from DOT Order 1050.2, attached to this Agreement as **Exhibit E**, which are incorporated into this Agreement by reference.

## ARTICLE XVI. ASSIGNMENT OR TRANSFER OF INTEREST

**XVI.1** Consultant shall not assign or transfer Consultant's interest in this Agreement without the written consent of City.

**XVI.2** Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this

Agreement, City may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

**XVI.3** Consultant agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with **Article XIII**, Termination

## **ARTICLE XVII. INSURANCE REQUIREMENTS**

**XVII.1** Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Public Works Department, which shall be clearly labeled with the Project Name in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Public Works Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

**XVII.2** The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

**XVII.3** A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the types and for an amount not less than the amount listed in the table attached as **EXHIBIT D**.

**XVII.4** Consultant agrees to require, by written contract, that all subconsultants providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the CITY as additional insureds. Policy limits of the coverages carried by subconsultants will be

determined as a business decision of Consultant. Consultant shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subconsultant. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

**XVII.5** As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Consultant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Public Works Department  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**XVII.6** Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

**XVII.6.1** Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

**XVII.8.2** Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

**XVII.8.3** Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and

**XVII.8.4** Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

**XVII.9** Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

**XVII.10** In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

**XVII.11** Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subconsultants' performance of the work covered under this Agreement.

**XVII.12** It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

**XVII.13** It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

**XVII.14** Consultant and any Subconsultants are responsible for all damage to their own equipment and/or property.

## **ARTICLE XVIII. INDEMNIFICATION**

**XVIII.1 CONSULTANT FULLY SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, MADE UPON INDEMNITEE CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST CITY IN WHICH CONTRACTORS ALLEGE DAMAGES AS A RESULT OF ANY NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF CONSULTANT, ITS EMPLOYEES, AGENTS, SUBCONSULTANTS, SUBCONTRACTORS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, INCLUDING BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS, CITY SHALL HAVE THE RIGHT TO JOIN CONSULTANT IN ANY SUCH PROCEEDINGS AT CITY'S COST.**

**XVIII.2** The provisions of this **Article XVIII** are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise City in writing within twenty-four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

**XVIII.3** In any and all claims against any party indemnified hereunder by any employee of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

**XVIII.4** Acceptance of any designs, plans, specifications, exhibits, drawings, reports, data, and documents, by City shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, plans, specifications, exhibits, drawings, reports, data, or other documents, and services; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the report or other documents prepared or services rendered by said Consultant.

**XVIII.5** Consultant shall pay all royalties and licensing fees. Consultant shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the performance of services. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Consultant has reason to believe that the design, service, process, or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

**XVIII.5.1** Upon receipt of notification that a third-party claim that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately:

- a obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b alter the programs, hardware, or both the programs and hardware so that

the alleged infringement is eliminated, and

- c reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

## **ARTICLE XIX. CLAIMS AND DISPUTES**

**XIX.1** As used herein, a Claim is a demand or assertion by one of the Parties to this Agreement seeking as a matter of right adjustment or interpretation of the Agreement's terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement. The term "Claim" may also include other disputes and matters in question between City and Consultant arising out of or relating to this Agreement. Claims shall be initiated by notice to the other Party electronically through an Internet-Based Project Management System (hereafter referred to as "PRIME*Link*"). A Claim of Consultant, whether for additional compensation, additional time, or other relief, shall be sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the Party making the Claim.

**XIX.2** A Claim either by Consultant or by City shall be initiated electronically through PRIME*Link* and sent to the other Party within twenty-one (21) days after the occurrence of the event giving rise to such Claim.

**XIX.3** Pending final resolution of a Claim, except as otherwise agreed upon in writing, Consultant shall proceed diligently with performance of Work and this Agreement and City shall continue to make payments to Consultant in accordance with this Agreement.

**XIX.4** If Consultant wishes to make a Claim for an increase in the time for performance, notice to City through PRIME*Link*, as stated in this **Article XIX** herein, shall be given. Consultant's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**XIX.5** Except as otherwise provided in this Agreement, 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 to claims by both Consultant and City:

**XIX.5.1** No consequential damages shall be allowed.

**XIX.5.2** Damages are limited to any extra costs specifically shown to have been directly caused by a proven wrong for which the other Party is claimed to be responsible.

**XIX.6** No profit will be allowed on any damage claim.

**XIX.7** Nothing in this **Article XIX** shall be construed to waive City's Governmental Immunity

from a lawsuit. Such Governmental Immunity is expressly retained to the extent it is not clearly and unambiguously waived by State law.

## **XIX.8 ALTERNATIVE DISPUTE RESOLUTION**

**XIX.8.1** Each Party to this Agreement is required to continue to perform its obligations under this Agreement pending a final resolution of any dispute arising out of or relating to this Agreement unless performance would be impossible or impracticable under the circumstances.

**XIX.8.2** Before invoking mediation or any other alternative dispute resolution process set forth herein, the Parties to this Agreement agree they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) days after a Party delivers a written notice of such dispute to the other Party, then the Parties shall proceed with mediation or any other alternative dispute resolution process set forth herein. All negotiations pursuant to this **Article XIX** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

### **XIX.8.3 MEDIATION**

In the event that City or Consultant contend that the other has committed a material breach of this Agreement, or the parties cannot reach an agreement, the Party alleging such a resolution of a claim or dispute pursuant to **Article XIX.7.2** as a condition precedent to filing any lawsuit, either party shall request mediation of the dispute with the following requirements:

- a. A request for mediation shall be in writing and request that the mediation commence not fewer than thirty (30) or more than ninety (90) days following the date of the request except upon the written agreement of both Parties.
- b. In the event City and Consultant 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 XIX** shall be deemed to have occurred.
- c. The Parties shall share equally the mediator's fee and any filing fees. Venue for any mediation or lawsuit arising under this Agreement shall be in San Antonio, 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 Agreement shall waive any immunity or defense. No provision of this Agreement shall be deemed a consent to suit.

**XIX.8.4** In the event of litigation, Consultant and City expressly agree that both Parties waive rights to payment of attorneys' fees that might otherwise be recoverable pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code Section 271.153, the Prompt Payment Act, common law, or any other provision for payment of attorneys' fees.

## **ARTICLE XX. SEVERABILITY**

If for any reason any one or more paragraphs of this Agreement are held to be invalid or unenforceable, then such invalidity or unenforceability shall not affect, impair, or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses, or parts of this Agreement held to be invalid or unenforceable. The invalidity or unenforceability of any section, sentence, clause, or parts of this Agreement in any one or more instances shall not affect or prejudice in any way the validity of this Agreement in any other instance.

## **ARTICLE XXI. INTEREST IN CITY CONTRACTS PROHIBITED**

**XXI.1** No officer or employee of City shall have a financial interest directly or indirectly in any contract with City or be financially interested directly or indirectly in the sale to City of any land, materials, supplies, or services except on behalf of City as an officer or employee. This prohibition extends to City's Public Service Board, SAWS, and other City boards and commissions which are more than purely advisory. This prohibition also applies to subcontracts on City projects.

**XXI.2** Consultant acknowledges that it is informed that City's Charter and Ethics Code prohibits a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. Consultant's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies, or services if any of the following individual(s) or entity is a party to the contract or sale:

**XXI.2.1** A City officer or employee;

**XXI.2.2** A City officer's or employee's parent, child, or spouse;

**XXI.2.3** A business entity in which a City officer, employee, or the officer's or employee's parent, child, or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity or ten percent (10%) or more of the fair market value of the business entity; or

**XXI.2.4** a business entity in which any individual or entity listed above is a Sub-Consultant or Subcontractor on a City contract and/or a partner or parent of a subsidiary business entity.

**XXI.3** Consultant warrants and certifies that it, its officers, employees, and agents neither officers nor employees of City. Consultant also warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City’s Ethics Code. To enter into this Agreement, City relies on Consultant’s warranties and certifications in this **Article XXI.3**.

**ARTICLE XXII. COMPLIANCE WITH TEXAS GOVERNMENT CODE CHAPTERS  
2252, 2270, 2271, AND 2274**

Consultant agrees to comply with the applicable restrictions from Texas Government Code Chapters 2252, 2270, and 2271 prohibiting City from contracting with a company that engages in business with Iran, Sudan, or a designated Foreign Terrorist Organization; boycotts Israel; boycotts firearm entities or firearm trade associations; or boycotts energy companies. By signing this Agreement with the City of San Antonio, Consultant hereby verifies they have reviewed the applicable state law restrictions, and warranties compliance with the certification requirements from the applicable provisions of the Texas Government Code. City hereby relies on Consultant’s verification. If found to be false, City may terminate the contract for material breach.

**ARTICLE XXIII. CONFLICTS OF INTEREST DISCLOSURE**

**XXIII.1** Consultant shall disclose if it is associated in any manner with a City officer or employee in a business venture or business dealing. Failure to do so will constitute a violation of City’s Ethics Code. To be “associated” in a business venture or business dealing includes the following: being in a partnership or joint venture with a City officer or employee, having a contract with a City officer or employee, being joint owners of a business with a City officer or employee, owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%), or having an established business relationship with a City Officer or employee as a client or customer.

**XXIII.1** Consultant shall comply with the more stringent requirements of City’s Ethics Code conflicts of interest provisions or the conflicts of interest requirements of 23 CFR 1.33, which is incorporated to this Agreement by reference, as applicable.

**ARTICLE XXIV. VENUE AND CHOICE OF LAW**

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS AND, IF LEGAL ACTION BECOMES NECESSARY, EXCLUSIVE VENUE SHALL LIE IN BEXAR COUNTY, TEXAS. The federal and state courts in Bexar County shall have exclusive jurisdiction to adjudicate any dispute relating to this Agreement and, in the event of any such dispute, the parties waive all rights to interpose any objections to personal jurisdiction or venue in those courts.

**ARTICLE XXV. NOTICES**

Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Agreement shall personally be delivered or mailed to the respective Party by depositing the same with the United States Postal Service and addressed to the applicable address shown below unless and until either Party is otherwise notified in writing by the other Party of a change in such address. Mailed notices shall be deemed communicated as of five (5) days of mailing.

**If intended for City, then to:**

Finance Department  
Attention: Purchasing Division  
Construction  
P.O. Box 839966  
San Antonio, Texas 78205

**If intended for Consultant, then to:**

John Tyler, Senior Vice President  
Pape-Dawson Consulting Engineers, LLC  
2000 NW Loop 410  
San Antonio, Texas 78213

**ARTICLE XXVI. INDEPENDENT CONTRACTOR**

**XXVI.1** Consultant covenants and agrees that it is an independent contractor and not an officer, agent, servant, or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant. No term or provision of this Agreement or act of the Consultant in the performance of this Agreement shall be construed as making the Consultant the agent, servant or employee of the City, or as making the Consultant or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which the City provides to or for its employees.

**XXVI.2** For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

**ARTICLE XXVII. DBE REQUIREMENTS**

**XXVII.1** Consultant shall comply with the City's Disadvantaged Business Enterprise (DBE) Program Terms and Conditions attached hereto as **EXHIBIT B**.

**XXVII.2** The Consultant, sub-consultants, or sub-contractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-

assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate, which may include, but is not limited to:

- XXVII.2.1** Withholding monthly progress payments;
- XXVII.2.2** Assessing sanctions;
- XXVII.2.3** Liquidated damages; and/or
- XXVII.2.4** Disqualifying the contractor from future bidding as non-responsible.

## **ARTICLE XXVIII. FORCE MAJEURE**

In the event that performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

## **ARTICLE XXIX. MISCELLANEOUS PROVISIONS**

**XXIX.1** The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

**XXIX.2** A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes may require approval by the San Antonio City Council.

**XXIX.3** It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

**XXIX.4** The Parties hereto expressly agree neither Party shall be responsible for payment of attorney's fees pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, common law or any other provision for payment of attorney's fees. Both Parties hereto expressly waive any claim to attorney's fees, should litigation result from any

dispute in this Agreement.

**XXIX.5** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

**XXIX.6** Consultant hereby agrees and acknowledges if anything contained in Consultant's prepared Scope of Services, attached hereto and labeled as **EXHIBIT A**, or contained in any other document prepared by Consultant and included herein is in conflict with this Agreement and/or with City's General Conditions for City of San Antonio Construction Contracts, attached hereto and labeled as **EXHIBIT C**, this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict.

**XXIX.6** Consultant represents, warrants, assures and guarantees that the signatory below has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all terms, performances and provisions herein contained.

#### **ARTICLE XXX. ENTIRE AGREEMENT**

This Agreement represents the entire and integrated Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement only may be amended by written instrument signed by both City and Consultant.

*(Signatures to follow)*

**IN WITNESS WHEREOF**, City of San Antonio lawfully caused these present to execute this Agreement by the hand of City Manager, or his/her designee; Consultant, acting by the hand of the undersigned below, thereunto authorized does now sign, execute, and deliver this document.

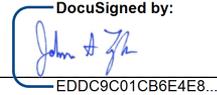
Executed by City and effective on this date \_\_\_\_\_.

**CITY OF SAN ANTONIO**

**PAPE-DAWSON CONSULTING ENGINEERS, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_



JOHN PETEREK, MPAff  
ASSISTANT CITY MANAGER

NAME John Tyler  
TITLE Managing Vice President

**Approved as to form:**

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

## **EXHIBIT A – CONSULTANT’S FEE SCHEDULE AND SCOPE OF SERVICES**

<b>CSJ 0915-12-802</b>		
<b>City of San Antonio</b>		
<b>Market Street/Dolorosa Street Cycle Track, Flores Street to IH 37</b>		
<b>Pape-Dawson Consulting Engineers, LLC</b>		
<b>BASE SERVICES</b>		
<b>Task</b>	<b>Description</b>	<b>SUBTOTALS</b>
<b>Task 110</b>	Field Investigations Review and Analysis	\$ 25,000.00
<b>Task 120</b>	Social/Economic/Environmental Studies	\$ 100,000.00
<b>Task 135</b>	Utility Activities	\$ 80,000.00
<b>Task 145</b>	Project Management and Administration	\$ 149,997.40
<b>Task 150</b>	Design Surveys	\$ 36,000.00
<b>Task 160</b>	Roadway Design	\$ 299,760.00
<b>Task 161</b>	Drainage Design	\$ 155,330.00
<b>Task 162</b>	Signing, Pavement Markings and Signalization	\$ 339,990.00
<b>Task 163</b>	Miscellaneous (Services)	\$ 173,240.00
<b>Task 300</b>	Construction Phase Services	\$ 40,470.00
	Subtotal Base Fee	\$ 1,399,787.40
	Additional Services	\$ 100,000.00
	<b>Total Fee</b>	<b>\$ 1,499,787.40</b>
	<b>% Total</b>	100%

**EXHIBIT B – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM  
CONTRACT PROVISIONS**

## **DISAVANTAGE BUSINESS ENTERPRISE (DBE) PROGRAM**

The City of San Antonio Public Works Department has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the Texas Department of Transportation (DOT). The objective of the DBE program is to ensure that the TCI Department complies with 49 CFR Part 26, and to remedy past and current discrimination against disadvantaged businesses. The program ensures a “level playing field” and fosters equal opportunity in all Texas Department of Transportation and Federal Highway Association assisted contracts that include highway and street construction.

The policy of the TCI Disadvantaged Business Enterprise program is:

To ensure non-discrimination in the award and administration of DOT assisted and locally funded contracts

To create a level playing field on which DBEs can compete fairly for DOT assisted and locally funded contracts

To ensure that the DBE program is narrowly tailored in accordance with the applicable law

To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs

To help remove barriers to the participation of DBEs in DOT assisted and locally funded contracts

To assist the development of firms that can compete successfully in the marketplace outside the DBE program

### **DBE OBLIGATION**

Public Works Department and/or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard the Public Works Department and its contractors shall not discriminate on the basis of race, color, national origin, gender, or disability in the award and performance of TXDOT-assisted contracts.

**THE DBE GOAL FOR THIS PROJECT IS 0%**

### **DEFINITIONS**

*Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.*

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
  - (i) One concern controls or has the power to control the other; or*
  - (ii) A third party or parties controls or has the power to control both; or*
  - (iii) An identity of interest between or among parties exists such that affiliation may be found.**

- (2) *In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.*

*Commercially Useful Function—*a DBE is considered to perform a commercially useful function when it:

- (1) *Engages in meaningful work that provides for a performance of a distinct element of the contract where that distinct element of work is worthy of the dollar amount to be awarded to the DBE; or,*
- (2) *Carries out its responsibilities by actually performing, managing, and/or supervising the work involved.*

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

*Contractor* means one who participates, through a contract or subcontract (at any tier) in a DOT assisted highway, transit, or airport program.

*Department or DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

*Disadvantage business enterprise or DBE* means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (3)

*Good faith efforts* mean efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Joint Venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

*Personal Net Worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

### **CERTIFICATION**

1. A contractor/bidder/proposer shall submit to the City a copy of the DBE Certification Affidavit, for all DBE firms utilized or proposed to be utilized as subcontractors or suppliers in the performance of work.
2. The Certification Affidavit must be from a firm that has been certified by one of the five (5) certifying agencies of the Texas Unified Certification Program (TUCP). The five agencies are: Texas Department of Transportation (TxDot), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, and Corpus Christi Regional Transportation Authority. Each certifying entity will maintain and process all DBE applications in their designated area throughout the state.
3. A firm must be certified on or before the bid/proposal due date in order for the firm's proposed work on the particular contract to be credited toward the DBE goal. It is not enough for a certification application to have been submitted by the deadline.

