



**CITY OF SAN ANTONIO, TEXAS  
CONSTRUCTION MANAGER AT RISK CONTRACT**

**Ella Austin Community Center Renovations  
PROJECT NUMBER: 2024-053**

This Construction Manager at Risk Contract (hereafter referred to as “Agreement”) is entered into by and between the City of San Antonio, Texas, a Texas Municipal Corporation and home- rule City (hereafter referred to as “City” or “Owner”) by and through its City Manager, pursuant to Ordinance Number **20XX-XX-XX-XXX** passed and approved by the San Antonio City Council on **MONTH DAY, 2024** and FA Nunnelly Company dba Nunnelly General Contractor corporation authorized to do business in the State of Texas (hereafter referred to as “CMAR” or “Contractor”) with its primary business location at 2922 N. Pan AM Expressway, San Antonio, TX, 78208. City and Contractor individually shall be referred to herein as “a Party” and collectively referred to herein as “the Parties”.

**RECITALS**

- A. The City Manager of the City of San Antonio, Texas, is authorized and empowered to execute agreements for professional and construction services.
- B. City intends to construct the **Ella Austin Community Center Renovations** as described in **Exhibit B** (Project Definition) attached hereto and made a part hereof (hereafter referred to as the “Project”).
- C. To undertake the design of said Project, City has entered into a contract with the Design Consultant.
- D. Contractor has represented to City the ability to provide pre-construction services and construction phase services for the Project and, based on this representation, City engages Contractor to provide pre-construction services and construction phase services for the Project. As part of the construction phase services, Contractor may construct a portion of the Project if qualified and selected for construction.
- E. Based on this representation, City intends to enter into this Agreement with Contractor for the Pre-Construction Phase Services and the Construction Phase Services identified in this Agreement.

## **AGREEMENT**

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

Contractor, to further the interests of City, shall perform the services required by this Agreement and in accordance with this Agreement, to the satisfaction of the Director of the Public Works Department (hereafter referred to as “Director”), its terms and conditions in a good and workmanlike manner exercising the degree of care, skill and judgment a professional contractor performing the same or similar services would exercise at such time and under similar conditions. Contractor shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.

Attached hereto and incorporated herein by reference, as if fully set out herein, are this Agreement’s Exhibits:

### **EXHIBIT A –PAYMENT AND PERFORMANCE BOND FORMS**

### **EXHIBIT B – PROJECT DEFINITION**

### **EXHIBIT C – CONTRACTOR’S HOURLY RATE SCHEDULE AND SCHEDULE OF VALUES FOR PRE-CONSTRUCTION SERVICES**

### **EXHIBIT D – SUBMITTAL REQUIREMENTS FOR THE GMP**

### **EXHIBIT E – SUBMITTAL REQUIREMENTS FOR A FIXED COST METHODOLOGY**

### **EXHIBIT F – APPROVED FIXED COST METHODOLOGY FORM**

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

### **EXHIBIT H – APPROVED GMP PROPOSAL FORM**

### **EXHIBIT I – TECHNICAL SPECIFICATIONS**

### **EXHIBIT J – CONSTRUCTION DRAWINGS**

### **EXHIBIT K – SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN**

### **EXHIBIT L – CONTRACTOR DESCRIPTION OF GENERAL CONDITIONS COSTS**

### **EXHIBIT M – ADDENDA**

### **EXHIBIT N – RFQ SUBMITTAL AND PROPOSAL COMMITMENTS**

### **EXHIBIT O – INSURANCE REQUIREMENTS**

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

Contractor agrees this Agreement, as awarded, is for the stated Work, as defined herein. Contractor understands, accepts and agrees payments for Work performed will be made by City on the basis of the indicated amount(s) and percentage(s), per the terms and conditions of the Agreement. See also **Exhibit H, Approved GMP Proposal Form**.

**Pre-Construction Fee: (\$125,000)**

Pre-Construction Fee shall include all personnel, material and equipment expenses, as well as Contractor's additional Overhead and Profit through the Design Phase portion of the Project.

**Construction Fee: [5.25] %**

Construction Fee shall be paid by applying this percentage to the actual Costs of the Work incurred and approved by City, calculated and applied on each of Contractor's submitted Payment Applications.

**Other Related Fees, to Include Builder's Risk, General Liability Insurance, Pollution Liability, Umbrella Liability, and Payment and Performance Bond Premiums.**

Related Fees are an estimated value, based on the Project's and Contractor's projected GMP **(\$23,000,000.00)**. The final construction cost is subject to adjustment, based on Change Orders issued throughout the Project's duration. The actual value paid by City for related fees shall be the straight pass-through cost incurred by Contractor without markup charged by Contractor.

**General Conditions Cost: [11.25] %**

General Conditions Cost shall be paid by applying this percentage to the actual Cost of the Work incurred and approved by City, calculated and applied on each of Contractor's submitted Payment Applications. General Conditions Costs include, but are not necessarily limited to, the items listed on **EXHIBIT L – Contractor DESCRIPTION OF GENERAL CONDITIONS COSTS**, attached hereto and made a part of this Agreement by reference.

CITY OF SAN ANTONIO  
CONSTRUCTION MANAGER-AT-RISK AGREEMENT

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## ARTICLE 1. TERMS AND DEFINITIONS

- 1.1 Addenda – Written or graphic instruments issued after the submittal of the Guaranteed Maximum Price (hereafter referred to as “GMP”) Proposal, which clarify, correct or change the GMP Proposal requirements and/or incorporated as part of this contract.
- 1.2 Approved Fixed Price Proposal – The offer or proposal of Contractor submitted on the prescribed form, setting forth the prices for the entire Work or portions of the Work to be performed during the construction phase which has been approved by City and incorporated herein as part of **Exhibit F**.
- 1.3 Contract Sum – The total maximum not-to-exceed amount payable by City to Contractor for performance of the Work under the Contract Documents, which is equal to (a) during the Pre-Construction Phase, the sum of the payments for Pre-Construction Phase Services calculated in accordance with Section 8.1.1 plus the costs of required bonds and insurance premiums without any markup, plus (b) if a Guaranteed Maximum Price Proposal is accepted by City, the Guaranteed Maximum Price plus the costs of bond and insurance premiums required during the Construction Phase without any markup, plus (c) any authorized adjustments.
- 1.4 Construction Cost Limitation (CCL) – The maximum monetary amount budgeted or otherwise allocated by City for all Construction Phase services, materials, labor and other work required for completion of the Work, in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work and the Construction Fee. City will provide the CCL to Contractor during the Pre-construction Phase of the Project. City may adjust the CCL before or after the acceptance of the GMP Proposal based on changes to Project funding, Project characteristics or other factors. The CCL does not include Contractor’s Pre-Construction Phase Fee.
- 1.5 Construction Documents – Include this Agreement, City’s General Conditions, City’s Supplementary and Special Conditions, the Drawings/Plans, Specifications, details and other documents prepared by the Design Consultant and its Sub-Consultants and by City’s other consultants that are accepted by City and describe the scope and quality of the materials, supplies, equipment, systems and other elements that are required for construction of the Project.
- 1.6 Construction Fee – A set percentage of the total cost of work, to include Contractor’s administrative costs, direct and indirect costs and Contractor’s home office overhead and profit, whether at Contractor’s principal or branch offices.
- 1.7 Contract Time – The number of calendar days or the dates related to the construction phase within which Contractor is to achieve Substantial Completion of the Work.
- 1.8 Contractor’s Representative – The person(s) designated by Contractor in writing with decision-making authority on behalf of Contractor.

- 1.9 Contingency – A fund to cover cost increases during the Project, to be used at the discretion of City, to address such costs that result from City directed changes, unanticipated project circumstances, unforeseen site conditions or related unanticipated costs. The City will set the amount of the Contingency which will be in addition to the Project costs included in Contractor’s GMP and FPP packages.
  
- 1.10 Contract Documents – As defined in the General Conditions to include GMP Plans and Specifications and Fixed Price Proposals (hereafter referred to as “FPPs”).
  
- 1.11 Cost of the Work – The direct costs incurred by Contractor in the proper performance of the Work. The Cost of the Work shall include, but is not necessarily limited to, direct labor costs, Subcontractor costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, building permit fees (if not paid for by City pursuant to the terms of the Contract), materials testing (if not paid and/or provided by City pursuant to the terms of the Contract) and related items. The Cost of the Work shall not include Contractor’s Construction Fee, General Conditions Cost, bond and insurance costs or taxes.
  
- 1.12 Critical Path Schedule/Method – The sequence of necessary and required activities from the start of the Work to the Substantial Completion of the Project, the delay in the completion of which may extend the Substantial Completion date.
  
- 1.13 Day – Means a calendar day, unless otherwise specifically noted in the Contract Documents. A calendar day is a day of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated.
  
- 1.14 Deliverables – The work products prepared by Contractor in performing the scope of Work described in this Contract.
  
- 1.15 Design Consultant – The licensed architect, engineer, or other qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project. 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.
  
- 1.16 Design Services Phase – See Pre-Construction Phase Services herein.
  
- 1.17 Director – The Public Works Department Director or his/her identified designee.
  
- 1.18 Drawings or Plans – Documents which visually represent the scope, extent and character of the Work to be furnished and performed by Contractor during the construction phase and which have been prepared or approved by the Design Consultant and City. These include Drawings that have reached a sufficient stage of completion and released by the Design Consultant solely for the purposes of review and/or use in performing constructability or bid-ability reviews and in preparing cost estimates (e.g. conceptual

design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but “*not for construction*”. Shop Drawings are not Drawings included in this definition.

- 1.19** Fixed Price Proposal (FPP) - The offer or proposal of Contractor submitted on the prescribed form setting forth the proposed prices for the entire Work or portions of the Work to be performed during the construction phase.
- 1.20** Float - The number of Days by which the completion of an activity or logically connected sequence of activities can be delayed without lengthening the Critical Path and extending the Substantial Completion date. Float is generally identified on the Project Schedule as the difference between the early completion times and late completion times for activities.
- 1.21** General Conditions Costs – Includes but is not limited to the types of costs for Contractor during the construction phase as defined in Exhibit L (Contractor Description of General Conditions Cost).
- 1.22** Guaranteed Maximum Price (GMP) – The sum of the maximum cost of the entire Work to be performed during the Construction Phase, including Contractor’s Construction Fee, General Conditions Costs and sales tax(es) (if any).
- 1.23** GMP Plans and Specifications – The three sets of Design Development Documents Plans and Specifications provided, as defined in **Article 2** herein, upon which the Guaranteed Maximum Price Proposal is based.
- 1.24** Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of Contractor, submitted on the prescribed form, setting forth the GMP prices for the entire Work to be performed during the construction phase.
- 1.25** Notice to Proceed (NTP) – A written notice given by City to Contractor fixing the date on which Contractor will start to perform one of the following as applicable:
- (a) Contractor’s obligations under this Agreement which will also constitute the start of the Pre-construction Phase and will set forth the date for Substantial Completion of the Work;
  - (b) Contractor’s initial start of construction Work under the Contract; and
  - (c) Contractor’s work under any FFP package
- 1.26** Party or Parties – Party shall mean City or Contractor individually. Parties shall mean City and Contractor collectively.
- 1.27** Pre-Construction Services – Services provided by Contractor as defined in **Article 3** herein.



- 1.28 Preliminary Budget – The total estimated cost of the Project, including design, construction, and other associated costs and services, which is established by City prior to the commencement of design.
- 1.29 Project – The services and work to be completed by Contractor, Subcontractors and/or Sub-Consultants pursuant to this Agreement as set forth in the Contract Documents.
- 1.30 Project Team – The Design Consultant, Contractor, City and any others designated by City who are responsible for making decisions regarding the programming, design and construction of the Project. The members of the Project Team may be modified from time to time by City.
- 1.31 Schedule of Values (SOV) – Document specified in the General Conditions which divides the Approved Fixed Price Proposals into pay items, such that the sum of all pay items equals the Approved Fixed Price Proposal for the construction phase Work or for any portion of the Work having a separate specified Approved Fixed Price Proposal. City, at its discretion, may require that the SOV be output from the Progress Schedule.
- 1.32 Sub-Consultant – A person, firm or corporation having a contract with Contractor to furnish services required as its independent professional associate or consultant, with respect to the Project.
- 1.33 Subcontractor – An individual or firm having a direct contract with Contractor or any other individual or firm having a contract with an individual or firm having a direct contract with Contractor at any tier, who/which undertakes to perform a part of the Construction Phase Work at the site for which Contractor is responsible. Subcontractors shall be selected through the Subcontractor bid process described in this Agreement.
- 1.34 Substantial Completion – As defined in the General Conditions. The substantial completion date for each FPP will be listed in each FFP Notice to Proceed Letter.
- 1.35 Value Engineering – Alternatives for design, means and methods or other scope considerations that are evaluated by City and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.
- 1.36 Work – All of the work, services and obligations which Contractor is, or may be, required to do to comply with its obligations under this Agreement in relation to the construction of the Project.
- 1.37 Work Packages – One or more packages (individually, referred to as a "Work Package") which identify a specific scope of Work and which will be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work.

