

**PROFESSIONAL SERVICES AGREEMENT
FOR
UNDERGROUND STORM DRAIN
VIDEO INSPECTION PROGRAM**

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

This Professional Services Agreement for **Underground Storm Drain Video Inspection Program** (hereafter referred to as “this Agreement” or “the Agreement”) is made and entered into in San Antonio, Bexar County, Texas, between City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as "City") and

RJN GROUP, INC.

8930 FOURWINDS DRIVE, STE 203

SAN ANTONIO, TEXAS 78239

(hereafter referred to as "Consultant"), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for **Underground Storm Drain Video Inspection Program** as set forth herein in connection with the above designated solicitation for City.

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ARTICLE I. DEFINITIONS

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

- I.1 **“APPLICATION FOR COMPENSATION”** means written form for a request from Consultant, to be paid for completed Work.
- I.2 **“CCMS”** means City’s Contract Management System, whereby payments made by Consultants to Sub-Consultants, said payments confirmed by Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and which are monitored by City for compliance.
- I.3 **"CITY"** means The City of San Antonio, Texas and its authorized representatives.
- I.4 **"CITY DESIGNATED REPRESENTATIVE (ODR)"** means person designated by City to act for City.
- I.4 **“COMPENSATION”** means amounts paid for services under this Agreement.
- I.5 **"CONSULTANT"** means RJN GROUP, INC. and its officers, partners, employees, agents and representatives, as well as all Sub-Consultants, if any, and all other persons or entities for which Consultant legally is responsible.
- I.6 **"DIRECTOR"** means the Director of City’s Transportation and Capital Improvements or his/her designee.
- I.7 **“FINALIZED TASK ORDER”** means a written agreement, authorized by both parties in the City’s Portal system and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Project as further defined herein.
- I.8 **“ON-CALL CONTRACT”** means a contract used by the City, through which a task order, on an as-needed basis, shall be issued for work or services, as determined by City.
- I.9 **"PLANS AND SPECIFICATIONS"** means the construction documents.
- I.10 **“PRIMELINK”** means City’s internet-based project management software for submitting and approving Task Orders, Applications for Compensation and all other forms of correspondence between City and Consultant.
- I.11 **"PROJECT"** means the capital improvement/construction development undertaking of City.
- I.12 **"PROPOSAL"** means Consultant's Proposal to provide services for a project.
- I.13 **“PROPOSED SERVICE PLAN”** means a detailed plan outlining how and when the City-requested Work or SERVICES shall be provided by the Consultant/Contractor.

- I.14** “**PROPOSED TASK ORDER REQUEST**” means a request to Consultant to submit a Proposal for a specific Project, as further defined herein.
- I.15** “**SAMSA**” means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson.
- I.16** “**SAWS**” means the San Antonio Water System, Inc.
- I.17** “**SCHEDULE OF VALUES**” means the values allocated to materials and various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as City may require.
- I.18** “**SCOPE OF SERVICES**” means the services described in Article IV Scope of Services herein.
- I.19** “**SERVICES**” means those services described in the Scope of Services, as set out in an issued Task Order.
- I.20** “**TASK ORDER**” means a work order issued to Consultant/Contractor setting forth the agreed to Scope of Services/Work, pricing and associated terms for an individual Project.
- I.21** “**TOTAL COMPENSATION**” means the not-to-exceed amount of this Agreement.
- I.22** “**WORK**” means the services required by the issued Task Order, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Consultant or any Sub-Consultant, material suppliers or any other entities for which Consultant is responsible to fulfill Consultant’s Task Order obligations.

END OF ARTICLE I

ARTICLE II. COMPENSATION

- II.1** The Compensation for all services included in this Agreement **SHALL NOT EXCEED FOUR HUNDRED DOLLARS (\$4,250,000.00)**. Any extension of this Agreement, up to two (2), one (1) additional one-year “Extension Periods,” may not increase the total amount of this Agreement.
- II.2** Consultant shall submit a Proposed Service Plan for each Project that City requests to be performed under this Agreement. City either will approve or disapprove each Proposed Service Plan. The City’s approval shall be evidenced by a finalized Task Order executed by both parties in *PRIMELink*. Task Orders shall be numbered sequentially, starting with number one (1), shall reference this Agreement and shall be entered into *PRIMELink*. Each finalized Task Order, as entered into *PRIMELink*, shall become a part of this Agreement.

- II.2.1** Consultant understands and agrees that City may have entered into multiple professional services agreements with other Consultants and City has the authority to assign Work/Task Orders at its sole discretion.
- II.2.2** Consultant understands and agrees that City makes no minimum guarantees, with regard to the amount of services, if any, Consultant may be extended under this Agreement.
- II.3** Each Task Order amount shall be based on the Scope of Services for a particular Project and will be based on the not to exceed pre-priced tasks and or hourly rates included in **Exhibit 1** hereto.
- II.4 REIMBURSABLE EXPENSES.** City maintains the right of prior approval of any reimbursable expenditure by Consultant and shall not pay any expenses not agreed upon and accepted in writing by City prior to the execution of this agreement. If Consultant, Sub-Consultant or vendor of Consultant should make an expenditure which, prior to its occurrence, had not been approved in writing by City, either prior to or after the execution of this agreement, those costs shall be the sole responsibility of Consultant and not City. When authorized by City in writing, Consultant shall be entitled to reimbursement at actual cost incurred for services and related expenses for the following:
- II.4.1** Travel outside SAMSA only if approved in writing by City prior to such travel. If approved by City, reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of service under this Agreement. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Consultant shall provide detailed receipts for all the reimbursable charges. Travel expenses shall not exceed the amount noted in Exhibit a Scope/Budget/Reimbursables without further approval of City. City shall not pay for Consultant's travel within SAMSA.
- II.4.2** Mailing, courier services and copies of documents requested in writing by City in excess of the copies which are to be provided under this Agreement. These costs shall not exceed the amount noted in attached Scope/Budget without further approval of City.
- II.4.3** Graphics, physical models and presentation boards requested in writing by City in excess of those which are to be provided under this Agreement. These costs shall not exceed the amount noted in attached Scope/Budget without further approval of City.
- II.4.4** City shall not allow a markup on any of the above reimbursable items and only shall reimburse actual costs incurred with City's written approval.

END OF ARTICLE II

ARTICLE III. METHOD OF PAYMENT

- III.1** Payments to Consultant shall be in the amount shown on the invoices, consistent with an issued Task Order and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are judged unsatisfactory and which previously have not been approved by the Director. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.
- III.1.1** Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service, as may be described in Consultant's proposal/fee schedule (as shown in Exhibit 1 hereto) and the approved Task Order.
- III.1.2** Monthly payments for services performed in the various additional services shall be reviewed by Director upon Consultant entering itemized invoices, with required back-up and reference to the individual Task Order, in *PRIMELink*. Entered invoices shall indicate the value of the additional services performed to date on that Task Order and any other invoices or payments made related to that Task Order.
- III.2** Consultant shall, within ten (10) days following receipt of Compensation from City, pay all bills for services performed and furnished by others, in connection with a Project and the performance of the Work, and shall, if requested, provide City with evidence of such payment. Consultant's failure to make payments within such ten-day period shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City a bona fide dispute associated with an unpaid Sub-Consultant and its provided service. Consultant shall include a provision in each of its Sub-Consultant agreements imposing the same payment obligations on Sub-Consultants as are applicable to Consultant hereunder and, if City so requests, shall provide copies of such payments by Sub-Consultants to City. If Consultant fails to make payment promptly to a Sub-Consultant for Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City.
- III.3** Consultant warrants that title to all Services covered by an Application for Payment shall pass to City no later than the time of payment by City. Consultant further warrants that, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have previously been issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of any and all liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided Work relating to this Agreement. Consultant shall indemnify and hold City harmless from any liens, claims, security interests or encumbrances filed by anyone claiming by, through or under the items covered by payments made by City to Consultant.
- III.4** Consultant may submit a request for Partial Compensation, prior to a Task Order's completion. A request for Partial Compensation shall be accompanied by a progress report

detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as reflected in the progress report, and approved by the Director and at City's sole discretion. Compensation also may be made based solely on the tasks and services completed and approved by City and the associated unit price for each service/Project, as may be described in fee schedule and/or hourly rates included in Exhibit 1 hereto.

III.5 Project Close Out and Final Payment:

III.5.1 Consultant's final billing shall indicate on its face: "Final Bill - No Additional Compensation is Due to Consultant".

III.5.2 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible due to:

III.5.2.1 delays in the performance of Consultant's Work;

III.5.2.2 third-party claims filed or reasonable evidence received indicating a probable filing of such claims, unless security acceptable to City is provided by Consultant;

III.5.2.3 failure of Consultant to make payments properly to Sub-Consultants, suppliers and/or vendors for supplied services, labor, materials or equipment;

III.5.2.4 reasonable evidence that Consultant's Work cannot be completed for the unpaid balance amount under an assigned Task Order and this Agreement;

III.5.2.5 damage to City; or

III.5.2.6 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement.

III.5.3 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made by City within a reasonable time. City shall not be deemed in default by reason of withholding compensation to Consultant, as provided for in this **Article III**.

III.5.3.1 In the event of any dispute(s) between the parties, regarding the amount properly compensable for any Phase, as final compensation or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such claim. In the event Consultant does not initiate and follow the claim procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be deemed waived by Consultant.

III.5.3.2 City shall make final compensation of all sums due Consultant not later than thirty (30) days after Consultant's execution and delivery of a mathematically correct and accepted final Pay Application.

III.5.3.3 Acceptance of final compensation by Consultant shall constitute a waiver of all claims except those previously made in writing and identified by Consultant as unsettled at the time of Consultant's submittal of its final application for compensation.

III.5.3.4 Consultant agrees to maintain adequate books, payrolls and records in forms deemed satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services, unless a dispute regarding the Project or Consultant's Work is ongoing. If any dispute exists, upon notice from City, Consultant shall retain its books, payrolls and records for more than four (4) years after completion of all Services performed herein and for as long after four (4) years as City may request. At all reasonable times, Consultant shall provide access to City and City's duly authorized representatives to all personnel of Consultant, all books, payrolls and records of Consultant and City shall have the right to audit same.

III.6 Internet-based Project Management Systems. City shall administer its services through an Internet-Based Management System (hereafter referred to as "PRIME*Link*"). Consultant shall conduct its communication with City through PRIME*Link* and Consultant shall perform all project-related functions utilizing PRIME*Link*. Communications shall include correspondences, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and any other administrative activities. City shall administer the software, shall provide training to Project Team Members and shall make the software accessible via the Internet to all necessary Project Team Members. All of Consultant's invoices shall be submitted through PRIME*Link*.

END OF ARTICLE III

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

IV.1 Consultant understands and agrees that City has entered into multiple **Underground Storm Drain Video Inspection Program** agreements with other Consultants and has the authority to assign services at City's discretion. As stated in Article II.2.2 herein, Consultant understands and agrees that City makes no minimum guarantees with regard to the amount of Work, if any, which Consultant may be extended under this Agreement.

IV.2 This Agreement is an on-call, Task Order or indefinite delivery agreement for **Underground Storm Drain Video Inspection Program** and such other services that are required for Consultant to provide or are associated with **Underground Storm Drain Video**

Inspection Program. Specific requirements as to location, conditions, procedures and associated services pertaining to a Project shall be negotiated and set out in individual Task Orders for each request. Assigned and accepted Task Orders to Consultant shall be incorporated into and become a part of this Agreement.

IV.3 Consultant shall provide Underground Storm Drain Video Inspection Program and all associated services required for Consultant to provide such Services, pursuant to this Agreement, as further defined in individual Task Orders. Services may include, but are not limited to, the following:

In general, the following tasks shall be included in the scope of the work:

- A. Locate and identify the underground storm water and surface drainage structures within a prescribed area (40 linear miles), to include manholes, inlets, pipes (main and laterals) and culverts (boxes and pipes);
- B. Clean the structures to the degree necessary successfully to perform a complete panoramic Closed-Circuit Television (CCTV) inspection or, alternatively, work in coordination with City crews to clean the structures, prior to their inspection;
- C. Using industry standard televising equipment, perform a complete panoramic Closed-Circuit Television (CCTV) inspection of the structures and populate the data in PipeLogix Software that is needed to meet Pipe Assessment Certification Program (hereafter referred to as "PACP") condition assessment standards and collect any additional attribute data City requires for asset management, using Cartegraph (STORM view module) Software;
- D. Place the collected data into the Public Works (hereafter referred to as "Public Works") Department's PipeLogix software;
- E. Using PACP certified raters, assess/rate/record the condition of the structures according to National Association of Sewer Service Companies (hereafter referred to as "NASSCO") standards;
- F. Export the PipeLogix PACP data and other attribute data collected into the Public Works Department's Cartegraph Asset Management System (STORM view module)
- G. Map City's storm water drainage infrastructure, using the interface capabilities within Pipelogix to export into ESRI ArcGIS, using a projection and coordinate system consistent with City's currently supported version of ESRI ArcGIS;
- H. Furnish all labor, materials, equipment and supervision of staff who shall perform the work;
- I. Provide an Executive Summary, signed and sealed by a Professional Engineer licensed to practice in the State of Texas, of the data collection effort, as well as summarize results into tables, graphic and descriptive text for use by City.

Technical Specifications:

- A. **Project Location:** Work is located within the boundaries of the City of San Antonio. City shall furnish GIS feature classes or shape files of City's boundaries, parcels, streets and any other relevant GIS data.

- B. Project Schedule and Delivery Plan:** The selected Respondent shall provide City with a Project Schedule for the project scope of work and a plan for providing delivery of project deliverables.
- C. Project Performance Time:** The selected Respondent agrees to start work on the project within thirty (30) calendar days after a written Notice to Proceed is issued by City. All work shall be completed and invoiced by the end of the contract term. It is up to the selected Respondent to provide sufficient equipment and workforce to accomplish the workload within the allotted time frame and within the period of time allotted in any City Right-of-Way permit that may be required.
- D. Cleaning Equipment:** If cleaning is a part of the selected Respondent's contract, the selected Respondent shall supply equipment for storm sewer cleaning capable of cleaning the structure to the degree needed to perform a complete panoramic Closed-Circuit Television (CCTV) inspection. The selected Respondent shall provide City with the technical specifications of the cleaning equipment to be used and the manner by which the cleaning shall be coordinated with the Closed-Circuit Television (CCTV) inspection.

The selected Respondent shall submit the equipment manufacturer's operation manual and guidelines to City. The equipment manufacturer's operational guidelines shall be strictly followed. All equipment and devices shall be operated by experienced personnel to minimize the likelihood of damage to the pipe material. For the purposes of this section, the equipment operator shall have a minimum of three (3) years prior experience operating the same or similar equipment. City's Project Representative may request project references that demonstrate the required experience.

City reserves the right and the selected Respondent acknowledges City's Project Representative may disallow the use of certain types of equipment under certain conditions, if City's Project Representative believes that the use of such equipment shall damage the pipe segment being cleaned or shall contribute to an adverse environmental condition. This does not relieve the selected Respondent of any obligations to avoid damage to existing collection system pipelines and appurtenances.

- E. Inspection Equipment:** The selected Respondent shall be required to provide City with the technical specifications of the Closed-Circuit Television (CCTV) equipment that shall be used, to include lighting used to illuminate the structures that are inspected. The selected Respondent also shall confirm its Closed-Circuit Television (CCTV) inspection equipment is compatible with the Public Works Department's Pipe Logix software.

Visual information collected by the selected Respondent shall be capable of delivery to City on a computer hard drive, in accordance with these specifications.

- F. Distance Measurement:** The importance of accurate distance measurements is a point of emphasis under this contract for the locations of defects, obstructions, laterals, manhole depths, etc. Measurements for location of defects or laterals shall be made by means of distance-measuring devices as approved by City's Project Representative. The accuracy and calibrations of any distance-measuring device may be reviewed and approved by City. Distance measurements shall be made from centerline of manhole/access point to centerline of manhole/access point or to the blockage when reverse set-ups are necessary.

Marking on the cable or the like that would require interpolation for depth of manholes shall not be allowed. Survey rods are the preferred method to measure the depth of manholes and for determining the size of the existing pipe.

- G. **Permits:** The selected Respondent solely is responsible for making all necessary arrangements to comply with any regulations, provisions or requirements of any right-of-way permits that may need to be issued for work to be performed within City's right-of-way. The selected Respondent shall be responsible for obtaining all necessary right-of-way permits from the City of San Antonio and from any other governing entity, including railroads.

The selected Respondent shall conform to all requirements of the City of San Antonio Tree Preservation Ordinance, including making the proper notifications to City's Arborist and/or obtaining required permits, if necessary.

- H. **Traffic Control:** The selected Respondent shall be responsible for traffic control and shall coordinate this activity with City.

- I. **Existing Utilities:** The selected Respondent shall be held responsible for the protection of existing utilities, as well as all damage which may occur as a result of operations. It shall be the selected Respondent's responsibility to determine the location of existing utilities. The selected Respondent shall pay the cost of temporarily relocating utilities for the convenience of the selected Respondent. In areas where existing utilities are within and adjacent to the established limits of work and could be damaged as a result of the selected Respondent's operations, the selected Respondent shall take all necessary precautions to protect such utilities from damage. Further, should damage to other utilities occur, the selected Respondent shall be fully responsible and shall pay for the repair of any such damage without additional cost to City or the affected utility owner.

Where overhead power lines are in close proximity to the work, the selected Respondent shall comply with the requirements established by Vernon's Texas Civil Statutes Articles 1463c.

- J. **Communication:** The selected Respondent shall have the ability to communicate with City at all times. The Superintendent shall have a cellular telephone at which he/she may be reached at any time. In the unforeseen event that Respondent's Superintendent is unavailable; the selected Respondent shall provide City with an emergency telephone number by the first working day of the Project which may be utilized by City on evenings, weekends and holidays. The telephone number must be a commercial answering service. The answering service must be able to contact the selected Respondent and the selected Respondent must respond back to City immediately after the initial contact.

- K. **Incident Complaint Log:** The selected Respondent shall maintain a log of incidents and customer complaints. Incidents, as used herein, shall mean all events that disrupt productivity, damages infrastructure or that would cause a negative public perception of City. Examples of incidents include the intrusive removal of lodged equipment from the pipe, a sewer spill, a "stop work" order issued by a City right-of-way inspector, citizen complaint, accident, injury, etc. the selected Respondent shall relay all incidents and/or customer complaints to City's Project Manager and Inspector immediately or as soon as is practicable, upon occurrence. The log shall include the date and time of a call or incident, the nature of a complaint and the resolution, if any. The log shall be made available to City upon request.

- L. **Quality Control and Assurance Plan:** The selected Respondent shall prepare and submit a Quality Control and Assurance Plan (hereafter referred to as “QC Plan”) that provides information regarding the policies and procedures that the selected Respondent shall follow to ensure:
- (a) The work is conducted in a timely and professional manner;
 - (b) The results of the selected Respondent’s operations shall produce the desired effect; and
 - (c) The data collected shall be of appropriate quality.