### **COUNTING JOINT VENTURES**

Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. *Joint ventures that do not include any DBE firms will not count toward the goal.* A joint venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, (provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function).

The required documentation to be submitted to the City, along with the proposal, for Joint Ventures with DBE partners shall include:

- a. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
- b. Corporate resolutions or other documents authorizing the firms to enter into the Joint Venture.
- c. A description of the work to be performed by all the Joint Venture Partners.
- d. Proof of current certification status of the individual DBE venture partners.

## **GOOD FAITH EFFORTS**

The bidder/proposer shall demonstrate, to the satisfaction of the DBE Liaison that genuine efforts have been made to achieve the DBE goal. The requirements for demonstrating “good faith efforts” are set forth as follows:

1. Written notices to DBEs contacted by the bidder/proposer for specific scopes of work identified by the bidder/proposer for subcontracting opportunities not less than five (5) business days prior to bid due date. Such notices shall include information on the plans, specifications and scope of work, including the deadline for submission of interest in teaming;
2. Attendance at a pre-bid conference, if any, scheduled by the City to inform DBEs of subcontracting opportunities under a given solicitation.
3. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goals.
4. For those DBES responding affirmatively in writing to the notice required by Item 1 above,
  - (a) reasons why agreements were not reached, including written explanation for rejection of bids;
  - (b) if additional elements of work have been identified by the bidder/proposer as available for subcontracting, the bidder/proposer shall contact the CIMS Department DBE Liaison to ascertain the availability of DBE firms in those areas.
5. Efforts to assist DBE contractors with bonding, insurance, and financing, where appropriate.
6. Seeking the assistance of the TCI DBE Liaison in contacting DBEs.
7. A bidder/proposer shall commit to the minimum percentage of DBE utilization as submitted with its bid/proposal on this contract. During the term of this contract, any unjustified failure to comply with the level of DBE participation identified in the bid/proposal shall be considered a material breach of contract.
8. If the bidder/proposer is a certified DBE and the DBE bidder/proposer intends to perform a portion of the work with its own work force, the DBE bidder/proposer must identify the work specifically by type and dollar value and must perform the work indicated with its own work forces in order to have that work counted toward the goal. (Even though the bidder/proposer is a certified DBE does not relieve the DBE bidder/proposer of the responsibility to make good faith efforts.)
9. In addition, all bidders/proposers will be required to submit the following information with the bid:
  - (a) The names and addresses of DBE firms that will participate in the contract;
  - (b) A description of the work that each DBE will perform
  - (c) The dollar amount of the participation of each DBE firm participating
  - (d) Written documentation of the bidder’s/proposer’s commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
  - (e) Written confirmation from the DBE that it is participating in the contract as provided in the bidder’s/proposer’s commitment.

## **EVALUATION OF GOOD FAITH EFFORTS**

The good faith effort of a bidder/proposer will be evaluated by the DBE Liaison to determine whether the efforts to obtain DBE participation were those that a firm seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable prospect of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

The following is a list of types of actions, which the DBE Liaison may consider as part of the bidder's/proposer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### **Criteria used to evaluate "Good Faith Efforts" are as follows:**

1. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal conferences, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. (a) Negotiating in good faith with interested DBEs. It is the bidder's/proposer's responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.  
  
(b) A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a prime contractor failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the prime

contractor of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
9. In determining whether a bidder/proposer has made good faith efforts, the DBE Liaison may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the DBE Liaison may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the DBE Liaison may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

### **RECONSIDERATION MECHANISM**

The TCI Department DBE Liaison will evaluate the "good faith efforts" of a firm. If after reviewing the good faith efforts submitted by Bidder/Proposer, the DBE Liaison determines that the Bidder/Proposer has failed to adequately document its good faith efforts, then the Bidder/Proposer shall have the opportunity to provide written documentation or argument, to the TCI Director, concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Proposer will have the opportunity to meet in person with the TCI Director to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The TCI Director will provide a written decision on reconsideration explaining the basis of his decision. In cases of dispute, the final decision in determining whether Good Faith Efforts have been made rests with the TCI Director.

The TCI Director may determine that the efforts of the Bidder/Proposer substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City. However, if the TCI Director determines that the Bidder/Proposer did not make good faith efforts to meet the goal, the decision is not administratively appealable to the Texas Department of Transportation

### **COMPLIANCE**

If a bidder/proposer is awarded a contract:

1. The bidder/proposer must not terminate for convenience a DBE subcontractor (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the City's prior written consent. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the bidder/proposer must notify the City immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

2. The Bidder/Proposer will be required to make good faith efforts to find another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the City has established for this contract. The Bidder/Proposer will be required to obtain the DBE Liaison's prior approval of the substitute DBE, through the submittal of Change of Subcontractors/Suppliers and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the Bidder/Proposer fails or refuses to comply in the time specified, our office may issue a termination for default.

### **PROMPT PAYMENT**

The Prime Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its subcontract **no later than 10 days** from the date that the prime contractor has been paid by the City for invoices submitted for performance of subcontractor's work. A delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of San Antonio. This clause applies to both DBE and non-DBE subcontractors.

To Apply for DBE Certification, please contact the South Central Texas Regional Certification Agency (SCTRCA) at (210) 227-4722 or [www.sctrca.org](http://www.sctrca.org)

For additional information contact Courtney McClure, DBE Coordinator, (210) 207-4633.



**Disadvantaged Business Enterprise  
Prime Contractor Certification of Good Faith Efforts**  
(Submit completed GFE pages 1-5 only with back-ups, if any)

Form 2603  
TxDOT (Rev. 05/16)  
COSA (Rev. 05/20)  
Page 2 of 5

**Purpose**

The certification's intent is to document the good faith efforts (GFE) undertaken by the Prime Contractor in soliciting and utilizing Disadvantaged Business Enterprises (DBE) to meet the good faith effort requirements for the contract. The completed certificate will assist the City of San Antonio (COSA) to determine if the Prime Contractor performed its due diligence in taking all necessary and reasonable steps by their scope, intensity, and appropriateness that could reasonably be expected to secure DBE project participation, in the event the prime contractor was not fully successful. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. COSA will determine if the Prime Contractor made satisfactory good faith efforts to achieve DBE participation. The burden of proof rests with the Prime Contractor.

**General**

The information requested in this certificate is the information required by COSA to evaluate your firm's good faith efforts. COSA reserves the right to request further documentation from the Prime Contractor to support and validate actions undertaken to secure participation.

**Prime Contractor:** Pape-Dawson Consulting Engineers, LLC

Project No or CSJ	County	Contract Amount	DBE Percentage	
			COSA Goal \$ _____ % _____	Proposed Goal to be met (GFE)
2024-116 23-04062	Bexar		0.00%	0

Provide a brief summary on why you believe your firm is unable to meet the assigned DBE goal on this contract. Attach additional pages if necessary.

Not Applicable





**Disadvantaged Business Enterprise  
Prime Contractor Certification of Good Faith Efforts**

3. List all advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, organizations or publications that received announcements or written notifications from the Prime Contractor, date published/sent and provide follow-up activity details. Provide explanation if no follow-up activities were performed. COSA reserves the right to request copies of all announcements or notifications listed.

Published Announcement / Publication (Provide brief description)	Date Sent	Association / Organization	Contact Person & Phone	Date of Follow-Up Activities
N/A				

List all attendance at pre-bid and business matchmaking meetings and events

Pre-Bid/Business Matchmaking Events	Association/Organization	Date Attended

**B. Identifying Subcontractor Work Units**

The Prime Contractor is strongly encouraged to select portions of work to be subcontracted to increase the likelihood of achieving the DBE participation. In selecting work to be subcontracted, the Prime Contractor shall consider, where it is appropriate, breaking down the project into economically feasible work units to facilitate and promote DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

1. Which portions or sections of the Scope of Work are able to be subcontracted?

**MEP, Pedestrian Illumination, Public Involvement, Signing and Pavement Markings**

2. Is there a DBE firm currently on the contract/project team able to perform the Scope of Work above or a portion of the work?

Yes  No      Name of firm CNG Engineering, PLLC; Poznecki-Camarillo, LLC



**Disadvantaged Business Enterprise  
Prime Contractor Certification of Good Faith Efforts**

**C. Providing Assistance to DBEs**

- g. Explain any efforts undertaken to provide DBE firms with adequate information in a timely manner about contract Scope of Work and requirements of this contract:

All subconsultants including DBE firms, will be included in all scoping meetings.

- 2. Describe any efforts undertaken to assist interested DBE firms in obtaining insurance bonding, lines of credit, or insurance required by COSA or the Prime Contractor: Prior written approval from COSA required.

N/A

- 3. Describe any efforts undertaken to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services: Prior written approval from COSA required.

N/A

- 4. Describe any efforts used to obtain services of available minority/women community organizations or other organizations:

N/A



**Disadvantaged Business Enterprise  
Prime Contractor Certification of Good Faith Efforts**

**D. Negotiating in Good Faith**

Contractors shall solicit services in good faith with interested DBE firms listed in the Texas Unified Certification Program (TUCP) DBE directory with the certification NAICS code to perform the areas of work desired and which are located in the area or surrounding areas of the project. Proposals from interested DBE firms shall not be rejected by Contractors without sound business justification.

1. Provide the firm name, contact information and work proposed of all DBE firms that submitted a proposal for this contract that were not selected. The reason for rejection must be provided for COSA to determine the Contractor's satisfactory good faith efforts. If no DBE proposals were rejected, state "NONE":

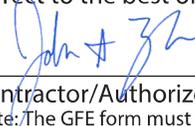
NOTE: If subcontractor proposals are rejected due to excessive costs, the Contractor must submit copies of the quote to COSA to evaluate.

DBE Firm and Contact Person	Work Proposed	Explanation for Rejecting Proposal
N/A		

2. Other comments or information you want COSA to consider as part of your good faith effort.

Pape-Dawson is committed to meeting the DBE goal.

The undersigned, John Tyler, P.E., RAS certifies that the information provided on this certificate is true and correct to the best of my knowledge and belief.

Signature:  Date: 01/15/25  
 Contractor/Authorized Representative  
 Note: The GFE form must be signed by an authorized signatory for the Contractor.

COSA Internal Use Only	
Date GFE Received: _____	Processed by: _____
Signature: _____	Date: _____
Management Concurrence	
GFE Request <input type="checkbox"/> Approved <input type="checkbox"/> Denied: _____ Date _____	
Manager, Supervisor: _____	
Signature: _____	Date: _____
DD, DE, or Designee: _____	
Signature: _____	Date: _____



## Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

**This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project.**

<b>Project #:</b> 2024-116		<b>County:</b> Bexar		<b>Contract-CSJ:</b>	
<b>Items of work to be performed (attach a list of work items if more room is required):</b>					
Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
	Public Engagement	TBD			
	Signing Pavement Marking	TBD			
<b>Total</b>					

The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.

**IMPORTANT: The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.**

<b>Prime Contractor:</b> Pape-Dawson Consulting Engineers, LLC		Name/Title (please print): John Tyler, P.E., RAS, Managing Vice President, Transportation	
Address: 2000 W Loop 410, San Antonio, TX 78213		Signature: 	
Phone: 210-375-9000	Fax: 210-375-9010		
E-mail: jtyler@pape-dawson.com			
<b>DBE:</b> Poznecki-Camarillo, LLC		Name/Title (please print):	
Vendor No.: 224018831		Fernando Camarillo, PE	
Address: 4801 Northwest Loop 410, Ste. 108, San Antoni		Signature: 	
Phone: 210-349-3273	Fax: N/A		
E-mail: fcamarillo@pozcam.com			
<b>Subcontractor (if the DBE will be a second tier sub):</b>		Name/Title (please print):	
Address:		Signature:	
Phone:	Fax:		
E-mail:			
		Date:	

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.



## Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

**This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project.**

<b>Project #:</b> 2024-116		<b>County:</b> Bexar		<b>Contract-CSJ:</b>	
<b>Items of work to be performed (attach a list of work items if more room is required):</b>					
Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
	MEP	TBD			
	Pedestrian Illumination	TBD			
<b>Total</b>					

The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.

**IMPORTANT: The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.**

<b>Prime Contractor:</b>		Name/Title (please print):	
Pape-Dawson Consulting Engineers, LLC		John Tyler, P.E., RAS, Managing Vice President, Transportation	
Address: 2000 W Loop 410, San Antonio, TX 78213		Signature:	
Phone: 210-375-9000	Fax: 210-375-9010		
E-mail: jtyler@pape-dawson.com			
<b>DBE: CNG Engineering, PLLC</b>		Name/Title (please print):	
Vendor No.: 223120168		Travis E. Wiltshire, PE / Principal	
Address: 8302 Broadway, San Antonio, TX 78209		Signature:	
Phone: 210-224-8841	Fax: 210-224-8824		
E-mail: travis.wiltshire@cngengineering.com			
<b>Subcontractor (if the DBE will be a second tier sub):</b>		Name/Title (please print):	
Address:		Signature:	
Phone:	Fax:		
E-mail:			
		Date:	

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.

**EXHIBIT C – GENERAL CONDITIONS FOR CITY OF SAN ANTONIO**

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

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## GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

### ARTICLE I. GENERAL PROVISIONS

#### 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** “**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.1.2** “**AMENDMENT**” is a written modification of the Contract prepared by City or Design Consultant and signed by City and Contractor, (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Work (specifically the services) or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Contract.
- I.1.3** “**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, lightning, earthquakes.
- 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 signed by both City and Contractor (and approved by City Council, if required) that authorizes an addition, deletion or revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the 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 these General Conditions, 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**” –an observed holiday by the City of San Antonio 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 Schedules.
- 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.
- I.1.10** “**CONSTRUCTION OBSERVER/INSPECTOR** (hereafter referred to as “**COI**”) is the authorized representative of the Director of Public Works (hereafter referred to as “**PW**”), 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 “**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 or Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind between:
- a. Design Consultant and Contractor;
  - b. Or City and a Subcontractor or Sub-Subcontractor;
  - 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: the solicitation documents, the Notice of Award, an enabling City of San Antonio Ordinance and all other contract-related documents, which include:
- a. General Conditions;
  - b. *Vertical* and/or *Horizontal* specific General Conditions and Special Conditions included by Special Provisions or addenda;
  - c. Drawings;
  - d. Specifications;
  - e. Addenda issued prior to the close of the solicitation period;

- f. Other documents listed in the Contract, including Field Work Directives, Change Orders and/or Amendments; and
  - g. A written order for a minor change in the Work issued by Design Consultant and/or City, as described in **ARTICLE VII**.
- I.1.13** The geotechnical and subsurface reports, which City may have provided to Contractor, specifically are excluded from 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. 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 Contractor, as used herein, includes Construction Manager at Risk or other applicable entities performing work under a Contract with City.
- I.1.16** “**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.1.17** “**DESIGN CONSULTANT**” is a person registered as an Architect pursuant to Tex. Occupations Code Ann., Chapter 1051, a Landscape Architect pursuant to Texas Occupations Code, Chapter 1052, and/or a person licensed as a professional Engineer pursuant to Texas Occupations Code, Chapter 1001, or a firm employed by City to provide professional architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in its Contract and these General Conditions. If the employment of a Design Consultant is terminated, City shall employ a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant.
- I.1.18** “**DEPARTMENT**” means the Department of Public Works (hereafter referred to as “**PW**”), City of San Antonio, Texas or Director of PW.
- I.1.19** “**DESIGN CONSULTANT**” means, unless the context clearly indicates otherwise, an Engineer, Architect or other Design Consultant in private practice, licensed to do work in Texas and retained for a specific project under a contractual agreement with City.
- I.1.20** “**DRAWINGS**” (also referred to herein as “**PLANS**”) are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of Work, generally including elevations, sections, details, schedules and diagrams.

- I.1.21** “**FIELD WORK DIRECTIVES**” OR “**FORCE ACCOUNT**” is a written order signed by City directing a change in the Work prior to agreement and adjustment, if any, in the Contract Sum and/or Contract, as further defined in **ARTICLE XII.3**.
- I.1.22** “**FLOOD**” an overflowing of a large amount of water beyond its normal confines, especially over what is normally dry land
- I.1.23** “**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 and undefined scope of work, with regard to the quantities to be provided by Contractor, 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, said Price Sheet submitted by Contractor and negotiated by City prior to Contractor’s selection by City for an IDIQ/Task Order Contract.
- I.1.24** “**HAZARDOUS SUBSTANCE**” is defined to include the following:
- a. Any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;
  - b. Any polychlorinated biphenyls (“PCBs”), or PCB-containing materials, or fluids;
  - c. Radon;
  - d. Any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
  - e. Any substance, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;
  - f. Any underground storage tanks, as defined in 42 U.S.C. Section 6991 (1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C Section 6901 et seq.;
  - g. The Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

- h. Any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.
  
- I.1.25** “**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.1.26** “**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 commence to run and the date on which Contractor may begin performance of its contractual obligations.
  
- I.1.27** “**OWNER’S DESIGNATED REPRESENTATIVE (ODR)**” means the person(s) designated by City to act for City.
  
- I.1.28** “**PARTY**” shall refer to City or Contractor individually herein.
  
- I.1.29** “**PARTIES**” shall refer to City and Contractor collectively herein.
  