## **ARTICLE 2. GENERAL PROVISIONS**

### **2.1 CONTRACT DOCUMENTS**

**2.1.1** Contract Documents are listed in this Section 2.1.1. The most recently issued document takes precedence over previous issues of the same document. In the event of a conflict among the Contract Documents, the following order of precedence shall govern the interpretation of such documents, with the highest authority listed herein. Contract Documents include this Agreement as "a" and its Exhibits in descending order:

- (a) Modifications to the Contract signed by Contractor, City and attachments Design Consultant;
- (b) Contract, including Exhibits A through F, H, and K through P;
- (c) Addenda, with those of later date(s) having precedence over those with earlier date(s);
- (d) Special Conditions;
- (e) General Conditions for City of San Antonio Construction Contracts, (Exhibit G);
- (f) Technical Specifications, (Exhibit I); and
- (g) Construction Drawings (Exhibit J).

Each of the Contract Documents is an essential part of the agreement between the Parties, and/ a requirement occurring in one is as binding as though occurring in all. Contract Documents, by reference, are made a part of this Agreement to the same extent as if set forth herein in full.

### **2.1.2 CORRELATION AND INTENT.**

- 2.1.2.1 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 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.
- 2.1.2.2 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.
- 2.1.2.3 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.

- 2.1.2.4 Reference to manufacturer's instructions, standard specifications, manuals or codes of any technical society, organization or association, laws or regulations of any governmental authority, or to any other documents, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Contractor's 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.
- 2.1.2.5 In case of differences between small and large-scale drawings, the large-scale drawings shall govern. On drawings, given dimensions shall take precedence over scaled measurements. Schedules on drawings shall take precedence over conflicting notations on such drawings. In the event of discrepancy between any drawings and the figures written thereon, the figures, unless otherwise indicated, shall govern over scaled dimensions. 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.
- 2.1.2.6 Notwithstanding the order of precedence in Section 2.1.1, in the event of a conflict among any standard or specification applicable to the Project established by reference contained in the Contract Documents to a described publication, law or regulation, or of a conflict among documents with equal priority, the more stringent requirement applies regardless of the order of precedence that would otherwise apply, unless the Parties otherwise agree. Contractor shall notify City of any perceived conflict and request City's determination respecting the order of precedence among such perceived conflicting provisions promptly upon becoming aware of any such perceived conflict. City shall have the right to determine which standard or specification is more stringent in the event of ambiguity.
- 2.1.2.7 In the Drawings and Specifications, where certain products, manufacturer's trade names or catalog numbers are given, such information is given for the sole and express purpose of establishing a standard of function, dimension, appearance and quality of design in harmony with the Work and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such a substitution has been specifically accepted for use on this Project by City and Design Consultant.

- 2.1.2.8 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.
- 2.1.2.9 In the event of a conflict among the standards, criteria, requirements, conditions, procedures, specifications or other provisions of the Contract Documents and those established by reference to a manual or publication, the Contract Documents shall prevail.
- 2.1.2.10 If the Contract Documents contain differing provisions on the same subject matter and within the same order of precedence pursuant to Section 1.3.7, the provisions that provide greater detail or establish a higher quality, manner or method of performing the Work or use more stringent standards shall prevail.
- 2.1.2.11 Additional details in a lower priority Contract Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Contract Document.
- 2.1.2.12 Omission of details of the Work from the Contract Documents or the mis-description of details of Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Contractor from performing such omitted Work, or the mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder.
- 2.1.2.13 The headings used in this Agreement or any other Contract Documents are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision or shall not be referenced in resolving questions of interpretation or construction.
- 2.1.2.14 The Contract Documents form the entire agreement between City and Contractor and, by incorporation herein, are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

### **2.1.3 INTERPRETATION**

The following rules of interpretation apply when interpreting the Contract Documents:

- 2.1.3.1 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.
- 2.1.3.2 the singular includes the plural and vice versa;
- 2.1.3.3 references to statutes or regulations include all statutory or regulatory provisions

consolidating, amending or replacing the statute or regulation referred to;

- 2.1.3.4 the words “including,” “includes,” and “include” shall be deemed to be followed by the words “without limitation” and shall not be considered to set forth an exhaustive list;
- 2.1.3.5 words such as “herein,” “hereby,” “hereof,” “hereto,” and “hereunder” and words of similar import refer to the entire document in which they are contained and not to any particular provision or section;
- 2.1.3.6 words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
- 2.1.3.7 references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities;
- 2.1.3.8 words of any gender used herein shall include each other gender where appropriate;
- 2.1.3.9 unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive;
- 2.1.3.10 the word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances;
- 2.1.3.11 unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified, or supplemented from time to time in accordance with its terms;
- 2.1.3.12 the division of the Contract Documents into parts, sections, and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of the Contract Document and the headings in these Contract Documents are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of the Contract Documents; and
- 2.1.3.13 whenever the Contract Documents require or provide for any notice, approval, consent, acceptance, determination, decision, certificate, order, response, waiver, explanation, policy, information, or the like, the same and any request for any of the foregoing must be in writing (unless otherwise waived in writing by the other Party).
- 2.1.4 **CHANGES IN TERMS AND CONDITIONS.** The terms and conditions of the Contract Documents may be changed only by a Field Work Directive, Change Order or Amendment.

## **2.2 PAYMENT AND PERFORMANCE BONDS**

2.2.1 On or prior to execution of this Contract, Contractor must provide Payment and Performance Bonds to City each in the penal sum of \$23,000,000.00 and in the forms provided in Exhibit A (Payment and Performance Bond Forms). The penal sums of the Payment and Performance Bonds are subject to increase as described herein. The bonds shall each be in accordance with the provisions of Chapter 2253, Texas Government Code.

2.2.2 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 this Section 2.2 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.

The required Performance Bond shall guarantee 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. The 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.

The required Payment Bond shall guarantee 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.

2.2.3 Upon City's acceptance of each Fixed Price Proposal and the Guaranteed Maximum Price Proposal (GMP), Contractor shall provide riders to the Payment and Performance Bonds on forms prescribed by City [and in accordance with the requirements set forth in the General Conditions for the City of San Antonio Construction Contracts] to increase the penal sum of the bonds. Upon City's acceptance of each Fixed Price Proposal, the riders shall specify that the penal sum of the bonds shall be increased by the amount of Fixed Price Proposal. Upon City's acceptance of the GMP, the riders shall set the penal sum of the bonds at 100% of the GMP amount. No construction shall commence on any Fixed Price Proposal or under the accepted GMP until the adequate Payment and Performance Bonds are and riders are delivered to City.

2.2.4 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 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 to City and on which service of process may be had in matters arising out of the suretyship.

## **2.3 CONSULTATION AND COORDINATION**

- 2.3.1 Program Evaluation: As a participating member of the Project Team, Contractor shall provide to City and Design Consultant a written evaluation of City's Project Program and Project Budget, with recommendations as to the appropriateness of each within thirty (30) days of City issuing a Notice to Proceed to Contractor, unless the parties otherwise mutually agree in writing.
- 2.3.2 Project Meetings: Contractor will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- 2.3.3 Contractor, when requested by City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings germane to the Project. Contractor will provide drawings, schedule diagrams, budget charts and other materials describing the Project when their use is required or appropriate in any such public agency meetings.
- 2.3.4 Contractor will provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters arising during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by City and shall be updated, at minimum, monthly during the Pre-construction Phase of the Project.

## **2.4 PROJECT SCHEDULE**

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

below, is required, the Project Schedule shall indicate milestone dates for the phases once those milestones are determined.

- 2.4.2 The Project Schedule shall include a CPM diagram schedule showing the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 2.4.3 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities and total Float times for all activities, except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 2.4.4 The CPM diagram schedule shall indicate all relationships between activities.
- 2.4.5 The activities making up the schedule shall be sufficient detail to assure adequate planning has been conducted to ensure proper execution of the Work and provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 2.4.6 The CPM diagram schedule shall be based upon activities which coincide with the Schedule of Values.
- 2.4.7 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 2.4.8 The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture, when those activities are interrelated with Contractor activities.
- 2.4.9 The schedule shall include anticipated rain delays during the performance of the contract for items of critical path activity. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service based out of San Antonio International Airport or other approved source.
- 2.4.10 The Project Schedule shall be updated and maintained by Contractor throughout the Pre-Construction Phase, such that it shall not require major changes at the start of the Construction Phase Services to incorporate Contractor's plan for the performance of the Construction Phase Work. Contractor shall provide updates and/or revisions to the Project Schedule for use by the Project Team whenever required, but no less often than at the monthly Project Team meetings. Contractor shall include with such submittals a narrative describing its analysis of the progress achieved to date versus progress planned, any concerns regarding delays or potential delays and any recommendations regarding mitigating actions.
- 2.4.11 If phased construction is deemed appropriate and City and Design Consultant approve, Contractor shall review the design and shall make recommendations regarding the phased issuance of Construction Documents, to facilitate phased construction of the Work, with the objective of reducing the Project Schedule



and/or Cost of the Work. Contractor shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability and any other factors pertinent to saving time and cost.

**2.5 PHASES OF SERVICES AND THE WORK** The services and the Work to be performed by or through Contractor shall be divided into the Pre-Construction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Pre-Construction Phase is completed. However, no Work shall commence under the Construction Phase until City has issued a Notice to Proceed for such Work in accordance with the terms of the Contract.

**2.6 DATE OF COMMENCEMENT.** The Pre-Construction Phase Services shall commence after this Agreement has been executed fully by the Parties the City has issued a Notice to Proceed.

### **ARTICLE 3. CONTRACTOR'S PRE-CONSTRUCTION SERVICES AND RESPONSIBILITIES**

Contractor's Pre-Construction Services Phase shall be deemed to commence upon the date specified in the Notice to Proceed with Pre-Construction Services, issued by City, and shall continue through completion of the Construction Documents or upon the delivery to City of a Guaranteed Maximum Price proposal. The Construction Phase Work shall commence upon City's issuance of a Notice to Proceed with the specific scope of the Work stated therein and shall continue through Final Completion. The duties of Contractor include those set forth in this **Article 3.**

#### **3.1 GENERAL RESPONSIBILITIES**

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

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

or entity. Contractor shall not assign any person or entity to the Project or contract with any person or entity to which City has a reasonable objection. Upon receiving City's reasonable objection of any person or entity and direction, Contractor promptly shall remove and replace the objected person or entity. Following receipt of City's written consent or direction to remove or replace a person or entity, Contractor promptly shall update the list of persons and consultants no later than fifteen (15) calendar days after the change is made during the Pre-Construction Services Phase.

- 3.1.3 The Pre-Construction Services Phase of the Project shall commence upon the date specified in City-issued Notice to Proceed with Pre-Construction Services for the Project and, unless otherwise agreed, shall continue through 100% completion of the Construction Documents or the delivery of a Guaranteed Maximum Price proposal to City. If, however, it is deemed by the Director or his designee to be in the best interest of City, and upon written approval by City, the Construction Services Phase of the Project may commence before the Design Services Phase has been completed, in which case the direction to do so shall be documented in writing and both phases shall proceed concurrently.
- 3.1.4 Contractor shall visit the site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions.
- 3.1.5 Contractor shall provide Pre-Construction Services described herein in a proactive manner and consistent with the most current Drawings and Specifications. Contractor promptly shall notify City in writing whenever Contractor determines any Drawing(s) or Specification(s) is/are inappropriate for the Project and/or cause(s) changes in the Scope of Work requiring an adjustment in the Project Schedule and/or in the Contract Time for the Work, to the extent such are established.
- 3.1.6 Contractor shall provide evaluations, recommendations and information to the Project Team regarding: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of Contractor and City's separate Contractors, if any; cost factors, including costs of alternative materials, systems or designs, Preliminary Budgets and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to complete the Project in accordance with the Project Schedule and GMP.
- 3.1.7 The recommendations and advice of Contractor concerning design alternatives shall be subject to the review and approval of City and City's Consultants. It is not Contractor's responsibility to ascertain the Drawings and Specifications are in accordance with applicable laws, statutes and ordinances, building codes, rules

and regulations. However, if Contractor has actual knowledge portions of the Drawings and Specifications are at variance therewith, Contractor promptly shall notify the Design Consultant and City in writing.

- 3.1.8 Contractor shall be responsible for reporting and assisting in remedying all discrepancies, errors and omissions in the Contract Documents of which Contractor has actual knowledge. In such case, Contractor's responsibilities include the review, coordination and recommendation of a resolution of strategies (within budget constraints) but do not establish a liability for design.
- 3.1.9 Contractor's services shall be provided in conjunction with the services of a Design Consultant. The terms of the Agreement between City and the Design Consultant shall be available for inspection by Contractor upon request.