Respondent’s QC Plan also shall provide information regarding the procedures put in place by the selected Respondent to effectively negate any type of undesirable condition in the collection system that typically is encountered in a project of this nature and magnitude that would materially affect the quality and productivity of the work. Include in Respondent’s QC Plan shall be procedures for taking pictures of the above ground pre- existing area of work, documenting the existing conditions for the purpose of protecting the selected Respondent from any false claims that may arise due to damages to private or public property. The selected Respondent shall submit the QC Plan for approval to City, prior to commencing work. Approval of Respondent’s QC Plan does not; in anyway, relieve the selected Respondent of any liability under its contract. Compensation for preparation of the QC Plan is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be allowed.

Selected Respondent Operations Requirements

- A. **Mobilization:** Except for mobilization associated with emergency work orders, mobilization on this Project shall be incidental to the work performed and no separate payment shall be made by City for mobilization.
- B. **Schedule of Operations:** Normal working hours are 7:45 a.m. to 4:30 p.m. daily, except for weekends and City holidays. The selected Respondent carefully shall plan, in close coordination with City and prior to beginning any work, fully to develop procedures and standards for the work that is to be scheduled. Employee safety, workmanship standards, tracking progress, submitting deliverables and maintaining the integrity of City operations with minimal disruption shall be the key areas to be addressed during the scheduling of the work. The selected Respondent shall schedule work to accommodate requirements of City of San Antonio Right-of-Way department, particularly as it regards the work days and working hours near schools, churches, during special events and any other requirement which may be imposed by City. The selected Respondent shall provide at least 72 hours advanced notice of any scheduled work outside of normal working hours.

Compensation for preparation and submission of work progress schedules is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City for the preparation and submission of work progress schedules.

- C. **Sequencing of Non-Emergency Work:** Sequencing of the work shall be determined by the selected Respondent, unless otherwise required by City. Sequencing of the work shall be discussed between City and the selected Respondent for concurrence prior to commencement of work. Generally, City emergency work orders take precedence. Consequently, the selected Respondent may be required to modify the sequencing due to City emergencies.

Compensation for planning and scheduling the sequence of work is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City for sequencing of work.

- D. **Daily Notifications:** Except for emergency work, the selected Respondent shall notify City (through its Project Manager and inspector, at minimum) via e-mail by 7:45 A.M., each work day of the work locations for that day. The selected Respondent shall provide at least 72 hours advanced notice of any scheduled work outside of City's normal working hours. The selected Respondent shall include a description of equipment to be used in its daily notification to City. The selected Respondent also shall notify City's Right-of-Way inspector, and/or any other jurisdictions as may be required. Repeated failure to properly notify City and others of work locations may result in stoppage of work and a formal review by City regarding contract compliance, prior to allowing the resumption of work. Extension of the contract completion date shall not be extended due to such work stoppage for City's review.

Compensation for daily notifications is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City for Respondent's daily notifications.

- E. **Third Party Notifications:** The COSA Project Manager or COSA Staff shall notify third parties (such as public and private utilities) of its intent to perform work in an area where such third parties may have rights to underground property or facilities. Further, the selected Respondent shall request maps or other descriptive information, as to the nature and location of such underground facilities or property, and selected Respondent shall offer assurance of its ability to enter upon any public or private lands to which access is required for performance of the work under the contract.

If access is required, the following will occur:

For underground facilities on private properties the proper legal documentation for access agreement (City of San Antonio Right of Entry Forms) will be provided by the Project Manager or COSA Staff to the property owners to acquire granted access onto the privately-owned properties. Contractor shall not enter the property until granted access is provided by the private property owners through the signed COSA Right of Entry Form.

- F. **Emergency Work:** City may issue emergency work orders. Upon verbal issuance of an emergency work order from City, the selected Respondent shall mobilize and commence work at the designated work site within twenty-four (24) hours of notification by City, unless specifically instructed by City otherwise. City shall document the verbal issuance of the emergency work order with a written emergency work order to follow.

It is imperative that the selected Respondent respond in a timely manner, when verbally notified by City of the emergency work requirement. Failure to be mobilized and working at the emergency job site within 24 hours of notification shall be the basis for termination. If Emergency Work is required, the Responded will provide an estimate which negotiations and approval will be made or each Task Order. Work initiated under normal non-emergency conditions shall not be subject to this increase.

- G. **Abatement and Remediation Plans and Notifications:** In the event that evidence is discovered of an imminent restriction of flow (such as severely crushed pipe, voids or missing

pipe, or if pieces of pipe, fresh soil or backfill are noted in the debris removed from the system) or other situation that would result in an overflow or public hazard, the selected Respondent immediately shall contact City. Work on that pipe may resume at the selected Respondent's risk.

The Edwards Aquifer Recharge Zone (hereafter referred to as "EARZ") includes sensitive geological aquifer recharge features. The selected Respondent shall be mindful of and immediately report to City any geological features, particularly solution cavities that may be a direct conduit to the aquifer. If anything of this sort is discovered, the selected Respondent shall cease work at that location until City has investigated and re-authorized Respondent's work.

The selected Respondent shall be liable for all costs of damages, direct and indirect, associated with storm sewer overflows that are caused, directly or indirectly, in whole or in part by its operations.

Compensation for drafting, submitting and executing emergency plans and notifications is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City for Respondent's draft, submitting and executing emergency plans.

- H. **Acquiring Water:** As necessary for performance of work under the contract, the selected Respondent solely shall be responsible for obtaining fresh water that may be needed for cleaning.

Compensation for acquiring water and for tracking and reporting water usage is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City to Respondent for acquiring water or for tracking and reporting water usage.

- I. **Pipe Inspection Report:** The selected Respondent shall create a digital pipe inspection report for every storm sewer pipe inspected, even if a storm sewer pipe partially is inspected. All observations shall be indexed to the footage counter, documented and coded using the most recent version of the National Association of Sanitary Sewer Companies (hereafter referred to as "NASSCO") PACP guidelines and must be recorded on the PACP storm sewer report, which includes the structural pipe rating index, O&M pipe rating index and the overall pipe rating index for each section of pipe observed.

Pipe inspection data shall be recorded with digital and hard copy deliverables. The video deliverable shall be in a format consistent with the requirements of PipeLogix software. The selected Respondent shall provide a report interpreting the data recorded including, but not limited to, the pipe segment number, manhole and structure numbers, diameter of the pipe, material from which the structure is made, defects outline, volume and/or level of debris, site location, profile of water and pipe level. This report shall be stored digitally in the system software. All observations shall be interpreted and recorded using the NASSCO PACP standard coding schema.

City shall work with the selected Respondent to identify the NASSCO database structure and schema information into which the condition assessment and attributes for each storm sewer pipe can be exported. The header section of all inspection forms shall be populated with all

mandatory and non-mandatory fields, as outlined by NASSCO, except for the year-renewed field and year-constructed field, as the selected Respondent shall not be expected to know this information unless it is provided by City.

The selected Respondent shall submit digital pipe inspection reports along with associated inspection data (tabular data, still images, video/audio file, etc.) with each invoice submittal, in a format consistent with the existing City closed circuit television inspection systems and data management systems. As a minimum, hard copy pipe inspection reports and the video file shall display manhole numbers, footage, pipe size and pipe material at all times, in addition to the defect information and lateral connection information. All digital video files shall be in a format compatible with City's software systems.

Compensation for preparation and management of all pipe inspection reports, videos and data bases is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City to Respondent for the preparation and management of pipe inspection reports, videos and data bases.

- J. **Global Positioning System (GPS) Mapping:** The selected Respondent shall collect x and y coordinates on all surface-located storm sewer structures and manholes, using global positioning system equipment capable of defining the coordinates of an asset to within "sub-meter" accuracy. Coordinates collected by the selected Respondent shall be identified by the manhole and structure numbers for linking to GIS. All horizontal (x and y) coordinates shall be provided in NAD_1983_StatePlane_Texas_South_Central_FIPS_4204_Feet. The collection of these data points shall be in conformance with established industry practices for quality and accuracy.

Compensation for global positioning system mapping of existing structures and manholes shall be on a "per each" basis for the successful collection of x and y coordinates.

- K. **Data Management:** As part of this contract, the selected Respondent is required to place the collected data into the PUBLIC WORKS Department's PipeLogix software. Using Pipe Assessment Certification Program (hereafter referred to as "PACP") certified raters; the selected Respondent shall assess and rate the condition of the structures according to NASSCO standards. The selected Respondent shall be responsible for exporting the PipeLogix PACP data into the Public Works Department's Cartegraph Asset Management System (STORMview module) and shall map City's stormwater drainage infrastructure using the interface capabilities within Pipelogix to export into ESRI ArcGIS using a projection and coordinate system consistent with GIS data maintained by City.

Input of the data into the Public Works Department's rating software (PipeLogix) and asset management system (Cartegraph STORMview module) shall take place no later than the following working day from the time of any inspection activities. The inspections shall require information on each pipe segment or manhole. The information required on pipe segments shall include, but not be limited to, coding the amount of debris, roots and grease removed (light, medium, or heavy), start and ending dates, number of cleaning passes performed to clean a segment, if the cleaning was completed (i.e. yes or no), denotation of heavy cleaning, comments and the length of segment cleaned and/or televised. Such information shall be used to track progress of the selected Respondent and as necessary backup data for invoicing.

The selected Respondent shall maintain a personal geo-data base consisting of the attribute information for the pipes and laterals that are in the scope of this Project. The selected Respondent shall add additional attribute fields to the personal geo-data base for the purpose of tracking work progress and for associating completed work and data to each individual pipe segment. The additional attribute fields shall include, but may not be limited to, the following:

- Actual linear footage and date cleaned
- Actual linear footage and date televised
- PACP ratings
- x and y GPS coordinates for upstream and downstream manholes and structures, and dates obtained
- Comments (for example, cite the reason why a pipe was only partially cleaned or inspected, if a map correction was submitted, if access was a problem, if a reverse set up was made, etc.)
- Video file identification number and video clip file name using a standardized naming convention.
- Name of Selected Respondent
- Contract Number

The selected Respondent shall provide all inspection data (tabular data, still images, video, NASSCO coded segments, etc. regardless of the source) in a digital format and compatible with the existing City closed circuit television inspection systems and data management systems. The selected Respondent shall be able to export the data out of their system and into City system by providing City with a NASSCO PACP export database in a 2007 MS Access Database format along with all associated videos, pictures, etc. The selected Respondent shall load the master file, which contains all the data from the entire project, on a hard drive in the proper format and submit it to City and the selected Respondent shall be responsible for exporting the data into City's enterprise data system. The selected Respondent shall be responsible for any errors in the data which must be corrected.

The documentation of City's storm water infrastructure shall be kept and maintained by the selected Respondent digitally, at minimum, for a period of two (2) years after final payment is made. The inspection reports shall be made available to City's Project Manager or Inspector upon request.

Compensation for data management is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City to Respondent for data management.

IV.4 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday services, as requested by City. Persons retained by Consultant to perform Work pursuant to this Agreement shall be employees or Sub-Consultants of Consultant.

IV.5 Consultant shall not commence Work on any authorized and issued Task Order, pursuant

to this Agreement, until thoroughly being briefed on the scope of a project and being notified by City in writing to proceed. Should the scope of Work of an issued Task Order subsequently change, either Consultant or City may request a review of the anticipated services, with an appropriate adjustment in compensation.

- IV.6** Consultant, in consideration for the compensation herein provided, shall render the professional services described in this **ARTICLE IV SCOPE OF SERVICES** that are necessary for the advancement of a project to substantial completion.
- IV.7** Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services outlined in each City-authorized Task Order and in accordance with the Consultant's Fee Schedule, attached hereto and incorporated herein and labeled as Exhibit 1. The Scope of Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with City and with the approval of the Director for each authorized Task Order and as provided in this Agreement.
- IV.8** Consultant's Fee Schedule, which includes pre-priced tasks and/or hourly rates, is incorporated by reference herein and attached hereto and labeled as Exhibit 1.

END OF ARTICLE IV

ARTICLE V. TIME AND PERIOD OF SERVICE

- V.1** The term of this Agreement shall commence upon its approval by the San Antonio City Council and upon the execution by both parties and shall remain in force for the period of one (1) year, herein referred to as the "Initial Term".
- V.2** As the enabling Ordinance provides, City shall retain an option to extend this Agreement for one (1) additional one-year periods, hereafter referred to as the "Extension Period(s)". The Director shall have the authority to exercise such options at his/her discretion.
- V.3** Time is of the essence of this Agreement. Consultant shall perform and complete its obligations for the various Tasks of services under Article IV Scope of Services herein in a prompt and continuous manner so as to not delay the construction of the work for a Project in accordance with the schedules approved by City and Construction Contractor. If, upon review of a Task Order, corrections, modifications, alterations and/or additions are required of Consultant for providing its services, those items shall be completed by Consultant before that Task Order is approved.
- V.4** Consultant shall not proceed with the next appropriate Task Order without a written authorization from City. City may elect to discontinue Consultant's services at the end of any Task Order for any reason or for no reason. However, if circumstance dictates, City retains the right to make adjustments to the scope of Consultant's Task Order obligations at any time to achieve the required services.
- V.5** Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or

regulations or any other causes beyond Consultant's reasonable control. Within twenty-one (21) days from the occurrence of any such event, for which time for performance by Consultant shall significantly be extended under this **Article V.5**, Consultant shall give written notice thereof to City stating the reason for such time extension and the actual or estimated time for completion thereof. If City determines that Consultant is responsible for Consultant's need for an extension of time, City shall have the right to make a Claim as provided in this Agreement.

- V.6** This Agreement with Consultant shall remain in force for a period of time City determines reasonably may be required for the design, award of the contract and the completion of a Project, including any extra work and any required extensions thereto, unless this Agreement is discontinued as provided for elsewhere in this Agreement.

END OF ARTICLE V

ARTICLE VI. PROJECT INSPECTION SERVICES REQUEST PROCESS

- VI.1** Inspection requirements shall be established with each project-specific issued Task Order.
- VI.2** When City has a Project for which it desires to procure Engineering Consulting Services for the Regional Storm Water Management Program, City shall notify Consultant by issuing a proposed Task Order Request through *PRIMELink*. Each proposed Task Order Request shall include, at a minimum: the name of the project; the location of the project; copies of or access to project documentation (such as specifications, environmental reports, or drawings) needed by Consultant to prepare a Proposal; a project schedule, to include any specific deadlines for performance of Engineering Consulting Services for the Regional Storm Water Management Program; any project-specific insurance requirements necessitated by the Work, which may require additional types of coverages or higher levels of coverage for Consultant than are required by the Agreement; and a deadline for providing City with a Proposal based on the above supplied information.
- VI.3** Consultant shall prepare and submit to City, within the deadline stated in a proposed Task Order Request, a Proposal for the desired services which shall include, at a minimum: Scope of Services; specific staffing; and an estimate of Task Order cost to City, based on the rates and fees agreed upon in Exhibit 1 hereto and Consultant's approved Fee Schedule. Consultant shall submit the Proposal in editable electronic format to the City through *PRIMELink*. By submitting a Proposal, Consultant thereby agrees to perform the requested service(s) within the time stated in the proposed Task Order Request.
- VI.4** Consultant and City shall negotiate the Proposal. Once Consultant and City reach mutual agreement as to scope, necessary staffing, scheduling and total cost, City shall issue a finalized Task Order through *PRIMELink*, to be accepted by both parties evidencing the agreed to scope and costs.
- VI.5** The Director has the authority to execute a Task Order in *PRIMELink* on behalf of City, so long as such finalized Task Order does not exceed the total contract value and funds are provided for in the project budget, as allocated by the San Antonio City Council.

- VI.6** Consultant shall not proceed with services until a finalized Task Order has been negotiated and accepted by both Consultant and City, Consultant receives a written Notice to Proceed from City and all documents required by City in advance of commencement of Work (to include Consultant's proof of insurance) have been provided to City. Any services provided or expenses incurred by Consultant, prior to receiving a written Notice to Proceed or after the expiration of either this Agreement or a finalized Task Order, shall be at Consultant's sole risk and expense and may not be reimbursable by City.
- VI.7** Actual amounts billed shall not exceed the total amount as set in a finalized Task Order.
- VI.8** City shall not pay and Consultant shall not invoice for any time or expense associated with a project proposed Task Order Request process, including development of Proposal and the associated Task Order negotiation.

END OF ARTICLE VI

ARTICLE VII. COORDINATION WITH THE CITY

- VII.1** Consultant shall hold periodic conferences with City representative(s) through the end of a project. A project shall have the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with City's current policies and standards. To assist Consultant in this project coordination, City shall make available for Consultant's use in planning for a project all existing plans, maps, statistics, computations and other data in City's possession, relative to existing facilities and to a particular project, at no cost to Consultant. However, any and all such information shall remain the property of City and immediately shall be returned by Consultant upon termination or the completion of a project or if so instructed by City.
- VII.2** The Director shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions, with respect to materials, equipment, elements and systems pertinent to Consultant's services.
- VII.3** City promptly shall give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services, in the work of a Contractor or any development that affects the scope or timing of Consultant's services.
- VII.4** Unless otherwise required by City, City shall furnish approvals and permits from all governmental authorities having jurisdiction over a project and other such approvals and consents from others, as may be necessary, for the completion of a project. Consultant shall provide City reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by Consultant pursuant to other provisions of the Agreement, but Consultant shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

END OF ARTICLE VII

ARTICLE VIII. REVISIONS TO DOCUMENTS

Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents as may be required to meet the needs of City and which are within the Consultant's Scope of Services. After the approval of reports or other documents by City, any revisions, additions or other modifications made at City's request, which involve extra services and expenses to Consultant, only shall be requested through an additional Task Order for services.

END OF ARTICLE VIII

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- IX.1** All documents, including any original drawings, estimates, specifications and all other documents and data, previously owned by Consultant shall remain the property of Consultant as instruments of service. However, it is understood that City shall have free access to all such Consultant information and City is granted the right to make and retain copies of Consultant's drawings, estimates, specifications and all other documents and data. Any reuse of Consultant's information without specific written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to Consultant.
- IX.2** Consultant acknowledges and agrees that City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data, immediately shall be delivered to City at no additional cost to City, upon request or termination or completion of this Agreement without restriction on its future use.
- IX.3** Consultant agrees and covenants to protect any and all proprietary rights of City in any materials provided to Consultant. Such protection of proprietary rights by Consultant shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Consultant by City shall not be released to any third party without the consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City.
- IX.4** Consultant hereby assigns all statutory and common law copyrights to City of any copyrightable Work product that in part or in whole was produced from this Agreement, including all equitable rights. No reports, maps, documents or other copyrightable Works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, drawings or other copyrightable Work produced under this Agreement shall become the property of City (excluding any instrument of services, as defined in **Article IX.1** herein, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction, against City, insofar as the same are based on any claim that materials or Work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

- IX.5** Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers or other persons, subsequent to the completion of a project. City requires that Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by other engineers or other persons, to include electronic copies, subsequent to the completion of a project.
- IX.6** Copies of documents, which may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions. Files in editable electronic media format of text, data, graphics or other types, (such as DWG or DGN) that are furnished by Consultant to City only are for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- IX.7** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Consultant to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.

END OF ARTICLE IX

ARTICLE X. TERMINATION AND/OR SUSPENSION OF SERVICES

X.1 RIGHT OF EITHER PARTY TO TERMINATE FOR DEFAULT.