- I.1.30** “**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.1.31** “**PROJECT**” means the total design and construction of Work performed under the Contract Documents and may be the whole or a part of the Project and which may include construction by City or by separate contractors. All references in these General Conditions to or concerning the Work or the Site of the Work shall use the term “Project,” notwithstanding the Work referenced only may be a part of the Project.
  
- I.1.32** “**PROJECT MANAGEMENT TEAM**” is comprised of city, its representatives, Design Consultant and Program Manager (if any) for this work.
  
- I.1.33** “**QUALITY ASSURANCE**” those actions taken by the CITY to determine the requirements of the contract have been met to include: inspection, sampling, testing, and other activities.
  
- I.1.34** “**QUALITY CONTROL**” is the sampling, testing and other process control activities conducted by Contractor to ensure that the services are performed according to the terms and conditions of the contract.
  
- I.1.35** “**SAMPLES**” are physical samples 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.1.36** “**SITE**” means the land(s) or area(s) (as indicated in the Contract Documents) furnished by City, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
- I.1.37** “**SHOP DRAWINGS**” are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared and furnished by Contractor or its agents, manufacturers, suppliers or distributors and which illustrate and detail some portion of the Work.
- I.1.38** “**SPECIAL CONDITIONS**” are terms and conditions to a contractual agreement 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 *Horizontal Special Conditions* are attached hereto, made a part of these General Conditions and shall be used as applicable.
- I.1.39** “**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 and other technical requirements.
- I.1.40** “**SUBCONTRACTOR**” is defined and used herein as a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor, Sub-Consultant or an authorized representative of Subcontractor or Sub-Consultant.
- I.1.41** “**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 – sufficiently is complete, in accordance with the Contract Documents, so City may occupy or utilize the Work or a designated portion thereof for its intended use with no inconvenience to City. In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s), 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.1.42** “**TASK ORDER**” means the agreement issued by City to Contractor reflecting City’s acceptance of Contractor’s submitted and negotiated proposal to perform assigned Work. In issuing a Task Order, City has accepted Contractor’s Task Order Proposal and, through an issued Task Order, is authorizing the performance of said Work through an issued Task Order in *PrimeLink*.
- I.1.43** “**TASK ORDER PROPOSAL**” means the formal proposal submittal by Contractor listing Contractor’s proposed price – subject to negotiation – for performing a scope of work assigned to Contractor by City through an issued Task Order Request. 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.1.44** “**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.

**I.1.45** “**TEMPORARY BENCH MARKS (TBM)**” are temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.

**I.1.46** “**THE 3D MODEL**” is the 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.1.47** “**WEATHER**” means the adverse or destructive atmospheric conditions, such as heavy rain, rising water, wind-driven water, ice, hail, snow, drought, lightning, or high winds.

**I.1.48** “**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.1.49** “**WRITTEN NOTICE**” is any notice, payment, statement or demand required or permitted to be given under this Contract by either Party to the other may be effected by personal delivery in writing or by facsimile transmission, email or by mail, postage prepaid, or by overnight delivery to an officer, management level employee or other designated representative of either Party. Mailed or email notices shall be addressed to the Parties at an address designated by each Party, but each Party may change its address by written notice in accordance with this section. Mailed notices shall be deemed received as of three (3) calendar days after mailing.

**I.1.50 OTHER DEFINITIONS.**

As used in the Contract Documents, the following additional terms have the following meanings:

- a. **“PROVIDE”** means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and all other expenses necessary to complete in place and ready for operation or use;
- b. **“SHALL”** means the mandatory action of the Party of which reference is being made;
- c. **“AS REQUIRED”** means as prescribed in the Contract Documents; and
- d. **“AS NECESSARY”** means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes and regulations.

## **I.2 PRELIMINARY MATTERS.**

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

### **I.2.2 DELIVERY OF CONTRACT AND BONDS.**

Not later than the Pre-Construction meeting and prior to the commencement of any Work on the Project, Contractor shall deliver a fully executed Contract to 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.**

Not later than the Pre-Construction meeting, and prior to the commencement of any Work under this Contract, Contractor shall deliver evidence of insurance to City. Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the PW Contract Services Division, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Contractor shall be prohibited from commencing the Work and 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 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).**

Prior to start of Work (unless otherwise specified elsewhere in the Contract Documents), Contractor shall submit to the Director of PW or his/her designee the Project schedule(s), as defined in **ARTICLE III.10**, a minimum of fifteen (15) days prior to the Pre-Construction Conference.

#### **I.2.6 PRE-CONSTRUCTION CONFERENCE.**

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

**I.2.7** Payments for services, goods, work, equipment and materials are contingent upon and subject to the availability and appropriation of funds and the sale of future City of San Antonio Certificates of Obligation and/or General Obligation Bonds in accordance with adopted budgets. In the event funds are not available, appropriated or encumbered to fund a Project, then, at City's discretion, this Contract may be terminated immediately with no additional liability to City.

### **I.3 CONTRACT DOCUMENTS.**

#### **I.3.1 EXECUTION OF CONTRACT DOCUMENTS.**

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

### **I.3.2 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.**

The Drawings, Specifications and other documents, including those in electronic form, prepared by Design Consultant, its Consultants or other Consultants retained by City for the Project, which describe the Work to be executed by Contractor (collectively referred to as the “Construction Documents”) are and shall remain the property of City, whether the Project for which they are made is executed or not. Contractor shall be permitted to retain one record set. Neither Contractor nor any Subcontractor, sub-Subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Design Consultant or Design Consultant’s Consultants. All copies of Construction Documents, except Contractor’s record set, shall be returned or suitably accounted for to Design Consultant on request and upon completion of the Work. The Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant’s Consultants, along with copies thereof furnished to Contractor, are for use solely with respect to this Project. The drawings, Specifications or other documents are not to be used by Contractor or any Subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of City. Any such use without written authorization shall be at the sole risk and liability of Contractor. Contractor, Subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant’s Consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant’s Consultants. Submittal or distribution to meet official regulatory requirements or for other purposes, in connection with this Project, is not to be construed as publication.

- a. All of Contractor’s non-proprietary, documentary Work product, including reports and correspondence to City, prepared pursuant to this Contract, shall be the property of City and, upon completion of this Contract and upon written request by City, promptly shall be delivered to City in a reasonably organized form, without restriction on its future use by City. For the avoidance of doubt, documentary Work product does not include privileged communications, proprietary information and documents used to prepare Contractor’s Bid Proposal.
- b. Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially-significant Work product lost or destroyed by Contractor shall be replaced or reproduced at Contractor’s non-reimbursable sole cost. In addition, City shall have access during normal business hours, during the duration this Contract is in effect and for four (4) years after the final completion of the Work, unless there is an ongoing dispute under the Contract, then such access period shall extend longer until final resolution of the dispute, to all of Contractor’s records and documents covering

reimbursable expenses, actual base hourly rates, time cards and annual salary escalation records maintained in connection with this Contract for purposes of auditing same at the sole cost of City. The purpose of any such audit shall be for the verification of such costs. Contractor shall not be required to keep records of, or provide access to, the makeup of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers. Nothing herein shall deny Contractor the right to retain duplicates. Refusal by Contractor to comply with the provisions hereof shall entitle City to withhold any payment(s) to Contractor until compliance is obtained.

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

### **I.3.3 CORRELATION AND INTENT.**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by Contractor shall be required only to the extent consistent with the Contract Documents and which reasonably is inferable from the Contract Documents as deemed necessary to produce the indicated results.

- I.3.4** Organization of the Specifications into divisions, sections, articles, and the arrangement of Drawings shall not control Contractor in dividing the Work among Subcontractors or establishing the extent of Work to be performed by any trade.

- I.3.5** 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. Where the phrases "directed by", "ordered by" or "to the satisfaction of" City, Design Consultant or City's Resident Inspector or other specified designation occur, it is understood the directions, orders or instructions to which they relate are those within the scope of and authorized by the Contract Documents.

- I.3.6** Reference to manufacturer's instructions, standard specifications, manuals or codes of any technical society, organization or association, laws or regulations of any governmental authority, or to any other documents, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Contractor's Bid Proposal, except as otherwise may be specifically stated or where a particular issue is indicated. Municipal and utility standards shall govern except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent shall govern.

**I.3.7** The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows, with the highest authority listed herein as "1" and in descending order:

- a. 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 (*Horizontal Projects*);
- g. Specifications;
- h. Detailed Drawings;
- i. Drawings;

**I.3.8** Should the Drawings and Specifications be inconsistent, contract pricing shall be based on the better quality and greater quantity of work indicated. In the event of the above-mentioned inconsistency, City shall determine the resolution of the inconsistency.

**I.3.9** 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.3.10** When the work is governed by reference to standards, building codes, manufacturer's instructions or other documents, unless otherwise specified, the edition currently in place as of the date of the submission of the bid shall apply.

**I.3.11 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 a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**END OF ARTICLE I**

## ARTICLE II. CITY

### II.1 GENERAL.

**II.1.1** City shall designate in writing to Contractor a representative (hereafter referred to as “City’s Designated Representative” or “ODR”) who shall have express authority to bind City with respect to all matters concerning this Contract requiring City’s approval or authorization. Whenever the term “City” or “City” is found in this Contract or the Contract Documents, such term shall include City’s agents, elected officials, employees, officers, directors, volunteers, representatives, successors and assigns.

**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 and maintain the Preliminary Budget and general schedule, if any, for the Project. The Preliminary Budget shall include the anticipated construction cost, contingencies for changes in the Work during construction and other costs that are the responsibility of City. The general schedule shall set forth City’s plan for milestone dates and Substantial Completion and Final Completion of the Project.

**II.2.2** City shall furnish surveys, if in existence and in City’s possession, describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Contractor of any of its duties under the Contract Documents or these General Conditions. Information or services required of 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 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.2.3** 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.2.4** City's personnel may, but are not required to, be present at the construction site during progress of the Work, along with Design Consultant in the performance of its duties, to verify Contractor's record of the number of workers employed on the Work site, the workers’ occupational classification, the time each worker is engaged in the Work and

the equipment used by the workers in the performance of the Work, for purpose of verification of Contractor's Applications for Payment and payroll records.

**II.2.5** City shall reimburse Contractor for the necessary Project-related approvals, fees and required permits with no markup paid to Contractor for these necessary Project-related approvals, fees and required permits costs, unless said costs are stipulated in the Contract Documents as a part of Contractor's cost of Work.

**II.2.6 CITY'S RIGHT TO STOP THE WORK.**

If Contractor fails to correct Work deemed by City not in accordance with the requirements of the Contract Documents, as required by **ARTICLE XII.3**, fails to carry out Work in accordance with the Contract Documents or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, 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 pursuant to **ARTICLE XII.3**. City's issuance of an order to Contractor to stop the Work shall not give rise to any claim by Contractor for additional time, cost or general conditions costs.

**II.2.7 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. In such case, an appropriate Change Order may be issued deducting from payments then or thereafter due Contractor reflecting the reasonable cost of correcting such deficiencies, neglect or failure of Contractor, including all of City's incurred expenses and compensation for Design Consultant's additional services made necessary by such default, neglect or failure of Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts for the Work performed, Contractor shall pay the difference to City.

**END OF ARTICLE II**

## **ARTICLE III. CONTRACTOR**

### **III.1 GENERAL.**

**III.1.1** Contractor shall perform the Work in a good and workmanlike manner, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

**III.1.2** 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 person other than the Contractor.

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

**III.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, Contractor carefully shall:

- a. Study and compare the various Drawings and other Contract Documents relative to that portion of the Work and the information furnished by City;
- b. Take field measurements of any existing conditions related to that portion of the Work; and
- c. Observe any conditions at the Site affecting the Work.

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

- d. The exactness of existing grades, elevations, dimensions or locations given on any Drawings issued by Design Consultant, or the work installed by other contractors, is not guaranteed by City. Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations.
- e. In all cases of interconnection of its Work with existing conditions or with work performed by others, Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, dimensions or locations promptly shall be rectified by Contractor without any additional cost to City.

**III.2.2** As between City and Contractor, and subject to the provisions of **ARTICLE III.2.4** below, Contractor has no responsibility for the timely delivery, completeness, accuracy and/or sufficiency of the Specifications or Drawings (or any errors, omissions, or ambiguities therein), and is not responsible for any failure of the design of the facilities or structures as reflected thereon to be suitable, sound or safe. Contractor shall be

deemed to have satisfied itself as to the design contained in and reflected by the Specifications and the Drawings. In particular, but without prejudice to the generality of the foregoing, Contractor shall review the Contract Documents to establish:

- a. The information is sufficiently complete to perform the Work; and
- b. There are no obvious or patent ambiguities, inaccuracies or inconsistencies within or between the documents forming the Contract; and
- c. Contractor shall work with the aforementioned Contract Documents so as to perform the Work and of each and every part thereof to ensure the Work and each and every part thereof shall, jointly and severally, be in accordance with the requirements of the Contract Documents and, in particular but without limiting the generality of the foregoing, the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance Specifications.

**III.2.3** Any design errors or omissions noted by Contractor during its review promptly shall be reported to City, but it is recognized the Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain if Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to Contractor promptly shall be reported both to City and Design Consultant.

**III.2.4** If Contractor believes additional cost or time is involved because of clarifications or instructions issued by Design Consultant, in response to the Contractor's Notices or Requests for Information, Contractor shall make Claims as provided in **ARTICLE IV.2.6** and **ARTICLE IV.2.7**. If Contractor fails to perform the obligations of **ARTICLE III.2.1** and **ARTICLE III.2.2** herein, Contractor shall pay such costs and damages to City, to include applicable Liquidated Damages, as would have been avoided if Contractor had performed such obligations. Contractor shall not be liable to City or Design Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents, unless Contractor recognized or should have recognized such error, inconsistency, omission or differences and knowingly failed to report it to City and Design Consultant.

### **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 of a reasonably prudent Contractor, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor solely shall be responsible for the means, methods, techniques, sequences, procedures and coordination of all portions of the Work under the Contract, unless the Contract

Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods and/or techniques, Contractor then shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If, upon its evaluation, Contractor determines such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give timely written notice to City and Design Consultant and Contractor shall not proceed with that portion of the Work without further written instructions from City. Sequencing and procedures shall be coordinated and agreed upon by City, Design Consultant and Contractor.

- 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 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 which such portion are in proper condition to receive subsequent Work.
- III.3.4** Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq.
- III.3.5** It is understood and agreed the relationship of Contractor to City shall be of an independent contractor. Nothing contained or inferable in the Contract documents shall be read, deemed or construed to make Contractor the agent, servant or employee of City or create any partnership, joint venture or other association between City and Contractor. Any direction or instruction by City, in respect of 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.3.6** Contractor shall review Subcontractor(s) written safety programs, procedures and precautions in connection with performance of the Work. However, Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations and ordinances, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing 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.4 LABOR AND MATERIALS.**

**III.4.1** Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

### **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” amended in City of San Antonio Ordinance 2008-11-20-1045, expressly are made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this Contract shall be obtained by Contractor from the City of San Antonio’s Labor Compliance Office and included in Contractor’s Project bid package, prior to Contractor bidding of the Project and such schedule shall become a part hereof. Contractor shall forfeit, as a penalty to City, sixty dollars (\$60.00) for each laborer, worker or mechanic employed **for each calendar day**, or portion thereof, in which such laborer, worker or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Contractor or any Subcontractor employed on the project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Contractor from its obligation under any federal or state law, regarding the wages to be paid to or hours worked by laborers, workers or mechanics, insofar as applicable to the work to be performed hereunder. Contractor, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Contractor agrees it shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This Contract provision shall be included in its entirety in all Subcontractor agreements entered into by the 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 code requirements or insurance regulations then existing;
  - ii. Specified products are unavailable through no fault of Contractor; and

- 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. Contractor shall submit to City and Design Consultant:
    - i. A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures and other like information necessary for a complete evaluation of the substitution;
    - ii. A written explanation of the reasons the substitution is necessary, including the benefits to 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 **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 the warranty and correction obligations in connection with the proposed substitution as if originally specified by Design Consultant.

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

- c. 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.
        - d. Except as otherwise stipulated in the Contract Documents or required for safety or protection of persons or the Work or property at the Site or adjacent thereto, no Work shall be allowed by 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.4.4** Contractor shall, at all times, enforce strict discipline and good order among persons working on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the assigned work. Contractor shall be liable for and responsible to City for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone who Contractor may allow to perform any Work on the Project and their respective officers, agents, employees, and Consultants who Contractor may allow to come on the job site, with the exception of City or City's Designee. City, at any time, for any reason or for no reason, may direct Contractor to remove any employee; Subcontractor, material supplier or anyone else from the Project and Contractor promptly shall comply with City's direction. In addition, if Contractor receives written notice from City complaining about any Subcontractor, employee or anyone who is a hindrance to the proper or timely execution of the Work, Contractor shall remedy such complaint without delay to the Project and at no additional cost to City. This provision shall be included in all contracts between Contractor and all Subcontractors of all tiers.
- III.4.5** Contractor recognizes accepts and hereby acknowledges the Project Site is a public facility representing the City of San Antonio. As such, Contractor shall prohibit the possession or use of alcohol, controlled substances, tobacco and any prohibited weapons on the Project Site and shall require appropriate dress of Contractor's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Contractor or any Subcontractor, employees or Consultants of City or of any visitor to the Project site, by Contractor, employee(s) of Contractor, a Subcontractor or an employee of Subcontractor strictly is forbidden. Any person, Contractor, employee of Contractor, Subcontractor or employee of Subcontractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Contractor and/or City, including the removal and exclusion of the violating person(s) or employee(s) of Contractor or Subcontractor from the Project Site and, if City so elects, termination from the Project.
- III.4.6** All materials and installed equipment shall be as specified in the Contract Documents and, if not so specified, shall be new and of good quality, except as otherwise provided in the Contract Documents. If required by City or Design Consultant, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment installed. Contractor may make substitutions only with the consent of City.
- III.4.7** 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** when the Work is Substantially Completed or City takes over use and occupancy, whichever is earlier.
- III.4.8** Contractor shall procure and furnish to City all guarantees, warranties, spares and maintenance manuals called for by the Specifications or which normally are provided

by a manufacturer. The maintenance manual shall include a catalog for any equipment, materials, supplies or parts used in the inspection, calibration, maintenance or repair of the equipment and items in the catalog shall be readily available for purchase.