## **3.2 DESIGN DOCUMENT REVIEWS**

- 3.2.1 Contractor periodically shall evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design and other factors impacting the cost estimate, GMP Proposals, Fixed Price Proposals and/or the Project Schedule.
- 3.2.2 Contractor shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations, in its opinion, required to provide the reasonably necessary information for Contractor to construct the Project. Before Contractor's receipt of Notice to Proceed for Construction, Contractor may request additional investigations to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 3.2.3 Contractor shall meet with the Project Team as required to review designs during their development. Contractor shall familiarize itself with the evolving documents through the construction document phase. Contractor proactively shall advise the Project Team and make recommendations on factors related to construction costs, including quantity calculations to verify quantities specified by the Design Consultant, and any concerns pertaining to the feasibility and practicality of any proposed means and methods, packaging of the Work, selected materials, equipment and building systems and, labor and material availability. Contractor shall advise the Project Team on proposed site improvements and excavation and foundation considerations, as well as concerns with respect to coordination of the Drawings and Specifications. Where appropriate, Contractor shall recommend cost effective alternatives to Design Consultant and City.
- 3.2.4 Contractor routinely shall conduct constructability and bid-ability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency and coordination of Work of Subcontractors, Sub-Consultants and Suppliers.

- 3.2.5 Constructability Reviews: Contractor shall implement and conduct a constructability review to identify and document Project cost and schedule savings opportunities. Whenever the term “value engineering” is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license.
- 3.2.6 Contractor shall prepare a “Constructability Report” identifying items that, in Contractor’s opinion, negatively may impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications and details and shall identify known discrepancies that may generate Change Orders or claims once Construction Phase Services commence. Contractor shall evaluate whether:
- (a) the Drawings and Specifications are configured to enable efficient construction;
  - (b) design elements are standardized;
  - (c) construction efficiency is properly considered in the Drawings and Specifications;
  - (d) module/preassembly design are prepared to facilitate fabrication, transport and installation;
  - (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions;
  - (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable; and
  - (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 3.2.7 Contractor shall identify equipment or material requiring extended delivery times and advise City on the need for expedited procurement of those items.
- 3.2.8 Bid-ability Reviews: Contractor shall check cross-references and complementary drawings and sections within the Specifications and, in general, evaluate whether:
- (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies;
  - (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations;

- (c) Specifications include alternatives in the event a requirement cannot be met in the field; and
  - (d) in its exercise of good judgment as the Project's Contractor, the Project is likely to be subject to differing site conditions.
- 3.2.9 The results of the reviews shall be provided to City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with accompanying notations and recommendations made on the Drawings, Specifications and other documents. If requested by City, Contractor shall meet with City and Design Consultant to discuss any findings and review reports.
- 3.2.10 Contractor's reviews shall be written from a Contractor's perspective and though it shall seek to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Consultant and not Contractor.
- 3.2.11 Notification of Variance or Deficiency: Contractor agrees to assist the Design Consultant in its efforts to ascertain whether the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If Contractor has actual knowledge portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it promptly shall notify the Design Consultant and City in writing, describing the apparent variance or deficiency. Notwithstanding the foregoing, the responsibility for ensuring compliance with applicable laws, statutes, ordinances, building codes, rules and regulations rests solely with the Design Consultant.
- 3.2.12 Alternate Systems Evaluations: The Project Team routinely shall identify and evaluate, using value engineering principles, any alternate systems, approaches and design changes having the potential to reduce Project costs while still delivering a quality and functional product. The recommendations and advice of Contractor concerning design alternatives shall be subject to the review and approval of City and City's Consultants. If the Project Team agrees, Contractor, in cooperation with the Design Consultant, shall perform a cost/benefit analysis of the alternatives and submit such analysis in writing to the Project Team. The Project Team shall decide, at the Project Team's sole discretion, which alternatives if any shall be incorporated into the Project. The Design Consultant shall have full responsibility for the incorporation of City's decided upon alternatives into the Drawings and Specifications. Contractor shall include the cost of the alternatives into the cost estimate and any GMP Proposals.

### **3.3 COST ESTIMATES**

- 3.3.1 Unless otherwise agreed upon by both parties, within fourteen (14) days after receipt of all documents for the various phases of design, Contractor shall provide

a complete and detailed cost projection estimate and a written review of the documents. The cost estimate shall include all cost categories except Contingency to be included in the GMP Summary identified in **Exhibit C** hereto. The Design Consultant and Contractor shall work to reconcile any disagreements on Contractor's estimate, to arrive at an agreed upon cost projection. If no consensus is reached by the Design Consultant and Contractor, City shall make the final determination.

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

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

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

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

3.3.6 Bidding of Project.

3.3.6.1 Upon completion of the Construction Documents, or applicable "Bid Package" portion thereof, by the Design Consultant, Contractor publicly shall advertise, as prescribed for a governmental entity under the Texas Local Government Code and receive sealed bids or proposals from trade Contractors and/or Subcontractors for the performance of all major elements of the Work, other than the minor work that may be included in its General Conditions Costs. Contractor shall comply with City's SBEDA Ordinance and Procurement Program policies and procedures in evaluating the impact of each Subcontractor selection. Contractor shall follow this process in the development of each construction trades package for each Work Package. Contractor shall submit Contractor's standard form of subcontract for the Project to City for review and approval, in



order to verify it contains provisions required by the Contract Documents protective of the interests of City and conforms to the requirements of the Contract Documents. Subcontracts shall not be awarded solely on the basis of cost of the work plus a fee without the prior written consent of City.

- 3.3.6.2 Contractor may perform portions of the Work itself if Contractor submits its bid or proposal for those portions of the Work in the same manner as other trade Contractors and/or Subcontractors and if City determines Contractor's bid or proposal provides the best value for City. If Contractor intends to submit a proposal for such Work, it shall notify City prior to soliciting proposals and all such bids and/or sealed proposals shall be submitted directly to City or its designated representative.
- 3.3.6.3 Contractor shall instruct interested Subcontractors to review the Project Plans and Specifications from the approved list of plan review locations or purchase a copy from the Design Consultant.
- 3.3.6.4 Contractor shall include specific notices of the following statutory requirements in the information to bidders:
  - 3.3.6.4.1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406.
  - 3.3.6.4.2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258.
  - 3.3.6.4.3 A notice of the sales tax exemption for the Project and the procedure for obtaining any required exemption verification or certificates.
  - 3.3.6.4.4 Other notices required, as set out in City's General Conditions or Special Conditions.
  - 3.3.6.4.5 Nothing herein shall prevent Contractor from including other notices required or allowed by law.
- 3.3.6.5 Upon receipt of bids/proposals, Contractor and City (and/or its representative) jointly shall open and review all trade Contractor or Subcontractor bids or proposals, taking into consideration the criteria listed in Texas Local Government Code. Following this review, Contractor shall prepare, for City's review, a notebook to include all bids/proposals received and a summary of all bids and/or proposals received. After discussion with City, Contractor shall recommend to City the bidders/proposers offering the best value to City and with whom Contractor desires to enter into a subcontract. At all times, City retains right to accept and/or reject all Subcontractors.

- 3.3.6.6 The bid/proposal review shall be handled in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by Contractor, the Design Consultant, the Project Management Team or City.
- 3.3.6.7 All bids or proposals shall be made public after the award of the contract or not later than the seven (7) days after the date of final selection of bids or proposals, whichever is later.
- 3.3.6.8 If a specific bidder among those whose bids are delivered by Contractor to City and Design Consultant
- (1) is recommended to City by Contractor;
  - (2) is qualified to perform that portion of the Work;
  - (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but City requires another bid be accepted, then City shall compensate Contractor for the increased change in price, time or Guarantee Maximum Cost for any additional cost and risk Contractor may incur related directly to City's requirement another bid or proposal be accepted.
- 3.3.7 Contractor agrees, at its own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement, free and clear of all claims, liens and charges whatsoever in the manner and under the conditions specified within the time or times stated in the accepted GMP Proposal.
- 3.3.8 The Contract Price shall include the approved Guaranteed Maximum Price Proposal, to be attached hereto, incorporated herein and labeled as **Exhibit H**, and shall include Contingency in an amount which shall be determined and controlled by City upon the acceptance of the GMP, along with Contractor's Pre- Construction Services Fee.
- 3.3.9 Contractor is at risk to cover any additional Project costs in the performance of the Work in excess of GMP (less any contingency listed). Any amounts in excess of the actual Cost of the Work shall be paid by Contractor.
- 3.3.10 The General Conditions Costs and the Construction Fee may be fixed percentages applied to the actual Cost of the Work, as evidenced by the approved GMP, the FPPs and Payment Applications, but are subject to adjustments as permitted in the Contract Documents.



- 3.3.11 Contingencies are funds to be used at the discretion of City to cover any increases in Project costs resulting from City-directed changes, unforeseen site conditions or related unanticipated project costs. Contingency is not available for items or costs that (a) arise as a result of Contractor's negligence or Contractor errors, (b) are covered by other payments to which Contractor is entitled under the Contract, or (c) are otherwise recoverable from an insurance company, Subcontractor or Sub-Consultant, or bonding company. Contingency shall be a separate line item and shall be in addition to the GMP amount provided by Contractor, the sum of which shall be the full contract price for construction. If City approves the use of Contingency for any item upon which the Construction Fee is payable under the terms of the Contract, the amount of the Contingency requested by Contractor may include the Construction Fee. Any unused Contingency amounts at the end of the term of the Contract shall belong to City.
- 3.3.12 During the Pre-construction Phase, City reserves the right to establish a contingency fund in addition to the fund described in Section 3.3.11 to provide greater flexibility in the use of contingency funding. Similar to the fund described in Section 3.3.10, use of such funds would be at City's discretion. However, the second fund would require less administrative approvals and documentation to utilize the contingency funding (e.g., access would not require a Change Order).
- 3.3.13 Approved Fixed Price Proposals are cumulative and the sum total of all Approved Fixed Price Proposals and the remaining costs to complete Work not addressed in Fixed Price Proposals shall not exceed the GMP total (less City's contingency). The amount of City-controlled Contingency for each Approved Fixed Price Proposal shall be negotiated separately. Although determined separately, the Contingency amounts for any Fixed Price Proposal shall be cumulative with other identified contingency amounts and not exclusive for use with a particular element of the Work.
- 3.3.14 If the GMP requires an adjustment due to changes in the Work or other causes, as allowed in the Contract Documents, the cost of such changes is determined subject to the General Conditions. Any markups allowed on such changes shall be captured by City's payment of the Construction Fee. There shall not be any additional markups for work by Sub-Consultants or Subcontractors.
- 3.3.15 Prior to submitting its GMP Proposal, Contractor acknowledges it has been provided unrestricted access to the existing improvements and conditions on the Project Site and it thoroughly has investigated those conditions, to the extent reasonably possible. Contractor confirms its investigation of the Project Site was instrumental in preparing its GMP Proposal for the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time, the GMP, Pre-construction Phase Services or for Construction Phase Services arising from Project conditions Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

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

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

- (i.) Contractor's Cost of Work; and
- (ii.) Indirect Costs, as defined in **Exhibit H – Approved GMP proposal** hereto.

3.4.2 Negotiation of GMP Proposal. After submission of its GMP Proposal for the entire Work, Contractor and City promptly shall meet to discuss and review the Proposal. To the extent the estimated Cost of the Work component of a GMP Proposal exceeds the Construction Cost Limitation, as established herein, Contractor shall exercise its best efforts (as measured by its applicable standard of care under the Contract) to propose Value Engineering solutions and other cost-cutting measures to bring such construction costs within the applicable Limit. In the event the estimated Cost of the Work component exceeds the applicable Construction Cost Limitation, and such cost increase is not due to a change in the scope of the Work, Contractor shall not be entitled to any reimbursement for the time or expenses required to bring such construction costs within the applicable Limit. If City has any comments regarding the respective Proposal or finds any inconsistencies or inaccuracies in the information presented, it promptly shall give written notice to Contractor of such comments or findings. If appropriate, Contractor shall, upon receipt of City's notice, make appropriate adjustments to the respective Proposal. Contractor agrees, to the best of its knowledge, the GMP Supporting Documents at the time of the approval of the GMP are sufficient to enable it to determine the GMP for all the Work covered by such Contract Documents and such Work can be completed in accordance with the Contract Documents for the GMP. By agreeing to a GMP, Contractor agrees with City the Work required by the Contract Documents for the Work including, without limitation, construction means, methods, procedures, and techniques necessary to perform the Work, shall be consistent with:

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

3.4.3 Following approval of a GMP Proposal by City, City shall authorize and cause the Design Consultant to revise the Drawings and Specifications for the Project to the extent necessary, to reflect the agreed-upon assumptions

and clarifications contained in Contractor Construction Phase Contract for the Project. Such Drawings and Specifications shall be furnished to Contractor in accordance with the schedules agreed upon by City, Design Consultant and Contractor. Contractor promptly shall notify the Design Consultant and City if it has actual knowledge the revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

- 3.4.4 Following written approval of the GMP Proposal by City, Contractor without reimbursement shall pay any costs or expenses causing the GMP for applicable Project to be exceeded, except as otherwise provided by the Contract Documents.
- 3.4.5 At the end of the Project, GMP savings resulting from a lower actual project cost than anticipated by Contractor shall revert to City.
- 3.4.6 The GMP is subject to adjustments made in accordance with those allowed by this Agreement and by GMP amendments to this Agreement.
- 3.4.7 GMP amendments are inclusive of prior GMP amounts. The amount of Contingency for each GMP amendment shall be determined separately. Though determined separately, the Contingency amounts for any GMP amendments shall be cumulative with other identified Contingency amounts and not exclusive for use with a particular element of the Work.
- 3.4.8 If the GMP requires an adjustment due to City-requested changes in the Scope of Work or other causes, as allowed in the Contract Documents, the cost of such changes is determined subject to the General Conditions. The markups allowed on such changes shall be captured by City's payment of the Construction Fee. There shall not be any additional markups for work by Sub-Consultants or Subcontractors.