X.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform, through no fault of the terminating party, in accordance with the terms of this Agreement and a failure to cure said failure, as provided in this **Article X.1**.

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

X.2 RIGHT OF CITY TO TERMINATE.

X.2.1 City reserves the right to terminate this Agreement for reasons other than substantial failure by Consultant to perform by issuing a signed Notice of Termination (citing

this **Article X.2.1**), which shall take effect on the twentieth (20th) day following receipt by Consultant of said Notice of Termination and/or upon the scheduled completion date of the performance phase of a project on which Consultant then currently is working, whichever effective termination date occurs first.

X.3 RIGHT OF CITY TO SUSPEND GIVING RISE TO RIGHT OF CONSULTANT TO TERMINATE.

X.3.1 City reserves the right to suspend this Agreement at the end of any phase of a project for the convenience of City by issuing a signed, written Notice of Suspension (citing this **Article X.3.1**) which shall outline City's reasons for the suspension and the expected duration of the suspension. Such expected duration shall, in no way, guarantee what the total number of days of suspension shall occur. Such suspension shall take effect immediately upon Consultant's receipt of said Notice of Suspension.

X.3.2 Consultant hereby is given the right to terminate this Agreement, in the event such suspension extends for a period in excess of one hundred twenty (120) days. Consultant may exercise this right to terminate by issuing a signed, written Notice of Termination (citing this **Article X.3.2**) to City after the expiration of one hundred twenty (120) days from the effective date of a suspension. Termination (under this **Article X.3.2**) shall become effective immediately upon receipt of said written notice by City.

X.4 PROCEDURES CONSULTANT TO FOLLOW UPON RECEIPT OF NOTICE OF TERMINATION.

X.4.1 Upon receipt of a Notice of Termination from City and prior to the effective date of termination, unless the Notice otherwise directs or Consultant immediately takes action to cure a failure to perform under the cure period set out herein, Consultant immediately shall begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and promptly shall proceed to cancel all existing orders and contracts, insofar as said orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of said Notice of Termination (unless Consultant successfully has cured its cited failure to perform), Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant Consultant an extension to the 30-day time period for submittal of such statement.

X.4.2 Copies of all completed or partially completed documents and all reproductions of all completed or partially completed documents, prepared under a Task Order pursuant this Agreement prior to the effective date of termination, immediately shall be delivered to City in a form requested by City as a pre-condition to a final payment to Consultant. These documents shall be subject to the restrictions and conditions set forth in Article IX herein.

X.4.3 Upon the above conditions being met, City promptly shall pay Consultant that

proportion of the prescribed fee, which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of any fee.

X.4.4 City, as a public entity, has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that the failure of Consultant to comply with the submittal of the required statement(s) and document(s), as cited herein, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed by Consultant under this Agreement.

X.4.5 Failure of Consultant to comply with the submittal of the required statement and documents, as outlined herein, shall constitute a waiver by Consultant of any and all rights or claims to collect monies that Consultant otherwise may be so entitled for services performed under this Agreement.

X.5 PROCEDURES CONSULTANT SHALL FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION.

X.5.1 Upon Consultant's receipt of a written Notice of Suspension, which date also shall be the effective date of the suspension, Consultant shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and promptly shall proceed to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.

X.5.2 Consultant shall prepare a statement showing, in detail, the services performed under a Task Order and this Agreement, prior to the effective date of suspension.

X.5.3 Copies of all completed or partially completed documents, prepared under a Task Order pursuant to this Agreement prior to the effective date of suspension, shall be prepared for possible delivery to City but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

X.5.4 In the event Consultant exercises its right to terminate one hundred twenty (120) days after the effective suspension date, within thirty (30) days after receipt of City's Notice of Termination, Consultant 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.

X.5.5 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.

X.5.6 Upon the above conditions being met, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of any fee.

X.5.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant hereby acknowledges this duty imposed on City. To this end, Consultant understands that failure of Consultant substantially to comply with the submittal of the required statement(s) and document(s), as outlined above, shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

END OF ARTICLE X

ARTICLE XI. CONSULTANT'S WARRANTY

Consultant warrants that the services required under this Agreement shall be performed with the same degree of professional skill and care typically exercised by similar consulting professionals performing similar services in San Antonio, Bexar County, Texas. Consultant further warrants that it has not employed or retained any company or person other than a bona fide employee, working solely for Consultant, to solicit or secure this Agreement and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person a commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this Consultant's Warranty, City shall have the right to terminate this Agreement under the provisions of **Article X** herein.

END OF ARTICLE XI

ARTICLE XII. NON-DISCRIMINATION POLICY

XII.1 NON-DISCRIMINATION. As a party to this contract, Consultant 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, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Consultant represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Consultant acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This **Article XII.1** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each

of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

XII.2 SUB-CONSULTANTS. Upon execution of this Agreement by Consultant, Consultant shall provide City a detailed outreach and diversity plan for approval by City, including Consultant's list of Sub-Consultants, and shall require all of its Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through City's web site. Consultant shall obtain approval in writing from City prior to adding, substituting or deleting any listed and approved Sub-Consultant from a project.

END OF ARTICLE XII

ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST

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

END OF ARTICLE XIII

ARTICLE XIV. INSURANCE REQUIREMENTS

XIV.1 Prior to the commencement of any Work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Transportation and Capital Improvements Department's (hereafter referred to as "TCI") Contract Services Division, which clearly shall be labeled "**Underground Storm Drain Video Inspection Program**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent. If City so requests, said Certificates also shall be accompanied by an affidavit signed by Consultant, attesting that the furnished Certificate(s) represent Consultant's current insurance coverages. City shall not accept a Memorandum of Insurance or Binder from Consultant as proof of insurance. The certificate(s) shall have the agent's signature and phone number and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. 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 TCI Contract Services Division. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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

XIV.3 Consultant's financial integrity is of interest to City; therefore, subject to Consultant's obligation to maintain reasonable deductibles in such amounts as are

approved by Consultant's insurance companies, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. These listed insurance limits are standard limits for all City projects/contracts. If a project/contract does not justify these standard limits of insurance coverages, Consultant may request a review and modification of the City's insurance requirements, to be considered on a project-by-project/contract-by-contract basis:

(Remainder of this Page 26 intentionally left blank)

XIV.3.1. Workers' Compensation	\$1,000,000 E.L. each accident
XIV.3.2. Employers' Liability	\$1,000,000 E.L. Disease – each employee \$1,000,000 E.L. Disease – Policy Limit
XIV.3.3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Explosion, Collapse, Underground Contractual liability	For Bodily Injury and Property Damage of: \$1,000,000 Per Occurrence \$2,000,000 General Aggregate, or its equivalent in umbrella or excess liability coverage must include per project aggregate.
XIV.3.4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of: \$1,000,000 Per Occurrence
XIV.3.5 Umbrella or Excess Liability Coverage	\$5,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage.
XIV.3.5. Professional Liability (Claims made form)	\$2,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.

Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service. City may request, without expense to City, to inspect copies of Consultant's policies and endorsements as they apply to the limits and forms required by City.

XIV.4 Consultant agrees to require, by written contract, that all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same insurance coverage required of Consultant herein and provide to Consultant a certificate of insurance and endorsement that names Consultant and City as additional insureds. Consultant shall acquire said certificate and endorsement, prior to the commencement of any Work by any Sub-Consultant and/or Subcontractor and through the period referenced in **Article XIV.3.5**. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

XIV.5 If City requests a copy/copies of an insurance policy, Consultant promptly shall comply and shall mark those portions of the policy, if any, Consultant regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Consultant's policy, City shall submit the received request, along with Consultant's information, to the

Texas Attorney General (hereafter referred to as “AG”) for an opinion regarding the release of Consultant’s policy information. Consultant and City agree that City shall be bound by the AG opinion/decision. Similarly, Consultant agrees and accepts City will provide all Consultant information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Consultant’s information.

XIV.6 Consultant agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:

- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers’ compensation and professional liability policies;
- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;
- Workers’ compensation, employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City; and
- Where allowed by respective policy provisions, terms and conditions, provide thirty (30) calendar days advance written notice to City of any cancellation or non-renewal or material change in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.

XIV.7 Within ten (10) calendar days of receipt by Consultant of a notice of cancellation or the non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant’s performance under this Agreement, should there be a lapse in insurance coverages at any time. Failure of Consultant to both provide and maintain the required insurance coverages shall constitute a material breach of this Agreement.

XIV.8 In addition to any other remedies City may have, upon Consultant’s failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order Consultant immediately to stop Work and Consultant immediately shall stop work until Consultant demonstrates compliance with the insurance requirements hereof.

XIV.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant’s or its Sub-Consultants’ and/or Subcontractors’ performance of the Work covered under this Agreement.

XIV.10 It is agreed that Consultant’s insurance shall be deemed primary and non-contributory,

with respect to any insurance or self insurance carried by the City of San Antonio, for liability arising out of operations under this Agreement.

- XIV.11** It is understood and agreed that the insurance coverages required are in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided by Consultant.
- XIV.12** Consultant and any Sub-Consultants and/or Subcontractors are responsible for all damage to their own equipment and/or property.

END OF ARTICLE XIV

ARTICLE XV. INDEMNIFICATION

- XV.1** CONSULTANT FULLY WILL INDEMNIFY and HOLD HARMLESS CITY and its officials, officers, agents, employees, volunteers, directors and representatives (hereafter referred to as "indemnatee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and defense costs, made upon indemnatee caused by or resulting from any act of negligence, intentional tort, intellectual property infringement or failure to pay a Sub-Consultant, Subcontractor or Supplier committed by Consultant or its Agent, Consultant under contract or another entity over which Consultant exercises control while in the exercise of rights or performance of the duties under this Agreement. This Indemnification shall not apply to any liability resulting from Indemnatee's negligence or willful misconduct in instances where the negligence or willful misconduct causes personal injury, bodily injury, death or property damage. If a court of competent jurisdiction finds Consultant and City jointly liable, liability shall be apportioned comparatively in accordance with the laws of the State without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under State law.
- XV.2** The provisions of this **Article XV** 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. Consultant shall advise City in writing within twenty-four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

END OF ARTICLE XV

ARTICLE XVI. CLAIMS AND DISPUTES

- XVI.1** As used herein, a Claim is a demand or assertion by one of the parties to this Agreement seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time or other relief, with respect to the terms of the Agreement. The term "Claim" also may include other disputes and matters in question between City and Consultant arising out of or relating to this Agreement. Claims shall be initiated by notice

to the other party electronically through *PRIMELink*. A Claim of Consultant, whether for additional compensation, additional time or other relief, shall be sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

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

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

XVI.5 Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply to claims by both Consultant and City:

XVI.5.1 No consequential damages shall be allowed.

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

XVI.5.3 No profit will be allowed on any damage claim.

XVI.6 Nothing in this **Article XVI** shall be construed to waive City's Governmental Immunity from a lawsuit, which Governmental Immunity expressly is retained to the extent it is not clearly and unambiguously waived by State law.

XVI.7 ALTERNATIVE DISPUTE RESOLUTION.

XVI.7.1 Each party to this Agreement is required to continue to perform its obligations under this Agreement, pending a final resolution of any dispute arising out of or relating to this Agreement, unless it would be impossible or impracticable to perform under the circumstances.

XVI.7.2 Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Agreement agree they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects.

This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with mediation alternative dispute resolution process contained herein. All negotiations pursuant to this **Article XVI.7.2** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

XVI.7.3 MEDIATION.

XVI.7.3.1 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

XVI.7.3.2 Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon the written agreement of both parties.

XVI.7.3.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this **Article XVI** shall be deemed to have occurred.

XVI.7.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in San Antonio, Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

XVI.7.4 Consultant and City expressly agree that, in the event of litigation, both parties waive rights to payment of attorneys' fees that might otherwise be recoverable pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code Section 271.153, the Prompt Payment Act, common law or any other provision for payment of Attorneys' fees.

END OF ARTICLE XVI

ARTICLE XVII. SEVERABILITY

If for any reason, any one or more paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining paragraphs

of this Agreement but shall be confined in its effect to the specific section, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any section, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

END OF ARTICLE XVII

ARTICLE XVIII. INTEREST IN CITY CONTRACTS PROHIBITED

XVIII.1 No officer or employee of City shall have a financial interest, directly or indirectly, in any contract with City or shall financially be 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's Public Service Board, SAWS and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.

XVIII.2 Consultant acknowledges that it is informed that the Charter of City and its Ethics Code prohibits a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. Consultant's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; a City officer or employee's parent, child or spouse; a business entity in which the City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a Sub-Consultant or Subcontractor on a City contract; and/or a partner or a parent of a subsidiary business entity.

XVIII.3 Consultant warrants, certifies and this Agreement is made on City's reliance thereon that Consultant, its officers, employees and agents neither are officers nor employees of City. Consultant further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

END OF ARTICLE XVIII

ARTICLE XIX. TEXAS GOVERNMENT CODES

XIX.1 **Texas Government Code §2270.002** provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If affirmation is found to be false, City may terminate the contract for material breach.

XIX.2 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City.

City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

**END OF ARTICLE XIX. TEXAS GOVERNMENT CODES
ARTICLE XX. CONFLICTS OF INTEREST DISCLOSURE**

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

END OF ARTICLE XX

ARTICLE XXI. STANDARD OF CARE/LICENSING

XX.1 Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

XX.2 Consultant shall be represented by personnel with appropriate certification(s) at meetings of any official nature concerning a project including, but not limited to, scope meetings, review meetings, pre-bid meetings and preconstruction meetings.

END OF ARTICLE XXI

ARTICLE XXII. RIGHT OF REVIEW AND AUDIT OF CONSULTANT'S RECORDS

XXI.1 Consultant grants City and its designees the right to audit, examine or inspect, at City's election, all of Consultant's Records relating to the performance of Work under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or inspection of Consultant's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain Consultant's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute.

XXI.2 "Consultant's Records" shall include any and all information, materials and data of every kind and character generated as a result of the Work under any Task Order and this Agreement. Example of Consultant Records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in City's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

XXI.3 City agrees that it will exercise its right to audit, examine or inspect Consultant's Records only during regular business hours. Consultant agrees to allow City and City's designee access to all of Consultant's Records, Consultant's facilities and the current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

XXI.4 Consultant shall include this audit clause in any Sub-Consultant and Subcontractor, Supplier or vendor contract.

END OF ARTICLE XXII

ARTICLE XXIII. ENTIRE AGREEMENT

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

END OF ARTICLE XXIII

ARTICLE XXIV. VENUE

The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in San Antonio, Bexar County, Texas.

END OF ARTICLE XXIV

ARTICLE XXV. NOTICES

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

If intended for City, to:

Public Works
Attention: Contract Services
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Consultant, to:

RJN Group, Inc.
Attention: Daniel Jackson, Vice-President
8930 Fourwinds Drive, STE 203
San Antonio, Texas 78239

END OF ARTICLE XXV

ARTICLE XXVI. INDEPENDENT CONTRACTOR

In performing services under this Agreement, the relationship between City and Consultant is that of an independent contractor. By the execution of this Agreement, Consultant and City do not change the independent contractor status of Consultant. Consultant shall exercise independent judgment in performing its duties and obligations under this Agreement and solely is responsible for setting working hours, scheduling or prioritizing the Work flow and determining how the Work is to be performed. No term or provision of this Agreement or act of Consultant, in the performance of this Agreement, shall be construed as making Consultant the agent, servant or employee of City

or making Consultant or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which City provides to or for its employees.

END OF ARTICLE XXVI

(Remainder of this Page 36 intentionally left blank)

ARTICLE XXVII CAPTIONS

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

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

Executed on this _____ day of _____, 20_____.

CITY OF SAN ANTONIO

RJN GROUP, INC.

By: _____
RODERICK J. SANCHEZ, AICP, CBO
ASSISTANT CITY MANAGER

DocuSigned by:
Daniel Jackson
By: _____
6454EDCA4BEE460
DANIEL JACKSON, P.E.
Vice President

Title

APPROVED:

CITY ATTORNEY

END OF ARTICLE XXVII

**EXHIBIT I CONSULTANT'S FEE SCHEDULE
(TO INCLUDE REIMBURSEABLES, IF ANY)**

END OF EXHIBIT I

EXHIBIT "I"

Scope of Services

City of San Antonio – Underground Storm Drain Video Inspection Program
Contract FY2020-FY2021 – Year 6
October 2020

RJN Group, Inc. (CONSULTANT) understands the City of San Antonio (CITY) has two main goals it would like to accomplish with this project: (1) to perform CCTV inspection, condition assessment and GIS network of the storm sewer infrastructure, and (2) to develop a CCTV and Condition Assessment Master Plan (Master Plan) for its stormwater system.

PHASE 1: CCTV Inspection, Condition Assessment and Defect Analysis

As discussed with the CITY in September 2020, the CITY wishes to complete the CCTV for the agreed upon areas for FY2021 – See Attachment D for Map. A total of 40 miles of stormwater infrastructure, including mains, laterals, inlets and manholes shall be inspected during FY2021 of this contract. These tasks are included below and shall be completed during this phase of the FY2021 project.

PHASE 2: Final CCTV and Condition Assessment Master Plan

The City of San Antonio (CITY) desires to finalize the CCTV and Condition Assessment Master Plan (Master Plan) Developed in FY18 for its stormwater system. The overall goal of the Master Plan report is to recommend a strategy to implement a comprehensive and proactive CCTV inspection and condition assessment program for the City-wide stormwater system. An analysis comparing the theoretical Risk compared to the calculated risk based on inspection shall be done to further estimate the Risk scores for the rest of the City. This resulting Master Plan will be used to scope out and direct the inspection and condition assessments of the stormwater infrastructure by the City in the future.

Phase 3: Corrugated Metal Pipe Rehabilitation Pilot Program

Based on our meeting with the City of San Antonio (COSA) Transportation and Capital Improvement (TCI) leadership on January 17, 2019, the CITY would like to develop a Corrugated Metal Pipe Rehabilitation Pilot Program in order to identify the best rehab methods for the defective CMP Pipe in the COSA system. Based on our discussions with the CITY, we have summarized our understanding of the project and outlined the scope of services for this Phase. The Letter Proposal and a more detailed scope of services was prepared and given to the CITY on February 4, 2019. This document is provided by RJN as Attachment E.

The scope of services to be provided by the CONSULTANT for FY2021 PHASE 1, PHASE 2 and PHASE 3 of the project is described in the following sections:

PHASE 1: CCTV Inspection, Condition Assessment and Defect Analysis

TASK 1: PACP Video Inspection

a) Update GIS Database for Video Inspection

CONSULTANT will develop a spatially referenced GIS layer that flags the assets that will be video inspected within the scope of this project. The CONSULTANT will coordinate with the CITY to assess the study area and determine a general schedule for completing the video inspections. The CONSULTANT will coordinate with the video inspection field crew and provide a pre-populated database of the study area.

b) CCTV Pipe Inspection

A CCTV video inspection will be conducted to pinpoint system defects, define their magnitude, and determine the amount of debris and sediment in the pipes. Main line structures within the designated study area will be targeted for video inspection. The results of these inspections will be recorded in digital videos and photos, and the condition of each pipe will be detailed in the assessment database using Pipeline Assessment Certification Program (PACP) standards.