**III.4.9** During construction of the Work and for four (4) years after final completion or longer if, during the duration of this Contract or during the four (4) years after the final completion of the Work, a dispute between any parties to this Project exists, Contractor shall retain and shall require all Subcontractors to retain for inspection and audit by City all books, accounts, reports, files, time cards, material invoices, payrolls and evidence of all other direct or indirect costs related to the bidding and performance of this Work. Upon request by City, a legible copy or the original of any or all such records shall be produced by Contractor at the administrative office of City. To the extent it requests copies of such documents; City shall reimburse Contractor and its Subcontractors for copying costs. Contractor shall not be required to keep records of or provide access to the makeup of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers.

### **III.5 WARRANTY.**

**III.5.1** Contractor warrants materials and equipment furnished and installed under the Contract shall be new and of good quality, unless otherwise required or permitted by the Contract Documents, the Work shall be free from defects not inherent in the quality required or permitted and the Work shall conform to the requirements of the Contract Documents. Work not conforming to this warranty and these requirements, including substitutions not properly approved and authorized by City, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by City's failure to promptly notify Contractor. If required by City, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**III.5.2** A right of action by City for any breach of Contractor's express warranty shall be in addition to, and not in lieu of, any other remedies City may have under this Contract at law or in equity, regarding any defective Work.

**III.5.3** The warranty provided shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Such warranty shall be interpreted to require Contractor, upon written demand by City, to replace defective materials and equipment and re-execute any defective Work disclosed to the Contractor by City within a period of one (1) year after Substantial Completion of the applicable Work or, in the event of a latent defect, within one (1) year after discovery by City.

**III.5.4** All warranties shall be assignable by City. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

- III.5.5** Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law or by manufacturer, all warranties shall be at minimum for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to City. City and Contractor acknowledge the Project may involve construction work on more than one (1) building or section of infrastructure of City's. While the overall Project shall have a single date for Substantial Completion of the Work and Final Completion of the Work, each building, section of infrastructure or approved phase of each section of infrastructure may have its own separate and independent date of Substantial Completion or Final Completion.
- III.5.6** If separate dates for Substantial Completion and Final Completion are established and granted by City, at City's sole discretion and as a result of City electing partially to occupy areas prior to the Project's overall date for Substantial Completion, Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion and, if City accepts partial occupancy of those completed areas, the dates upon which the one (1) year warranty on each building, phase or section of infrastructure granted Substantial Completion shall expire. If separate dates are granted, Contractor agrees to provide notice of the warranty expiration date(s) to City and Design Consultant at least one (1) month prior to the expiration of the one (1) year warranty period on each building, section of infrastructure or each phase of the section of infrastructure which has achieved Substantial Completion.
- III.5.7** Prior to termination of any one (1) year warranty period, Contractor shall accompany City and Design Consultant on re-inspection of the building, section of infrastructure or phase of the section of infrastructure and be responsible for correcting any reasonable additional deficiencies not caused by City or by the use of the building, section of infrastructure or phase of the section of infrastructure observed and/or reported during the re-inspection.
- III.5.8** For extended warranties required by the Contract Documents, City shall notify Contractor of deficiencies and Contractor shall start remedying these defects within seven (7) calendar days of initial notification from City. Contractor shall prosecute the work without interruption until accepted by City and Design Consultant, even though such prosecution may extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date and conduct the required walk through with City, Contractor's warranty obligations described in **ARTICLE III.5.5** shall continue until such inspection is conducted and any deficiencies found in the inspection is corrected.
- III.5.9** Warranties shall become effective on a date established by City in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the Parties, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment and those occurrences addressed in **ARTICLE III.5.4**. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to Final Completion shall become effective on the

later of the date the Work is completed or corrected and accepted by City and Design Consultant or the date of final completion of the Work.

**III.5.10** Neither final payment nor compliance by Contractor with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve Contractor or its sureties of liability, with respect to any warranties or responsibility for faulty materials and workmanship. Contractor warrants all Work shall conform to the requirements of the Contract Documents.

**III.5.11** Contractor agrees to assign to City, at the time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties, provided such assignment shall contain a reservation of Contractor's right also to enforce the manufacturer's warranties. As a condition precedent to final payment, Contractor shall prepare a notebook with reference tabs and submit a copy and electronic version in PDF of the notebook to City which shall include a complete set of warranties from Subcontractors, manufacturers or suppliers, as appropriate, and executed by and between Contractor and City, as required under this Contract, with a specified warranty commencement date, as required by the Contract Documents. Copies of the complete set of warranties from Subcontractors, manufacturers and/or suppliers, as appropriate, executed by Contractor as required by the Contract Documents, with and between City and Contractor will be provided to City by Contractor.

**III.5.12** When Contractor is constructing a building, the building shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building by external forces beyond Contractor's control. Contractor, immediately upon notification by 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.

### **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 PERMITS.**

Unless otherwise provided in the Contract Documents or by City, as per **ARTICLE II.2.2**, Contractor shall secure all permits, licenses and inspections. City and Design Consultant may assist Contractor, when necessary, in obtaining such permits, licenses and inspections necessary for the proper execution and completion of the work. For federally funded construction projects, when applicable, City shall prepare and submit the necessary paperwork to satisfy Texas Pollutant Discharge Elimination System (hereafter referred to as "TPDES"), regulations of the Texas Commission on Environmental Quality.

**III.7.2** Contractor shall comply with and give all notices required by law, ordinance, rule, regulations and lawful orders of public authorities applicable to performance of the Work.

**III.7.3** It is not Contractor's responsibility to ascertain the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes and rules and regulations. However, if Contractor observes portions of the Contract Documents are at variance therewith, Contractor promptly shall notify City and Design Consultant in writing of any variances and all necessary changes shall be accomplished by appropriate modification(s) before Contractor performs any Work affected by such modification(s).

**III.7.4** If Contractor performs Work knowing Work is contrary to laws, statutes, ordinances, building codes and rules and regulations, without such notice to and approval from City and Design Consultant, Contractor shall assume sole responsibility for performing such Work and shall bear all costs attributable to correct such Work.

**III.7.5** Contractor also shall assist City in obtaining all permits and approvals and, at City's request, pay all fees and expenses, if any, associated with TPDES regulations of the Texas Commission on Environmental Quality, as well as local authorities, if applicable, which require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for a Project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the Project Site. However, any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. It shall be Contractor's responsibility to prepare and submit the permit approval documentation provided by the regulatory agencies prior to beginning any Work.

### **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.

**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 and all required taxes, 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, shall be included in the allowances;
- 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 both the difference between actual costs and the allowances under **ARTICLE III.8.2.a** and all changes in Contractor's costs under **ARTICLE III.8.2.b**.

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

**III.9. SUPERINTENDENT/KEY PERSONNEL.**

**III.9.1** At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who is able to communicate fluently in English, along with any necessary assistant(s) who is/are satisfactory to City. Any superintendent designee shall be identified in writing to City promptly after City issues written Notice to Proceed. The superintendent shall represent Contractor at all time and all directions given to the superintendent shall be binding on Contractor. The designated superintendent shall not be replaced without written notice to and the approval of City, which approval shall not be unreasonably withheld, except with good reason (including any termination or disability of the superintendent) or under extraordinary circumstances. The superintendent may not be employed on any other project prior to Final Completion of the Work without the approval of City, which approval shall not be unreasonably withheld.

**III.9.2** Contractor shall furnish a list to Design Consultant and City of all Architects, Engineers, Consultants, Sub-Consultants, job-site superintendents, Subcontractors and suppliers involved in the Project construction.

- a. City, upon the showing of good and reasonable cause, may reject or require removal of any Architect, Engineer, Consultant, Sub-Consultant, job superintendent, employee of the Contractor, Subcontractor or sub-Subcontractor and/or supplier involved in the Project.
- b. Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. City reserves the right to require Contractor to remove from the Project any employee(s) City, at its sole discretion, deems incompetent, careless, insubordinate, unnecessary or in violation of any provision in these

Contract Documents. This provision is applicable to Subcontractors, sub-Subcontractors and their employees.

- c. City reserves the right to utilize one or more of its employees or Consultants to function in the capacity of City's Inspector, whose primary function shall be daily inspections, checking pay requests or construction timelines and the verification of the storage of supplies and materials.
- d. Contractor shall not change any key personnel or key Subcontractors without the prior written consent of City, which consent shall not be unreasonably withheld. In the event key personnel leaves Contractor's employment, such key personnel's replacement shall be subject to City's reasonable approval.

### **III.10 CONTRACTOR'S PROJECT SCHEDULES.**

#### **III.10.1 PROJECT SCHEDULE METHOD.**

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

#### **III.10.2 SCHEDULING PERSONNEL.**

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

#### **III.10.3 PROJECT SCHEDULE SUBMISSION.**

- a. Unless indicated otherwise, Contractor shall submit Project Schedule(s) for the Work in relation to the entire Project to City and Design Consultant at least fourteen (14) calendar days prior to the pre-construction conference.
- b. All Project Schedule submittals shall be in the electronic form to include PDF plots of the schedule, a PDF plot defining the Critical Path and two week look-ahead, and include the native compatible scheduling file format. Contractor shall submit the schedule to City and Design Consultant via electronic mail or electronic format acceptable to City.

- c. This initial schedule shall indicate the dates for starting and completing the various aspects/phases required to complete the Work, including mobilization, procurement, installation, testing, inspection and acceptance of all the Work of the Contract, including any contractually mandated milestone dates. The Project Schedule shall not exceed the time limits set forth in the Contract Documents. Contractor shall organize the Project Schedule and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- d. The Project Schedule shall show the order in which Contractor proposes to carry out the Work in accordance with the final approved phasing plan, if any, and the anticipated start and completion dates of each phase of the Work. The Project Schedule shall be in the form of a time scaled work progress chart, to indicate the percentage of Work scheduled for completion at various critical milestones.
- e. Contractor shall maintain a schedule of Shop Drawings and Sample Submittals and each submitted Shop Drawing and Sample Submittal shall list each required submittal and the expected time(s) for submitting, reviewing and processing such submittal.
- f. City shall review the Project Schedule within fourteen (14) calendar days for compliance with the Specifications and notify Contractor of its acceptability.

**III.10.4 PROJECT SCHEDULE SEQUENCING.**

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

- a. Ensure adequate planning during the execution and progress of the Work in accordance with the allowable number of calendar days and all milestones;
- b. Assure coordination of the efforts of Contractor, City, utilities and others that may be involved in the Project and those activities are included in the Schedule highlighting coordination points with others;
- c. Assist Contractor and City in monitoring the progress of the Work and evaluating proposed changes to the Contract; and
- d. Assist City in administering the Contract time requirements.

**III.10.5 PROJECT SCHEDULE ACTIVITIES.**

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

- a. An activity number utilizing an alphanumeric designation system agreeable to City;
- b. A concise description of the Work represented by the activity; and
- c. 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.

### **III.10.6 PROJECT SCHEDULE WORK DURATION AND RESOURCES.**

- a. The Project Schedule layout shall be grouped by Project and then by Work Breakdown Structure (hereafter referred to as “WBS”) for organizational purposes.
- b. The original and remaining Work duration shall be displayed. The grouping band shall, by default, report Work days planned. One additional level of effort activity shall be added to the schedule as a “time calculator” with a seven (7) day calendar without holidays reflected. The calculation of days should be reflected in the appropriate duration columns.
- c. Pursuant to the definitions in **ARTICLE I.1**, Work shall be scheduled based upon Contractor’s six (6) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software.
- d. Assign working calendars for the days Contractor plans to work. Contractor shall designate all twelve (12) City holidays as non-working days (holidays). For dates beyond the then-current calendar year, Contractor shall assume City holidays are the same as the current calendar year.
- e. Seasonal weather conditions shall be considered and included in the Project Schedule for all work influenced by temperature and/or precipitation. Baseline weather conditions shall be incorporated in to the Project Schedule using the table below: When actual inclement weather days do not exceed the cumulative inclement weather days in the table below, there shall not be a basis for a time extension claim.

**Table III.10.6.e**

January – Two (2) days	February – Two (2) days
March – Three (3) days	April – Two (2) days
May – Four (4) days	June – Three (3) days
July – Three (3) days	August – Two (2) days
September – Four (4) days	October – Three (3) days
November – Two (2) days	December – Two (2) days
<b>Total Annual Weather Days = 30 days</b>	

- f. The Contractor will take reasonable precautions to prevent loss caused by weather related events, erosion, rising water, or vandalism during the construction period and is the responsibility of the Contractor to rectify such loss or damage to the extent required by City.
- g. City or Joint-Bid Utilities-responsible delays in activities affecting milestone dates or the Contract completion date, as determined by CPM analysis, shall be considered for a time extension by discretion of City.

**III.10.7 PROJECT SCHEDULE - OTHER REQUIREMENTS.**

The Project Schedule shall:

- a. Have all Work coded and organized by WBS. An example of an acceptable WBS shall be provided, upon written request, by City to Contractor;
- b. Reflect Duration Percent complete as the percent complete type;
- c. Reflect Fixed Units as the duration type;
- d. Include submittals with a logical tie to what each drives;
- e. Add proposed Change Order(s) and those Change Order(s) shall be reflected on the Schedule as proposed Change Order(s). This task shall be linked to the schedule with logical ties and approved by City. Upon approval of a Change Order, a task shall be renamed and shall identify Work performed and Change Order number and resources shall be added to the task;
- f. Only have constraints in accordance with the Plans;
- g. Include activity milestones for material delivery;

- h. Disallow default progress; and
- i. Include a detailed explanation in the Project narrative, if Work is performed out of sequence.

**III.10.8 PROJECT SCHEDULE JOINT REVIEW AND ACCEPTANCE.**

- a. The Project Schedule and successive updates or revisions thereof are for Contractor’s use in managing the Work. The Project Schedule is for the information of City and to demonstrate Contractor has complied with requirements for planning the Work. City’s acceptance of a Schedule, Schedule update(s) or revisions constitutes City’s agreement to coordinate its own activities with Contractor’s activities, as shown on the schedule.
- b. Within fourteen (14) calendar days of receipt of Contractor’s proposed Project Schedule, City shall evaluate the Schedule for compliance with this specification and notify Contractor of its findings. If City requests a revision or justification, Contractor shall provide satisfaction to City within seven (7) calendar days. If Contractor submits a Project Schedule for acceptance, based on a sequence of work not shown in the Plans, Contractor shall notify City in writing of said sequence of work, separate from the Schedule submittal.
- c. City's review and acceptance of Contractor's Project Schedule only is for conformance to the requirements of the Contract Documents. Review and acceptance by City of Contractor's Project Schedule does not relieve Contractor of any of its responsibility for the Project Schedule, Contractor's ability to meet interim milestone dates (if so specified) or meeting the Contract completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of Contractor's Project Schedule. In the event Contractor fails to define any element of Work, activity or logic and 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 schedule update and shall not affect the Project or Contract completion date.
- d. Acceptance of the Project Schedule, or update and/or revision thereto, does not indicate any approval of Contractor’s proposed sequences and duration.
- e. Acceptance by City of the Project Schedule or updated Project Schedule which exceeds contractual time does not alleviate Contractor from meeting the contractual completion date.
- f. Acceptance of a Project Schedule update or revision indicating early or late completion does not constitute City’s consent to any changes, alter the terms of

the Contract, waive either Contractor’s responsibility for timely completion, or waive City’s right to damages for Contractor’s failure to do so.

- g.** Contractor’s scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract time.
- h.** Submittal of a schedule, schedule revision or schedule update 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 schedule as submitted in performing the Work.