**3.5 FIXED PRICE PROPOSAL REQUIREMENTS** If Contractor elects and to utilize Fixed Price Proposal(s), and City accepts Contractor's utilization of Fixed Price Proposal(s), Contractor shall provide:

- 3.5.1 Contractor's Fixed Price Proposal shall be an amount including Contractor's Costs of the Work and all City-proposed allowances, if any, a detailed and itemized statement of the Cost of the Work organized by trade categories, a list of all of City's allowances, if any, and a detailed and itemized statement of those allowances' basis.
- 3.5.2 The date of Substantial Completion, upon which the requested Fixed Price Proposal is based;
- 3.5.3 The Not-To-Exceed Construction Phase Fee, based on the agreed upon percentage;

- 3.5.4 The Not-To-Exceed General Conditions Costs and shall include bonds and insurance premiums, based on the Cost of The Work for construction (Note: City does not pay any fee or markup for the cost for Contractor's bonds and insurance, as these are straight past-through costs at Contractor's actual incurred costs);
  - 3.5.5 A schedule for Construction Documents issuance dates, upon which the date of Substantial Completion is based;
  - 3.5.6 A complete Schedule of Values with line item breakdowns of the calculations apportioned for the various divisions or phases of the Work. If City has agreed to accept one or more portions of the Work separately, there shall be a separate Schedule of Values for each separate portion of the Project;
  - 3.5.7 A list of the Drawings and Specifications, including all addenda thereto, and the Supporting Documents, which were used in preparation of the Fixed Price Proposal;
  - 3.5.8 A list of the clarifications and assumptions made by Contractor in the preparation of the Fixed Price Proposal to supplement the information contained in the Supporting Documents;
  - 3.5.9 A list of the trade packages supported by certified bids;
  - 3.5.10 Contractor's SBEDA submittals documentation, to the extent required for the specific Project for which the Fixed Price is proposed; and
  - 3.5.11 Any other Project information reasonably requested by City.
  - 3.5.12 The Fixed Price Proposal(s) shall include no amount for sales or use taxes, for which City is exempt. Upon request by Contractor, City timely shall provide to Contractor an appropriate tax exemption certificate or other required verification of City's tax exempt status. Such taxes shall not be reimbursable costs.
- 3.6** The Fixed Price Proposal shall adopt and incorporate all of the terms and conditions of and all of the attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement clearly and conspicuously must be identified to City in writing and specifically accepted in writing by City. In the event of a conflict between any term of the Fixed Price Proposal not clearly and conspicuously identified and approved by City, the terms of this Agreement and its attachments shall control.
- 3.7** Contractor shall not withdraw its Fixed Price Proposal for the Project for ninety (90) days, following submission to City.
- 3.8** Fixed Price Proposal(s) Review and Approval: Contractor shall meet with City and Design Consultant to review the Fixed Price Proposal(s) and the written statement of its basis. As part of the statement of its basis, Contractor shall identify and justify any costs

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

- 3.9** If Contractor's Fixed Price Proposal is greater than the independent third party or Design Consultant's estimate, City may require Contractor to reconfirm its Fixed Price Proposal. Contractor shall accept the independent third party's or Design Consultant's estimate for the Cost of Work as part of his Fixed Price Proposal or present a report to City within seven (7) days of a written request by City identifying, explaining and substantiating the differences. Contractor may be requested to, or at its own discretion may, submit a revised Fixed Price Proposal for consideration by City. At that time, City may accept Contractor original or revised Fixed Price Proposal, if it is within City's budget and Contractor's GMP, without comment.
- 3.10** City may accept or reject Contractor's Fixed Price Proposal or negotiate its terms with Contractor. The Fixed Price Proposal shall not be effective without written approval by City, documenting the agreement of the Parties to a Fixed Price Proposal
- 3.11** Prior to written approval of the Fixed Price Proposal by City, Contractor shall not incur any cost to be reimbursed as part of the Cost of Work for the Construction Phase Services of the Project, except as City may specifically authorize in writing.

#### **ARTICLE 4. AMENDMENTS FOR UNANTICIPATED PRE-CONSTRUCTION SERVICES**

##### **4.1 CHANGE IN SCOPE**

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

##### **4.2 CLAIMS FOR EXTRA WORK**

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

## **ARTICLE 5. CONTRACTOR'S CONSTRUCTION SERVICES AND RESPONSIBILITIES**

### **5.1 GENERAL RESPONSIBILITIES**

- 5.1.1 The Work to be performed under the Construction Phase may commence before the Preconstruction Phase is completed. Contractor shall commence the Construction Phase on the date specified in the Notice to Proceed with Construction issued by City and shall continue until Final Completion of all Work on the Project. In implementation of the responsibilities and duties of Contractor for Construction Phase, Contractor shall provide the services described in this **Article 5**.
- 5.1.2 Contractor shall construct the Work in strict accordance with the Construction Documents and as required by City's General Conditions, Supplementary General Conditions (if any) and City's Specifications within the time required in and by the Project Schedule approved by City.

### **5.2 ADMINISTRATION**

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

### **5.3 CONTROL OF THE WORK**

- 5.3.1 Contractor shall keep City informed of the progress and quality of the Project Work.
- 5.3.2 In accordance with City's General Conditions and Supplementary Conditions, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and all other facilities and services necessary for the proper execution and completion of the Work, in strict accordance with the requirements of the Construction Documents.
- 5.3.3 Contractor shall coordinate delivery and installation of any and all City-procured material and equipment.
- 5.3.4 Where the Contract Documents require a particular product be installed and/or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.
- 5.3.5 Contractor shall take field measurements and verify field conditions and carefully



shall compare such field measurements, conditions and other information known to Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered immediately shall be reported to City.

- 5.3.6 Before ordering materials or doing Work, Contractor and each Subcontractor shall verify measurements at the Site, and each shall be responsible for the correctness of such measurements. No increase to the approved GMP shall be allowed because of differences between actual dimensions and the dimensions indicated in the Design and/or Contract Documents. Dimension differences, which may be found, shall be submitted to City for resolution before proceeding with the Work.
- 5.3.7 Contractor solely shall be responsible for quality control throughout duration of project, to ensure compliance with plans, specifications, good workmanship and construction management.

#### **5.4 CONTROL OF THE WORK SITE**

- 5.4.1 Contractor shall provide a traffic control plan for approval by City, if required by City for execution of the work.
- 5.4.2 Contractor shall take all reasonable steps, procedures and means to prevent any dust nuisance on Site, due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of City and in accordance with all legal requirements.
- 5.4.3 Contractor shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge and emergency exit paths of travel. Contractor shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

#### **5.5 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- 5.5.1 Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by City's and Design Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals, unless Contractor specifically has informed City in writing of such deviation at the time of submittal and City has given written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by City's approval thereof.
- 5.5.2 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 City or Design Consultant on previous submittals.
- 5.5.3 Informational submittals, upon which City is not expected to take responsive action, shall be identified in the Contract Documents.

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

## **5.6 QUALITY CONTROL, INDEPENDENT MATERIALS TESTING AND INSPECTION**

- 5.6.1 In compliance with Texas Government Code, City shall retain, independent of Contractor, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the facility by City. Such consultants shall be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of those independent consultants shall be described in the Agreements between City and those consultants. The provision of inspection services by City shall not reduce or lessen Contractor's responsibility for the Work or its duty to establish and implement a program to monitor and control the quality of construction, to guard City against defects and deficiencies in the Work, required by the Contract Documents. Contractor fully and solely is responsible for constructing the Project in strict accordance with the Construction Documents. When the first and subsequent tests indicate noncompliance with the Contract Documents, all associated costs associated with that noncompliance shall be paid by and are the responsibility of Contractor, including all costs for re-testing. Project Contingency shall not be utilized for the cost of re-testing.
- 5.6.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the original testing agency.
- 5.6.3 Contractor shall cooperate and coordinate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide all access to the Work at all times.
- 5.6.4 At the option of City, materials may be approved at the source of supply before delivery is started.
- 5.6.5 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by Contractor as a cost of the work, unless otherwise provided in the Contract Documents.
- 5.6.6 Contractor's convenience and quality control testing and inspections shall be the sole responsibility of Contractor and paid by Contractor.

## **5.7 PROJECT RECORD DOCUMENTS**

- 5.7.1 At all times during the construction period, Contractor shall maintain at the jobsite a set of blue-line or black-line prints of the Construction Document drawings and shop drawings for Project Record Document purposes.
- 5.7.2 Contractor shall mark these drawings to indicate the actual installation, where the



installation varies from the original Construction Documents, and give particular attention to information on concealed elements, which would be difficult to identify or measure and record at a later date. If applicable, items required to be marked include, but are not limited to:

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

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

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

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

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

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

5.7.6.2 The original copy of the Project Record Drawings (redline mark-

ups) shall be retained by City.

## **5.8 PROJECT SAFETY**

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

- 5.8.1 Contractor shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Contractor's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project, in addition to safety.
- 5.8.2 The Safety Representative shall make routine daily inspections of the Site and shall hold, at minimum, weekly safety meetings with Contractor's personnel, Subcontractors and others, as applicable.
- 5.8.3 Contractor immediately shall report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by legal requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 5.8.4 Contractor shall submit a project safety plan to City for approval, prior to initiating construction work.

## **ARTICLE 6. CITY'S SERVICES AND RESPONSIBILITIES**

### **6.1 DUTY TO COOPERATE**

- 6.1.1 City shall, throughout the performance of the Work, cooperate with Contractor and perform its responsibilities, obligations and services in a timely manner, to facilitate Contractor's timely and efficient performance of the Work and so as not to delay or interfere with Contractor's performance of its obligations under the Contract Documents.
- 6.1.2 City shall furnish, at Contractor's request and at no cost to Contractor, if in City's possession, a file of Construction Documents it possesses in a format compatible with City of San Antonio technology.

### **6.2 CITY'S DESIGNATED REPRESENTATIVE**

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

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

- 6.2.2 City's Representative also shall provide Contractor with prompt notice if he/she observes any failure on the part of Contractor to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents, specifying in such detail as is necessary to enable Contractor's prompt correction of same as required by the Contract Documents.
- 6.2.3 On or before issuing its Notice(s) to Proceed, City shall designate in writing to Contractor a representative who shall have express authority to bind City with respect to all matters requiring City's approval or authorization, other than matters requiring the approval of the San Antonio City Council. To the extent permitted by law, City's representative shall have the authority to make decisions on behalf of City concerning estimates and schedules, construction budgets and changes in the Work and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of Contractor.
- 6.2.4 City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner, to permit Contractor to fulfill its obligations under the Contract Documents.
- 6.2.5 City's Representative also shall provide Contractor with prompt notice if he/she observes any failure on the part of Contractor to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.

### **6.3 INFORMATION AND SERVICES**

- 6.3.1 City, to the best of its abilities, shall provide full and accurate information within seven (7) calendar days of when a request is submitted in PRIMELink, regarding the requirements of the Project, including information which sets forth City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.
- 6.3.2 City shall provide a Preliminary Budget and general schedule information for the Project to Contractor in a timely manner. The Preliminary Budget shall include the anticipated construction cost, any City-controlled contingency for City-requested changes in the Work during construction and/or all other costs that are the responsibility of City. City shall set forth City's plan for milestone dates (if any) and the completion of the Project.
- 6.3.3 Structural and Environmental Tests, Surveys and Reports. In the Pre-Construction Phase, City shall furnish the following with reasonable promptness, **if in City's possession**, so as not to delay Contractor's performance of its services and/or Work, at City's expense:
  - 6.3.3.1 Reports, surveys, drawings and tests accurately identifying the conditions at the Site which are required by law.
  - 6.3.3.2 Surveys accurately identifying the physical characteristics, legal limitations and utility locations for the Site and a written legal description of the Site.

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

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

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

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

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

## **6.6 SEPARATE CONTRACTS**

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

6.6.2 If the proper execution or results of any part of Contractor's work depends on work performed by City's employees, separate Contractors, vendors or employees, Contractor shall inspect such other work and promptly report to City and the Design Consultant in writing any patent defects or deficiencies in such other work rendering it unavailable or unsuitable for the proper execution and results of Contractor's

Work. Contractor's failure to so report shall constitute an acceptance

of the other work as fit and proper for integration with Contractor's work, except with regard to latent or non- apparent defects and deficiencies in the other work.