During the performance of the work, CONSULTANT shall utilize industry standard OSHA safety and appropriate traffic control procedures. In addition, local traffic control requirements shall be observed. CONSULTANT will comply with TMUTCD standards.

c) Sub-Consultant Coordination

The CONSULTANT shall monitor all CCTV activities completed by the SUB-CONSULTANT. Weekly notifications shall be created with coordination of the SUB-CONSULTANT and sent to CITY staff to alert them as to the starting location of CCTV activities each week.

d) Notifications to City

The CONSULTANT shall obtain a permit for all CCTV activities for the specified area of this project. The permit shall be a blanket permit to cover the all field activities.

To minimize delays, the CONSULTANT will coordinate with the field task leader and immediately notify the CITY if any structural issues are encountered and to determine if pipe cleaning is necessary.

The CONSULTANT shall provide the CITY with a monthly status report that summarizes the total linear footage that has been inspected for the prior month in order to track the amount of CCTV completed in correlation to the CITY's measurable CCTV goals.

TASK 2: PACP Condition Assessment of Task 1

a) CCTV Pipe Inspection Processing

The results of the inspections from TASK 1 will be recorded in digital videos and photos, and the condition of each pipe will be detailed in the assessment database using PACP standards. The SUB-CONSULTANT shall provide the CONSULTANT with periodic data deliverables of the PACP databases. This information will be integrated into a master PipeLogix Database. Each interim data deliverable will be processed by the CONSULTANT in order to consolidate the individual databases into a master

database for the project. This task shall include updating the InspectionID, VideoID, SurveyID and Condition ID's so that they are unique and there is no duplication of any IDs when consolidating data from multiple field crews and multiple interim databases. CONSULTANT shall integrate the inspection data with the original GIS database provided to the SUB-CONSULTANT to ensure that the Inspections IDs match up with the GIS assets.

b) Inspection Data Post Processing and QAQC

The CONSULTANT will complete a QAQC assessment of the raw pipe inspection and condition assessment data. CONSULTANT shall review the CCTV files to assess the quality and accuracy of the information. Various data checks will be performed, including but not limited to: checking that the upstream and downstream IDs are correct, that the flow direction is correct, that all connecting pipes have been inspected, and that all pipe materials and sizes are accurate. The final assessment data will be processed and formatted based on the previously developed standardized schema.

c) Inspection Reports

The CONSULTANT will compile an inspection report of all acceptably inspected assets that show any defects, indexed to the footage counter, and all PipeLogix fields and headers. This report shall be provided digitally to the CITY.

TASK 3: Mobile LiDAR and Manhole/Inlet Inspections

Mobile LiDAR

a) Above Ground Field Reconnaissance

ENGINEER shall dispatch field crews to locate and confirm the existence and accessibility of structures within the study area. ENGINEER shall develop a list of buried, not found, or believed to be non-existent structures. This list will be forwarded and reviewed with the CITY (as needed) in determining whether subsequent manhole exposing activities are warranted.

b) Storm Asset Survey

Field survey of the stormwater assets will be performed on manholes and inlets within the study area. The survey crews will determine the X-Y-Z spatial location of the stormwater assets using survey grade GPS equipment and Mobile LiDAR enabled trucks. The crews will collect basic measurements such as rim elevation, flowline elevation and attribute information for each asset where possible.

c) Process Survey and Integrate into GIS

ENGINEER will process the raw field survey data and perform QAQC on the files and features. The QAQC'd data will be integrated into the GIS database. A standard folder structure will be developed for digital storage and supporting files will be organized accordingly.

Manhole Inspections

a) Manhole/Inlet Inspections

The CONSULTANT shall provide the SUB-CONSULTANT with a GIS layer of all located manholes/inlets that require inspection. The CONSULTANT shall develop a field application for entering the details of the inspection by the SUB-CONSULTANT. A visual inspection of each manhole/inlet encountered

during the Video Inspection and Condition Assessment Task will be completed. All inlets from prior project years shall be inspected during this task.

The CONSULTANT shall coordinate with the SUB-CONSULTANT to ensure that all inspections are completed in a timely manner and to the specifications outlined.

During the performance of the work, CONSULTANT shall utilize industry standard OSHA safety and appropriate traffic control procedures. In addition, local traffic control requirements shall be observed. CONSULTANT will comply with TMUTCD standards.

b) Manhole/Inlet Condition Assessment

The general condition of the manhole/Inlet will be noted during inspection as either a "GOOD" or a "POOR" grade. A "GOOD" grade denotes that there are no structural issues with the manhole/Inlet. A "POOR" grade shall represent either a structural failure or a manhole/inlet that is clogged with debris. The characteristics of the connecting pipes, including size, material and measure down to the invert shall be recorded. If the structure is rated as "POOR", the reasoning for this grade will be recorded. This information shall be post-processed, QAQC'd and integrated into the GIS.

To minimize delays, the CONSULTANT will coordinate with the field task leader and immediately notify the CITY if any structural issues are encountered.

TASK 4: Pipe and Inlet Cleaning (Allowance)

a) Pipe Cleaning

Pipe cleaning shall only be performed to facilitate the video inspection activities and/or to improve system performance except for Corrugated Metal Pipes (CMP). All pipes with a CMP material, shall be cleaned so that the invert is clear of debris and sediment and is clearly visible in all inspections.

The CONSULTANT shall proceed with pipe cleaning on main lines where heavy debris build-up or sediment prevents the efficient release of storm water through the system or where major blockages prevent the video inspection equipment from performing.

During cleaning operations, sludge, debris, etc. shall be removed from the sewer and disposed of at a location provided by CITY.

Water acquisition required for cleaning processes will be coordinated with the San Antonio Water System (SAWS) on a case by case basis as needed.

All documentation and reports shall be delivered in Microsoft compatible format or other formats compatible with the CITY's existing databases.

TASK 5: GIS Data Processing, Defect Analysis and Integration of FY2021 CCTV Data

a) QAQC of GIS Database

CONSULTANT will conduct a QAQC of the FY2021 digital storm drain network after the assessment and inspection data have been integrated from the CCTV data. The network will be validated based on geometric network connectivity and topology rules and this review will also check the GIS database for attribute consistency. The CONSULTANT will QAQC the reference file attributes within the database to ensure that the digital files are accurately linked to the correct spatial feature.

b) Integrate Inspection and Assessment Data into Databases

The CONSULTANT will process the QAQC'd GIS data and integrate the inspection/assessment information the In-House CCTV data into the GIS database. Each spatial line will be referenced to the inspection video, photos, PDF reports and assessment attribute data.

The CONSULTANT will coordinate with CITY staff to transfer inspection/assessment data into the CITY's existing PipeLogix and Cartegraph databases. The CITY shall provide a portal for the CONSULTANT to upload data.

c) Defect Analysis

After the field investigation services and GIS Data Processing, CONSULTANT shall perform a system-wide condition assessment for the assets within the project area. CONSULTANT shall evaluate the system, note assets with structural issues and provide a condition "score" or "grade" for each asset using the rating criteria provided by the CITY.

If desired by the CITY, the CONSULTANT can provide detailed rehabilitation and improvement costs for the system as an amendment to this contract or separately negotiated agreement.

PHASE 2: CCTV and Condition Assessment Master Plan

Background:

On October 19, 2017, the CONSULTANT submitted the Initial CCTV Master Plan for review. Additional data refinement was required in 2018 and 2019. A final version of this Master Plan shall be developed, re-analyzed and finalized during this Phase

The scope of services to be provided by the CONSULTANT for the Final CCTV Master Plan development is described in the following Task:

TASK 6: InfoAsset Planner System Analysis

a) Integration of ALL Inspection Data from Years Past

At the completion of TASK 5:, the CONSULTANT shall re-run the InfoAsset Planner COF, LOF and Risk Analyses from the FY2019 CCTV Master Plan project with the updated GIS Data and ALL previous years of inspection data. The CONSULTANT shall analyze the resulting information results of these scenarios will be presented to the CITY upon completion for discussion and review. At this time, the CONSULTANT will review with the CITY the weighting of the COF and LOF scores and determine the final failure risk scoring matrix configuration and grading criteria. Attribute data shall be updated based on what is found in the field inspections. COF LOF and Risk analysis will be rerun based on new data.

b) Compare Inspection Data Risk to Master Plan Theoretical Risk

The CONSULTANT shall compare the existing inspection defect analysis developed during the past five years of inspection to the identified theoretical Risk of the Master Plan analysis. The projected Overall Risk scores from the Master Plan shall be analyzed to identify the differences in projected Risk and Risk based on actual inspection-driven condition assessment data information.

This information will be used to summarize the condition of the system compared to the theoretical expectations (developed based on attribute data alone) that was used to prioritize sequence inspection activities. The prioritization sequence shall be updated based on this information.

TASK 7: Update FINAL Stormwater Condition Assessment and CCTV Master Plan

a) Reporting

Once the system analysis has been completed and the failure risk grade has been assigned to each asset, the CONSULTANT will stratify and group the assets into a list that prioritizes the need for condition assessment and CCTV inspection based on the magnitude of failure risk. The CONSULTANT will work with the CITY to identify the parameters required to achieve yearly goals.

Once these parameters have been finalized and the magnitude of high risk pipe is known, the CONSULTANT shall develop the FINAL Master Plan detailing the risk analysis process, discussing the prioritized CCTV needs of the CITY and recommending a strategy to implement a comprehensive condition assessment and CCTV inspection program of the stormwater system. After comments are received and addressed, a FINAL Stormwater CCTV and Condition Assessment Master Plan will be prepared and submitted to the CITY.

b) Deliverables

Asset Planner generates GIS feature classes for all COF, LOF, and Risk analysis results. These feature classes will be imported into a GIS Database along with the CITY's shapefiles that were populated with pertinent attribute data used to grade the stormwater system. The CONSULTANT will furnish the CITY with this GIS Database of all generated results.

The CONSULTANT will provide the CITY with a list of 10 miles/year packages for CITY forces to inspect. These targeted locations will be selected based on the assets being deemed to have a Low to Medium Risk from the COF and LOF analysis.

TASK 8: ArcGIS Online Dashboard

Background: During the interview process for the FY2021 contract the CONSULTANT showed the capabilities of an ArcGIS Online Dashboard to the City. The purpose of this task is to continue to develop and provide access to the City an online dashboard that can be used to track the progress of the current phase of the project as well as view previously collected data for pipes and other assets such as pipe score, inspection videos, and other inspection related information.

a) Initial Development

CONSULTANT will develop a fully functional dashboard that contains maps that show the status of the current phase of the project as well the overall inspection data collected during the previous years of the project. The dashboard will also contain bar graphs and pie charts that can be used to filter the displayed map data based on material, diameter, pipe score, and inspection year.

b) Integration of Inspection Videos

CONSULTANT will work with personnel at the City to develop and test a link between the inspection videos and the GIS that can be used to display the videos through the ArcGIS Online Dashboard.

c) Dashboard Training for City Staff

Consultant will develop the online dashboard and have up to 2 training sessions with COSA staff to ensure all desired features are included in the final product.

TASK 9: Training of In-House CCTV Field Crews

a) Development of Training Agenda

CONSULTANT will hold a workshop with CITY staff to develop a comprehensive training agenda. This agenda will include input from city's field and office staff as well as CONSULTANT's input. This agenda will require CITY's approval before implementation.

b) Implementation of Training Agenda

CONSULTANT will develop a training schedule that will consist of two (2) days of field and in office training.

i) Field Training

Field training will consist of demonstrations by CONSULTANT on how to set up equipment, conducting pipe and lateral inspections as well as filling out PipeLogix header information.

ii) Office Training

Office training will consist of basic introductions to GIS, PipeLogix and Cartograph software. It will also give examples of how field work data is handled by the GIS analyst and what the final product of an inspection is used for Master Plan refinement.

TASK 10: Project Management

a) Project Administration

CONSULTANT shall prepare and monitor schedule of work activities.

Perform CONSULTANT's internal project control procedures monthly including schedule and budget control, quality control review, and monthly progress reports.

CONSULTANT shall order and obtain services necessary to perform the project and finalize agreements with any required sub consultants or subcontractors.

CONSULTANT shall answer all questions by the CITY and provide timely response to all CITY communications.

Regular scheduled progress reports will be provided by the CONSULTANT to the CITY's Project Manager and designated team members.

b) Meetings

A project kick-off meeting will be held with all team members at the beginning of the project. Subsequent project status meetings will be held with designated team members based on the current tasks being completed. Meeting minutes will be documented and distributed throughout the project.

CONSULTANT shall conduct the project status meetings with the CITY's staff on a regularly scheduled basis, approximately every four weeks depending on the current tasks being performed, or at the request of the CITY. The project status meetings will

- 1) summarize previous work completed,
- 2) outline and coordinate upcoming work tasks,
- 3) receive comments and questions from CITY staff, and
- 4) document any project issues.

Meetings will be held at significant project milestones with written documentation of each meeting provided. Correspondence and informal meetings will also be conducted on an as needed basis.

c) Data Delivery

The CONSULTANT shall compile field inspection data, surveying information, CCTV video files, summaries and reports into an organized digital file structure.

Services Not Required in this Scope. Can be provided as a line item amendment:

Ground Penetrating Radar (GPR)

For suspected large voids in pipes, CONSULTANT and SUB-CONSULTANT can provide Ground Penetrating Radar (GPR) to assess approximate location of the void. GPR Survey can provide information of the voids in the soil above and below a pipe. GPR uses Ultra High Frequency (UHF) and Very High Frequency (VHF) microwave bands of the radio spectrum of the electromagnetic radiation. The reflected signals are detected by a receiver and used to map the subsurface structure. In the right conditions, GPR can be used to detect subsurface objects, changes in material properties, and voids and cracks. The reflected images of these pulses are analyzed using one-dimensional electromagnetic wave propagation theory. These pulses are reflected to the antenna with amplitudes and arrival times that are related to the dielectric constants of the material layers. Across the interfaces, part of the energy is reflected, and part is absorbed, depending on the dielectric contrast of the materials. The refracted or reflected signal is then interpreted by the GPR as an “anomaly”.

ATTACHMENT "B"

SERVICES PROVIDED BY OWNER

City of San Antonio – Underground Storm Drain Video Inspection Program
Contract FY2020-FY2021 – Year 6
October 2020

Obligations of the CITY:

a) CITY Contact

Designate a person to act as CITY's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY's policies and decisions with respect to CONSULTANT'S services for the PROJECT.

b) CITY-Furnished Data

The CITY will make available to the CONSULTANT all technical data in the CITY's possession relating to the CONSULTANT's services on the project. The CONSULTANT may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY. Information shall include any data prepared by others, including without limitations previous storm sewer system reports and records and other special data or consultations not covered in CONSULTANT'S services; all of which CONSULTANT may rely upon in performing the required services.

The CITY will provide to the CONSULTANT base maps and sewer maps in an electronic format. Maps will include, but not be limited to, aerial photography, topography information, sewer layer, addresses of all lots, streets, and street names.

The CITY will provide CONSULTANT with a portal to access the CITY's existing PipeLogix and Cartegraph databases in order to upload deliverable data.

The CITY will provide training on the planned implementation of the Cartegraph OMS system within the City and provide all database schema requirements.

The CITY shall provide to the CONSULTANT all datasets that will be integrated into the Stormwater CCTV Master Plan, including but not limited to: critical facilities, critical roadways, and soils, budget constraints, yearly CCTV goals.

c) Access to Facilities and Property

The CITY will make its facilities accessible to the CONSULTANT as required for the CONSULTANT's performance of its services.

Prior to the beginning of the project, the CITY shall inspect the manholes in the project area for accessibility. Where manhole assets are paved over or welded shut, CITY staff shall send crews to open assets and make them accessible for the CONSULTANT's inspection tasks.

The CITY will assist the CONSULTANT in arranging for access to and make necessary provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform services under this AGREEMENT.

d) Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the CONSULTANT's services.

e) Timely Review

The CITY will examine the CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other CONSULTANTS as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the project schedule.

f) Prompt Notice

The CITY will give prompt written notice to the CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of the CONSULTANT's services or of any defect in the work of the CONSULTANT or construction contractors.

ATTACHMENT "C"
COMPENSATION AND PAYMENT SCHEDULE

City of San Antonio – Underground Storm Drain Video Inspection Program
 Contract FY2020-FY2021 – Year 6
 October 2020

The contract shall be a ***"Time and Materials"*** contract. The total fee shall be considered an hourly not-to-exceed fee for engineering services and a unit-based fee for pipe CCTV inspection/cleaning and will not be exceeded without prior approval from the CITY of San Antonio.

A summary of the fee, broken down by task and estimated man hours, is provided. Outlined below are the expected quantities for the FY2021/PHASE 6 Scope:

COSA 2021 Stormwater Scoping Asset Quantity Summary				
<i>Item</i>	<i>Asset</i>	<i>Unit</i>	<i>Count</i>	<i>Task</i>
1	Storm Pipe	FT	212,000	Inspect, PACP/LACP Code, GIS Integration and Defect Analysis
2	Manholes Inspections	EA	500	Manhole Inspections
3	Inlet Inspections	EA	1,400	Inlet Inspections
4	Mobile LiDAR	Mile	72	Mobile LiDAR
5	Mobile LiDAR Asset Extraction and Mapping (Estimate)	EA	2,200	Mobile LiDAR

1. The CONSULTANT has identified approximately 212,000 (40 Miles) of pipe (including mains and all laterals) that will be CCTV Inspected (Task 1), PACP/LACP coded (Task 2), and Integrated into GIS and a Defect Analysis performed (Task 5).
2. The CONSULTANT has identified approximately 500 main access manholes in the FY2021 study area. The CONSULTANT has identified approximately 1,400 inlets in the FY2021 study area. The CONSULTANT will conduct a visual inspection and basic condition assessment of each manhole and inlet (Task 3).

The CONSULTANT plans to utilize two sub-consultants for the Manhole Inspection, Inlet inspections, CCTV video inspection, cleaning tasks, and mobile LiDAR in this project.

1. Pipe CCTV Video Inspection, Manhole Inspection and Cleaning – Ace Pipe Cleaning,

CCTV INSPECTION/CLEANING				
Pipe Size	Unit	CCTV Inspection	Light Cleaning ¹	Heavy Cleaning
18"	LF	\$1.65	\$1.61	(Note 2)
24"	LF	\$1.65	\$1.87	(Note 2)
30"	LF	\$1.65	\$1.93	(Note 2)
36"	LF	\$1.65	\$2.51	(Note 2)
42"	LF	\$1.65	\$2.84	(Note 2)
48"	LF	\$1.65	\$3.48	(Note 2)
54"	LF	\$1.92	\$5.08	(Note 2)
60"	LF	\$1.92	\$5.08	(Note 2)
66"	LF	\$1.92	\$5.35	(Note 2)
4'x4'	LF	\$2.19	\$5.35	(Note 2)
5'x4'	LF	\$2.19	\$5.51	(Note 2)
10'x8'	LF	\$2.19	\$6.42	(Note 2)
10'x9'	LF	\$2.19	\$7.49	(Note 2)

NOTES:

1. Light Cleaning is defined as 3 slow passes with the appropriate cleaning nozzle utilizing an 80 GPM Jet-Vac
2. Heavy Cleaning is defined as the additional cleaning necessary to obtain a 95% clean pipe. Mechanical cleaning for the removal of "fixed or excessive debris, tap removal" will be negotiated on a case by case basis.