**III.10.9 PROJECT SCHEDULE UPDATES AND REVISIONS.**

- a.** The Project Schedule shall be updated monthly, at a minimum, to reflect progress to date and current plans for completing the Work. A paper and an electronic copy of the update shall be submitted to City and Design Consultant as directed. City has no duty to make progress payments to Contractor unless Contractor’s payment application accompanied by the updated Project Schedule. The anticipated date of Substantial Completion shall show all extensions of time granted through Change Order(s) as of the date of the update.
- b.** The Project Schedule update shall be submitted no later than the date the pay application is submitted.
- c.** Contractor shall meet with City each month, at a scheduled Project Schedule update meeting, to review actual progress made through the data date of the schedule update, as determined by City. The review of progress shall include dates of activities actually started and/or completed, the percentage of Work completed, the remaining duration of each activity started and/or completed and the amount of Work still to complete, with an analysis of the relationship between the remaining duration of the activity and the quantity of material to install over that given period of time with a citation of past productivity.
- d.** The monthly Schedule Update shall include a progress narrative, explaining the Project’s progress, identifying all progress made out of sequence, defining the Critical Path, identification of any potential delays, and other relevant data. A Project Schedule Narrative template shall be required for the narrative. Upon request, City shall supply said template to Contractor.
- e.** Each Schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by Contractor, City and Design Consultant. The Project Schedule layout shall be grouped first by Project then by WBS. The layout shall include the following columns:
  - i.** Activity ID

- ii.** Activity Description
- iii.** Original Durations
- iv.** Remaining Durations
  - Early Start and Early Finish Dates
  - Late Start and Late Finish Date
  - Total Float
  - Performance Percent Complete
  - Display logic and target bars in the Gantt bar chart view
- f.** Each schedule shall include activities representing manufacturing, fabrication or ordering lead time for materials, equipment or other items for which Design Consultant is required to review submittals, shop drawings, product data or samples.
- g.** Each schedule, other than the initial schedule, shall:
  - i.** Indicate the activities, or portions thereof, which have been completed;
  - ii.** Reflect the actual time for completion of such activities; and
  - iii.** Reflect any changes to the sequence or planned duration of all activities
- h.** If any updated schedule exceeds the time limits set forth in the Contract Documents for Substantial Completion of the Work, Contractor shall include, along with its updated schedule, a statement of the reasons for the anticipated delay in achieving Substantial Completion of the Work and Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If Contractor asserts 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 and is required from City or Design Consultant.
- i.** Neither City nor Contractor shall have exclusive ownership of float time in the schedule and all float time shall inure to the benefit of the Project.
- j.** Submission of any schedule under this Contract constitutes a representation by Contractor, as of the date of the submittal,;

- i. The schedule represents the sequence in which Contractor intends to prosecute the remaining Work;
- ii. The schedule represents the actual sequence and duration used to prosecute the completed Work;
- iii. To the best of its knowledge and belief, Contractor is able to complete the remaining Work in the sequence and time indicated; and
- iv. Contractor intends to complete the remaining work in the sequence and time indicated.
- v. If Contractor desires to make major changes in the Project Schedule, Contractor shall notify City in writing and submit the proposed schedule revision. The written notification shall include the reason for the proposed revision, what the revision is composed of and how the revision was incorporated into the schedule. Major changes are hereby defined as those affecting compliance with the contract requirements and/or those that change the Project's critical path. All other changes may be accomplished through the monthly updating process without written notification.

#### **III.10.10 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, the Schedule update reflects Work is behind schedule and the rate of performance of Work is inadequate to regain scheduled progress to insure Contractor achieving any Project Milestones (including, but not limited to, Substantial Completion) in accordance with the Project Schedule, City may, at its sole option, give written notice to Contractor and direct Contractor, at Contractor's sole expense, to propose and adopt a plan to accelerate the Work so the Work conforms to the Project Schedule and Project Milestones previously agreed upon. Contractor may, but is not limited to, propose:
  - i. Increasing Project work forces;
  - ii. Increasing Project equipment or tools;
  - iii. Increasing the hours of work or number of shifts per day;
  - iv. Expediting the delivery of Project materials;
  - v. Changing, with the approval of City, the schedule logic and Work sequences; or

- vi. Taking some other action as Contractor may proposes, if acceptable to City
- c. Within ten (10) calendar days after such 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 estimate as to the date of scheduled full progress recovery and an updated Project Schedule, illustrating Contractor's plan for achieving timely completion of the Project Milestone's and the Project's Substantial Completion.
- d. Should City deem Contractor's plan of action inadequate to achieve the desired acceleration to bring the Work back on the Project Schedule and achieve Substantial Completion on time, 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 limitations:
  - i. Increasing work forces and hours, to include Contractor working additional shifts of overtime;
  - ii. Supplying additional manpower, equipment and facilities;
  - iii. Re-sequencing the Work;
  - iv. Expediting the fabrication and supply of materials; and/or
  - v. Other similar measures City may direct (hereafter **(1) – (5)** above collectively referred to as "Extraordinary Measures").

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

- e. City's right to require Extraordinary Measures solely is for the purpose of ensuring Project Milestones and Substantial Completion of the Work is achieved within the Contract Time. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by City under or pursuant to this **ARTICLE III.10**, except as may be provided under the provisions of **ARTICLE IV.2.11**.
- f. City may exercise the rights furnished pursuant to **ARTICLE III.10** as frequently as City deems necessary to ensure Contractor's performance of the Work is in compliance with any milestone date or completion date(s) set forth in the Contract Documents.
- g. 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.

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

### **III.10.11 PROJECT SCHEDULE TIME IMPACT ANALYSIS.**

- a.** Contractor shall provide written notice to City upon the occurrence of an impact that may justify an extension of contract time and/or adjustment of milestone dates. Said notice shall be made by Contractor in writing, no later than fourteen (14) calendar days after the commencement of the impact giving rise to delay. Failure to provide such written notice within fourteen (14) calendar days of the commencement of the impact shall waive Contractor's right to subsequently request a time extension, or to recover days or compensation for the delay.
  
- b.** Once Contractor provides City written of notice the occurrence of an impact that may justify an extension of contract time and/or adjustment of milestone dates, Contractor shall:
  - i.** Within fourteen (14) calendar days of submitting the aforementioned notice, provide a project schedule update of the status immediately prior to the impact occurrence and predict the effect of the impact on the most recent project schedule for every critical path activity. This requires estimating the duration of the impact and inserting the impact into the schedule update. Contractor shall note any other changes made to the schedule including modifications to the calendars or constraints; and
  - ii.** For the duration of the impacting event, track the effects of the impact on the schedule during its occurrence. Contractor shall note any changes in sequencing and mitigation efforts.
  
- c.** Within twenty-one (21) calendar days after the end of the impacting event, Contractor shall submit electronically, in conformance with the City's scheduling software, a Time Impact Analysis. Failure to provide a Time Impact Analysis within twenty-one (21) calendar days after the end of the impacting event shall waive Contractor's right to subsequently request a time extension or to recover days or compensation for the delay.

The Time Impact Analysis shall:

- i.** Compare the status of the affected critical path activities prior to the impact to the status of the affected critical path activities during the impact and after the conclusion of the impact. If an impact causes a lack of access to a portion of

the Project, the effects of the impact may extend to include a reasonable period for remobilization; and

- ii. Provide a report detailing the impact on the Project Schedule and the requested time extension resulting from the impact.
  
- d. Approval or rejection of each Time Impact Analysis by City shall be made within twenty-one (21) calendar days after receipt of such Time Impact Analysis by City, unless subsequent meetings and negotiations are necessary.

### **III.11 DOCUMENTS AND SAMPLES AT THE SITE.**

**III.11.1** Contractor shall maintain, on Site and for City's use, one record copy of the Drawings, Specifications, Addenda, Change Orders and other Amendments, in good order and currently marked, to record field changes and selections made during construction, along with one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These record copies also shall be available to Design Consultant and shall be delivered to Design Consultant for submittal to City upon completion of the Work.

**III.11.2** Contractor shall at all times maintain job records including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries and job meeting minutes applicable to the Project. Contractor shall make such reports and records available for inspection by City, Design Consultant and/or their respective agents, during normal business hours if requested by City.

### **III.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.**

**III.12.1** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittals is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Design Consultant is subject to the limitations of **ARTICLE IV.1.8**. Informational submittals, upon which Design Consultant is not expected to take responsive action, may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Design Consultant without action.

**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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by Design Consultant without action.

**III.12.3** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents it has determined and verified materials, field measurements and filed construction criteria related thereto, or shall do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**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 and review has been approved by Design Consultant. Design Consultant shall review and return such submittals within ten (10) calendar days or within a reasonable period so as to not delay the project.

**III.12.5** The Work shall be in accordance with approved submittals, except Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Design Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor specifically has informed Design Consultant in writing of such deviation at the time of submittal and:

- a. Design Consultant has given written approval in the specific deviation as a minor change in the Work; or
- b. A Change Order or Field Work Directive has been issued the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Design
- c. Consultant'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 which constitute the practice of architecture or engineering unless such services specifically are required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment specifically are required of Contractor by the Contract Documents, 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 or approvals performed by such design professionals, provided City and Design Consultant have specified to Contractor all performance and design criteria such identified services must satisfy. Design Consultant shall review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Documents. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

### **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 law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

**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.

**III.13.3** Contractor shall abide by all applicable rules and regulations of City with respect to conduct, including 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.

**III.13.5** Contractor shall erect and maintain on Site a Project Bulletin Board, accessible to all Contractor and Subcontractor employees, upon which Contractor shall post and maintain, throughout the Project's duration, all employment and safety information required by law. Contractor further shall post complete Payment and Performance Bond information on the Project Bulletin Board, listing Contractor's bonding and insurance agencies/providers, to include agency contact names, address and telephone numbers.

**III.13.6** As applicable, City shall have appropriate Temporary Bench Marks (hereafter referred to as "TBM") and a baseline (for both *horizontal* and *vertical projects*, as applicable) established. As of the date of the Notice To Proceed, it is Contractor's responsibility to protect, preserve and reestablish (if required) the TBM and/or baseline. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5".

**III.13.7** As applicable, Contractor shall layout its work from an established baseline and TBM indicated on the drawings and shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates,

platforms, equipment, tools, materials and labor required to layout any part of the work. Contractor shall provide cut sheets to City's inspector at minimum seven (7) calendar days prior to construction of street and drainage work. Contractor shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for San Antonio Water System (SAWS) Work, if present. Contractor shall provide cut sheets for improvements where Sewer profiles are provided for various phases of the project and cut sheets for Water profiles, if applicable. Contractor shall provide staking and preparation of cut sheets after receiving notice to proceed from City. If present, Contractor shall provide SAWS with cut sheets at minimum (7) calendar days prior to commence of SAWS work. Contractor shall be responsible for maintaining and preserving a baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, Contractor shall replace them at its own expense. At the end of construction of the Project, Contractor shall provide City a grade certificate prepared by a Registered Professional Land Surveyor. This certificate shall state the infrastructure is constructed in accordance to the construction documents or as approved by City and the Engineer of Record, which is noted on the record plan set.

### **III.14 CUTTING AND PATCHING.**

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

**III.14.2** Contractor shall not damage or endanger a portion of the Work or a fully or partially completed construction by either City or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. 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 and said consent shall not be unreasonably withheld. Contractor unreasonably shall not withhold from City or City's separate contractor Contractor's consent to cutting or otherwise altering the Work.

**III.14.3** Any part of the Work damaged by Contractor, either during installation or prior to Substantial Completion of the Work (or such earlier date established in **ARTICLE IX.9**, shall be repaired by Contractor so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this repair cannot fully be accomplished, a damaged item or part shall be replaced by Contractor.

### **III.15 CLEANING UP.**

**III.15.1** During the progress of the Work, Contractor shall keep the Project Site and surrounding area including, but not limited to, creeks, drainage channels, easements and private property free from accumulations of waste materials, rubbish and other debris resulting from the Work. As applicable, Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of

debris. If Contractor fails to clean up as provided in the Contract Documents, City may elect to do so and all costs incurred by City shall be paid by Contractor.

**III.15.2** Prior to Substantial Completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project Site clean and ready for occupancy by City. As applicable, Contractor shall clean, sweep, mop, brush and polish, to City's satisfaction, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. Contractor shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If Contractor fails to clean up the premises as provided in the Contract Documents, City may elect to do so and all costs incurred by City shall be paid by Contractor.

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

### **III.18 INDEMNITY PROVISIONS.**

**III.18.1** Contractor covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, City and its elected officials, employees, officers, directors, volunteers and representatives of City, individually and collectively, from and against any and all costs, claims (including third-party claims), liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon City directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or Subcontractor of Contractor and Contractor's and its Subcontractor's respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its

officers or its 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**III.18.2** The provisions of this Indemnity solely are for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall advise City in writing within twenty four (24) hours of any claim or demand against City or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract and shall see to the investigation and defense of such claim or demand at Contractor's sole cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this **ARTICLE III.10.18.**

### **III.18.3 INTELLECTUAL PROPERTY INDEMNIFICATION.**

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

**III.18.4** If such infringement claim or action has occurred or, in Contractor's judgment, is likely to occur, City shall allow Contractor, at Contractor's option and expense, (unless such infringement results directly from Contractor's compliance with City's written standards or Specifications or by reason of City's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process for which City shall be liable) to elect to:

- a. Procure for City the right to continue using said deliverable and/or materials;
- b. Modify such deliverable and/or materials to become noninfringing (provided such modification does not adversely affect City's intended use of the deliverable and/or materials as contemplated hereunder);
- c. Replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to City; or
- d. If none of the foregoing alternatives is reasonably available to Contractor, upon written request, City shall return the deliverable and/or materials in question to Contractor and Contractor shall refund all monies paid by City, with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this **ARTICLE III.10.18** shall fail to satisfy the third-party claimant, these actions shall not relieve Contractor from its defense and indemnity obligations set forth in this **ARTICLE III.10.18**.

**III.18.5** The Indemnification obligations under this **ARTICLE III.10.18** shall not be limited in any way by the limits of any insurance coverage or any limitation on the amount or type of damages, compensation or benefits payable by, for or to Contractor or any Subcontractor, supplier or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.

#### **III.18.6 WORKER SAFETY.**

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

#### **III.18.7 DEFENSE COUNSEL.**

City shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City-approved defense counsel within ten (10) calendar days of City's written notice City is invoking its right to Indemnification under this Contract. If Contractor fails to retain 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 costs incurred by City. City also shall have the right, at its option, to be represented by

advisory counsel of its own selection and at its own expense, without waiving the foregoing.

### **III.19 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, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work, Contractor:

**III.19.1** is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

**III.19.2** is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

**III.19.3** is authorized to do business in the State of Texas and properly is licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work and the site of the Project;

**III.19.4** is acting within its duly authorized powers to execute this Contract and execute the performance and obligations thereof; and

**III.19.5** had directed its duly authorized representative(s) to visit the Site of the Work, familiarize itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

### **III.20 BUSINESS STANDARDS.**

Contractor, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of City or affiliates. Contractor shall review with City, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees, Subcontractors and agents in their relations with City's employees, Consultants, agents, representatives, vendors, Subcontractors, other third parties and those relating to the placement and administration of purchase orders and subcontracts.

**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 City's representative:

- a. During construction;
- b. Until final payment is due; and
- c. With City's concurrence, from time to time during the one- year period for correction of Work described in **ARTICLE XII**.

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

**IV.1.2** City's instruction 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, provided written notice of such modification immediately shall be served on Contractor. Nothing shall authorize independent agreements between Contractor and Design Consultant, nor shall Design Consultant be deemed to have a legal relationship with Contractor.

**IV.1.3** Neither Design Consultant nor City shall have control over, charge of nor be responsible for the construction means, methods or techniques, or for the safety precautions, quality control program and other programs in connection with the Work, since these solely are Contractor's rights and responsibilities under the Contract Documents. Sequencing and procedures shall be coordinated and agreed upon by City, Design Consultant and Contractor and shall remain the responsibility of Contractor for implementation.

**IV.1.4** Design Consultant shall not be responsible for Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Design Consultant shall not have control over, charge of and shall not be responsible for acts or omissions of Contractor, Subcontractor, their respective agents, employees or any other persons or entities performing portions of the Work.

**IV.1.5** 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 Contract. Communications by and with Design Consultant's Consultants shall be through Design Consultant. Communications by City and Design Consultant with Contractor's employees Subcontractors and material suppliers shall be through Contractor. All communications by and with City's separate contractors shall be through City.

**IV.1.6** Design Consultant shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Design Consultant shall perform these reviews in a timely fashion so as to not delay the Work. Design Consultant promptly shall respond to submittals such as Shop Drawings, Product Data and Samples pursuant to the procedures set forth in the Project Specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. Design Consultant's review of Contractor's submittals shall not relieve the Contractor of the obligations under **ARTICLE(S) III.3, III.5 and III.12**. Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Design Consultant, any construction means, methods, techniques, sequences or procedures. Design Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**IV.1.7** Upon written request of City or Contractor, Design Consultant shall issue its interpretation of the requirements of the Plans and Specifications. Design Consultant's response to such requests shall be made in writing within a time limit agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of Design Consultant shall be furnished in compliance with this **ARTICLE IV.1**, then no delay shall be recognized on account of any failure by Design Consultant to furnish such interpretations except for actual substantiated delays, for which Contractor is not responsible, occurring more than fifteen (15) calendar days after written request is made for the interpretations.

**IV.1.8** Interpretations and decisions of Design Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

**IV.1.9** Design Consultant's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by City.

## **IV.2 CLAIMS AND DISPUTES.**

**IV2.1** Except as contemplated by **ARTICLE VIII.2**, every Claim of Contractor, whether for additional compensation, additional time or other relief including, but not limited to, claims arising from concealed conditions, shall be signed and sworn to by an authorized

corporate officer (if not a corporation, then an official of the company authorized to bind Contractor by his/her signature) of Contractor, verifying the truth and accuracy of the Claim. The responsibility to substantiate a Claim shall rest with the Party making the Claim.

#### **IV.2.2 TIME LIMIT ON CLAIMS NOTIFICATIONS AND SUBMITTALS.**

Except for those Claims resulting from unusually severe weather, as addressed in herein, Contractor Claim notifications must be submitted within seven (7) calendar days after occurrence of the event giving rise to such Claim. Claim notifications by Contractor must be submitted by written notice to City. Claims by City must be submitted by written notice to Contractor. Failure by Contractor to submit written Claim notification within the required time limit shall constitute a waiver of such Claim. The complete Claim submittal must be submitted to the City fourteen (14) calendar days after the resolution of the claimed impact to the work. Failure by Contractor to submit the complete Claim submittal within the required time limit shall constitute a waiver of such Claim.