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

## **ARTICLE 7. CONTRACT TIME**

### **7.1 GENERAL**

- 7.1.1 Work Packages. It is anticipated the Construction Phase Work may be divided into one or more packages (individually, a "Work Package") which, through a Fixed Price Proposal, identify a specific scope of Work and which may be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work.
- 7.1.2 Work Authorization. When the parties have identified the Work to be performed in a Work Package and have agreed on any applicable Contract Time requirements for that Work Package and such other terms and conditions relating to that Work Package including, but not limited to, a Fixed Price Proposal for the Work Package, Contractor shall receive a Notice to Proceed from City and the Approved Fixed Price Proposal shall be incorporated as part of this Agreement. However, no Work shall commence under a Work Package or Fixed Price Proposal until a Notice to Proceed with regard to such Work has been issued in writing by City to Contractor in accordance with the terms of the Contract Documents.
- 7.1.3 Each Work Package established through an Approved Fixed Price Proposal may establish a separate commencement date and a date of Substantial Completion and a performance period. The performance periods are not required to be sequential and may run concurrently.
- 7.1.4 Contractor agrees it shall commence performance of the Work upon receipt of Notice to Proceed and shall achieve the performance periods and Contract Time.
- 7.1.5 All of the times set forth in this **Article 7** shall be subject to adjustment in accordance with the General Conditions.

### **7.2 LIQUIDATED DAMAGES**

- 7.2.1 Contractor understands if Substantial Completion is not attained by the defined Contract Time date, as adjusted, City shall suffer financial damages, which are

difficult to determine and accurately specify. Contractor hereby accepts and agrees if Substantial Completion of the Project is not attained within the specified Contract Time, as adjusted, Contractor shall pay City **(\$2,580.00)** as liquidated damages for each Day Substantial Completion extends beyond the defined Contract Time date, as adjusted.

- 7.2.2 Contractor and Contractor's surety shall be liable for and shall pay to City the sums stipulated in the Agreement as liquidated damages for each calendar day of delay until Contractor attains and City grants Substantial Completion.
- 7.2.3 Upon attaining Substantial Completion Contractor shall be given Thirty (30) calendar days to achieve Final Completion of the Project. Contractor accepts and agrees if Final Completion of the Project is not achieved within Thirty (30) calendar days from the date of Substantial Completion, Contractor shall pay City **(\$1,220.00)** as liquidated damages for each day Final Completion extends beyond Thirty (30) calendar days from the date of Contractor achieving Substantial Completion.
- 7.2.4 If Contractor incurs liquidated damages for either not achieving Substantial Completion by the defined contract date, as adjusted, or not achieving Final Completion within the stated time period, as defined in **Section 7.2.3 herein**, Contractor accepts and agrees City shall be entitled to deduct, from any sums due Contractor, any or all liquidated damages due and owed to City on this Project. In such an instance, Contractor shall include a line item on all submitted pay application requests, tracking the number of days of liquidated damages from the contractual date for either Substantial Completion or Final Completion forward, computing the number of days of liquidated damages incurred for that pay period and deducting the amount of accrued liquidated damages associated with that submitted pay application submittal.
- 7.2.5 Contractor acknowledges and agrees that the foregoing damages have been set based on an evaluation by City of damages which it will incur in the event of late completion of the defined aspects of the Work, including additional administrative costs. Contractor and City agree that the amount of such damages is impossible to ascertain as of the effective date of this Contract and the Parties have agreed to such liquidated damages in order to fix Contractor's costs and to avoid later disputes over which items are properly chargeable to Contractor. It is understood and agreed by Contractor that any liquidated damages payable in accordance with this Section 7.2 are in the nature of liquidated damages and not a penalty and that such sums are not manifestly unreasonable under the circumstances existing as of the effective date of this Contract.

## **ARTICLE 8. PROCEDURE FOR PAYMENT**

### **8.1. CONTRACT PRICE**

#### **8.1.1 PAYMENTS FOR PRE-CONSTRUCTION PHASE SERVICES**

8.1.1.1 Payments for Pre-construction Phase Services shall be made monthly,



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

- 8.1.1.2 Payment for services negotiated as an amount not-to-exceed shall be made in accordance with the percentage of work completed during the preceding month.
- 8.1.1.3 The fees for Contractor and any Sub-Consultants shall be based upon the hourly rate schedule included as **Exhibit C** hereto, attached and presented with the Payment Application.
- 8.1.1.4 Payments from City are due and payable thirty (30) days from the date Contractor's accurate and complete Application for Payment invoice is received by City.
- 8.1.1.5 Contractor shall pay all sums due Sub-Consultants for services and reimbursable expenses within ten (10) calendar days after Contractor has received payment for those services from City.

#### 8.1.2 GUARANTEED MAXIMUM PRICE AND APPROVED FIXED PRICE PROPOSALS

- 8.1.2.1 This article shall be read and interpreted to complement the General Conditions not as a replacement to them.
- 8.1.2.2 For and in consideration of the faithful performance of the Work herein, as set forth in the Contract Documents and in accordance with the directions of City and to its satisfaction, City agrees to pay Contractor the actual Cost of the Work and any applicable General Conditions Costs, the costs for insurance and bonding without markup or fee and Contractor's Construction Fee, but in no event shall City pay Contractor more than the GMP, as adjusted by any Change Orders. Payment for the specific Work under this Agreement shall be made in accordance with payment provisions detailed herein below. To the extent the Construction Phase consists of multiple Work Packages, each such Work Package shall be subject to a Firm Fixed Price Proposal, as defined herein. The sum of the Firm Fixed Price Proposals for all Work Packages shall not exceed the Guaranteed Maximum Price for the Construction Phase.
- 8.1.2.3 At the Pre-Construction Conference prescribed in the General Conditions, Contractor shall submit for City's review and approval a Schedule of Values. The Schedule of Values shall serve as the basis for monthly progress payments made to Contractor throughout the Work, in



accordance with the General Conditions. Any Schedule of Values developed by Contractor for the Project, whether the Schedule of Values described in this section or otherwise, is subject to City approval.

- 8.1.2.4 At least five (5) working days prior to the date established for a Payment Application, Contractor shall submit an updated Project Schedule and meet with City's Representative to review the progress of the Work as it shall be reflected on the Payment Application.
- 8.1.2.5 The Payment Application shall constitute Contractor's representation the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Application and all Work shall pass to City free and clear of all claims, liens, encumbrances and security interests upon the incorporation of the Work into the Project and payment, therefore.
- 8.1.2.6 The Payment Application may request payment for stored equipment and materials if: (1) construction progress is in reasonable conformance with the approved Project Schedule and (2) said store equipment and materials have been verified by City in writing.
- 8.1.2.7 For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment, therefore.
- 8.1.2.8 For materials and equipment stored off the Site and included in Payment Application, City must approve the storage in writing. The material and equipment must be stored within Bexar County, must be separated, tagged or labeled and secured, and be accessible for City's inspection. Contractor must protect City's interest and shall include applicable insurance, bonding, storage and transportation to the Site. Contractor must obtain a negotiable warehouse (or similar) receipt, endorsed over to City for materials and equipment stored off the Site. City will not make payments for materials and equipment stored off the Site until Contractor has delivered the endorsed receipt(s) and other information verifying compliance with this section.
- 8.1.2.9 All bonds and insurance required for stored materials shall name City as the loss payee, to the extent of its interest in the stored materials. Full title to the materials and equipment shall vest in City free and clear of all liens and encumbrances at the earlier of time of payment or delivery to the Site or off-Site storage, provided that payment or delivery does not indicate acceptance or determination of suitability of the materials and equipment by City.

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

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

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

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

## **8.2 CITY MONETARY OBLIGATIONS**

Contractor accepts and agrees that all monetary obligations hereunder, including payments pursuant to this Contract, are subject to the availability and appropriation of funds by the San Antonio City Council, notwithstanding any contrary provisions of the Contract Documents. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any Party to this Contract

## **ARTICLE 9. CONTRACT SAVINGS, ALLOWANCES, REBATES AND REFUNDS**

### **9.1 CREDITS**

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

### **9.2 DEDUCTIONS**

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

- 9.2.1 The fair market value of all tools, surplus materials, construction equipment and temporary structures charged to the Work (other than rental items) but were not consumed during construction or retained by City. Upon completion of the Work or when no longer required, Contractor either shall credit City for the fair market value (as approved by City) for all surplus tools, construction equipment and materials retained by Contractor, at City's option or use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest price and credit the proceeds to City's account.
- 9.2.2 **Discounts earned by Contractor through advance or prompt payments funded by City** - Contractor shall obtain all possible trade and time discounts on bills for material furnished and shall pay bills within the highest discount periods. Contractor shall purchase materials for the Project in quantities providing the most advantageous prices to City.
- 9.2.3. Rebates, discounts or commissions obtained by Contractor from material Suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.
- 9.2.4 Deposits made by City and forfeited due to the fault of Contractor.
- 9.2.5 Balances remaining on any Allowances or any other identified contract savings.
- 9.2.6 Any markup or fee applied to bond or insurance costs.

### **9.3 RECOVERY OF SAVINGS**

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

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

This **Article 10** shall be read and interpreted as a complement City's General Conditions, not to replace them.

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

**10.2 CONTRACTOR'S ACKNOWLEDGEMENT OF ITS PARTICIPATION IN CONSTRUCTION DOCUMENT PHASE**

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

**ARTICLE 11. OWNERSHIP OF DOCUMENTS**

**11.1 PROJECT DOCUMENTS AND COPYRIGHTS**

- 11.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including, but not limited to, cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes and other related documents prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of City and are to be delivered to the Project Manager before final payment is made to Contractor. Nonetheless, these Projects Documents may altered, modified or adapted by City with or without the written consent of Contractor, which consent Contractor shall not unreasonably withhold.
- 11.1.2 Documents to Bear Seal: When applicable and if required by state law, Contractor and its Sub-Consultants shall endorse, by a Texas professional seal, all plans, works and Deliverables prepared by the Contractor or its Sub-Consultants for this Contract.
- 11.1.3 All previously owned documents, including the estimates, specifications and all other documents and data, shall remain the property of Contractor as instruments of service. However, Contractor understands and agrees City shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates specifications and all other documents and data. Any reuse without specific written verification or adaptation by Contractor shall be at City's sole risk and without liability or legal exposure to Contractor.
- 11.1.4 Contractor acknowledges and agrees, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and shall be used by City as City desires. Documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City upon request, termination or completion of this Agreement without restriction on future use. However, any reuse without specific written verification or adaptation by Contractor shall be at City's sole risk and without liability or legal exposure to Contractor.

- 11.1.5 Contractor agrees and covenants to protect any and all proprietary rights of City in any materials provided to Contractor. Such protection of proprietary rights by Contractor 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 Contractor by City shall not be released to any third party without the written consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by the Director.
- 11.1.6 Contractor HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO CITY OF ANY COPYRIGHTABLE WORK, IN PART OR IN WHOLE, PRODUCED FROM THIS AGREEMENT, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY Contractor. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF CITY AND JOINT UTILITIES (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). Contractor SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND JOINT UTILITIES AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST CITY, INSOFAR AS THE SAME ARE BASED ON ANY CLAIM MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.
- 11.1.7 Contractor may make copies of any and all documents and items for its files. Contractor shall have no liability for changes made to or use of the drawings, specifications and other documents by other Architects, Engineers or other persons, subsequent to the completion of the Project. Contractor appropriately shall mark all changes or modifications made on all drawings, specifications and other documents by other Architects, Engineers or other persons, including electronic copies, subsequent to the completion of the Project.
- 11.1.8 Copies of documents for this Work that may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions submitted by Contractor. Files in editable electronic media format of text, data, graphics or other types, (such as DGN) furnished by Contractor to City only are for convenience of City or a utility. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk. However, any reuse without specific written verification or adaptation by Contractor shall be at City's sole risk and without liability or legal exposure to Contractor.
- 11.1.9 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Contractor including but not limited to, any computer software

(object code and source code), tools, systems, equipment or other information used by Contractor or its Suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Contractor 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 Contractor or its Suppliers.

## **ARTICLE 12. INSURANCE**

Contractor shall purchase and maintain in effect, or cause to be procured and kept in effect with the Contractor as a named insured, as appropriate, the insurance policies required in accordance with this Article 12, Exhibit P, or elsewhere in the Contract Documents.