CCTV INSPECTION/CLEANING		
Description	Unit	Rate
CCTV Reverse Setup Fee	EA	\$125.00
Waste Extraction	TON	\$540.00
Waste Disposal	TON	\$150.00 ¹
Lateral Inspection	EA	\$80.00 ²
Lateral Inspection Post Cleaning	EA	\$125.00

1. The cost for waste disposal assumes there are no contaminants present in the waste material. If any hazardous materials are found, the cost for waste disposal will be adjusted accordingly.
2. The Inlet and Manhole asset inspection costs have been built into this unit rate.

2. Mobile LIDAR

Mobile Lidar Miles			
	Unit	Rate	Fee
Miles	72	\$297.00	\$21,384.00
Subtotal			\$21,384.00

Manholes			
	Unit	Rate	Fee
Main Access MH	500	\$15.00	\$7,500.00
Subtotal			\$7,500.00

Inlets			
	Unit	Rate	Fee
Inlets (collected with mobile lidar)	1500	\$14.00	\$21,000.00
Subtotal			\$21,000.00
Total			\$49,884.00

NOTE:

Direct costs accrued by the Consultant and services rendered by individuals or entities having a contract with CONSULTANT to furnish services with respect to the Project as CONSULTANT's independent subcontractor shall be invoiced to the CITY at cost plus a five percent (5%) markup.

Level of Effort – Rollover from 2020

Presented below are the costs that were accrued during FY2020 to inspect and analyze the additional 20 miles of pipe that was not scoped during the FY2019 contract. It has been agreed upon that these amounts shall be paid during this contract in addition to the outlined scope for FY2021.

		Totals		
Code	Description	Labor Costs	Direct Costs	Total Costs
TASK 1:	Rollover Cost from FY 2020 – CCTV Inspection		\$69,085	\$69,085
TASK 2:	Rollover Cost from FY2020 PACP Condition Assessment of Task 1	\$64,426		\$64,426
Grand Total				\$133,511

ATTACHMENT C

RJN Group, Inc. Estimated Level of Effort

Date Issued:	10/1/2020	Project Number:	18-2872-06	Version 1.7
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Office: 18

COSA Stormwater CCTV - FY2021

Contract Type: Time and Materials
Project Type: Stormwater
Project Manager: Noelle Gaspard, PE

Start Date: 10/1/2020
Completion Date: 9/30/2021

Contract Amount : \$1,416,666
Amendment No. 1 :
Amendment No. 2 :
Total : \$1,416,666

PD	Sr. PM	PE	EIT	Tech	GIS	CL
\$275	\$245	\$185	\$143	\$100	\$115	\$130

Code	Description	Class Codes (Hours)							Totals							
		PD	Sr. PM	PE	EIT	Tech	GIS	CL	Total Hours	Labor Costs	Direct Costs	Direct Cost Markup (5%)	Contingency	Total Direct	Total Costs	Task % Total
TASK 1:	PACP Video Inspection				80				80	\$11,440	\$500,000	\$25,000		\$525,000	\$536,440	37.9%
TASK 2:	PACP Condition Assessment of Task 1		80		200	200	200		680	\$91,200					\$91,200	6.4%
TASK 3:	Manhole/Inlet Inspection & Mobile LiDAR				120		120		240	\$30,960	\$100,000	\$5,000		\$105,000	\$135,960	9.6%
TASK 4:	Pipe Cleaning (Allowance)				40		40		80	\$10,320	\$50,000	\$2,500		\$52,500	\$62,820	4.4%
TASK 5:	FY2021: GIS Data Processing, Defect Analysis, Integration		200		980	118	600		1898	\$269,940					\$269,940	19.1%
TASK 6:	InfoMaster System Analysis		80	80	180		260		600	\$90,040					\$90,040	6.4%
TASK 7:	Update FINAL Stormwater Condition Assessment and CCTV Master Plan		40		120		120		280	\$40,760					\$40,760	2.9%
TASK 8:	ArcGIS Online Dashboard		80		120		260		460	\$66,660	\$2,000	\$100	\$2,646	\$2,100	\$71,406	5.0%
TASK 9:	Training of In-House CCTV Field Crew		40		120	60	60		280	\$39,860	\$2,000	\$100		\$2,100	\$41,960	3.0%
TASK 10:	Project Management	20	140		80		80	40	360	\$65,640	\$10,000	\$500		\$10,500	\$76,140	5.4%
Grand Total		20	660	80	2040	378	1740	40	4958	\$716,820	\$ 664,000	\$33,200	\$2,646	\$697,200	\$1,416,666	100.0%

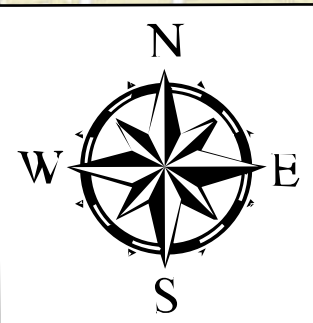
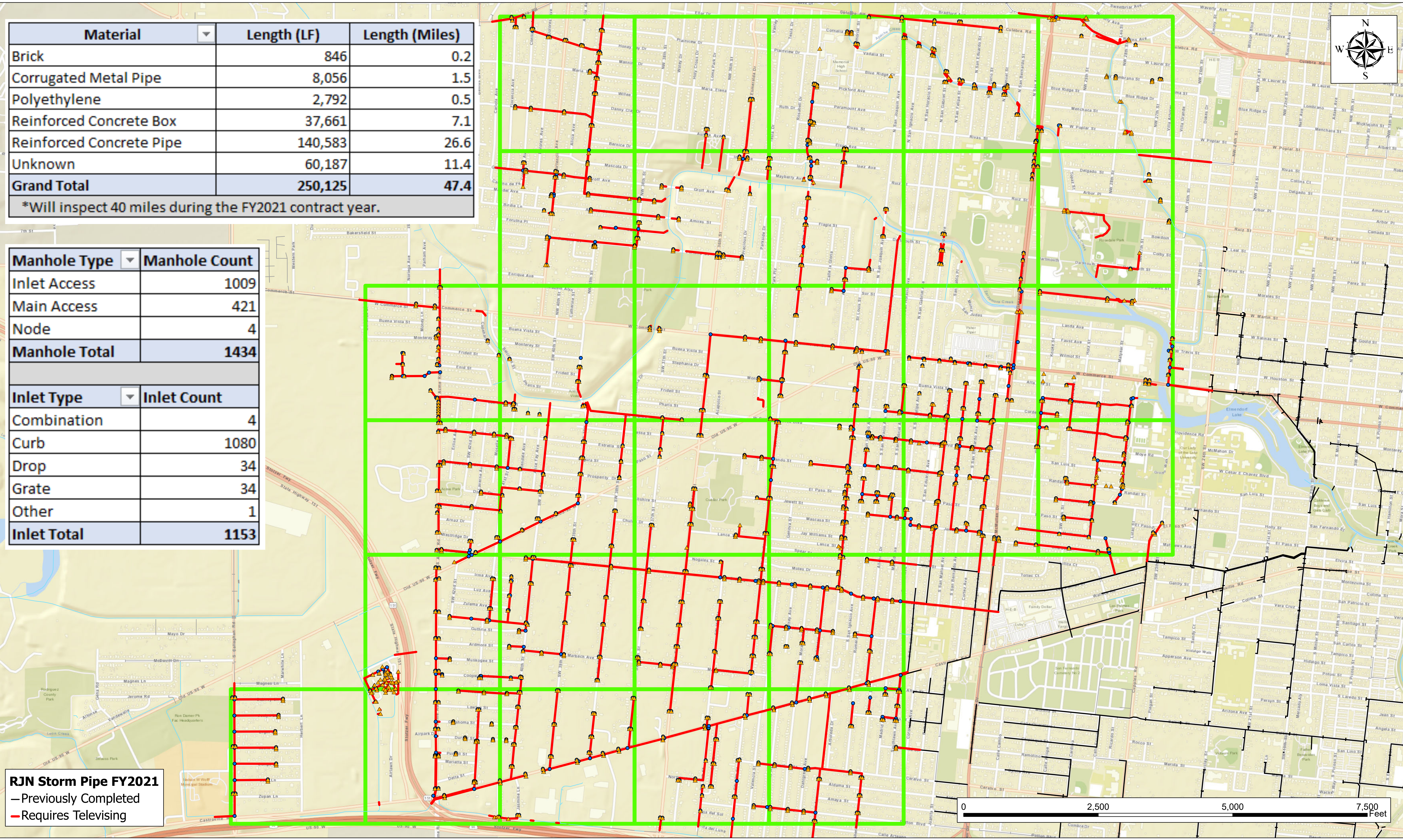
COSA Stormwater Scope FY2021

Material	Length (LF)	Length (Miles)
Brick	846	0.2
Corrugated Metal Pipe	8,056	1.5
Polyethylene	2,792	0.5
Reinforced Concrete Box	37,661	7.1
Reinforced Concrete Pipe	140,583	26.6
Unknown	60,187	11.4
Grand Total	250,125	47.4

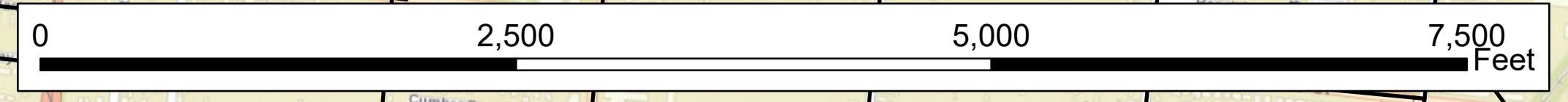
*Will inspect 40 miles during the FY2021 contract year.

Manhole Type	Manhole Count
Inlet Access	1009
Main Access	421
Node	4
Manhole Total	1434

Inlet Type	Inlet Count
Combination	4
Curb	1080
Drop	34
Grate	34
Other	1
Inlet Total	1153



RJN Storm Pipe FY2021
 — Previously Completed
 — Requires Televising



- RJN Manholes FY2021
- ▲ RJN Inlets FY2021
- Channels
- Stormwater Underground
- ▭ RJN Boundary 2021

EXHIBIT II SBEDA

END OF EXHIBIT II



CITY OF SAN ANTONIO SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

SOLICITATION NAME: **Storm Water Systems Televising, Mapping and Condition Assessment**

PRIME CONTRACTOR NAME: RJN Group, Inc.

Please review the following information before completing the form:

1. Prime contractor must list **ALL** certified and non-certified Subcontractors/Suppliers that will be utilized for the entire contract period (see page 2).
2. A Subcontractor/Supplier Utilization Plan that does not satisfy City subcontracting goal(s) placed on this solicitation and absent an approved Subcontracting Goal- Waiver (at the time of bid submission) by the Small Business Office will be deemed **NON-RESPONSIVE**.
3. For a Prime contractor or Subcontractor to count toward a City required subcontracting goal(s), the Prime contractor or Subcontractor must be SBEDA eligible and have the same certification(s) as the City required subcontracting goal(s).
4. To be SBEDA eligible, a Prime contractor or Subcontractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency (www.SCTRCA.org) **AND** must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area.

For further clarification, please contact Small Business Office at (210) 207-3922 or refer to the SBEDA language within the solicitation document(s).

To be Completed by City Staff			To be Completed by Prime Contractor		
SOLICITATION API's	EVALUATION POINTS APPLIED	CITY REQUIRED SUBCONTRACTING GOAL	PERCENT SBEDA ELIGIBLE PARTICIPATION	MEETING THE GOAL? (Y/N)	WAIVER SUBMITTED? (Y/N)
Small Business Enterprise (SBE) Prime Contract Program	10 points			N/A	N/A
Minority/Women-Owned Business Enterprise (M/WBE) Prime Contract Program	10 points			N/A	N/A
					
					

I hereby affirm that the information on this form is true and complete to the best of my knowledge and belief. I possess internal documentation from all proposed Subcontractors/Suppliers confirming their intent to perform the scope of work for the price or percentage indicated. I understand and agree that if approved, this document shall be attached thereto and become a binding part of the contract.

Prime Contractor's Authorized Agent: Sign and Date *Don Jackson* May 10, 2020 Name Daniel Jackson, PE Title Project Director/Vice President

Director or Designee of Economic Development: Sign and Date *Shuchi Nagpal* APPROVED DENIED Version: 7/15/16 pg.1

All sections of the following table must be completed for all firms listed. List all *certified or non-certified* Subcontractors/Suppliers that will be utilized for the entire contract period, excluding possible extensions, renewals and/or alternates. Use additional pages if necessary.

ROLE	NAME OF FIRM	SBEDA ELIGIBLE (YES/NO)	DOLLAR AMOUNT BY FIRM	% OF TOTAL CONTRACT VALUE BY FIRM	WORK TO BE PERFORMED (5 DIGIT NIGP CODE)
PRIME CONTRACTOR	RJN Group, Inc.	No	\$2,380,000.00	55%	92517
SUB	Ace Pipe Cleaning Company	No	\$850,000.00	20%	48524
SUB	Civil Engineering Consultants	Yes	\$255,000.00	6%	92517
SUB	DFW Infrastructure, Inc.	Yes	\$637,500.00	15%	48524
SUB	Raba Kistner	No	\$170,000.00	4%	92517
SUB					
SUB					
SUB					
SUB					
SUB					
SUB					
SUB					
SUB					
SUB					
SUB					

Business Name RJN GROUP, INC
DBA
Vendor # 10064801
Telephone 1(972) 437-4300
Fax 1(972) 437-2707
SBEDA Eligible NO
Certifications

NIGP Code	NIGP Code Description
96891	WATER SUPPLY ANALYSI
90735	DESIGNING SVCS
90738	DRAFTING SVCS
90740	ENGINEERING SVCS, NO
90783	TESTING SVCS
92517	CIVIL ENGINEERING
92535	ENVIRONMENTAL ENGINE
92536	ENGINEERING SVCS (NO
92538	FIELD ENGINEERING
92555	INSPECTING, GENERAL/
92583	SANITARY ENGINEERING
92587	SEWAGE COLLECTION, T
92592	VALUE ENGINEERING &
92597	WATER SUPPLY, TREATM

Business Name ACE PIPE CLEANING INC

DBA

Vendor # 1032377

Telephone 1(817) 332-1115

Fax 1(817) 332-1557

SBEDA Eligible NO

Certifications

NIGP Code	NIGP Code Description
91051	MASONRY, CONCRETE, &
96291	UTILITY LOCATOR SERV
96292	VIDEO SCANNING OF SE
91381	MAINT SWR STRM DRAIN

Business Name DON DURDEN
DBA DBA CIVIL ENGINEERING CONSULTANTS
Vendor # 1013717
Telephone 1(210) 641-9999
Fax 1(210) 641-6440
SBEDA Eligible YES
Certifications SBE - Small Business Enterprise

NIGP Code	NIGP Code Description
92688	STORM WATER DISCHARG
92695	WATER/WASTEWATER CON
96847	INSPECTION SVCS, CON
96885	TRAFFIC COUNTING SVC
96889	TRAFFIC STUD/ANA SVC
96891	WATER SUPPLY ANALYSI
90625	DESIGN BUILD SERVICE
90735	DESIGNING SVCS
90738	DRAFTING SVCS
90740	ENGINEERING SVCS, NO
90775	SITE ASSESSMENT & SI
92508	AIRPORT ENGR SVC
92517	CIVIL ENGINEERING
92519	CONCRETE ENGINEERING
92523	DAM ENGINEERING
92528	DRAINAGE ENGINEERING
92533	ENGINEER SVCS, PROFE
92536	ENGINEERING SVCS (NO
92537	FACILITIES DESIGN SV
92538	FIELD ENGINEERING
92544	GEN CONSTR ENGR COST
92549	ENG SVC HWYS/ST
92555	INSPECTING, GENERAL/
92558	DRAINAGE ENG SVC
92561	LAND DEV ARCH ENGR
92570	MUNICIPAL ENGINEERIN
92579	RAILROAD; RAPID TRAN
92583	SANITARY ENGINEERING
92586	SURVEYOR SVCS, LAND
92587	SEWAGE COLLECTION, T
92592	VALUE ENGINEERING &
92593	TRAFFIC & TRANSPORTA
92595	UTILITIES (GAS, STEA
92596	WASTE WATER TRTMT EN
92597	WATER SUPPLY, TREATM

[Show directory information and instructions](#)

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)
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

DFW INFRA

Search Results

1 firm with 2 certifications found

Click the certification type for contact information and certification details

Vendor

DFW Infrastructure, Inc.

Location

Alvarado, TX

Certification

[SBE](#)
[WBE](#)

Business Name RABA KISTNER INC**DBA****Vendor #** 1004563**Telephone** 1(210) 699-9090**Fax** 1(210) 699-6426**SBEDA Eligible** NO**Certifications**

NIGP Code	NIGP Code Description
22014	ENERGY CTRL SYSTEM
22053	RADIANT ENERGY MEASU
34034	FIRE PROTECTION CLOT
77093	WATERPROOF MEMB/BASE
91016	ENERGY CNSRV SVC
91017	ENERGY CTRL SY INSTL
91066	ROOFING MAINT
91078	WEATHER & WATERPROOF
91430	CONSTR CONCRETE NEW
92614	AIR POLLUT CTRL SVC
92615	AIR MONITORING SVC
92623	AUDITING SVCS, ENVIR
92629	CONTAMINATED GROUNDW
92630	CONTAMINATE SOIL SVC
92640	ECOLOGICAL SERVICES
92641	ECOSYSTEMS DEVELOPME
92642	ENVIRONMENTAL SVCS (
92645	HAZARDOUS MATL & WAS
92649	HYDRAULIC PUSH PROBE
92652	IMPACT STUDIES, ENVI
92653	INDUSTRIAL HYGIENE T
92654	INVESTIGAT SER POLLU
92658	LEAD & ASBESTOS INSP
92662	NOISE TESTING SVC
92665	OIL & PETROLEUM SPIL
92666	OIL/WATER SEPARATOR
92670	PERMITTING SVCS, ENV
92672	PLANNING & ADVISORY
92677	RECYCLING SERVICES
92678	REMEDIATION SVCS, EN
92682	SAFETY SVCS, ENVIRON
92683	SITE ASSESSMENT, ENV
92684	SOIL POLLUTION SVC
92685	SOIL/VAPOR/GDWTR SAM
92688	STORM WATER DISCHARG
92690	SUBSURFACE TESTING,
92691	TANK TESTING & DISPO
92693	TESTING & MONITORING
92694	WATER POLLUTION SVCS
92695	WATER/WASTEWATER CON

92696	WETLAND DELIN ASSESS
93629	FAC ENE MGM SY MA/RE
93831	ENGINEERING & SURVEY
95926	BREAKWATER CONS/MAIN
95935	CONST SERVGEN MARINE
95939	DAM/LEVEE CONS/MAIN
95966	RESER MAINT/MGMT SVC
95990	WATERFRONT CONSTRUCT
96101	ARCHEOLOGICAL SVC
96109	BUILDING PERMIT SVC
96114	COMMIS FACILITIE SVC
96121	COST ESTIMATING
96127	DECONTAMINATION SVCS
96128	ECONOMIC DEVELOPMENT
96129	ECONOMIC IMPACT STUD
96131	ENERGY COMP PERF SVC
96132	ENVIRONMENTAL IMPACT
96140	FORENSIC SERVICES
96143	HYDROLOGIC/OCEAN SVC
96144	INDUSTRIAL DEVELOPME
96145	INSPECTION/CERT SVC
96148	LABORATORY & FIELD T
96149	LEGAL SVCS, ATTORNEY
96150	LEGAL SVCS INCLUDING
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EXHIBIT III GENERAL CONDITIONS FOR CITY OF SAN ANTONIO

END OF EXHIBIT III

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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 Transportation and Capital Improvements (hereafter referred to as “**TCI**”), 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 Transportation and Capital Improvements (hereafter referred to as “**TCI**”), City of San Antonio, Texas or Director of TCI.
- 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 TCI Contract Services, notifying Contractor of the award of a contract. In its Notice of Award Letter, Contractor shall be informed of a date certain by which Contractor’s bond(s) and evidence of insurance shall be delivered to TCI Contract Services.