#### **IV.2.3 CONTINUING CONTRACT PERFORMANCE.**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in **ARTICLE IV.4.1, ARTICLE IX.7 and ARTICLE XIV**, 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 which either are subsurface or are otherwise concealed physical conditions which were not known to Contractor and which differ materially from those indicated in the Contract Documents or in the reports of investigations and tests of subsurface and latent physical conditions provided by City to Contractor prior to the preparation by Contractor of its Bid, as referred to above, or are unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents in the general vicinity of the Project site, then Contractor promptly shall notify City and Design Consultant of such conditions before conditions are disturbed, and in no event more than three (3) workdays after first observation of the conditions. Upon notification by Contractor, Design Consultant promptly shall investigate such conditions and report its findings to City. If City and Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to **ARTICLE IV.4.**

#### **IV.2.5 CLAIMS FOR ADDITIONAL COST.**

If Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in this **ARTICLE IV.2.5** shall be given and accepted by City before proceeding to execute the Work, provided prior notice is not required for Claims relating to an emergency endangering life or property. Contractor shall file 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;
- 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.**

- a. If Contractor wishes to make Claim for an increase in the Contract Time, Contractor shall submit a Time Impact Analysis in accordance with **ARTICLE III.10.11** herein. In the case of a continuing delay, only one Claim is necessary

Only actual inclement weather days in excess of the cumulative inclement weather days provided in the table will be considered for a time extension in accordance with **ARTICLE III.10.11** herein. Any time extension granted to Contractor under **ARTICLE IV.2.6** shall be non-compensatory.

**IV.2.7 INJURY OR DAMAGE TO PERSON OR PROPERTY.**

If either Party to the Contract suffers injury or damage to person or property because of an act or omission of the other Party or an act or omission of others for whose acts such other Party legally is responsible (including, with respect to City, the acts or omissions of City’s separate contractors), written notice of such injury or damage, whether or not insured, shall be given to the other Party within a reasonable time not exceeding three (3) calendar days after the discovery of the injury or damage. The written notice shall provide sufficient detail to enable the other Party to investigate the injury or damage.

**IV.2.8 CHANGE IN UNIT PRICES.**

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.

#### **IV.2.9 CLAIMS FOR CONSEQUENTIAL DAMAGES.**

Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply both to Claims by Contractor and to Claims by 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. 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.
- d. 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**.
- e. No damages shall be allowed for home office overhead or other home office charges or any Eichleay formula calculation, except or unless as expressly authorized by the Contract Documents.
- f. No profit shall be allowed on any damage Claim, except or unless as expressly authorized by the Contract Documents.

#### **IV.2.10 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 be subject to:

- a. The requirements of **ARTICLE IV.2.6** of these General Conditions; and
- b. The following additional three (3) requirements listed below, all three of said additional requirements shall be conditions precedent to the entitlement of Contractor to seek and assert such Claim against 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 the Claim is being made in good faith and the claim is believed to be valid.
- iii. Subcontractor making the Claim to Contractor shall certify to both Contractor and City Subcontractor 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.
- c. Any failure of Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.
- d. Receipt and review of a Claim by City under this **ARTICLE IV.2.6** shall not be construed as a waiver of any defenses to the Claim available to City under the Contract Documents or at law.

**IV.2.11 CITY'S RIGHT TO ORDER ACCELERATION AND TO DENY CLAIMED AND APPROPRIATE TIME EXTENSIONS, IN WHOLE OR IN PART.**

Contractor acknowledges and agrees Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to City. The following provisions, therefore, shall apply:

- a. If Contractor falls behind the approved construction schedule for whatever reason, City shall have the right, in City's sole discretion, to order Contractor to develop a schedule recovery plan to alter its work sequences or to otherwise accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as City reasonably may direct. Upon receipt, Contractor shall take any and all action necessary to comply with City's order. In such event, any possible right, if any, of Contractor to additional compensation for any acceleration shall be subject to the terms of this **ARTICLE IV.2.11**.
- b. In the event City agrees Contractor is entitled to an extension of Contract Time and Contractor properly has initiated a Claim for a time extension, City shall have the right, in City's sole discretion, to deny any portion of Contractor's Claim for an extension of Contract Time and order Contractor to exercise its commercially reasonable efforts to achieve Substantial Completion on or before the contractual date established, but for the existence of the event giving rise to the Claim, by giving written notice to Contractor provided within fifteen (15) calendar days after receipt of Contractor's Claim. If City denies Contractor's claim for an extension of Contract Time, either in whole or in part, Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then-existing Scheduled Completion Date. If, after initiating good faith acceleration efforts and it is shown, through no fault of Contractor, Contractor fell behind on the approved construction schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time, City shall not be entitled to Liquidated Damages.
- c. If City orders Contractor to accelerate the Work, Contractor may be entitled to a time extension for a reason specifically allowed under the Contract Documents. Contractor may initiate a Claim for schedule recovery or acceleration costs. Any resulting Claim for these costs properly 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 recovery or acceleration activity necessary for Contractor to bring the Work back within the then existing approved construction schedule. Direct costs of Contractor include, but are not limited to; the premium portion of overtime pay for additional crew, shift, or equipment costs, if requested in advance by Contractor and approved in writing by 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 IV.2.11**.

#### **IV.2.12 NO WAIVER OF GOVERNMENTAL IMMUNITY.**

Nothing in this contract shall be construed to waive City's Governmental Immunity from a lawsuit, which Immunity is expressly retained to the extent it is not clearly and unambiguously waived by State law.

### **IV.3 RESOLUTION OF CLAIMS AND DISPUTES.**

**IV.3.1** Claims by Contractor against City and Claims by City against Contractor, including those alleging an error or omission by Design Consultant but excluding those arising under **ARTICLE X**, shall be referred initially to Design Consultant for consideration and recommendation to City.

**IV.3.2** An initial recommendation by Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the Parties arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to Design Consultant with no recommendation having been rendered by Design Consultant.

**IV.3.3** Design Consultant shall review Claims and, within ten (10) work days of receipt of a Claim, take one or more of the following actions:

- a. Request additional supporting data from the Party making the Claim;
- b. Issue an initial recommendation;
- c. Suggest a compromise; or
- d. 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.3.4** Following receipt of Design Consultant's initial recommendation regarding a Claim, City and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement is reached, either Party may request mediation of the dispute, pursuant to **ARTICLE IV.4**.

**IV.3.5** If Design Consultant requests either or any Party to provide a response to a Claim or to furnish additional supporting data, such requested Party shall provide a response or the requested supporting data to Design Consultant, advise Design Consultant when the response or supporting data shall be furnished or advise Design Consultant that no response of supporting data shall be furnished.

**IV.3.6** With receipt of all information requested by Design Consultant, Design Consultant shall review the Claim and all received information within ten (10) calendar days of receipt of the information and shall take one of the following actions:

- a. Issue a recommendation;

- b. Suggest a compromise; or
- c. Advise the Parties Design Consultant is unable to issue a recommendation due to lack information or conflict of interest.

**IV.3.7** Upon Design Consultant's action or inaction, the Parties may agree to accept recommendations made by either Party or may request mediation of the dispute pursuant to **ARTICLE IV.4**.

**IV.3.8 WAIVER OF LIEN.**

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

**IV.4 ALTERNATIVE DISPUTE RESOLUTION.**

**IV.4.1 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.4.2 REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.**

Before invoking mediation or any other alternative dispute process, the Parties to this Contract agree that they first shall try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. Both City and Contractor agree that this step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a Party delivers a written notice of such dispute to the other, then the Parties shall proceed with the alternative dispute resolution process. All negotiations pursuant to **ARTICLE IV.4** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

**IV.4.3 MEDIATION.**

In the event that City and/or Contractor contend that the other has committed a material breach of this Contract, or the Parties cannot reach a resolution of a claim or dispute pursuant to **ARTICLE IV.4**, as a condition preceding to filing a lawsuit, 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) calendar days following the date of the request, except upon agreement of both Parties.
- b. In the event City and Contractor are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **ARTICLE IV.4** shall be deemed to have occurred.
- c. The Parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

#### **IV.4.4 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 "PRIME*Link*"). In such cases, Contractor shall conduct communication through this medium and perform all Project-related functions utilizing this management system, to include all correspondences, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders and other administrative activities. When such a management system is employed, City shall administer the software, provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

**END OF ARTICLE IV**

## **ARTICLE V. SUBCONTRACTORS**

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

**V.1.1** Contractor shall, prior to entering into an agreement with 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 or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom City may have reasonable objection. A Subcontractor or other person or organization 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. Acceptance of any Subcontractor, other person or organization by City shall not constitute a waiver of any right of City to reject defective Work. If City, after due investigation, has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall be required to submit an acceptable substitute. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

**V.1.3** Contractor fully shall be responsible to City for all acts and omissions of its Subcontractors, persons and organizations directly or indirectly employed by them and persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between City and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of City to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. 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.

**V.1.4** All Work performed for Contractor by a Subcontractor shall be performed pursuant to an appropriate agreement between Contractor and Subcontractor which specifically binds Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of City.

#### **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 SUB-CONTRACTUAL RELATIONS.**

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

#### **V.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.**

Each Subcontractor agreement for a portion of the Work assigned by Contractor to City shall provide:

- V.3.1** An 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
- V.3.2** An assignment is subject to the prior rights of the Surety, if any, obligated under bond relating to the Contract.
- V.3.3** Upon any such assignment, if the Work has been suspended for more than thirty (30) calendar days, Subcontractor's compensation equally shall be adjusted for increase in cost resulting from the suspension.

**END OF ARTICLE V**

## **ARTICLE VI. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTS**

### **VI.1 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO 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 **ARTICLE IV.2.6**.
- 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 and Contractor fully shall cooperate with said coordination. Contractor shall participate with other separate contractors and City in reviewing all construction schedules when directed by City to do so. Contractor shall make any revisions to its construction schedule deemed necessary after said joint review and mutual agreement. The revised construction schedules then shall constitute the schedules to be used by Contractor, separate contractors and City until subsequently revised.
- VI.1.4** Unless otherwise provided in the Contract Documents, when City and City's own forces perform construction or operation related to the Project, City shall be subject to the same obligations and to have the same rights that apply to Contractor under these General Conditions and the Contract Documents.

### **VI.2 MUTUAL RESPONSIBILITY**

- VI.2.1** Contractor shall afford City and City's separate contractor(s) reasonable opportunity for the introduction and storage of materials and equipment, the performance of their activities and the coordination of Contractor's construction and operations with theirs, as required by the Contract Documents.
- VI.2.2** If part of Contractor's Work depends upon the construction or operations by City or a separate contractor for the proper execution or results, Contractor shall, prior to proceeding with that portion of the Work, promptly report to City apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgment that City's separate contractor's completed or partially completed

construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

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

**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**.

**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 and rubbish, City may clean up and those costs shall be allocated amongst those parties responsible.

**END OF ARTICLE VI**

## **ARTICLE VII. CHANGES IN THE WORK**

### **VII.1 GENERAL**

- VII.1.1** Changes in the Work may be accomplished, after the execution of the Contract and without invalidating the Contract, by Change Order, Field Work Directive/Force Account or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this **ARTICLE VII** and elsewhere in the Contract Documents.
- 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 by City.
- 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 or in this **ARTICLE VII**.
- VII.1.4** Changes resulting from Change Orders, Field Work Directives or orders for minor changes shall be recorded by Contractor on the As-Built record documents.

### **VII.2 CHANGE ORDERS**

- VII.2.1** Methods used in determining adjustments to the Contract Sum may include those listed in **ARTICLE VII.3.4**.
- VII.2.2** Acceptance of a Change Order by Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including, but not limited to impact, delay or acceleration damages arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and any extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, cost and additional time, if any. This Contract, as amended, forever releases any Claim against City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release of any Claim applies to Claims related to the cumulative impact of all Change Orders and to any Claim related to the effect of a change on unchanged Work.

**VII.2.3** City or Design Consultant shall prepare Change Orders and Field Work Directives and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which Contractor promptly shall carry out and record on the As-Built record documents.

**VII.2.4** Contractor and Subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by Project Specifications.

### **VII.3 FIELD WORK DIRECTIVES**

**VII.3.1** A Field Work Directive is a written directive signed by City and, if necessary, Design Consultant directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum or Contract time, or both. 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 this **ARTICLE VII.3.**

**VII.3.2** A Field Work Directive 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** Upon receipt of a Field Work Directive, Contractor promptly shall proceed with the change in the Work involved and, in writing, advise City 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.

**VII.3.4** If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as applicable:

- a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- b. Prices, including unit prices, stated in the Contract Documents or subsequently agreed upon;
- c. Cost to be determined in a manner agreed upon by City and Contractor and a mutually acceptable fixed or percentage fee; or

**VII.3.5** If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall initially be determined by Design Consultant on the basis of reasonable costs and savings attributable to the change including, in case of an increase in the Contract Sum, as applicable, a reasonable allowance for overhead and profit. In such case, and also under **ARTICLE**

**VII.3.4.c**, Contractor shall keep and present, in such form as City may prescribe, an itemized and detailed accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **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 related to the Work;
- 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.
- h. The amount of credit to be allowed by Contractor to City for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus Contractor's allocated percent for profit and overhead, as confirmed by Design Consultant, subject to any equitable adjustment recommended by Design Consultant and approved by 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 net increase or decrease, if any, with respect to that change.
- i. 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 Change Order.
- j. If City and Contractor cannot reach an agreement on either an adjustment on the Contract Sum and Contract Time, pursuant to an issued Field Work Directive, City and Contractor shall execute a Change Order for the adjustment on the

Contract Sum or Contract Time, if any, the Parties do agree upon for the Work performed and Contractor reserves the right to file a Claim for any disagreements in Contract Sum or Contract Time not addressed in the Change Order, pursuant to **ARTICLE IV.3**. If 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 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.3**.

#### **VII.4 MINOR CHANGES TO THE WORK.**

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

#### **VII.5 TIME REQUIRED TO PROCESS CHANGE ORDERS.**

**VII.5.1** All responses by Contractor to proposal requests from City or Design Consultant shall be accompanied by a complete itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow City and Design Consultant a minimum of thirty (30) calendar 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.5.2** All Change Orders require written approval by either City or City 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) calendar 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 or City Council Resolution or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM SHALL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Contractor shall proceed with the work under a pending Change Order only if directed in writing to do so by CITY.

**END OF ARTICLE VII**

## **ARTICLE VIII. TIME**

### **VIII.1 PROGRESS AND COMPLETION.**

**VIII.1.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE CONTRACT.**

**VIII.1.2** By executing the Contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**VIII.1.3** Contractor shall proceed with the Work expeditiously using adequate forces and shall achieve Substantial Completion within the Contract Time.

**VIII.1.4** Contractor shall work sunrise to sundown Monday through Saturday.

### **VIII.2 DELAYS AND EXTENSIONS OF TIME.**

**VIII.2.1** Neither City nor Contractor, except as provided for in this **ARTICLE VIII.2.1**, shall be liable to the other for any delay to Contractor's Work by reason of fire, act of God, riot, strike or any other cause beyond City's control. Should any of these listed factors delay the Work's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and City, Contractor shall receive an extension of the Contract Times equal to the delay if a written claim is made accordance to **ARTICLE IV.2.6**. Under no circumstances shall City be liable to pay Contractor any compensation for such delays. Note that any request for an extension of time due to delays or disruption caused by unusually severe weather are addressed in **ARTICLE IV.2.6.b**.

**VIII.2.2** Should Contractor be delayed solely by the act, negligence or default of City or Design Consultant, and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and City, Contractor shall receive an extension of the Contract Time equal to the verified delay or portion thereof if a written claim is made within accordance to **ARTICLE IV.2.6** of the act, negligence or default of City or Design Consultant and granted by City. 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 (said per diem includes the costs incurred by Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or supplier to administer their Work. Compensation for Subcontractor's and supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to a City-caused event. In no event shall Contractor be entitled to home office or other off-site expenses or damages.

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

**VIII.2.4** This Contract does not permit the recovery of damages by Contractor for delay, disruption or acceleration, other than those described in **ARTICLE VIII.2**, as provided under **ARTICLE IV.2.11(c)** and those justified by a Time Impact Analysis. Contractor agrees that it fully shall be compensated for all delays solely by an extension of non-compensatory time or as contemplated in **ARTICLE VIII.2**.

**END OF ARTICLE VIII**

## **ARTICLE IX. PAYMENTS AND COMPLETION**

### **IX.1 CONTRACT SUM.**

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

### **IX.2 SCHEDULE OF VALUES.**

**IX.2.1** A Schedule of Values for all of the Work shall be submitted by Contractor and shall include quantities and prices of items which, when added together, equal a contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable, overhead and profit shall be included as a separate line item.

**IX.2.2** Before the first Application for Payment, Contractor shall submit to City and Design Consultant a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as City and Design Consultant may require. This schedule, unless objected to by Design Consultant or City, shall be used as a basis for reviewing Contractor's Applications for Payment.