## **ARTICLE 13. INDEMNIFICATION**

**13.1 CONTRACTOR SHALL FULLY RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS, CONSULTANTS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS “INDEMNITEE”) FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, DEMANDS, LOSSES, DAMAGES, LIABILITIES AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, IN EACH CASE IF ASSERTED OR INCURRED OR AWARDED TO ANY THIRD PARTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RELATING TO OR RESULTING FROM:**

- (a) THE BREACH OR ALLEGED BREACH OF ANY OF THE CONTRACT DOCUMENTS BY CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR;**
- (b) THE FAILURE OR ALLEGED FAILURE BY CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR TO COMPLY WITH APPLICABLE LAW;**
- (c) ANY ALLEGED INTELLECTUAL PROPERTY INFRINGEMENT, OR PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT TO THE EXTENT RESULTING FROM CITY’S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO CITY BY CONTRACTOR;**



- (d) THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH, INTENTIONAL TORT, OR MISCONDUCT OF CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR IN OR ASSOCIATED WITH PERFORMANCE OF THE WORK;**
- (e) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL OR TAXING AUTHORITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR WITH RESPECT TO ANY PAYMENT FOR THE WORK MADE TO OR EARNED BY CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR;**
- (f) ANY AND ALL STOP NOTICES AND LIENS FILED IN CONNECTION WITH THE WORK, INCLUDING ALL EXPENSES AND ATTORNEYS', ACCOUNTANTS', AND EXPERT WITNESS FEES AND COSTS INCURRED IN DISCHARGING ANY STOP NOTICE OR LIEN, AND ANY OTHER LIABILITY TO SUB-CONSULTANTS, SUBCONTRACTORS OR SUPPLIERS FOR FAILURE TO PAY ASUMS DUE FOR THEIR WORK OR SERVICES, PROVIDED THAT CITY HAS PAID ALL UNDISPUTED AMOUNTS OWING TO CONTRACTOR WITH RESPECT TO SUCH WORK;**
- (g) ANY ACTUAL OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY CONTRACTOR OR ANY SUB-CONSULTANT, OR SUBCONTRACTOR;**
- (h) THE CLAIM OR ASSERTION BY ANY OTHER (i) CONTRACTOR THAT CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR, OR FAILED TO COOPERATE REASONABLY WITH SUCH OTHER CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY, OR LOSS, EXCEPT**



**WHERE CONTRACTOR OR ITS SUB-CONSULTANT OR SUBCONTRACTOR WAS NOT IN ANY MANNER ENGAGED IN PERFORMANCE OF THE WORK OR (ii) CONTRACTOR THAT CONTRACTOR OR ITS SUB-CONSULTANT OR SUBCONTRACTOR INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY, OR LOSS, TO THE EXTENT SUCH CLAIM ARISES OUT OF THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH, OR MISCONDUCT OF CONTRACTOR OR ANY OF ITS SUB-CONSULTANTS OR SUBCONTRACTORS;**

- (i) CONTRACTOR'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT, OR ANY DISPUTE BETWEEN CONTRACTOR AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT;**
- (j) CONTRACTOR OR ANY OF ITS SUB-CONSULTANTS OR SUBCONTRACTOR'S BREACH OF OR FAILURE TO PERFORM AN OBLIGATION THAT CITY OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER LAW OR UNDER ANY AGREEMENT BETWEEN CITY AND A THIRD PERSON, WHERE CITY HAS DELEGATED PERFORMANCE OF THE OBLIGATION TO CONTRACT OR UNDER THE CONTRACT DOCUMENTS OR (ii) THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS SUB-CONSULTANTS OR SUBCONTRACTORS THAT RENDER CITY UNABLE TO PERFORM OR ABIDE BY AN OBLIGATION THAT CITY OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER ANY AGREEMENT BETWEEN CITY AND A THIRD PERSON WHERE THE AGREEMENT WAS EXPRESSLY DISCLOSED TO CONTRACTOR;**
- (k) THE FRAUD, BAD FAITH, ARBITRARY OR CAPRICIOUS ACTS, OR VIOLATION OF LAW BY ANY CONTRACTOR OR ANY OF ITS SUB-CONSULTANTS OR SUBCONTRACTORS IN OR ASSOCIATED WITH THE PERFORMANCE OF THE WORK;**
- (l) ERRORS, INCONSISTENCIES, OR OTHER DEFECTS IN THE DESIGN OR CONSTRUCTION OF THE PROJECT OR OF UTILITY ADJUSTMENTS INCLUDED IN THE WORK; AND**
- (m) ANY CLAIM BY SUB-CONSULTANT OR SUBCONTRACTOR TO CONTRACTOR ARISING OUT OF, RELATING TO, OR RESULTING FROM THE PERFORMANCE BY CITY OF MATERIAL INSPECTION AND TESTING SERVICES.**

- 13.2** CONTRACTOR'S INDEMNIFICATION OBLIGATION IN SECTION 13.1 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 CONTRACTOR AND CITY JOINTLY LIABLE, 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.
- 13.3** The indemnification obligations under this Article 13 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 Sub-Consultant, Subcontractor, supplier or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.
- 13.4** 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 of Texas statutes for the safety of workers and, in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workers. It is agreed that the primary obligation of Contractor is to comply with these statutes in the performance by Contractor of the Work and the obligations of City, its agents, consultants and representatives under said statutes are secondary to that of Contractor.
- 13.5** For purposes of this Article 13, "third party" means any person or entity other than an Indemnatee and Contractor, except that a "third party" includes any Indemnatee's employee, agent or contractor who asserts a claim against an Indemnatee that is within the scope of the indemnities and that is not covered by the Indemnatee's worker's compensation program.
- 13.6** The provisions of this Article 13 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 Agreement 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 13.

## **ARTICLE 14. NOTICES**

### **14.1 REPRESENTATIVES OF THE PARTIES**

#### **14.1.1 City's Designated Representative**

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

Razi Hosseini, Director/City Engineer  
Public Works Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

#### **14.1.2 Contractor's Designated Representative**

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

Name: Blaine Beckman  
Firm Name: F.A. Nunnelly Company dba Nunnelly General Contractor  
Address: 2922 N. Pan Am Expressway  
San Antonio, TX, 78208

## **ARTICLE 15. TERMINATION AND SUSPENSION**

### **15.1 TERMINATION WITHOUT CAUSE**

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

15.1.2 If this Agreement is terminated for the convenience of City, following City's inspection and acceptance of Contractor's services properly performed prior to the effective date of termination, City promptly shall pay Contractor for all services properly performed and all liabilities incurred up to the time of such termination. Contractor shall not, however, be entitled to any lost or anticipated profit or to any

payment on unperformed services, should City choose to exercise this option to terminate, nor shall Contractor be entitled to compensation for any unnecessary or unapproved Work performed during the time between Contractor's receipt of City's Notice of Termination and the actual termination date.

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

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

15.1.5 DEFAULTS WITH OPPORTUNITY FOR CURE: Should Contractor fail to satisfactorily perform the Pre-Construction Services set out in **Article 3** herein or comply with any covenant required by the Contract Documents, such failure shall be considered an Event of Default. In such Event of Default, City shall deliver written notice of said default in accordance with the notice provisions contained in this Agreement, specifying the specific Event(s) of Default and the action necessary to cure such defaults. Contractor shall have a reasonable period of time of not more than seven (7) calendar days after receipt of the written notice to cure such default. Contractor shall continue working during the seven (7) days to cure such default. If Contractor fails to cure the default within such seven-day cure period or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part, as City deems appropriate, and to contract with another Contractor or other party to complete the work required by this Agreement. City also shall have the right to offset the cost of said new agreement with a new Contractor or other party against Contractor's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses. The Party not in default of this Agreement must issue a signed, written notice of default and termination (citing this **Section 15.2**) to the other Party declaring the other Party to be in default and stating the reason(s) why it is in default. Upon receipt of such written notice of default and termination, the Party in receipt shall have a period of not more than seven (7) days to cure any failure to perform under this Agreement. Upon the completion of such seven-day period, commencing upon receipt of notice of default termination, if such Party has not cured any failure to perform, such termination shall become effective without further written notice.

**15.2 CONTRACTOR TERMINATION FOR CAUSE** Upon the occurrence of any of the events listed in **Article 13** of General Conditions for City of San Antonio Construction Contracts or one or more of the following events, and following written notice to Contractor given in accordance with the notice provisions contained in this Agreement, City immediately may terminate this Agreement, in whole or in part, "for cause":

15.2.1 Contractor, either directly or indirectly through its employees or representatives, makes any material misrepresentation or provides any materially misleading

information to City in connection with this Agreement or its performance hereunder; or

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

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

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

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

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

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

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

15.4.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or Contractor immediately takes

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

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

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

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

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

## **15.5 ASSIGNMENT OF INTEREST IN SUBCONTRACTS AND PURCHASE ORDERS**

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



- 15.6 CLAIMS FOR OUTSTANDING COMPENSATION** Within forty-five (45) calendar days of the effective date of completion, termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for any monies owed by City to Contractor for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall constitute evidence of a Waiver by Contractor of any and all right or claims to collect monies Contractor rightfully may otherwise be entitled to for services performed pursuant to this Agreement.
- 15.7 TERMINATION NOT SOLE REMEDY** In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity City's right to seek damages from or otherwise pursue Contractor for any default hereunder or any other action.
- 15.8 SUSPENSION** The Work may be suspended by City, as provided in City's General Conditions. In such case of suspension, the compensation, as established by this Agreement, may be increased, as provided in the General Conditions. In such instances, the term "Cost of Performance of the Contract" in the General Conditions shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Phase Fee.
- 15.8.1 Upon receipt of written Notice of Suspension, which date shall also be the effective date of the suspension, Contractor shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed promptly to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.
- 15.8.2 Contractor shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.
- 15.8.3 Copies of all completed or partially completed design, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to City and shall be retained by Contractor until such time as Contractor may exercise the right to terminate as defined herein.
- 15.8.4 If a Notice of Suspension is issued by City, Contractor may exercises its right to terminate this Agreement as outlined in **Section 15.9.8** herein. If Contractor elects to terminate this Agreement and notifies City in writing of its intent via a Notice of Termination, within thirty (30) days after receipt by City of Contractor's Notice of Termination, Contractor promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

- 15.8.5 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.
- 15.8.6 Upon the above conditions being met, City promptly shall pay Contractor that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee, together with all liabilities incurred by Contractor as a result of such suspension or termination.
- 15.8.7 City reserves the right to suspend this Agreement at the end of any phase for the convenience of City by issuing a signed, written Notice of Suspension citing this **Section 15.8**, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way shall guarantee what the total number of days the suspension shall occur. Such suspension shall take effect immediately upon receipt of said Notice of Suspension by Contractor.
- 15.8.8 Contractor 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. Contractor may exercise this right to terminate by issuing a signed, written Notice of Termination, citing this **Section 15.8.8**, to City after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination under this paragraph shall become effective immediately upon receipt of said written notice by City. In such event, City promptly shall pay Contractor that proportion of the prescribed fee which the Work and/or services actually performed under this Agreement bear to the total Work and/or services called for under this Agreement, less previous payments of the fee, together with all liabilities incurred by Contractor as a result of such suspension or termination.

## **ARTICLE 16. MISCELLANEOUS PROVISIONS**

- 16.1 DISPUTE RESOLUTION** All disputes against City arising from this Agreement, as well as those arising on any other City Project, shall be resolved in accordance with the procedures and limitations of Texas Local Government Code Subchapter I, Chapter 271.151 et seq., and City's General Conditions. City designates the Director of Capital Improvements Management Services or his/her designee as its officer(s) for examining, negotiating and resolving claims and counterclaims. City hereby waives sovereign immunity only in accordance with Section 271.152 of the Local Government Code for its obligations to Contractor arising under this Agreement.
- 16.2 GOVERNMENTAL IMMUNITY** Nothing in this Contract shall be construed to waive City's governmental immunity from a lawsuit, which immunity is expressly retained.
- 16.3 ASSIGNMENT** This Agreement is a personal service contract for the services of Contractor, and Contractor shall not assign, transfer or convey its interest in this Agreement, duties hereunder, fees due and/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 the Contract Documents..

- 16.4 TITLE TO WORK** Immediately upon the performance of or payment for any part of the Work, as between Contractor and City, title thereto shall vest in City; provided, however, the vesting of title shall not impose any obligations on City or relieve Contractor of any of its obligations hereunder.
- 16.5 AUDIT RIGHTS** **ARTICLE XV**, in City's General Conditions is superseded by the following provision: Contractor agrees City may review any and all Work performed by Contractor under this Agreement. City is granted the right to audit, at City's election, all of the records and billings related to performance of this Agreement. Contractor agrees to retain such records for a minimum of four (4) years following completion of this Agreement. Any records related to any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to City's audit rights.
- 16.6 The following clause supplements Section III.4 (Labor and Material) of City's General Conditions:** Records of expenses pertaining to services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by City or City's authorized representative on reasonable notice.
- 16.7 TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION** Pursuant to Section 231.006, Texas Family Code, Contractor certifies it is eligible to receive the award of or payments under this Agreement and acknowledges this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 16.8 FRANCHISE TAX CERTIFICATION** As corporation or limited liability company, Contractor certifies:
- (a) it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code; or
  - (b) the corporation or limited liability company is exempt from the payment of such taxes; or
  - (c) the corporation or limited liability company is an out-of-state corporation or limited liability company not subject to the Texas Franchise Tax, whichever is applicable.

- 16.9 PAYMENT OF DEBT OR DELINQUENCY TO CITY** It is the policy of City any person or entity doing business with City shall, at all times, remain in financial good standing with all City Departments. In that regard, Contractor warrants it has no outstanding obligations to any City Department at the time of the execution of this Agreement and hereby covenants it timely shall pay, as they come due, any and all taxes, fees, fines or any other charges assessed by any City Department, whether imposed by statute, ordinance or contract, without regard to whether these charges are associated with this Agreement, or Contractor's operation under this Agreement.
- 16.10 CONTRACT DOCUMENTS; MERGER** The Contract Documents form the entire and integrated contractual agreement between City and Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and City.
- 16.11 CAPTIONS** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 16.12 GOVERNING LAW AND VENUE** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws and case decisions of the State of Texas without reference to conflict of law or choice of law principles of Texas or of any other state. This Contract is entered into subject to and controlled by, and Contractor shall comply with, the Charter, codes 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. Bexar County shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which City is a party.
- 16.13 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.
- 16.14 WAIVERS** Except as may be specifically agreed in writing by Change Order or amendment, no delay or omission by either Party in exercising any right or power arising from non-compliance or failure of performance by the other Party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either Party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of this Agreement.