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 TCI Contract Services Division, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Contractor shall be prohibited from commencing the Work and 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 TCI 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
Total Annual Weather Days = 30 days	

- 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.

A **TIME IMPACT ANALYSIS** shall consist of one or all of the steps listed below:

- STEP 1** Establish the status of the Project before the impact using the most recent Project Schedule Update prior to the impact occurrence.
 - STEP 2** If requested by City; predict the effect of the impact on the most recent Project Schedule Update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.
 - STEP 3** Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing and mitigation efforts.
 - STEP 4** Compare the status of the work prior to the impact (**STEP 1**) to the prediction of the effect of the impact if applicable (**STEP 2**), and to the status of the work during and after the effects of the impact are over (**STEP 3**). Note: 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.
- b. The **TIME IMPACT ANALYSIS** shall be electronically submitted to City. If the Project Schedule is revised after the submittal of a **TIME IMPACT ANALYSIS** but prior to its approval, Contractor promptly shall indicate in writing to City the need for any modification to its **TIME IMPACT ANALYSIS**. One (1) copy of each **TIME IMPACT ANALYSIS** shall be submitted within fourteen (14) calendar days

after the completion of an impact. City may require **STEP 1** and **STEP 2** in the **TIME IMPACT ANALYSIS** to be submitted at the commencement of the impact, if needed to make a decision regarding the suspension of Contract time. Approval or rejection of each **TIME IMPACT ANALYSIS** by City shall be made within fourteen (14) calendar days after receipt, unless subsequent meetings and negotiations are necessary.

Once Contractor provides City written notice of the occurrence of an impact that may justify an extension of contract time and/or adjustment of milestone dates, Contractor shall:

- i. Within fourteen (14) calendar days of submitting the aforementioned notice, provide a project schedule update of the status immediately prior to the impact occurrence and predict the effect of the impact on the most recent project schedule for every critical path activity. This requires estimating the duration of the impact and inserting the impact into the schedule update. Contractor shall note any other changes made to the schedule including modifications to the calendars or constraints; and
- ii. For the duration of the impacting event, track the effects of the impact on the schedule during its occurrence. Contractor shall note any changes in sequencing and mitigation efforts.
- c. Within twenty-one (21) calendar days after the end of the impacting event, Contractor shall submit electronically, in conformance with the City's scheduling software, a Time Impact Analysis. Failure to provide a Time Impact Analysis within twenty-one (21) calendar days after the end of the impacting event shall waive Contractor's right to subsequently request a time extension or to recover days or compensation for the delay.

The Time Impact Analysis shall:

- i. Compare the status of the affected critical path activities prior to the impact to the status of the affected critical path activities during the impact and after the conclusion of the impact. If an impact causes a lack of access to a portion of the Project, the effects of the impact may extend to include a reasonable period for remobilization; and
- ii. Provide a report detailing the impact on the Project Schedule and the requested time extension resulting from the impact.
- d. Approval or rejection of each Time Impact Analysis by City shall be made within twenty-one (21) calendar days after receipt of such Time Impact Analysis by City, unless subsequent meetings and negotiations are necessary.

III.11 DOCUMENTS AND SAMPLES AT THE SITE.

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

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

III.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

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

III.12.2 Contractor shall review for compliance with the Contract Documents, approve and submit to Design Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of City or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by Design Consultant without action.

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

III.12.4 Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal and review has been approved by Design

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

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

- a. Design Consultant has given written approval in the specific deviation as a minor change in the Work; or
- b. A Change Order or Field Work Directive has been issued the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Design
- c. Consultant's approval thereof.

III.12.6 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Design Consultant on previous submittals. In the absence of such written notice, Design Consultant's approval of a resubmission shall not apply to such revisions.

III.12.7 Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services specifically are required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment specifically are required of Contractor by the Contract Documents, City and Design Consultant shall specify all performance and design criteria such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly Texas-licensed design professional, whose signature and seal shall appear on all drawings, calculations, Specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Design Consultant. City and Design Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided City and Design Consultant have specified to Contractor all performance and design criteria such identified services must satisfy. Design Consultant shall review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Documents. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

III.13 USE OF SITE.

- III.13.1** Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- III.13.2** Contractor shall not load nor permit any part of any structure to be loaded in any manner that shall endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that shall endanger it.
- III.13.3** Contractor shall abide by all applicable rules and regulations of City with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by City.
- III.13.4** Contractor shall provide access to residents and businesses affected by the construction of this Project to the greatest extent possible, including providing temporary base and asphalt as needed.
- III.13.5** Contractor shall erect and maintain on Site a Project Bulletin Board, accessible to all Contractor and Subcontractor employees, upon which Contractor shall post and maintain, throughout the Project's duration, all employment and safety information required by law. Contractor further shall post complete Payment and Performance Bond information on the Project Bulletin Board, listing Contractor's bonding and insurance agencies/providers, to include agency contact names, address and telephone numbers.
- III.13.6** As applicable, City shall have appropriate Temporary Bench Marks (hereafter referred to as "TBM") and a baseline (for both *horizontal* and *vertical projects*, as applicable) established. As of the date of the Notice To Proceed, it is Contractor's responsibility to protect, preserve and reestablish (if required) the TBM and/or baseline. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5".
- III.13.7** As applicable, Contractor shall layout its work from an established baseline and TBM indicated on the drawings and shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout any part of the work. Contractor shall provide cut sheets to City's inspector at minimum seven (7) calendar days prior to construction of street and drainage work. Contractor shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for San Antonio Water System (SAWS) Work, if present. Contractor shall provide cut sheets for improvements where Sewer profiles are provided for various phases of the project and cut sheets for Water profiles, if applicable. Contractor shall provide staking and preparation of cut sheets after receiving notice to proceed from City. If present, Contractor shall provide SAWS with cut sheets at minimum (7) calendar days prior to

commence of SAWS work. Contractor shall be responsible for maintaining and preserving a baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, Contractor shall replace them at its own expense. At the end of construction of the Project, Contractor shall provide City a grade certificate prepared by a Registered Professional Land Surveyor. This certificate shall state the infrastructure is constructed in accordance to the construction documents or as approved by City and the Engineer of Record, which is noted on the record plan set.

III.14 CUTTING AND PATCHING.

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

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

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

III.15 CLEANING UP.

III.15.1 During the progress of the Work, Contractor shall keep the Project Site and surrounding area including, but not limited to, creeks, drainage channels, easements and private property free from accumulations of waste materials, rubbish and other debris resulting from the Work. As applicable, Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. If Contractor fails to clean up as provided in the Contract Documents, City may elect to do so and all costs incurred by City shall be paid by Contractor.

III.15.2 Prior to Substantial Completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project

Site clean and ready for occupancy by City. As applicable, Contractor shall clean, sweep, mop, brush and polish, to City's satisfaction, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. Contractor shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If Contractor fails to clean up the premises as provided in the Contract Documents, City may elect to do so and all costs incurred by City shall be paid by Contractor.

III.16 ACCESS TO WORK.

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

III.17 PATENT FEES AND ROYALTIES.

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

III.18 INDEMNITY PROVISIONS.

III.18.1 Contractor covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, City and its elected officials, employees, officers, directors, volunteers and representatives of City, individually and collectively, from and against any and all costs, claims (including third-party claims), liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon City directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or Subcontractor of Contractor and Contractor's and its Subcontractor's respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or its employees in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO**

CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

III.18.3 INTELLECTUAL PROPERTY INDEMNIFICATION.

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

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

- a. Procure for City the right to continue using said deliverable and/or materials;
- b. Modify such deliverable and/or materials to become noninfringing (provided such modification does not adversely affect City's intended use of the deliverable and/or materials as contemplated hereunder);

- c. Replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to City; or
- d. If none of the foregoing alternatives is reasonably available to Contractor, upon written request, City shall return the deliverable and/or materials in question to Contractor and Contractor shall refund all monies paid by City, with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this **ARTICLE III.10.18** shall fail to satisfy the third-party claimant, these actions shall not relieve Contractor from its defense and indemnity obligations set forth in this **ARTICLE III.10.18**.

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

III.18.6 WORKER SAFETY.

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

III.18.7 DEFENSE COUNSEL.

City shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City-approved defense counsel within ten (10) calendar days of City's written notice City is invoking its right to Indemnification under this Contract. If Contractor fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by City. City also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

III.19 REPRESENTATIONS AND WARRANTIES.

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

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

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

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

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

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

III.20 BUSINESS STANDARDS.

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

END OF ARTICLE III

ARTICLE IV. ADMINISTRATION OF THE CONTRACT

IV.1 ROLES IN ADMINISTRATION OF THE CONTRACT.

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

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

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

IV.1.2 City's instruction to Contractor may be issued through Design Consultant and City reserves the right to issue instructions directly to Contractor or through other designated City representatives. Contractor understands City may modify the authority of such Design Consultant as provided in the terms of its contractual relationship with Design Consultant, and City shall, in such event, be vested with powers formerly exercised by such Design Consultant, provided written notice of such modification immediately shall be served on Contractor. Nothing shall authorize independent agreements between Contractor and Design Consultant, nor shall Design Consultant be deemed to have a legal relationship with Contractor.

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

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

IV.1.5 City and Contractor shall endeavor to communicate with each other directly, through Design Consultant and/or through the ODR about matters arising out of or relating to the Contract. Communications by and with Design Consultant's Consultants shall be

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

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

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

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

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

IV.2 CLAIMS AND DISPUTES.

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

bind Contractor by his/her signature) of Contractor, verifying the truth and accuracy of the Claim. The responsibility to substantiate a Claim shall rest with the Party making the Claim.

IV.2.2 TIME LIMIT ON CLAIMS NOTIFICATIONS AND SUBMITTALS.

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

IV.2.3 CONTINUING CONTRACT PERFORMANCE.

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in **ARTICLE IV.4.1, ARTICLE IX.7 and ARTICLE XIV**, Contractor shall proceed diligently with performance of the Contract and City shall continue to make payments in accordance with the Contract Documents.

IV.2.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS.

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

IV.2.5 CLAIMS FOR ADDITIONAL COST.

If Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in this **ARTICLE IV.2.5** shall be given and accepted by City before

proceeding to execute the Work, provided prior notice is not required for Claims relating to an emergency endangering life or property. Contractor shall file a Claim in accordance with this **ARTICLE IV.2.5** if Contractor believes additional cost is involved for reasons including, but not limited to:

- a. A written interpretation from Design Consultant;
- b. An order by City to stop the Work where Contractor was not at fault;
- c. A written order for a minor change in the Work issued by Design Consultant;
- d. Failure of payment by City;
- e. Termination of the Contract by City for convenience;
- f. City's suspension; or
- g. Other reasonable grounds.

IV.2.6 CLAIMS FOR ADDITIONAL TIME.

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

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

IV.2.7 INJURY OR DAMAGE TO PERSON OR PROPERTY.

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

IV.2.8 CHANGE IN UNIT PRICES.

As applicable, if unit prices are stated in the Contract Documents or subsequently are agreed upon by City and Contractor and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive, such that the

application of such unit prices to quantities of Work proposed shall cause substantial inequity to City or Contractor, the applicable unit prices shall be equitably adjusted.

IV.2.9 CLAIMS FOR CONSEQUENTIAL DAMAGES.

Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply both to Claims by Contractor and to Claims by City:

- a. No consequential, indirect, incidental, punitive or exemplary damages shall be allowed, whether or not foreseeable, regardless of whether based on breach of contract, tort (including negligence), indemnity, strict liability or other bases of liability.
- b. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, on estimated losses of labor efficiency, on a comparison of planned man loading to actual man loading or on any other similar analysis used to show total cost or other damages.
- c. Damages are limited to extra costs specifically shown to directly have been caused by a proven wrong for which the other Party is claimed to be responsible.
- d. The maximum amount of any recovery for delay, to the extent damages for delay are not otherwise disallowed by the terms of the Contract Documents, shall be as is provided in **ARTICLE VIII**.
- e. No damages shall be allowed for home office overhead or other home office charges or any Eichleay formula calculation, except or unless as expressly authorized by the Contract Documents.
- f. No profit shall be allowed on any damage Claim, except or unless as expressly authorized by the Contract Documents.

IV.2.10 SUBCONTRACTOR PASS-THROUGH CLAIMS.

In the event any Subcontractor of Contractor asserts a Claim to Contractor that Contractor seeks to pass through to City under the Contract Documents, any entitlement to submit and assert the Claim as to City shall be subject to:

- a. The requirements of **ARTICLE IV.2.6** of these General Conditions; and

- b. The following additional three (3) requirements listed below, all three of said additional requirements shall be conditions precedent to the entitlement of Contractor to seek and assert such Claim against City:
- i. Contractor shall:
- Have direct legal liability as a matter of contract, common law or statutory law to Subcontractor for the claim Subcontractor is asserting; or
 - Have entered into a written liquidating agreement with Subcontractor, prior to the Claim's occurrence, under which Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such Claim against City under said Contract and for paying to Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The relationship, liability or responsibilities shall be identified in writing by Contractor to City at the time such Claim is submitted to City and a copy of any liquidating agreement shall be included by Contractor in the Claim submittal materials.
- ii. Contractor shall have reviewed the Claim of the Subcontractor prior to its submittal to City and independently shall have evaluated such Claim in good faith to determine the extent to which the Claim is believed in good faith to be valid. Contractor shall inform City it has made a review, evaluation and determination the Claim is being made in good faith and the claim is believed to be valid.
- iii. Subcontractor making the Claim to Contractor shall certify to both Contractor and City Subcontractor has compiled, reviewed and evaluated the merits of such Claim and the Claim is believed in good faith by Subcontractor to be valid. A copy of the certification by Subcontractor shall be included by Contractor in the Claim submittal materials.
- c. Any failure of Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.
- d. Receipt and review of a Claim by City under this **ARTICLE IV.2.6** shall not be construed as a waiver of any defenses to the Claim available to City under the Contract Documents or at law.

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

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

- a. If Contractor falls behind the approved construction schedule for whatever reason, City shall have the right, in City's sole discretion, to order Contractor to develop a schedule recovery plan to alter its work sequences or to otherwise accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as City reasonably may direct. Upon receipt, Contractor shall take any and all action necessary to comply with City's order. In such event, any possible right, if any, of Contractor to additional compensation for any acceleration shall be subject to the terms of this **ARTICLE IV.2.11**.
- b. In the event City agrees Contractor is entitled to an extension of Contract Time and Contractor properly has initiated a Claim for a time extension, City shall have the right, in City's sole discretion, to deny any portion of Contractor's Claim for an extension of Contract Time and order Contractor to exercise its commercially reasonable efforts to achieve Substantial Completion on or before the contractual date established, but for the existence of the event giving rise to the Claim, by giving written notice to Contractor provided within fifteen (15) calendar days after receipt of Contractor's Claim. If City denies Contractor's claim for an extension of Contract Time, either in whole or in part, Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then-existing Scheduled Completion Date. If, after initiating good faith acceleration efforts and it is shown, through no fault of Contractor, Contractor fell behind on the approved construction schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time, City shall not be entitled to Liquidated Damages.
- c. If City orders Contractor to accelerate the Work, Contractor may be entitled to a time extension for a reason specifically allowed under the Contract Documents. Contractor may initiate a Claim for schedule recovery or acceleration costs. Any resulting Claim for these costs properly initiated by Contractor shall be limited to those reasonable and documented direct costs of labor, materials, equipment and supervision solely and directly attributable to the actual recovery or acceleration activity necessary for Contractor to bring the Work back within the then existing approved construction schedule. Direct costs of Contractor include, but are not limited to; the premium portion of overtime pay for additional crew, shift, or equipment costs, if requested in advance by Contractor and approved in writing by City. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, profit and field overhead, not to exceed the markups permitted by this Contract, shall be allowed on the claimed costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING, BUT NOT LIMITED TO, HOME OFFICE OVERHEAD) OR ANY OTHER COSTS SHALL BE ALLOWED ON ANY**

ACCELERATION CLAIM. City shall not be liable for any costs related to an acceleration claim other than those described in this **ARTICLE IV.2.11.**

IV.2.12 NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

IV.3 RESOLUTION OF CLAIMS AND DISPUTES.

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

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

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

- a. Request additional supporting data from the Party making the Claim;
- b. Issue an initial recommendation;
- c. Suggest a compromise; or
- d. Advise the Parties that Design Consultant is unable to issue an initial Recommendation, due to a lack of sufficient information or conflict of interest.

IV.3.4 Following receipt of Design Consultant's initial recommendation regarding a Claim, City and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement is reached, either Party may request mediation of the dispute, pursuant to **ARTICLE IV.4.**

IV.3.5 If Design Consultant requests either or any Party to provide a response to a Claim or to furnish additional supporting data, such requested Party shall provide a response or the requested supporting data to Design Consultant, advise Design Consultant when the response or supporting data shall be furnished or advise Design Consultant that no response or 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.8.2**, 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.8.2**.

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** 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.1.6** 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.1.7** 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 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.
- 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 TCI'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.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 Transportation & Capital Improvements Department (hereafter referred to as "TCI")

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 TCI Fiscal Department for payment to Contractor.

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

IX.3.5 Unless otherwise provided in the Task Order contract documents, payments by City shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by City. If approved in advance in writing by City, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by City. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to City to establish City's title to such materials and equipment or otherwise protect City's interest. Contractor solely shall

be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

IX.3.7 Contractor warrants, upon Contractor's approval of its Payment Request to City, all Work for which payment previously has been received from City, to the best of Contractor's knowledge, information and belief, is free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY CITY TO CONTRACTOR.**

IX.3.8 By Contractor's approval of its Payment Request to City and by its concurrence with said submission, Contractor certifies there are no known liens or bond claims outstanding as of the date of said Application for Payment, all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and releases from all Subcontractors and Contractor's material men have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by City to Contractor; provided if any of the foregoing is not true and cannot be certified, Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

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

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

IX.4 PAYMENT APPROVAL.