### **IX.3 APPLICATIONS FOR PAYMENT.**

**IX.3.1** Contractor shall submit Applications for Payment to City electronically, at minimum, every thirty (30) days throughout the duration of the Project. City may elect to create Electronic Applications for Payment for Vertical Projects. 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. Electronic Applications for Payment will be created by City at a minimum of every thirty (30) days. Contractor electronically shall attach to its Application for Payment all data substantiating Contractor's right to payment as City or Design Consultant may require, such as copies of requisitions from Subcontractors and material suppliers reflecting retainage, if provided for in the Contract Documents, and reflecting a deduction for Liquidated Damages, if applicable. Applications for Payment shall not include requests for payment for portions of the Work which Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom Contractor intends to pay.

**IX.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for

subsequent incorporation in the Work and verified by 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.3.3** Contractor warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from City shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD 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.3.4** By submission of an Application for Payment, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's 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.4 PAY APPLICATION APPROVAL.**

**IX.4.1** Design Consultant shall, within five (5) business days after the electronic receipt of Contractor's Application for Payment through *PRIMELink*, either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Contractor and City the Design Consultant's reasons for withholding approval, as provided in **ARTICLE IX.5.1**.

**IX.4.2** The certification of an Application for Payment 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 the Work has progressed to the point indicated and that, to the best of Design Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The

foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by Design Consultant. The issuance of a Certificate for Payment further shall constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation Design Consultant has:

- 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 material 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** The 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 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. Persistent failure by Contractor to carry out the Work in accordance with the Contract Documents;
- h. The applicable Liquidated Damages were not included in the Application for Payment;
- i. Billing for unapproved/unverified materials stored off Site; or
- j. A current schedule update 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 XI.5.1**.

**IX.6 PROGRESS PAYMENTS.**

**IX.6.1** After the final approval of the 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 the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Contractor-acquired materials stored on the Project Site, and/or within off-site storage facilities either owned or leased by Contractor. Upon receipt of a complete and mathematically accurate Application for Payment from Contractor, City shall make payments, in accordance with **ARTICLE IX**, to Contractor within thirty (30) calendar days on Contracts totaling four hundred thousand dollars (\$400,000.00) or less, based upon such cost determination and at the Contract prices in a sum equivalent to ninety percent (90%) of each such invoice. The remaining ten percent (10%) retainage shall be held by City until the Final Completion. However, where the Contract amount exceeds four hundred thousand dollars (\$400,000.00), installments shall be paid to Contractor at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of City receipt of a complete and mathematically accurate Application for Payment from the Contractor, and the retainage held until Final Completion shall be five percent (5%).

**IX.6.3** 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.6.4** 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.6.5** City and/or Design Consultant shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by City and Design Consultant on account of portions of the Work done by such Subcontractor.
- IX.6.6** Neither City nor Design Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.
- IX.6.7** Payments to material suppliers shall be treated in a manner similar to that provided in **ARTICLE(S) IX.6.2, IX.6.3 and IX.6.4** regarding Subcontractors.
- IX.6.8** 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 that was not performed or furnished in accordance with the Contract Documents.

## **IX.7 SUBSTANTIAL COMPLETION.**

- IX.7.1** When Contractor considers that the Work, or a portion thereof which City agrees to accept separately, is Substantially Complete, Contractor shall prepare and submit to City and Design Consultant a preliminary comprehensive list of items to be completed or corrected prior to Final Completion and final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- IX.7.2** Upon receipt of Contractor's list of items to be completed or corrected, City and Design Consultant shall make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If City's or Design Consultant's inspection discloses any item, whether or not it was included on Contractor's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that City may occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by City or Design Consultant. In such case, Contractor then shall submit a request for another inspection by City and Design Consultant to determine Substantial Completion and Contractor shall be responsible for all costs incurred and associated with re-inspection.
- IX.7.3** When the Work – or the designated portion thereof which City agrees to accept separately – is Substantially Complete, Design Consultant or City shall prepare a

Certificate of Substantial Completion (*Vertical Projects*) or a Letter of Conditional Approval (*Horizontal Projects*) which 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 security, maintenance, heat, utilities, damage to the Work and insurance; and
- c. Confirm the time limit by which Contractor shall complete all items on the list accompanying the Certificate.

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

## **IX.8 PARTIAL OCCUPANCY OR USE**

**IX.8.1** City may occupy or use any completed or partially completed portion of the Work at any stage of the Work when such partially completed portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer, as required and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided City and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion of the Work to be Substantially Complete, Contractor shall prepare and submit a list of items to be completed or corrected prior to Final Completion and final payment and submit such list to City and Design Consultant, as provided under **ARTICLE IX.8.2**. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between City and Contractor or, if no agreement is reached, by the decision of Design Consultant.

**IX.8.2** Immediately prior to such partial occupancy or use, City, Contractor and Design Consultant collectively shall inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**IX.8.3** Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**IX.8.4** Upon such partial occupancy or use, and upon Substantial Completion, City may assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.

**IX.8.5** Partial occupancy or use by City does not constitute substantial completion and does not start any warranty period(s).

## **IX.9 FINAL COMPLETION AND FINAL PAYMENT**

**IX.9.1** When all of the Work finally is completed and ready for final inspection, Contractor shall notify City and Design Consultant thereof in writing. Thereupon, City and Design Consultant shall make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the final Application for Payment may be submitted. If City and Design Consultant are unable to approve the final Application for Payment for reasons for which Contractor is responsible and City and Design Consultant are required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by City from the Contractor's retainage.

**IX.9.2** Contractor shall not be entitled to payment of retainage unless and until it submits all documents required in the Retainage Checklist to City. Retainage Checklist shall include, but is not limited to: 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 fully have been paid or otherwise satisfied or shall be paid from final payment; releases and waivers of liens from all Subcontractors of Contractor and of any and all other parties required by Design Consultant or City that either are unconditional or conditional on receipt of final payment; Certificates of insurance showing continuation of required insurance coverage; such other documents as City may request; and consent of Surety to final payment.

**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** 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.10 ADDITIONAL INSPECTIONS.**

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

**IX.10.1** Design Consultant is required to make more than one inspection to determine if Substantial Completion has been achieved by Contractor;

**IX.10.2** Design Consultant is required to make more than one inspection to determine if Final Completion has been achieved by Contractor; or

**IX.10.3** The Work is not substantially complete within thirty (30) calendar days after the date established for the Work's Substantial Completion, as stated in the Contract Documents.

**END OF ARTICLE IX**

## ARTICLE X. PROTECTION OF PERSONS AND PROPERTY

### 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 program applicable to each job site and to the Work to be done, review such program with City in advance of beginning the Work, and enforce such program at all times. Further, Contractor shall comply with all applicable laws and regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Contractor employees. 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 and Subcontractor.
- X.1.2** Contractor shall notify City immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities including, but not limited to, copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.
- X.1.3** Contractor has adopted or shall adopt its own policy to assure a drug and alcohol free work place while performing the Work. Contractor's employees, agents, and Subcontractors shall not perform any service for City while under the influence of alcohol or any controlled substance. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell illegal, illicit and/or prescribed controlled drugs or drug paraphernalia or misuse legitimate prescription drugs while on Site or performing the Work. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell alcoholic beverages while performing the Work or while on Site or performing the Work. Contractor shall remove any of its employees or Subcontractor employees from performing the Work or from the Site any time there is suspicion of alcohol and/or drug use, possession or impairment involving such employee and at any time an incident occurs where drug or alcohol use could have been a contributing factor. City has the right to require Contractor to remove employees or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Contractor's or Subcontractor's employees only may be considered for return to work after Contractor certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Contractor shall not employ any individual, or shall not accept any Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.
- X.1.4** Contractor shall comply with all applicable federal, state and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations,

Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether there exists a valid permit for carrying a weapon.

**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.
- 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 this **ARTICLE X** by Contractor or a Subcontractor shall be a material and substantial breach of this Contract. In the event that City shall determine that Contractor has breached or violated the terms of this Section, 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 XIV.2**.

**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 or third parties, or altering the status of Contractor as an independent contractor.

**X.1.8** Notwithstanding either of 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 insure 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 AND PROPERTY.**

- X.2.1** Contractor shall take reasonable precautions for the safety and training and shall provide 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 the 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, 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 comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- X.2.3** Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying City and users of adjacent sites and utilities.
- a. Contractor shall submit a health and safety plan that includes heat illness measures as required by 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. Prior to the 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. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to City and Design Consultant.
- X.2.6** Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- X.2.7** Notwithstanding the delivery of a survey 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 City-provided Plans are not guaranteed and may not be completely accurate. Contractor shall locate and verify any and all utilities and associated service lines prior to beginning any Work. Contractor shall be responsible for and shall repair, at Contractor's own expense, any damage done to lines, cables, pipes and pipelines identified or not identified to Contractor.

### **X.3 EMERGENCIES.**

- X.3.1** In an emergency affecting safety of persons or property, Contractor shall exercise its best efforts to act to prevent or minimize threatened damage, injury or loss. Additional compensation or extension of time claimed by Contractor on account of an emergency shall be determined, as provided in **ARTICLE IV.2.6** and **ARTICLE VII**.
- X.3.2** If Contractor causes damage resulting in an issue of safety and/or security to a property City, Contractor immediately shall repair any damage caused. If Contractor does not or shall not act immediately to repair the damage caused by Contractor to eliminate the resulting safety and/or security issue(s), City shall act to repair the damage caused and deduct all costs associated with the repair from any money due Contractor.

### **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. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances and fire alarm or police call boxes in the vicinity.
- X.4.2** City reserves the right to remedy any neglect on the part of Contractor, in regard to 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 immediately to remedy any neglect without notice. 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. Contractor shall notify City, City's Traffic Control Department and Design Consultant when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be given at least forty-eight (48) hours in advance. 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 or streets 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.4.3** Contractor shall limit airborne dust and debris throughout the Project site and its duration. Contractor shall apply the necessary amounts of water or other appropriate substance required to maintain sufficient moisture content for dust control. For City *horizontal projects*, Contractor shall apply appropriate amounts of water or other appropriate substance to the base on streets under construction and on detours required to maintain sufficient moisture control in the surface layer for dust control.

**X.4.4** City's Office of Sustainability continues to work on City's Air Quality Control Strategies Plan in its ongoing efforts to lower emissions throughout the City, including City's Project sites. In an effort to assist City in these goals, Contractor shall strive to:

- a. Reduce fuel use by directing its employees and its Subcontractors to reduce vehicle idling, maintaining equipment utilized on the Project and replacing or repowering equipment with current technologies;
- b. Conserve electricity used to provide power to Contractor's offices and throughout the Project site, to include Project lighting, tools and Contractor's Project construction trailer; and
- c. Recycle Project site materials such as asphalt, steel, other metals and concrete.
- d. All costs associated with Contractor's and its Sub-Consultants' and Subcontractors' acquisition and installation of emission control technology shall be considered incidental costs of the Project; as such, no additional compensation shall be provided Contractor by City.

## **X.5 BARRICADES, LIGHTS AND WATCHMEN.**

If the Work is carried on, in or adjacent to any street, alley or public place, Contractor shall, at Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, provide sufficient watchmen and take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that shall be visible at night, and shall be illuminated by lights as required under City's Barricades Specifications. The term "lights," as used in this **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 failure of barricades, signs, lights and/or watchmen necessary to protect the Work. Whenever evidence is found of such damage, City or Design Consultant may order the damaged portion immediately removed and replaced by Contractor at Contractor's sole cost and expense. Contractor's responsibility for maintenance of barricades, signs, lights, and for providing watchmen, as required under this **ARTICLE X.5**, shall not cease until the Project has been finally accepted by City.

**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 Project site for the purpose of making such changes or repairs to their property that may become necessary during the performance of the Work. City reserves the right of entry upon the Project site at any time and for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures and for making other repairs, changes, or extensions to any of City's property. City's actions shall conform to Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to 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 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 the 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 the representatives of the 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 Project site, for which all related costs shall be borne by Contractor, Contractor shall provide for an electronic device to exchange data wirelessly via a local area computer network, to include high-speed internet connections (commonly known as “Wi Fi access”), for City personnel’s use while on the Project site for the duration of the Project.

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

**X.10.2** In the event Contractor encounters on the Project Site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, Contractor immediately shall stop Work in the affected area and report in writing the facts of such encounter to City and Design Consultant. 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 material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, City shall remediate the Hazardous Substance with a separate contractor or through a Change Order with Contractor. If the Hazardous Substance exists in the affected area due to the fault or negligence of Contractor or any of its Subcontractors, Contractor shall be responsible for remediating the condition at the sole expense of Contractor. If applicable, such remediation shall be in accordance with Contractor’s Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by City only

if the Project critical path is affected and Contractor is not the source of the Hazardous Substance. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of **ARTICLE IV.2.6** and **ARTICLE VIII**.

**X.10.3** Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substance brought into or onto the site by Contractor or any Subcontractor or Contractor's Supplier. Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation and/or disposal, notify City and Design Consultant so that they may observe the activities; provided, however, that it shall be Contractor's sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities.

**X.10.4** Contractor shall be responsible for complying with PW'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 they receive approval from City. Projects performed on Aviation grounds shall comply with Aviation's Soil Management Policy.

**END OF ARTICLE X**

## ARTICLE XI. INSURANCE AND BONDS

### XI.1 INSURANCE REQUIREMENTS

Contractor is required to adhere to all insurance requirements as stated in their contract. Contractor agrees to require, by written contract, all Subcontractors providing goods or services pursuant to performance on the Project obtain the same categories of insurance coverage required of Contractor and provide a Certificate of Insurance and endorsement that names Contractor and City as additional insureds. Policy limits of the coverages carried by Subcontractors shall be determined as a business decision of Contractor.

### XI.1.2 INSURANCE BEFORE COMMENCEMENT OF WORK

Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Public Works Department (hereafter referred to as "PW")

### XI.3 PERFORMANCE BONDS AND PAYMENT BONDS.

**XI.3.1** Subject to the provisions of **ARTICLE XI.3.2**, Contractor shall, with the execution and delivery of the Contract, furnish and file with City, in the amounts required in this **ARTICLE XI**, the Surety Bonds described in **ARTICLE XI.3.1.a** and **ARTICLE XI.3.1.b**, 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:

**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.3.2** 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.3.3** 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 ship.
- XI.3.4** The person or persons, partnership, company, firm, Limited Liability Company, association, corporation or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with City and provide the necessary surety bonds and evidence of insurance as required under 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 Payment Bond and Performance Bond and evidence of the required insurance have been furnished to City by Contractor, as required by the Contract Documents; and
  - d. A fully executed Contract has been delivered to Contractor (if required).
- XI.3.5** The failure of Contractor to execute the Contract (if required) and deliver the required Bonds and evidence of insurance within ten (10) days after the Contract is awarded, or as soon thereafter as City can assemble and deliver the Contract and by the time the

City-scheduled Pre-Construction meeting is held, 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. By reason of the uncertainty of the market prices for materials and labor and it being impracticable and difficult to determine accurately the amount of damages occurring to City by reason of Contractor's failure to execute the Contract within ten (10) days and deliver bonds and insurance by the City-scheduled Pre-Construction meeting, the filing of a bid proposal shall constitute an acceptance of this **ARTICLE XI.3.5**. In the event City should re-advertise for bids, the defaulting Contractor shall not be eligible to bid and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this **ARTICLE XI.3**.

#### **XI.4 'UMBRELLA' LIABILITY INSURANCE.**

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

#### **XI.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS.**

**XI.5.1** Each insurance policy to be furnished by Contractor shall address the following required provisions within the certificate of insurance, which shall be reflected in the body of the insurance contract and/or by endorsement to the policy:

- a. City and Design Consultant shall be named as additional insureds on all liability coverages, using endorsement CG 20 26 or broader. When City employs a Construction Manager on the Project, Contractor and Subcontractor(s) shall include the Construction Manager on all liability insurance policies to the same extent as City and Design Consultant are required to be named as additional insureds.
- b. Within five (5) calendar days of a suspension, cancellation or non-renewal of any required line of insurance coverage, Contractor shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during the Contract.
- c. The terms "Owner," "City" or "City of San Antonio" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of City and the individual members, employees and agents thereof in their official capacities, while acting on behalf of City.

- d. The policy phrase or clause “Other Insurance” shall not apply to City where City is an additional insured on the policy. The required insurance coverage furnished by Contractor shall be the primary insurance for all purposes for the Project, as well as the primary insurance for the additional insureds named in the required policies.
- e. All provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten with contractual liability coverage(s) sufficient to include such obligations with the applicable liability policies.

**XI.5.2** Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability which:

- a. All policies must comply with the applicable requirements and special provisions of this **ARTICLE II**.
- b. Any policy evidenced by a Certificate of Insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and City’s decision regarding whether any policy contains such provisions and contrary to this requirement shall be final.
- c. All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that otherwise are acceptable to City.

**XI.5.3** Contractor agrees to the following special provisions:

- a. Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against City, it being the intention that the insurance policies shall protect the Parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this **ARTICLE XI**.
- b. Insurance companies issuing the insurance policies and Contractor shall have no recourse whatsoever against City for payment of any premiums or assessments for any deductibles, as all such premiums and assessments solely are the responsibility and risk of Contractor.
- c. Approval, disapproval or failure to act by City, regarding any insurance supplied by Contractor or any Subcontractor(s), shall not relieve Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by

Contractor's insurance company shall likewise not exonerate or relieve Contractor from liability.