- 16.15 RIGHTS AND REMEDIES** 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.
- 16.16 SUCCESSORS AND ASSIGNS** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.
- 16.17 RECORDS** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to City or its authorized representative during normal business hours and shall be retained for four (4) years after final Payment to Contractor or Contractor's termination and/or abandonment of the Project, unless City otherwise instructs Contractor in writing.
- 16.18 NOTICES** In addition to the written Notice Provision in City's General Conditions, all notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of Contractor or City for whom it is intended; or sent by U. S. Mail, certified mail, return receipt requested, to the last known business address of the designated representative; transmitted by fax machine to the last known business fax number of the designated representative or sent via electronic mail (e-mail) to the last known e-mail address. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. E-mail are deemed effective at the time sent. Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations. The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other Party.

**If to City:**

City of San Antonio  
Public Works Department Attention:  
Razi Hosseini, Director/City  
Engineer  
P. O. Box 839966  
San Antonio, Texas 78283-3966

**If to Contractor:**

Firm Name: F.A. Nunnelly Company dba Nunnelly  
General Contractor  
Attention Blaine Beckman  
Address: 2922 N. Pan AM Expressway  
San Antonio, TX, 78208

- 16.19 SEVERABILITY** Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.
- 16.20 ILLEGAL DUMPING** Contractor shall ensure it and all of its Sub-Consultants, Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

**16.21 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

**16.22 INDEPENDENT CONTRACTOR** 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 (i) make Contractor the agent, servant or employee of City, (ii) create any partnership, joint venture or other association between City and Contractor or (iii) or make Contractor or any of Contractor's employees, agents or servants eligible for fringe benefits, such as retirement, insurance and worker's compensation which City provides to its employees. Contractor shall exercise independent judgment in performing the Work and is solely 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. 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. Contractor accepts and agrees it is and shall remain, throughout the duration of this Project and this Contract, an independent contractor and not an agent of City. Contractor shall be liable to City for the acts and omissions of Contractor, Sub-Consultants, Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of this Agreement with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work, directly or indirectly, under contract with Contractor, including any design professionals and their consultants and subconsultants of any tier, to the extent of its liability for same.

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
- (c) Any persons or entities other than City and Contractor.

**16.23 INTEREST ON LATE PAYMENTS** 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.

**16.24 BENEFITS TO PUBLIC SERVANTS** 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. Notwithstanding any other legal remedies, City may require Contractor to remove any employee of Contractor, a Subcontractor, a Sub-Consultant or any employee of a Subcontractor or Sub-Consultant from the Project who has violated the restrictions of this Section 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. For purposes of this Section, "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.

#### **16.25 SUB-CONSULTANT AND SUBCONTRACTOR CONTRACT REQUIREMENTS**

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

### **ARTICLE 17. INTEREST IN CITY CONTRACTS PROHIBITED**

**17.1** In addition to the **Officers or Employees of City Not to Have Financial Interest in Any Contract of City** provision in City's General Conditions: No officer or employee of City shall have a financial interest, directly or indirectly, in any contract with City, or shall be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City Public Service Board, the SAWS, and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.

**17.2** Contractor acknowledges it is informed the Charter of City and its Ethics Code prohibit a City officer or employee, as those terms are defined in City's Ethics Code, from having a financial interest in any contract with City or any City agency, such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his

parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a Sub-Consultant or Subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 17.3** Contractor warrants and certifies, and this Agreement is made in reliance thereon, it, its officers, employees and agents neither are officers nor employees of City. Contractor further warrants and certifies it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.
- 17.4** Contractor must disclose if it is associated in any manner with a City official or employee in a business venture or business dealings. Failure to do so shall constitute a violation of City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with City official or employee, having a contract with City official or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a City official or employee also owns at least 10%, or having an established business relationship with a City official or employee as client or customer. Any violation of this Article 18 with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with City shall render the Contract voidable by City's City Manager or City Council.

*(Signature Page immediately to follow)*

**BY THEIR SIGNATURES BELOW**, the respective and represented Parties have executed and bound themselves to this Agreement as of \_\_\_\_\_.

**CITY OF SAN ANTONIO, TEXAS**

By: \_\_\_\_\_  
JOHN PETEREK, MPAFF  
INTERIM ASSISTANT CITY MANAGER

**F.A. NUNNELLY COMPANY DBA  
NUNNELLY GENERAL CONTRACTOR**

Signed by:  
B Blaine Beckman \_\_\_\_\_  
DAD478374C01404...  
BLAINE BECKMAN  
PRESIDENT

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

## **EXHIBIT A - SURETY, PAYMENT, AND PERFORMANCE BOND FORMS**

## **EXHIBIT B - PROJECT DEFINITION**

The Ella Austin Community Center, located at 1023 N. Pine St., consists of six (6) structures spanning 63,000 square feet. These structures include the main building, gym and annex, senior center, metal storage building, and a modular building. The main and gym annex buildings are original structures, and the attached auditorium was constructed in 1930.

This project consists of the demolition of four existing buildings on the campus, full renovation of the 2 story, 39,894 sf main building, cosmetic renovation of the auditorium, partial renovation of the existing gymnasium, and the construction of a new approximately 4,600 sf Senior Center building. Site development is to include new parking lot, upgrade and modifications to the existing parking lot, new vehicular drop off, new central courtyard area including shade structures and new playground, and upgrades of the community garden. The City of San Antonio desires the Project to be designed with sustainability in mind where practical. Specific sustainability measures which may be considered include, EV stations, energy efficiency in mechanical and electrical systems, and the like.

**EXHIBIT C - CONTRACTOR'S HOURLY RATE SCHEDULE AND SCHEDULE OF  
VALUES FOR PRE-CONSTRUCTION SERVICES**



December 16, 2024

Cathleen Crabb  
Public Works Department  
**City of San Antonio**  
P.O. Box 839966  
San Antonio, TX 78283-3966

Re: Ella Austin Community Center – Preconstruction Services Proposal

Dear Ms. Crabb,

Nunnelly General Contractor appreciates the opportunity to offer this proposal for Preconstruction Services for the above referenced project.

Please see the attached Preconstruction Services Breakdown for a complete listing of deliverables included in the proposed Preconstruction Services Fee.

**Proposed Preconstruction Services Fee - Lump Sum Amount of \$125,000.00.**

Thank you for this opportunity and we look forward to collaborating with you on this important project!

Please feel free to contact me at 210-535-3968 or at [jody@nunnelly.com](mailto:jody@nunnelly.com) with any questions.

Sincerely,

Jody Mokry  
Project Executive  
Nunnelly General Contractor

Cc: Greg Vaughn – Nunnelly General Contractor  
Blaine Beckman – Nunnelly General Contractor  
File





## COSA Ella Austin Community Center

### Preconstruction Services

Schematic Design Estimate	64 hrs	\$11,200
Budget Collaboration Meeting	8 hrs	\$1,400
Preconstruction & Initial Project Schedule	24 hrs	\$4,130
Initial Cost Savings Exercise	80 hrs	\$14,000
Budget Update Review Meeting	8 hrs	\$1,400
SD Constructability Review	24 hrs	\$4,130
SD Constructability Review Meeting	8 hrs	\$1,400
DD Document Review Meeting	8 hrs	\$1,400
Project Schedule Update #1	12 hrs	\$2,100
Design Development Estimate	120 hrs	\$21,000
DD Constructability Review	24 hrs	\$4,130
DD Constructability Review Meeting	8 hrs	\$1,400
Demolition Package Review Meeting	8 hrs	\$1,400
Demolition GMP Pricing	80 hrs	\$14,000
Demolition GMP Pricing Review Meeting	8 hrs	\$1,400
50% CD Document Review Meeting	8 hrs	\$1,400
Project Schedule Update #2	12 hrs	\$2,100
50% CD GMP Pricing	120 hrs	\$21,000
GMP Pricing Review Meeting	8 hrs	\$1,400
100% CD Document Review Meeting	16 hrs	\$2,710
100% CD GMP Price Check	60 hrs	\$10,500
100% CD GMP Price Check Review Meeting	8 hrs	\$1,400
<b>Proposed Preconstruction Services</b>	<b>714 hrs</b>	<b>\$125,000</b>

## **EXHIBIT D - SUBMITTAL REQUIREMENTS FOR THE GMP**

## **EXHIBIT D**

### **SUBMITTAL REQUIREMENTS FOR THE GMP**

The proposed Cost of the Work shall be developed as set out herein:

The GMP proposal must be submitted in a binder and entitled, "Proposal for the Guaranteed Maximum Price for \_\_\_\_\_, Project No. \_\_\_\_\_ and must include a date on the cover. Proposal pages must be numbered. Proposals must include all specified items and components of the GMP as required by the Contract. Sections must be divided by tabs for ease of reference. Please include:

- transmittal letter
- table of contents

**Tab 1** Executive Summary (a brief, general summary of the Project)

**Tab 2** A list of Drawings and Specifications and any other Contract Documents upon which Contractor's proposed prices are based.

**Tab 3** Description of proposed Variations and/or Substitutions to the Drawings and Specifications:

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

**Tab 4** Proposed Cost of the Work Breakdown:

- Estimated Cost of the Work, broken down into the standard 16 CSI Divisions and any such additional sections as directed by City, prior to Contractor's submission of its GMP Proposal.
- Cost breakdown shall be a lump sum for each Division and section with information on proposed Subcontractors and pricing supporting such costs, to include a schedule of Unit Prices if applicable.
- Proposed allowances, broken out by type of Work, and including support for proposed allowance amount

**Tab 5** Proposed Indirect Costs Breakdown:

- Construction Fee and General Conditions Cost each shown as a percentage of the Cost of the Work
- Cost break down (without markup) for Payment and Performance Bonds, Builder's Risk Insurance, General Liability Insurance and any applicable Sales Tax

**Tab 6** Progress Schedule:

- The Progress Schedule for the GMP Proposal shall include detailed activities for all events, milestones and the contractual date for Substantial Completion included in Construction Phase.
- Additionally, the Progress Schedule update must include detailed, logic driven activities for all Construction Phase activities.
- All paths in the Progress Schedule must lead to milestone activities to ultimately achieve Substantial Completion on or before the Milestone/contractual date for Substantial Completion.
- A Schedule of Values based on the timeline in the Progress schedule, documenting either the entirety of the Construction Phase Services or, if there are previously accepted Fixed Price Proposals, all of the Construction Phase Services not covered by such Fixed Price Proposals.
- The Progress Schedule shall be provided in hard copy form in the binder and also in an electronic format attached to the binder.

**EXHIBIT E - SUBMITTAL REQUIREMENTS FOR FIXED COST METHODOLOGY**

**(WILL BE PROVIDED AT A LATER DATE)**

**EXHIBIT F – APPROVED FIXED COST METHODOLOGY**

**(WILL BE PROVIDED AT A LATER DATE)**



**EXHIBIT G - GENERAL CONDITIONS FOR CITY OF SAN ANTONIO  
CONSTRUCTION CONTRACTS**

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

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# GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

## ARTICLE I. GENERAL PROVISIONS

### 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 meet 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.**

**IV.2.1** 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 contract. City reserves the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by City to be incomplete or erroneous.



## **END OF SPECIAL CONDITIONS FOR THE GENERAL CONDITIONS**

**EXHIBIT H - APPROVED GMP PROPOSAL FORM**

**(WILL BE PROVIDED AT A LATER DATE)**

**EXHIBIT I - TECHNICAL SPECIFICATIONS**

**(WILL BE PROVIDED AT A LATER DATE)**

**EXHIBIT J - CONSTRUCTION DRAWINGS**

**(WILL BE PROVIDED AT A LATER DATE)**

**EXHIBIT K - SBEDA SUB-CONTRACTOR/SUPPLIER UTILIZATION PLAN FORM**

Utilization Plan Summary Worksheet													
General Information				GSC API(s) Applied									
				Prime Points	Pts.	Subcontracting Goals		%	Joint Venture		Yes/No		
Contract Name:	Construction Manager at Risk for the Ella Austin Community Center			SBE Points	5	SBE Subcontracting Goal		0.00%	SBE JV Program		0		
Originating Dept:	Public Works			M/WBE Points	5	M/WBE Subcontracting Goal		20.00%	M/WBE JV Program		0		
Prime Contractor:	F.A. Nunnelly Company			ESBE Points	0	AABE Subcontracting Goal		3.00%	SBE JV Incentives		0		
Contract Amount (\$):	\$1.00			E/MWBE Points	0				M/WBE JV Incentives		0		
UP REVIEWED (Y/N):	Yes			HUB Zone Points	0				M/WBE JV Incentives		0		
Prime		Notes	Total %	SBE %	MBE %	WBE %	AABE %	ABE %	HABE %	NABE %	ESBE %	HUB Zone %	\$ Amount
F.A. Nunnelly Company		Non-SBEDA Eligible	100.00%										\$1.00
Subcontractors													
N/A			0.00%										\$0.00
Total Prime Participation:			100.00%									\$1.00	
Total Subcontractor Participation:			0.00%									\$0.00	
Total Participation (must equal 100%)			100.00%								\$1.00		
Total Utilization	SBE Utilization	M/WBE Utilization	AABE Utilization	ABE Utilization	HABE Utilization	NABE Utilizztion	ESBE Utilization	HUB Zone Utilization					
	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		0.00%			
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00			
Sub Utilization	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%		0.00%			
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00			



# ECONOMIC DEVELOPMENT

## City of San Antonio Subcontractor/Supplier Utilization Commitment Form

Please consult the [Central Vendor Registry](#) for a complete list of SBEDA-eligible contractors.