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

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

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

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

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

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

IX.5 DECISIONS TO REJECT PAYMENT TO CONTRACTOR

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

IX.5.2 Work not performed or is defective;

IX.5.3 Third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder, unless security acceptable to City is provided by Contractor;

IX.5.4 Failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

IX.5.5 Reasonable evidence the Work cannot be completed for the unpaid balance of the Contract Sum and Contractor has failed to provide City adequate assurance of its continued performance within a reasonable time after demand;

IX.5.6 Damage to City or another contractor;

IX.5.7 Reasonable evidence the Work shall not be completed within the time allotted on the issued Task Order and the unpaid balance on the issued Task Order would not be adequate to cover actual or Liquidated Damages for the anticipated delay;

IX.5.8 Persistent failure by Contractor to carry out the Work in accordance with the issued Task Order and/or Contract Documents;

IX.5.9 The applicable Liquidated Damages were not included in the City-submitted Application for Payment;

IX.5.10 Billing for unapproved/unverified materials stored off Site; or

IX.5.11 A current schedule update has not been submitted by Contractor to City.

IX.5.12 City shall not be deemed in default by reason of rejecting Application for Payment as provided for in **ARTICLE IX.5.1**.

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

IX.6 PROGRESS PAYMENTS.

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

IX.6.2 Contractor shall, within ten (10) calendar days following receipt of payment from City, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide City with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to City bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment

obligations on its Subcontractors as are applicable to Contractor hereunder, and if City so requests, shall provide copies of such Subcontractor payments to City. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which City has made payment to the Contractor, City shall be entitled to withhold payment to Contractor to the extent necessary to protect City.

IX.6.3 City shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by City on account of portions of the Work done by such Subcontractor.

IX.6.4 City shall not have any obligation to pay or to see to the payment of money to a Subcontractor, except as otherwise may be required by law, if any.

IX.6.5 Payments to material suppliers shall be treated in a manner similar to that provided in **ARTICLE IX.6.3** and **ARTICLE IX.6.4** regarding Subcontractors.

IX.6.6 A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by City shall not constitute acceptance of Work not performed or furnished in accordance with the Task Order Contract Documents.

IX.6.7 Contractor shall, as a condition precedent to any obligation of City under this Contract, provide to City payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

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

IX.9 FINAL COMPLETION AND FINAL PAYMENT.

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

final inspection(s) and said costs may be deducted by City from the Contractor's final payment.

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

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

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

XI.3 PERFORMANCE BONDS AND PAYMENT BONDS.

XI.3.1 Subject to the provisions of **ARTICLE XI.3.1**, Contractor shall, with the execution and delivery of the Task Order Contract, furnish and file with City, in the amounts required in this **ARTICLE XI**, the surety bonds described in **ARTICLE XI.3.1.a** herein, with said surety bonds in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each surety bond shall be signed by Contractor, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of **ARTICLE XI.3.3** and approved by City. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

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

a. PERFORMANCE BOND. Contractor shall furnish a Performance Bond to City. Unless otherwise stipulated by City, Contractor shall furnish:

i. A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total Task Order Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with issued Plans, Specifications and all other

Task Order Contract Documents, including any extensions thereof, for the protection of City. This Performance Bond also shall provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of Final Completion or acceptance of the Task Order Work by City, or lesser or longer periods, as may be otherwise designated in the issued Task Order.

- b. PAYMENT BOND.** Contractor shall furnish a Payment Bond to City. Unless otherwise stipulated by City, Contractor shall furnish:
 - i.** A good and sufficient Payment Bond in an amount equal to 100% of the total Task Order Contract Sum, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.

XI.3.2 No surety shall be accepted by City that is in default, delinquent on any bonds or that is a party to any litigation against City. All bonds shall be made and executed on City's standard forms, shall be approved by City and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to City. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Bexar County, Texas. Each surety shall designate an agent resident in Bexar County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the surety ship.

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

ARTICLE XVII ISSUANCE OF TASK ORDERS

- XVII.1** Unless otherwise stated in the Contract solicitation documents, Task Order Contracts shall commence upon the date of the issuance of the first Task Order by the City of San Antonio.
- XVII.2** With the exception of emergencies, any Work required by City shall be ordered through the issuance of a formal written Task Order containing the approved Task Order Proposal, along with a City issued Task Order through *PRIMELink*.
- XVII.3** Request by City for Task Order Proposals shall be submitted to City at no additional cost. In the event Task Order Contracts are awarded to multiple Contractors, City may elect and often shall, at its own discretion, to solicit Task Order Proposals from one or more of the awarded Contractors, depending upon the estimated value and/or complexity of the proposed project. Determination to solicit multiple proposals from the awarded Contractors or from only one awarded Contractor shall be on a case- by-case, as deemed in the best interest of City.
- XVII.4** Upon review of the received Task Order Proposal(s), City shall have the right to reject all proposals, solicit a proposal from one or more Contractors, cancel the proposed project, rebid the Work under any permissible procedure or perform the Work utilizing City personnel. City shall not be responsible for payment or costs incurred by the awarded Contractor(s) for the preparation and submission of a Task Order Proposal, regardless of project outcome.
- XVII.5** In the event design services, construction drawings and/or plans are required, City either shall obtain said professional design services from City resources or from a third party, as deemed in City's best interest.
- XVII.6** The current RS Means Unit Price Book shall serve as a basis for establishing the maximum price for and the value of the Work to be performed. Each selected Contractor's Task Order Proposal shall be submitted to City and negotiated under the contractual agreement.
- XVII.7** The Task Order Contract shall be for a fixed unit price, with an indefinite delivery and quantity regarding the performance of a broad range of construction services, to include, but not limited to, minor repairs, rehabilitation, reconstruction and professional supervision on an as-needed basis. Contractor acknowledges, accepts and agrees it is not and will not be guaranteed a minimum or maximum amount of work. Specific Work requirements shall be identified in individual Task Orders as deemed necessary by City. If there is an item of Work not included in the fixed unit pricing negotiated for an issued Task Order, City and Contractor shall negotiate the cost for the non-included item and, upon agreement of the cost for the Work, shall execute a Change Order through *PRIMELink* reflecting the agreed upon cost.

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

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

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

ARTICLE XVIII SCHEDULING OF WORK ON ISSUED TASK ORDERS

XVIII.1 The first day of performance shall be the effective date specified in the Task Order. No Work shall commence any earlier than the issuance date of the first Task Order. No Work shall be performed by Contractor or any Subcontractor prior to the issuance of a Task Order. Any preliminary Work started, materials ordered or purchases made, prior to receipt of City's Task Order Notice to Proceed, shall be at Contractor's risk and expense.

XVIII.2 Contractor meticulously shall prosecute the Work to completion within the time set forth in the Task Order. The period of performance shall include allowance for the mobilization, holidays, weekend days, inclement weather and cleanup; therefore, claims for delay, based upon said elements, shall not be allowed.

XVIII.3 Contractor shall ensure the purchase, delivery and storage of materials and equipment shall be made without interference to City operations and personnel.

XVIII.4 Contractor shall take all necessary precautions to ensure no damage shall result from operations to private or public property. All damages shall be repaired or replaced by Contractor at no additional cost to City. Contractor also shall be responsible for providing all necessary traffic control, to include, but not limited to, street blockages, traffic cones, flagmen, etc., as required for each Task Order. Proposed traffic control methods shall be submitted to City for approval prior to the commencement of Work.

XVIII.5 Contractor shall be responsible for obtaining all required permits applicable to performance under any single order placed against this contract. City shall be responsible for the cost of any and all required City permits.

XVIII.6 Contractor shall allow authorized City personnel to inspect and audit any books, documents, papers, data and records relating to Contractor's performance throughout the term of said Task Order/IDIQ contact. City reserves the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by City to be incomplete or erroneous.

END OF SPECIAL CONDITIONS FOR THE GENERAL CONDITIONS

EXHIBIT IV AMENDMENTS

END OF EXHIBIT IV



CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT

AMENDMENT 1

PROJECT NAME:

UNDERGROUND STORM DRAIN VIDEO INSPECTION PROGRAM
RFQ-PublicWorks03232020JEC

DATE: March 25, 2020

A. Remove and replace the following:

1. Remove: RFQ - UNDERGROUND STORM DRAIN VIDEO INSPECTION PROGRAM (RFQ-PublicWorks03232020JEC) Posted to Civcast on 3/23/2020.
2. Replace: RFQ - UNDERGROUND STORM DRAIN VIDEO INSPECTION PROGRAM (RFQ-PublicWorks03232020JEC) Posted to Civcast on 3/25/2020.

End of Amendment 1



CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT

CITY OF SAN ANTONIO
REQUEST FOR QUALIFICATIONS (“RFQ”)

UNDERGROUND STORM DRAIN VIDEO INSPECTION PROGRAM
(RFQ-PublicWorks03232020JEC)

Release Date: March 23, 2020
Proposals Due: May 11, 2020; 10:00 AM Central Time

This solicitation has been identified as High-Profile.

PROHIBITED CAMPAIGN CONTRIBUTIONS

Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts. Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections beginning on the *10th business day after a contract solicitation has been released through the 30th calendar day following the approval by City Council (“blackout” period):

- (1) Any individual seeking a high-profile contract;
- (2) Any owner, officer, officer of board, and executive committee member of an entity seeking a high-profile contract, excluding board officers and executive committee members of 501 (c)(3), 501(c)(4) and 501 (c)(6) non-profit organizations not created or controlled by the City whose board service is done strictly as a volunteer with no financial compensation and no economic gain from the non-profit entity;
- (3) The legal signatory of the high-profile contract;
- (4) Any attorney, lobbyist or consultant hired or retained to assist the individual or entity in seeking a high-profile contract;
- (5) Subcontractors hired or retained to provide services under the high-profile contract; and
- (6) Any first-degree member of the household of any person listed in (1), (2), (3) or (5) of this subsection.

A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution was made by any of these individuals during the “blackout” period.

****For this solicitation, the first-day contributions are prohibited is **Monday, April 6, 2020.*****
The first day contributions may be made is the 31st day after the contract is approved at a City Council “A” Session.

RESTRICTIONS ON COMMUNICATIONS

In accordance with and as authorized by Section 2-61 of the City Code, the following restrictions on communications apply to this solicitation: Respondents are prohibited from contacting 1) City officials, as defined by §2-62 of the City Code of the City of San Antonio, regarding the RFQ or proposal from the time the RFQ has been released until the contract is posted for consideration as an agenda item during a meeting designated as an A session; and 2) City employees from the time the RFQ has been released until the contract is approved at a City Council “A” session.

Restrictions extend to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFQ and/or proposal submitted by Respondent.

Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent’s proposal from consideration.

For additional information, see the section of this RFQ entitled “Restrictions on Communication”.

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ATTACHMENTS

Contract Template	Exhibit A
SBEDA Ordinance Contract Provisions	Exhibit B
General Conditions	Exhibit C

Forms to be uploaded in CivCast with Statement of Qualifications:

Submittal Checklist and Table of Contents	Form 1
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Required Forms must be Uploaded/Submitted Individually in CivCast:

Respondent Submittal Cover Sheet	Form 2
Contracts Disclosure Form and Instructions	Form 3
Litigation Disclosure Form	Form 4

City of San Antonio

UNDERGROUND STORM DRAIN VIDEO INSPECTION PROGRAM RFQ-PublicWorks03232020JEC

I. BACKGROUND

The City of San Antonio (hereafter referred to as “City”), Public Works Department (hereafter referred to as “Public Works”) seeks Statements of Qualifications (hereafter referred to as “SOQs”) from qualified Respondents interested in providing Professional Storm Water Data Collection and Management Services, as described in this RFQ. City desires proposals that shall, among other things, provide an inventory of City-maintained underground storm water drainage and related surface infrastructure, to include Closed Circuit Televising (CCTV) inspection of all underground structures, condition assessment, population of attribute information and mapping. This information shall be used to assist City with identifying and prioritizing maintenance of storm water infrastructure.

II. SCOPE OF WORK

In general, the following tasks shall be included in the scope of the work:

- A. Locate and identify the underground storm water and surface drainage structures within a prescribed area (40 linear miles), to include manholes, inlets, pipes (main and laterals) and culverts (boxes and pipes);
- B. Clean the structures to the degree necessary successfully to perform a complete panoramic Closed Circuit Television (CCTV) inspection or, alternatively, work in coordination with City crews to clean the structures, prior to their inspection;
- C. Using industry standard televising equipment, perform a complete panoramic Closed Circuit Television (CCTV) inspection of the structures and populate the data in PipeLogix Software that is needed to meet Pipe Assessment Certification Program (hereafter referred to as “PACP”) condition assessment standards and collect any additional attribute data City requires for asset management, using Cartegraph (STORM view module) Software;
- D. Place the collected data into the Public Works (hereafter referred to as “Public Works”) Department’s PipeLogix software;
- E. Using PACP certified raters, assess/rate/record the condition of the structures according to National Association of Sewer Service Companies (hereafter referred to as “NASSCO”) standards;
- F. Export the PipeLogix PACP data and other attribute data collected into the Public Works Department’s Cartegraph Asset Management System (STORM view module)

- G. Map City's storm water drainage infrastructure, using the interface capabilities within Pipelogix to export into ESRI ArcGIS, using a projection and coordinate system consistent with City's currently supported version of ESRI ArcGIS;
- H. Furnish all labor, materials, equipment and supervision of staff who shall perform the work;
- I. Provide an Executive Summary, signed and sealed by a Professional Engineer licensed to practice in the State of Texas, of the data collection effort, as well as summarize results into tables, graphic and descriptive text for use by City.

The contract duration is an initial term of one (1) year with two (2), one (1) year renewal options with a total budget of \$4,250,000.00.

TECHNICAL SPECIFICATIONS

A. Project Location

Work is located within the boundaries of the City of San Antonio. City shall furnish GIS feature classes or shape files of City's boundaries, parcels, streets and any other relevant GIS data.

B. Project Schedule and Delivery Plan

The selected Respondent shall provide City with a Project Schedule for the project scope of work and a plan for providing delivery of project deliverables.

C. Project Performance Time

The selected Respondent agrees to start work on the project within thirty (30) calendar days after a written Notice to Proceed is issued by City. All work shall be completed and invoiced by the end of the contract term. It is up to the selected Respondent to provide sufficient equipment and workforce to accomplish the workload within the allotted time frame and within the period of time allotted in any City Right-of-Way permit that may be required.

D. Cleaning Equipment

If cleaning is a part of the selected Respondent's contract, the selected Respondent shall supply equipment for storm sewer cleaning capable of cleaning the structure to the degree needed to perform a complete panoramic Closed Circuit Television (CCTV) inspection. The selected Respondent shall provide City with the technical specifications of the cleaning equipment to be used and the manner by which the cleaning shall be coordinated with the Closed Circuit Television (CCTV) inspection.

The selected Respondent shall submit the equipment manufacturer's operation manual and guidelines to City. The equipment manufacturer's operational guidelines shall be strictly followed. All equipment and devices shall be operated by experienced personnel to minimize the likelihood of damage to the pipe material. For the purposes of this section, the equipment operator shall have a minimum of three (3) years prior experience operating the same or similar equipment. City's Project Representative may request project references that demonstrate the required experience.

City reserves the right and the selected Respondent acknowledges City's Project Representative may disallow the use of certain types of equipment under certain conditions, if City's Project Representative believes that the use of such equipment shall damage the pipe segment being cleaned or shall contribute to an adverse environmental condition. This does not relieve the selected Respondent of any obligations to avoid damage to existing collection system pipelines and appurtenances.

E. Inspection Equipment

The selected Respondent shall be required to provide City with the technical specifications of the Closed Circuit Television (CCTV) equipment that shall be used, to include lighting used to illuminate the structures that are inspected. The selected Respondent also shall confirm its Closed Circuit Television (CCTV) inspection equipment is compatible with the Public Works Department's PipeLogix software.

Visual information collected by the selected Respondent shall be capable of delivery to City on a computer hard drive, in accordance with these specifications.

F. Distance Measurement

The importance of accurate distance measurements is a point of emphasis under this contract for the locations of defects, obstructions, laterals, manhole depths, etc. Measurements for location of defects or laterals shall be made by means of distance-measuring devices as approved by City's Project Representative. The accuracy and calibrations of any distance-measuring device may be reviewed and approved by City. Distance measurements shall be made from centerline of manhole/access point to centerline of manhole/access point or to the blockage when reverse set-ups are necessary.

Marking on the cable or the like that would require interpolation for depth of manholes shall not be allowed. Survey rods are the preferred method to measure the depth of manholes and for determining the size of the existing pipe.

G. Permits

The selected Respondent solely is responsible for making all necessary arrangements to comply with any regulations, provisions or requirements of any right-of-way permits that may need to be issued for work to be performed within City's right-of-way. The selected Respondent shall be responsible for obtaining all necessary right-of-way permits from the City of San Antonio and from any other governing entity, including railroads.

The selected Respondent shall conform to all requirements of the City of San Antonio Tree Preservation Ordinance, including making the proper notifications to City's Arborist and/or obtaining required permits, if necessary.

H. Traffic Control

The selected Respondent shall be responsible for traffic control and shall coordinate this activity with City.

I. Existing Utilities

The selected Respondent shall be held responsible for the protection of existing utilities, as well as all damage which may occur as a result of operations. It shall be the selected Respondent's responsibility to determine the location of existing utilities. The selected Respondent shall pay the cost of temporarily relocating utilities for the convenience of the selected Respondent. In areas where existing utilities are within and adjacent to the established limits of work and could be damaged as a result of the selected Respondent's operations, the selected Respondent shall take all necessary precautions to protect such utilities from damage. Further, should damage to other utilities occur, the selected Respondent shall be fully responsible and shall pay for the repair of any such damage without additional cost to City or the affected utility owner.

Where overhead power lines are in close proximity to the work, the selected Respondent shall comply with the requirements established by Vernon's Texas Civil Statutes Articles 1463c.

J. Communication

The selected Respondent shall have the ability to communicate with City at all times. The Superintendent shall have a cellular telephone at which he/she may be reached at any time. In the unforeseen event that Respondent's Superintendent is unavailable; the selected Respondent shall provide City with an emergency telephone number by the first working day of the Project which may be utilized by City on evenings, weekends and holidays. The telephone number must be a commercial answering service. The answering service must be able to contact the selected Respondent and the selected Respondent must respond back to City immediately after the initial contact.

K. Incident Complaint Log

The selected Respondent shall maintain a log of incidents and customer complaints. Incidents, as used herein, shall mean all events that disrupt productivity, damages infrastructure or that would cause a negative public perception of City. Examples of incidents include the intrusive removal of lodged equipment from the pipe, a sewer spill, a "stop work" order issued by a City right-of-way inspector, citizen complaint, accident, injury, etc. the selected Respondent shall relay all incidents and/or customer complaints to City's Project Manager and Inspector immediately or as soon as is practicable, upon occurrence. The log shall include the date and time of a call or incident, the nature of a complaint and the resolution, if any. The log shall be made available to City upon request.

L. Quality Control and Assurance Plan

The selected Respondent shall prepare and submit a Quality Control and Assurance Plan (hereafter referred to as “QC Plan”) that provides information regarding the policies and procedures that the selected Respondent shall follow to ensure:

- (a) The work is conducted in a timely and professional manner;
- (b) The results of the selected Respondent’s operations shall produce the desired effect; and
- (c) The data collected shall be of appropriate quality.