- d. City reserves the right to review the insurance requirements of this **ARTICLE XI** during the effective period of this Contract and to adjust insurance coverage and insurance limits when deemed necessary and prudent by City's Risk Management Division, based upon changes in statutory law, court decisions or the claims history of Contractor and Subcontractors. Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either Party to this Contract or upon the underwriter of any such policy provisions. Upon request by City, Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage.
- e. No special payments shall be made for any insurance policies that Contractor and Subcontractors are required to carry. Except as provided in **ARTICLE XI.5.3.d**, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.
- f. Any insurance policies required under this **ARTICLE XI** may be written in combination with any of the other policies, where legally permitted, but none of the specified limits neither may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this **ARTICLE XI** be limited or circumvented by doing so.

**END OF ARTICLE XI**

## **ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK**

### **XII.1 INSPECTING WORK.**

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

### **XII.2 UNCOVERING WORK.**

**XI.2.1** If a portion of the Work is covered, concealed and/or obstructed, contrary to City's or Design Consultant's requirements specifically expressed in the Contract Documents, it must be uncovered for City's 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 and Design Consultant or City has not inspected the Work prior to its being covered, concealed and/or obstructed, City 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 CORRECTING WORK.**

**XII.3.1** Contractor promptly shall correct any Work rejected by City or Design Consultant as failing to conform to the requirements of the Contract Documents, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, along with all costs for additional testing, inspections and compensation for Design Consultant's services and expenses made necessary thereby.

**XII.3.2** In addition to Contractor's warranty obligations, if any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, including, but not limited to these General Conditions, Contractor shall correct it promptly after receipt of written notice from City or Design Consultant to correct unless City previously has given Contractor a written acceptance or waiver of the defect or nonconformity. Contractor's obligation to correct defective or nonconforming Work remains in effect for:

- a. One (1) year after the date of Substantial Completion of the Work or designated portion of the Work;
- b. One (1) year after the date for commencement of warranties established by agreement in connection with partial occupancy under **ARTICLE IX.1** hereto; or
- c. The stipulated duration of any applicable special warranty required by the Contract Documents.

**XII.3.3** The one (1) year period, described in **ARTICLE XII.3.2.a**, **ARTICLE XII.3.2.b** and **ARTICLE XII.3.2.3**, shall be extended, with respect to portions of the Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual completion of the Work.

**XII.3.4** The obligations of Contractor under **ARTICLE III.5** and this **ARTICLE XII.3** shall survive final acceptance of the Work and termination of this Contract. City shall give notice to Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in this **ARTICLE XII.3** does not limit the ability of City to require Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by City or Design Consultant at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one (1) year period also does not relieve Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one (1) year correction period.

**XII.3.5** Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by City.

**XII.3.6** If Contractor fails to correct any defective or nonconforming Work within what City deems a reasonable time after City or Design Consultant gives written notice of rejection to Contractor, City may correct the defective or nonconforming Work in accordance with this **ARTICLE XII.3**. If Contractor promptly does not proceed with correction of any defective or nonconforming Work within a reasonable time fixed by written notice from City or Design Consultant, City may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay the costs of removal and storage within ten (10) calendar days after written notice by City or Design Consultant, City may, upon ten (10) additional calendar days written notice, sell the materials and equipment at auction or at private sale and shall account to Contractor for the proceeds, after deducting all costs and damages that should have been borne by Contractor to correct the defective work, including all compensation for Design Consultant's services and expenses made necessary as a result of the sale, removal and storage. If the proceeds of sale do not cover the costs that Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to Contractor then or

thereafter are not sufficient to cover the deficiency, Contractor shall pay the difference to City.

**XII.3.7** Contractor shall bear the cost of correcting destroyed or damaged construction of City or City's separate contractors, whether the construction is completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**XII.3.8** Nothing contained in this **ARTICLE XII.3** shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. The establishment of the one (1) year time period, as described in **ARTICLE XII.3.2** relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

**XII.3.9** Any Work repaired or replaced, pursuant to this **ARTICLE XII**, shall be subject to the provisions of **ARTICLE XII** to the same extent as Work originally performed or installed.

#### **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. Any adjustment shall be accomplished whether or not final payment has been made.

**END OF ARTICLE XII**

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

### **XIII.1 FINAL COMPLETION OF CONTRACT.**

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

### **XIII.2 WARRANTY FULFILLMENT.**

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

### **XIII.3 TERMINATION BY CITY FOR CAUSE.**

**XIII.3.1** 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) calendar days advance written notice and an opportunity to cure to Contractor, including but not limited to the following causes:

- a. Failure or refusal of Contractor to start the Work within ten (10) calendar days after the date of the written Notice to Proceed is issued by City to Contractor commence Work.
- b. A reasonable belief of City 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 equipment or construction forces properly to execute the Work in a timely manner.
- 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 observe any material requirements of the Contract Documents or to comply with any written orders given by City or Design Consultant, as provided for in the Contract Documents.
- g. Failure or refusal of Contractor promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Contractor in writing by City or Design Consultant.
- h. A reasonable belief by City collusion exists or has occurred for the purpose of illegally procuring the contract or a Subcontractor, or that a fraud is being perpetrated on City in connection with the construction of Work under the Contract.
- i. Repeated and flagrant violation of safe working procedures.

**XIII.3.2** When the Work or any portion of the Work is terminated for any of the causes itemized in **ARTICLE XIII.3.1**, or for any other cause except termination for convenience pursuant to **ARTICLE XIII.3.5**, Contractor shall, as of the date specified by City, immediately discontinue the Work or portion of the Work as City shall designate, whereupon the Surety shall, within fifteen (15) calendar days after the written Notice of Termination by City For Cause has been served upon Contractor and the Surety or its authorized agents, assume the obligations of Contractor for the Work or that portion of the Work which City has ordered Contractor to discontinue and Surety may:

- a. Perform the Work with forces employed by the surety;
- b. With the written consent of City, tender a replacement Contractor to take over and perform the Work, in which event the Surety shall be responsible for and pay the amount of any costs required to be incurred 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 of Termination by City For Cause involving **ARTICLE XIII.3.1** and/or **ARTICLE XIII.3.2**, the Surety shall assume Contractor's place in all respects and the amount of funds remaining and unpaid under the Contract shall be paid by City for all Work performed by the Surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of City to deduct any and all costs, damages (liquidated or actual) City incurred including, but not limited to, any and all additional fees and expenses of Design Consultant and any attorneys' fees City incurs as a result of Contractor's default and subsequent termination.

**XIII.3.3** The balance of the Contract Sum remaining at the time of Contractor's default and subsequent termination shall become due and payable to the Surety as the Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If the Surety does not, within the time specified in **ARTICLE XIII.3.2**, exercise its obligation to assume the obligations of the Contract, or that 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, plant, tools, equipment, supplies and property of every kind, to be provided by Contractor for the purpose of the Work; and
- b. Procure other tools, equipment, labor and materials for the completion of the Work at Contractor's expense; and
- c. Charge to the account of Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses.

**XIII.3.4** 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. Contractor and the Surety shall be liable to City for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including, but not limited to, additional fees of Design Consultant and attorney's fees) and liquidated or actual damages incurred as a result of the termination.

**XIII.3.5** City shall not be required to obtain the lowest bid for the Work of completing the Contract, as described in **ARTICLE XIII.3.3** herein, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and the other damages, as provided in **ARTICLE XIII.3.3**. In case City's costs and damages are less than the sum which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then City may pay Contractor (or the Surety, in the event of a complete Termination by City For Cause) the difference, provided that Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then Contractor and its Surety shall pay the amount of the excess to City immediately upon written notice from City to Contractor and/or the Surety for the excess amount owed. When only a particular part of the Work is being carried on by City, by contract or otherwise under the provisions of this Section, Contractor shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workers employed and provided by City.

**XIII.3.6** 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, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Contractor. Upon Contractor's receipt of such written notice, Contractor immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Contractor shall then be paid by City, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred, the actual cost of all materials installed and the actual cost of all materials stored at the Project site or away from the Project site, as approved in writing by City but not yet paid for and which cannot be returned, plus applicable overhead, profit, and actual, reasonable and documented termination costs, if any, paid by Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents up to the date of termination for convenience, less all amounts previously paid for the Work. No amount ever shall be paid to Contractor for lost or anticipated profits on any part of the Work not performed.

#### **XIII.4 TEMPORARY SUSPENSION OF THE WORK.**

**XIII.4.1** The Work or any portion of the Work may temporarily be suspended by City, for a time period not to exceed ninety (90) calendar days, immediately upon written notice to Contractor for any reason, including, but not limited to:

- a. The causes described in **ARTICLE XIII.3.1.a** through **ARTICLE XIII.3.2.i**;
- b. Under other provisions in the Contract Documents that require or permit temporary suspension of the Work;
- c. Situations where the Work is threatened by, contributes to or causes an immediate threat to public health, safety, or security; or
- d. Other unforeseen conditions or circumstances.

**XIII.4.2** Contractor immediately shall resume the temporarily suspended Work when ordered in writing to do so by City. City shall not, under any circumstances, be liable for any claim of Contractor arising from a temporary suspension due to a cause described in **ARTICLE XIII.4.1**; provided, however, that in the case of a temporary suspension for any of the reasons described under **ARTICLE XIII.4.1.b** through **ARTICLE XIII.4.1.d**, where Contractor is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to City, City shall make an equitable adjustment for the following items, provided that a claim properly is made by Contractor under **ARTICLE IV.2.6**:

- e. An equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension, as determined by City and Design Consultant;

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

**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 by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

**XIV.2.2** This Contract is entered into subject to and controlled by the Charter and ordinances of the City of San Antonio and all applicable laws, rules and regulations of the State of Texas and the Government of the United States of America. Contractor shall, during the performance of the Work, comply with all applicable City of San Antonio codes and ordinances, as amended, and all applicable State of Texas and Federal laws, rules and regulations, as amended.

### **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 Documents, 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, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Project by City. Such Consultants shall be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of any independent Consultants shall be described in the agreements between City and those Consultants. The provision of inspection services by City shall be for Quality Assurance and shall not reduce or lessen Contractor's responsibility for the Work or its duty to establish and implement a thorough Quality Control Program to monitor the quality of construction and guard City against defects and deficiencies in the Work, as required. 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. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale:

**XIV.7.1** A City officer or employee; his parent, child or spouse;

**XIV.7.2** A business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares value of the business entity; (3) a business entity in which any individual or entity above listed is a Subcontractor on a City contract, or

**XIV.7.3** A partner or a parent or subsidiary business entity.

Pursuant to this **ARTICLE XIV**, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and/or agents are neither officers nor employees of 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.8**, 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 performed in Bexar County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Bexar County, Texas.

#### **XIV.9 INDEPENDENT CONTRACTOR.**

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

#### **XIV.10 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 insure that, in connection with any Work under this Contract, Contractor and its Subcontractor(s) shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, either directly, indirectly or through contractual or other arrangements. Contractor also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended.

#### **XIV.11 BENEFITS TO PUBLIC SERVANTS.**

**XIV.11.1** 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.11.2** 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.11.3** Notwithstanding any other legal remedies, City may require Contractor to remove any employee of Contractor, a Subcontractor or any employee of a Subcontractor from

the Project who has violated the restrictions of this **ARTICLE XIV** or any similar State or Federal law and 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.

**END OF ARTICLE XIV**

## **ARTICLE XV. AUDIT**

### **XV.1 RIGHT TO AUDIT CONTRACTOR'S RECORDS.**

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

**XV.1.1** As used in these General Conditions, "Contractor written and electronically stored records" shall include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Contractor written and electronically stored records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in City's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents.

**XV.1.2** City agrees that it shall exercise the right to audit, examine or inspect Contractor's records only during regular business hours. Contractor agrees to allow City and/or City's designee access to all of the Contractor's Records, Contractor's facilities and current or former employees of Contractor, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Contractor also agrees to provide adequate and appropriate work space necessary for City or its designees to conduct such audits, inspections or examinations.

**XV.1.3** Contractor shall include this **ARTICLE XV** in any Subcontractor, supplier or vendor contract.

### **END OF ARTICLE XV**

## **ARTICLE XVI. ATTORNEY FEES**

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

**END OF ARTICLE XVI**

**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.2.5 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.4.5 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.

(Remainder of this page intentionally left blank)

## 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 contact. 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**

## **EXHIBIT D – INSURANCE REQUIRMENTS**



CITY OF SAN ANTONIO  
**PUBLIC WORKS DEPARTMENT**

**INSURANCE REQUIREMENTS**

It is agreed and understood the following provisions and insurance table are binding, and are a part of the contract. This document contains the following:

- **Insurance Requirements and Provisions**
- **Indemnification**
- **Insurance Table**

A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Public Works Department, which shall be clearly labeled with the Project Name in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Public Works Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed in the table.

D) Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

**City of San Antonio  
Attn: PW Department  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

F) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

L) Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

## **INDEMNIFICATION**

**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.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

**PROJECT: MARKET STREET CYCLE TRACK RFQ: 2024-116 |WBS: 23-04062**

TYPE	AMOUNTS
<p>1. Workers' Compensation</p> <p>2. Employers' Liability</p>	<p>\$ 1,000,000 E.L. each accident</p> <p>\$ 1,000,000 E.L. Disease - each employee</p> <p>\$ 1,000,000 E.L. Disease - policy limit</p>
<p>3. Commercial General Liability Insurance to include coverage for the following:</p> <p>Premises/Operations</p> <p>Products/Completed Operations</p> <p>Personal/Advertising Injury</p> <p>Contractual Liability</p> <p>Explosion, Collapse, Underground</p>	<p>For Bodily Injury and Property Damage of:</p> <p>\$ 1,000,000 per occurrence;</p> <p>\$ 2,000,000 general aggregate, or its equivalent in umbrella liability coverage must include per project aggregate.</p>
<p>4. Business Automobile Liability:</p> <p><b>Applicable for this contract</b></p> <p>Owned/leased vehicles</p> <p>Non-owned vehicles</p> <p>Hired Vehicles</p>	<p>Combined Single Limit for Bodily Injury and Property Damage of:</p> <p>\$ 1,000,000 per occurrence</p>
<p>5. Professional Liability (Claims-made basis)</p> <p>To be maintained and in effect for no less than <b>two (2)</b> years subsequent to the completion of the professional service.</p>	<p>\$ 1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.</p>
<p>6. Umbrella Liability Coverage</p>	<p>\$ 2,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage.</p>
<p>Additional Requirements: NA</p>	

**SCOPE OF SERVICES:**

The City of San Antonio, Public Works Department is issuing a Request for Qualifications seeking Statement of Qualifications from qualified firms to provide PS&E and environmental support services for the Market Street Cycle Track (South Flores to IH 37). Through this solicitation, the City’s intents to select one firm for engineering design and construction administration services for this Project.

The City of San Antonio is seeking a design team to produce the Plans, Specifications, & Estimates (PS&E) and construction administration services for the construction of a two-way separated bike facility (cycle track) from Flores Street to IH 37 on Market/Dolorosa, South Alamo, & Commerce Streets to include drainage modifications, traffic signals, pedestrian/bicycle safety lighting, streetscape improvements, signing and pavement markings. Other services to be provided under this contract include supplemental survey, public and stakeholder engagement, historic research, archaeological services, and construction phase services.

**CONTRACT AMOUNT:**

\$1,300,000.00

## **EXHIBIT E – ADDITIONAL SERVICES AND AMENDMENTS**

## HEAT ILLNESS PREVENTION ORDINANCE ACKNOWLEDGEMENT FORM

Effective August 31, 2023, the Heat Illness Prevention Ordinance implemented requirements to certain City-funded contracts involving activities in outdoor and unconditioned spaces.

To comply with the Heat Illness Prevention Ordinance, respondents/bidders are required to submit this acknowledgement form as part of their response to City solicitations, where this ordinance may be applied.

1. Respondent/Bidder acknowledges that, as an employer, Respondent/Bidder is currently responsible under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970 (the "Act") to provide their employees with a place of employment that "is free from recognized hazards that are causing or likely to cause death or serious harm to employees", including heat-related hazards that are likely to cause death or serious bodily harm.
  
2. Respondent/Bidder acknowledges that the San Antonio City Council approved an ordinance on August 31, 2023, to provide criteria to further guide contractors in San Antonio heat conditions to better protect its residents and contractor employees working in San Antonio (the "Heat Illness Prevention Ordinance"), which provides:

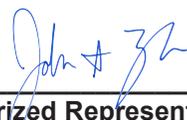
When the heat index for San Antonio, Texas equals or exceeds 95 degrees Fahrenheit, Contractor is required to take all of the following actions for all onsite workers working outdoors or unconditioned spaces (without air conditioning):

- 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.
- d) Post signage with City requirements in both 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.
- e) Contractor shall submit a "heat safety plan" as part of Contractor's proposal.

3. Respondent/Bidder  **agrees**  **does not agree** to adhere to the City's Heat Illness Prevention Ordinance. Respondent's/Bidder's agreement to adhere to the City's Heat Illness Prevention Ordinance may constitute Respondent's/Bidder's "heat safety plan" or Respondent/Bidder may choose to submit one with this Acknowledgement.

**Project/Solicitation Name & No.** Market Street Cycle Track RFQ: 2024 | WBS: 23-04062

**Acknowledged:**



**(Signature) Authorized Representative of Respondent/Bidder**

**John Tyler, P.E., RAS**

**(Print Name) Authorized Representative of Respondent/Bidder**

**Managing Vice President, Transportation**

**Title**

**Pape-Dawson Consulting Engineers, LLC**

**Contractor/Firm Name**

**1/15/2025**

**Date**