Solicitation Name: *Construction Manager at Risk for the Ella Austin Community Center*

Respondent Name: F.A. Nunnelly Company dba Nunnelly General Contractor

**Please acknowledge the statements below by initialing the box:**

- |    |  |
|----|--|
| BB | In responding to this solicitation, I hereby affirm my firm's commitment to meet the subcontracting requirement(s) indicated in the solicitation.  |
| BB | I understand that Small Business Enterprise (SBE) prime respondents proposing at least 51% of SBE utilization (prime and/or sub-consultant/contractor) will receive <b>five (5)</b> evaluation preference points.  |
| BB | I understand that Minority and/or Women-Owned Business Enterprise (M/WBE) prime respondents proposing at least 51% of M/WBE utilization (prime and/or sub-consultant/contractor) will receive <b>five (5)</b> evaluation preference points.  |
| BB | I understand that a Minority and/or Women-Owned Business Enterprise (M/WBE) subcontracting goal of <b>twenty percent (20%)</b> applies to this solicitation.   |
| BB | I understand that an African American Business Enterprise (AABE) subcontracting goal of <b>three percent (3%)</b> applies to this solicitation.  |
| BB | I understand that for a sub-consultant/contractor to count toward City required subcontracting goal(s), the sub-consultant/contractor must be SBEDA eligible and have the same certification(s) as the City required goal(s). Self-Performance by S/M/WBE prime respondents does <b>NOT</b> count towards the subcontracting goal(s).  |
| BB | I understand that to be SBEDA eligible, a sub-consultant/contractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency ( <a href="http://www.sctrca.org">www.sctrca.org</a> ) <b>AND</b> they must be headquartered in or have a significant business presence in the San Antonio Metropolitan Statistical Area.   |
| BB | I understand that the failure to include a completed, signed copy of this Commitment Form to acknowledge the subcontracting goal(s) for this solicitation will render this response NON-RESPONSIVE.  |
| BB | I understand and affirm that failure to meet the subcontracting goal(s) without an approved Post-Award Subcontracting Waiver Request Form to be submitted with the Subcontractor/Supplier Utilization Plan, during or after the price proposal response (as determined by the City), will be grounds for termination of negotiations and will allow the City to enter into negotiations with another prime respondent.   |
| BB | I understand that in the absence of a Post-Award Vendor Subcontracting Waiver granted by the SBO, the failure of firm to attain these subcontracting goals for S/M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and subject to penalties and/or sanctions available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.   |
| BB | I understand that if awarded this contract, I am required to register as a Mentor in City of San Antonio's Mentor- Protégé Program for a two-year commitment, per the date of contract award. All prime consultant, contractor and joint venture entities will be required to register as a Mentor at <a href="http://www.besanantonio.com">www.besanantonio.com</a> . I further understand that following registration for the Program, I will be assigned to one or more protégé(s) of the Program Administrator's (or City's) choice, if the Protégé consents to participate. |

Prime Contractor's Authorized Agent:

Name:

Blaine Beckman, President

Sign and Date:

**Blaine Beckman** Digitally signed by Blaine Beckman  
Date: 2024.02.15 18:52:43 -06'00'



**Business Name** F A NUNNELLY CO

**DBA**

**Vendor #** 1012467

**Telephone** 1(210) 227-7070

**Fax**

**E-Mail** Sheila@Fanunnelly.com

**SBEDA Eligible** NO

**Certifications**

NIGP Code	NIGP Code Description
90921	BLDG CONSTRUCTION, I
90922	BLDG CONSTRUCTION, N
90924	BLDG CONSTRUCTION, C
91336	CONST PRKNG LT/ALLEY
91347	CONST SDWLK/DRWY

Search Parameters

Edit Parameters

Clear Parameters

CERTIFICATIONS

- African American Business Enterprise (AABE)
- Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)
- Asian American Business Enterprise (ABE)
- Disabled Business Enterprise (DIBE)
- Disadvantaged Business Enterprise (DBE)
- Disadvantaged Business Enterprise (FAA Only) (DBE (FAA Only))
- Emerging Small Business Enterprise (ESBE)
- Hispanic American Business Enterprise (HABE)
- Minority Business Enterprise (MBE)
- Native American Business Enterprise (NABE)
- Small Business Enterprise (SBE)
- Veteran Business Enterprise (VBE)
- Women Business Enterprise (WBE)

BUSINESS NAME/DBA

F.A. NUNNELLY

Search Results

0 firms with 0 certifications found

Your search parameters did not return any matches. Click **Edit Parameters**, modify the information in the fields above and click **Search Again**.

## EXHIBIT L – CONTRACTOR DESCRIPTION OF GENERAL CONDITIONS COSTS

General Conditions will be negotiated and added as an amendment at a later date. The general conditions anticipated include, but are not limited to:

- Operations manager
- Home office personnel
- Project Manager
- Site superintendent
- Assistant superintendent(s)
- Field engineers
- Secretarial support
- Temporary & contract personnel
- Personnel relocation
- Travel and lodging
- Job office rental
- Project office utilities
- Project office telephone
- Office supplies
- Project office machines
- First aid supplies
- Construction site fire extinguishers
- Trash disposal
- Portable toilets
- Storage trailer rental
- Cellular Telephones
- Postage and Shipping
- Haul and set up trailers
- Pick up truck rental
- Security fencing
- Fuel and maintenance
- Benchmark survey
- Data processing
- Drug Screens
- Progress schedules
- Submittal/Shop drawing printing
- Employee Benefits
- Workers compensation

## **EXHIBIT L – CONTRACTOR DESCRIPTION OF GENERAL CONDITIONS COSTS**

General Conditions will be negotiated and added as an amendment at a later date. The general conditions anticipated include, but are not limited to:

- Operations manager
- Home office personnel
- Project Manager
- Site superintendent
- Assistant superintendent(s)
- Field engineers
- Secretarial support
- Temporary & contract personnel
- Personnel relocation
- Travel and lodging
- Job office rental
- Project office utilities
- Project office telephone
- Office supplies
- Project office machines
- First aid supplies
- Construction site fire extinguishers
- Trash disposal
- Portable toilets
- Storage trailer rental
- Cellular Telephones
- Postage and Shipping
- Haul and set up trailers
- Pickup truck rental
- Security fencing
- Fuel and maintenance
- Benchmark survey
- Data processing
- Drug Screens
- Progress schedules
- Submittal/Shop drawing printing
- Employee Benefits
- Workers' compensation

## **EXHIBIT M - CERTIFICATE OF INTERESTED PARTIES (Form 1295)**

The Texas Government Code §2252.908 and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 to the City before the City may enter into a contract with that business entity. Form 1295 must be completed online. It is available from the Texas Ethics Commission by accessing the following web address:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

**Print your completed Form 1295 and the certification of filing. Sign Form 1295 in front of a notary and submit it, along with the certification of filing, with your response to this solicitation. In Box 3 of Form 1295, provide the solicitation number shown on the cover page of this solicitation (e.g. IFB 23-00001234, RFQ 23-100001234 or RFCSP 23-00001234).**

The following definitions found in the statute and Texas Ethics Commission rules may be helpful in completing the required Form 1295.

“Business entity” includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.

“Controlling interest” means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. Subsection (3) of this section does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

“Interested Party” means: (1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or (2) an intermediary.

“Intermediary,” for purposes of this rule, means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person’s participation;
- (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.

## **EXHIBIT N – RFQ SUBMITTAL AND PROPOSAL COMMITMENTS**

## RFP Evaluation Criteria C: Proposed Costing Methodology (20 points):

Respondent shall respond to the cost items below.

1. **Costing Methodology for General Conditions, Overhead and Profit –**  
Provide your team's proposed costing methodology for General Conditions to deliver the Project as it would be applied in the highlighted box of Row E in the table below.

Costing Methodology for Proposed General Conditions: 11.25 %

2. **Costing Methodology for CMAR Construction Phase –** Provide your team's proposed costing methodology for the Construction Phase to deliver the Project as it would be applied in the highlighted box of Row D in the table below.

Costing Methodology for Proposed Construction Phase: 5.25 %

*Respondent should only submit the percentages requested above in Sections 1 and 2 for RFP submittal.*

GMP Summary				AMOUNT
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			\$ 18,664,653
B.	Total of all Fixed Price Proposal(s) (if any)			\$ 453,567
C.	Total Cost of Work (A + B = C)			\$ 19,118,220
INDIRECT COSTS			RATE	
D.	Construction Fee (Approved Fee x Cost of Work [A] above)		5.25 %	\$ 1,003,707
E.	General Conditions (Less any GCs paid via FFPs)		11.25 %	\$ 2,150,800
F.	Payment and Performance Bond (no markup)	\$229,419	1.20%	
G.	Builder’s Risk Insurance (no markup)	\$ 57,355	0.30%	
H.	General Liability Insurance (no markup)	\$ 440,500	1.80%	
I.	Sales Taxes (if any)			\$ N/A
J.	Total Indirect Cost of Work (D+E+F+G+H+I = J)			\$ 3,881,780
		K. TOTAL CONTRACTOR GMP (C + J = K)		\$ 23,000,000
		L. City-Controlled Project Contingency (if any)		\$ N/A
		M. Total GMP Amount (K + L = M)		\$ N/A



**EXHIBIT O – CONTRACT ADDENDA**

**(WILL BE PROVIDED AT A LATER DATE)**

## **EXHIBIT P – INSURANCE REQUIREMENTS**

**Proof of Insurability****Exhibit C – Ella Austin Community Center Renovation: \$23,000,000.00**

**Scope of Work:** The City of San Antonio (City) Public Works Department is seeking an experienced Construction Manager at Risk (hereafter referred to as “CMAR”) firm with demonstrated technical capabilities and architectural construction experience to provide Design and Construction services for the **Ella Austin Community Center**. The CMAR firm will be integrated into a city-led team as part of a progressive Construction Manager at Risk delivery method that will be a blend of City and Consultant staff. The scale, concurrent projects, and operational complexity will require the CMAR to provide specific expertise and specialty technical and architectural services for the project to be successful.

No later than 30 days before the scheduled work under this Agreement, CONTRACTOR must provide a completed Certificate(s) of Insurance to CITY’s Finance Department. The certificate must be:

- clearly labeled with the legal name of the event in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
- properly endorsed and have the agent’s signature, and phone number,

Certificates may be mailed or sent via email, directly from the insurer’s authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY’S Finance Department. No officer or employee, other than CITY’S Risk Manager, shall have authority to waive this requirement.

If the City does not receive copies of insurance endorsement, then by executing this Agreement, CONTRACTOR certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

The City’s Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, at CONTRACTOR’S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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 below. If the CONTRACTOR claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<b><i>INSURANCE TYPE</i></b>	<b><i>LIMITS</i></b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors* f. Explosion, Collapse, Underground Property Hazard Liability g. Damage to Property Rented by you*	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate. Must be on a per project aggregate.  Limits apply separately to premises/operations and products /completed operations.  *g. \$500,000
4. Business Automobile Liability a. Owned/leased vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

b. Non-Owned vehicles c. Hired Vehicles d. Scheduled Vehicles*	
5. Professional Liability	\$5,000,000 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. (Coverage to be maintained and in effect for no less than four years subsequent to the completion of the professional service.)
6. Environmental Insurance – (Contractor's Pollution Liability (Claims-made coverage)	\$5,000,000 per occurrence; \$10,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.
7. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
8. Umbrella or Excess Liability Coverage	\$25,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage.
*If Applicable	

CONTRACTOR must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONTRACTOR and provide a certificate of insurance and endorsement that names CONTRACTOR and CITY as additional insureds. Respondent shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. CONTRACTOR must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

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

CONTRACTOR's insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and 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 CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.
- Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and

- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation, material change in coverage, 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 Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies CITY may have upon CONTRACTOR'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order CONTRACTOR to stop work and/or withhold any payment(s) which become due to CONTRACTOR under this Agreement until CONTRACTOR demonstrates compliance with requirements.

Nothing contained in this Agreement shall be construed as limiting 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.

CONTRACTOR'S insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

CONTRACTOR and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.