Respondent’s QC Plan also shall provide information regarding the procedures put in place by the selected Respondent to effectively negate any type of undesirable condition in the collection system that typically is encountered in a project of this nature and magnitude that would materially affect the quality and productivity of the work. Include in Respondent’s QC Plan shall be procedures for taking pictures of the above ground pre- existing area of work, documenting the existing conditions for the purpose of protecting the selected Respondent from any false claims that may arise due to damages to private or public property. The selected Respondent shall submit the QC Plan for approval to City, prior to commencing work. Approval of Respondent’s QC Plan does not; in anyway, relieve the selected Respondent of any liability under its contract. Compensation for preparation of the QC Plan is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be allowed.

SELECTED RESPONDENT OPERATIONS REQUIREMENTS

A. Mobilizations

Except for mobilization associated with emergency work orders, mobilization on this Project shall be incidental to the work performed and no separate payment shall be made by City for mobilization.

B. Schedule of Operations

Normal working hours are 7:45 a.m. to 4:30 p.m. daily, except for weekends and City holidays. The selected Respondent carefully shall plan, in close coordination with City and prior to beginning any work, fully to develop procedures and standards for the work that is to be scheduled. Employee safety, workmanship standards, tracking progress, submitting deliverables and maintaining the integrity of City operations with minimal disruption shall be the key areas to be addressed during the scheduling of the work. The selected Respondent shall schedule work to accommodate requirements of City of San Antonio Right-of-Way department, particularly as it regards the work days and working hours near schools, churches, during special events and any other requirement which may be imposed by City. The selected Respondent shall provide at least 72 hours advanced notice of any scheduled work outside of normal working hours.

Compensation for preparation and submission of work progress schedules is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City for the preparation and submission of work progress schedules.

C. Sequencing of Non-Emergency Work

Sequencing of the work shall be determined by the selected Respondent, unless otherwise required by City. Sequencing of the work shall be discussed between City and the selected Respondent for concurrence prior to commencement of work. Generally, City emergency work orders take precedence. Consequently, the selected Respondent may be required to modify the sequencing due to City emergencies.

Compensation for planning and scheduling the sequence of work is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City for sequencing of work.

D. Daily Notifications

Except for emergency work, the selected Respondent shall notify City (through its Project Manager and inspector, at minimum) via e-mail by 7:45 A.M., each work day of the work locations for that day. The selected Respondent shall provide at least 72 hours advanced notice of any scheduled work outside of City's normal working hours. The selected Respondent shall include a description of equipment to be used in its daily notification to City. The selected Respondent also shall notify City's Right-of-Way inspector and/or any other jurisdictions as may be required. Repeated failure to properly notify City and others of work locations may result in stoppage of work and a formal review by City regarding contract compliance, prior to allowing the resumption of work. Extension of the contract completion date shall not be extended due to such work stoppage for City's review.

Compensation for daily notifications is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City for Respondent's daily notifications.

E. Third Party Notifications

The COSA Project Manager or COSA Staff shall notify third parties (such as public and private utilities) of its intent to perform work in an area where such third parties may have rights to underground property or facilities. Further, the selected Respondent shall request maps or other descriptive information, as to the nature and location of such underground facilities or property, and selected Respondent shall offer assurance of its ability to enter upon any public or private lands to which access is required for performance of the work under the contract.

If access is required, the following will occur:

For underground facilities on private properties the proper legal documentation for access agreement (City of San Antonio Right of Entry Forms) will be provided by the Project Manager or COSA Staff to the property owners to acquire granted access onto the privately owned properties. Contractor shall not enter the property until granted access is provided by the private property owners through the signed COSA Right of Entry Form.

F. Emergency Work

City may issue emergency work orders. Upon verbal issuance of an emergency work order from City, the selected Respondent shall mobilize and commence work at the designated work site within twenty four (24) hours of notification by City, unless specifically instructed by City otherwise. City shall document the verbal issuance of the emergency work order with a written emergency work order to follow.

It is imperative that the selected Respondent respond in a timely manner, when verbally notified by City of the emergency work requirement. Failure to be mobilized and working at the emergency job site within 24 hours of notification shall be the basis for termination.

If Emergency Work is required, the Responded will provide an estimate which negotiations and approval will be made on each Task Order. Work initiated under normal non-emergency conditions shall not be subject to this increase.

G. Abatement and Remediation Plans and Notifications

In the event that evidence is discovered of an imminent restriction of flow (such as severely crushed pipe, voids or missing pipe, or if pieces of pipe, fresh soil or backfill are noted in the debris removed from the system) or other situation that would result in an overflow or public hazard, the selected Respondent immediately shall contact City. Work on that pipe may resume at the selected Respondent's risk.

The Edwards Aquifer Recharge Zone (hereafter referred to as "EARZ") includes sensitive geological aquifer recharge features. The selected Respondent shall be mindful of and immediately report to City any geological features, particularly solution cavities that may be a direct conduit to the aquifer. If anything of this sort is discovered, the selected Respondent shall cease work at that location until City has investigated and re-authorized Respondent's work.

The selected Respondent shall be liable for all costs of damages, direct and indirect, associated with storm sewer overflows that are caused, directly or indirectly, in whole or in part by its operations.

Compensation for drafting, submitting and executing emergency plans and notifications is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City for Respondent's draft, submitting and executing emergency plans.

H. Acquiring Water

As necessary for performance of work under the contract, the selected Respondent solely shall be responsible for obtaining fresh water that may be needed for cleaning.

Compensation for acquiring water and for tracking and reporting water usage is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City to Respondent for acquiring water or for tracking and reporting water usage.

I. Pipe Inspection Report

The selected Respondent shall create a digital pipe inspection report for every storm sewer pipe inspected, even if a storm sewer pipe partially is inspected. All observations shall be indexed to the footage counter, documented and coded using the most recent version of the National Association of Sanitary Sewer Companies (hereafter referred to as "NASSCO") PACP guidelines and must be recorded on the PACP storm sewer report, which includes the structural pipe rating index, O&M pipe rating index and the overall pipe rating index for each section of pipe observed.

Pipe inspection data shall be recorded with digital and hard copy deliverables. The video deliverable shall be in a format consistent with the requirements of PipeLogix software. The selected Respondent shall provide a report interpreting the data recorded including, but not limited to, the pipe segment number, manhole and structure numbers, diameter of the pipe, material from which the structure is made, defects outline, volume and/or level of debris, site location, profile of water and pipe level. This report shall be stored digitally in the system software. All observations shall be interpreted and recorded using the NASSCO PACP standard coding schema.

City shall work with the selected Respondent to identify the NASSCO database structure and schema information into which the condition assessment and attributes for each storm sewer pipe can be exported. The header section of all inspection forms shall be populated with all mandatory and non-mandatory fields, as outlined by NASSCO, except for the year-renewed field and year-constructed field, as the selected Respondent shall not be expected to know this information unless it is provided by City.

The selected Respondent shall submit digital pipe inspection reports along with associated inspection data (tabular data, still images, video/audio file, etc.) with each invoice submittal, in a format consistent with the existing City closed circuit television inspection systems and data management systems. As a minimum, hard copy pipe inspection reports and the video file shall display manhole numbers, footage, pipe size and pipe material at all times, in addition to the defect information and lateral connection information. All digital video files shall be in a format compatible with City's software systems.

Compensation for preparation and management of all pipe inspection reports, videos and data bases is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City to Respondent for the preparation and management of pipe inspection reports, videos and data bases.

J. Global Positioning System (GPS) Mapping

The selected Respondent shall collect x and y coordinates on all surface-located storm sewer structures and manholes, using global positioning system equipment capable of defining the coordinates of an asset to within “sub-meter” accuracy. Coordinates collected by the selected Respondent shall be identified by the manhole and structure numbers for linking to GIS. All horizontal (x and y) coordinates shall be provided in NAD_1983_StatePlane_Texas_South_Central_FIPS_4204_Feet. The collection of these data points shall be in conformance with established industry practices for quality and accuracy.

Compensation for global positioning system mapping of existing structures and manholes shall be on a “per each” basis for the successful collection of x and y coordinates.

K. Data Management

As part of this contract, the selected Respondent is required to place the collected data into the PUBLIC WORKS Department’s PipeLogix software. Using Pipe Assessment Certification Program (hereafter referred to as “PACP”) certified raters; the selected Respondent shall assess and rate the condition of the structures according to NASSCO standards. The selected Respondent shall be responsible for exporting the PipeLogix PACP data into the Public Works Department’s Cartegraph Asset Management System (STORMview module) and shall map City’s stormwater drainage infrastructure using the interface capabilities within Pipelogix to export into ESRI ArcGIS using a projection and coordinate system consistent with GIS data maintained by City.

Input of the data into the Public Works Department’s rating software (PipeLogix) and asset management system (Cartegraph STORMview module) shall take place no later than the following working day from the time of any inspection activities. The inspections shall require information on each pipe segment or manhole. The information required on pipe segments shall include, but not be limited to, coding the amount of debris, roots and grease removed (light, medium, or heavy), start and ending dates, number of cleaning passes performed to clean a segment, if the cleaning was completed (i.e. yes or no), denotation of heavy cleaning, comments and the length of segment cleaned and/or televised. Such information shall be used to track progress of the selected Respondent and as necessary backup data for invoicing.

The selected Respondent shall maintain a personal geo-data base consisting of the attribute information for the pipes and laterals that are in the scope of this Project. The selected Respondent shall add additional attribute fields to the personal geo-data base for the purpose of tracking work progress and for associating completed work and data to each individual pipe segment. The additional attribute fields shall include, but may not be limited to, the following:

- Actual linear footage and date cleaned
- Actual linear footage and date televised
- PACP ratings
- x and y GPS coordinates for upstream and downstream manholes and structures, and dates obtained
- Comments (for example, cite the reason why a pipe was only partially cleaned or inspected, if a map correction was submitted, if access was a problem, if a reverse set up was made, etc.)

- Video file identification number and video clip file name using a standardized naming convention.
- Name of Selected Respondent
- Contract Number

The selected Respondent shall provide all inspection data (tabular data, still images, video, NASSCO coded segments, etc. regardless of the source) in a digital format and compatible with the existing City closed circuit television inspection systems and data management systems. The selected Respondent shall be able to export the data out of their system and into City system by providing City with a NASSCO PACP export database in a 2007 MS Access Database format along with all associated videos, pictures, etc. The selected Respondent shall load the master file, which contains all the data from the entire project, on a hard drive in the proper format and submit it to City and the selected Respondent shall be responsible for exporting the data into City's enterprise data system. The selected Respondent shall be responsible for any errors in the data which must be corrected.

The documentation of City's storm water infrastructure shall be kept and maintained by the selected Respondent digitally, at minimum, for a period of two (2) years after final payment is made. The inspection reports shall be made available to City's Project Manager or Inspector upon request.

Compensation for data management is considered subsidiary to the cost of cleaning, inspection, data collection and condition assessment of the storm water structures. Additional compensation shall not be paid by City to Respondent for data management.

III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this project.

Pre-Submittal Conference:	April 6, 2020 at 10:00 A.M., CT
Deadline for Submission of Written Questions:	April 20, 2020 at 4:00 P.M., CT
RFQ Responses Due:	May 11, 2020 at 10:00 A.M., CT
Anticipated City Council Consideration	August 2020

IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference is scheduled to be held on **Monday, April 6, 2020 at 10:00 A.M., Central Time** through WebEx. Respondents may call the toll-free number listed below and enter the meeting password/access code to participate the day of the conference. Respondents may also log into WebEx at <https://www.webex.com/> to view the Pre-Submittal Presentation and any additional documentation.

WebEx Dial-In Number: 1-415-655-0001
Access Code: 807-138-340

Attendance at the Pre-Submittal Conference is non-mandatory but highly recommended as review experience, expertise, and background of the submittal will be discussed. Respondents are encouraged to prepare and submit questions in writing **five (5) calendar days** in advance of the Pre-Submittal Conference in order to expedite the proceedings.

City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference, as well as being posted on the CivCast website at <https://www.civcastusa.com/bids>.

This meeting place is accessible to disabled persons. Interpreters for the Deaf shall be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain City's official responses to issues raised during the Pre-Submittal Conference and posted on the CivCast website at <https://www.civcastusa.com/bids>. Any oral response given at the Pre-Submittal Conference that is not confirmed in the posted written summary from the Pre-Submittal Conference or in a subsequent addendum shall not be official or binding on City. Only written responses shall be official. All other forms of communication with any officer, employee or agent of City shall not be binding on City.

V. SUBMITTAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

The City will conduct a comprehensive, fair, and impartial evaluation of all Proposals received in response to this RFQ. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFQ. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon the same criteria. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council by adoption of an Ordinance. Respondent shall provide information or responses to the following items as it relates to Section II, Scope of Services and Respondent's submittal shall include the following items in the following sequence:

1. **SUBMITTAL CHECKLIST AND TABLE OF CONTENTS** – (FORM #1) (Indexed and labeled as “Tab 1”) – Respondent shall complete this form, which shall be used as the Table of Contents and as a checklist for Respondent's submittal.
2. **EXECUTIVE SUMMARY** – (Indexed and labeled as “Tab 2”) – Respondent shall include a one (1) page Executive Summary at the beginning of the Statement of Qualifications. Respondent's Executive Summary shall state the number of years Respondent's team has been in business, Respondent's number of years in business in its local office, Respondent's local office address and the number of employees employed in Respondent's local office.
3. **CONTRACT TEMPLATE AND GENERAL CONDITIONS REVIEW** – (Indexed and labeled as “Tab 3”) – Respondent shall review the Contract Template and its General Conditions, provided hereto and made a part hereof and labeled as RFQ Exhibit A and C, and provide written comments and/or concerns regarding the Contract and General Conditions. If Respondent does not

have any comments and/or concerns, Respondent shall indicate this in this Tab 3. If no objections are submitted by the Respondent, City and Respondent agree Respondent shall sign the Contract as presented, if a contract is awarded.

4. **LETTERS OF REFERENCE** – (required) (Indexed and labeled as “Tab 4”) – Respondent shall provide a total of five (5) letters of reference.
5. **STATEMENT OF QUALIFICATIONS** – Respondent shall provide a narrative document, as outlined in this Statement of Qualification below, addressing all evaluation criteria in **Section II Scope of Services** of this RFQ. Sufficient information regarding Respondent’s past projects and key personnel’s experience shall be provided in Respondent’s submittal to indicate its team has met or exceeded the minimum qualifications provided in Section II of this RFQ in submittal.

City shall conduct a comprehensive, fair and impartial evaluation of all submittals received, in response to this RFQ. It currently is anticipated City shall appoint and utilize a selection committee to perform said evaluation.

Evaluation Criteria:

- A. **Background, Experience and Qualifications of Prime Firm, Key Personnel, and Key Sub-Consultants, including Co-Respondent, Joint Venture Party or Partner (35 Points)**
 - (a) **Experience (Indexed and Labeled as “Tab 5”)** – City shall consider the relevance of past experience for all parties proposed as a part of Respondent’s team. Respondent shall provide a narrative, in four (4) pages or less, that describes the team’s qualifications, as they relate to the Project’s scope in this RFQ. Respondent’s submittal shall include how the proposed team has worked together on past similar projects and shall include the number of years working as a team. For any Sub-Consultants listed as part of Respondent’s team, include information on how those Sub-Consultants shall function within the team’s organization. In addition, Respondent shall provide a narrative description of the proposed roles of Respondent and each Sub-Consultant, to include assignments, roles and responsibilities, lines of authority and communication among all team members.
 - (b) **Proposed Key Personnel/Organizational Chart (Indexed and Labeled as Tab “6”)** – Key Personnel Respondent included in this section are expected to be the same personnel that will be assigned to contract, if awarded. Respondent shall provide a detailed organizational chart of its firm, identifying key personnel who shall be committed to working on the various tasks required under this contract. The Proposed Key Personnel shall consist of a Licensed Engineering Consultant with a minimum of five (5) five years demonstrated experience in San Antonio or the South Texas Region with the activities normally associated with the scope of work listed.

Label key personnel assignments as:

- (a) Project Manager
- (b) Storm Water Infrastructure design and/or operation
- (c) Coordination with regulatory agencies
- (d) Coordination with utility companies

- (e) Quality assurance
 - (f) Storm Water Asset Management Software’s
 - (g) Infrastructure data integration and migration
- (c) **Resumes (Indexed and Labeled as Tax “7”)** - Respondent shall submit one-page resumes for all key team members. Resumes should link to the provided project sheets and also may include additional previously completed relevant projects not highlighted in the provided project sheets. The provided resumes also shall include the license type (if applicable), number of years licensed, location of office, number of years’ experience in proposed role and experience with the Firm.
- (d) **Project Sheets (Indexed and Labeled as “Tab 8”)** – Respondent’s submittal shall include, at minimum, three (3) project sheets, limited to one (1) page for each project included, which shall describe similar projects Respondent has completed within the last five (5) years. Each project sheet shall include, at minimum, the following:
1. Name and Description of the project, including similarity to the scope of work in this RFQ;
 2. Year of project;
 3. Respondent’s role in the project;
 4. Project Engineer;
 5. Project Manager;
 6. Project’s original and final contract amounts (explain inconsistencies);
 7. Project’s proposed completion date and actual completion date achieved (explain inconsistencies);
 8. Project owner’s name and the name of the representative (if different) who served as the day-to-day liaison for the project in the following format:
 - a) Name of Owner: _____
 - b) Name of Owner’s representative: _____
 - c) Representative’s Phone Number: _____
 - d) Representative’s E-mail _____
 - e) The name of the Prime Firm and key Sub-Consultants and Subcontractors, including S/M/WBE status.

B. Understanding of the Project and Proposed Management Plan (25 Points)

This information shall include Respondent’s proposed organizational structure and availability of labor resources (capacity to perform) in executing Respondent’s effort. Respondent shall submit information in a brief narrative plan, in two (2) pages or less indexed and labeled as “Tab 9” that clearly and concisely describes Respondent’s organization and approach to the project, to include the following:

1. Describe Respondent's project management approach and team organization, for the provision of the services outlined in this RFQ.
2. Detail the current capacity of Respondent's key team individuals and Respondent's capabilities to complete the services outlined herein.
3. Briefly describe Respondent's experience with regard to quality control, accelerated work schedules and value engineering.

C. Team's Experience with San Antonio Region Issues and past experience with City of San Antonio contracts (20 Points)

City is interested in evaluating Respondent's experience with San Antonio issues, as may be evidenced by work in San Antonio and/or the surrounding area during the past five (5) years. In narrative form, using two (2) pages, briefly describe Respondent's experience (if any) in the following areas, referencing projects relating to that experience. Note: Respondent may reference projects included in project sheets under Tab 8 herein or include other projects, but no additional project sheets shall be provided for this criteria. This information shall be indexed and labeled as Tab "10".

- Local area storm sewer data collection and practices;
- Local environmental community, conditions and constraints;
- Involvement in project development as it relates to condition assessment and infrastructure management practices in the local area;
- Firm's experience with private and public utilities within the San Antonio or surrounding area;
- Local site development;
- Building code requirements; and
- City of San Antonio Design Guidelines; and

A portion of the scoring for these criteria may be based on City's Consultants' Scorecard, other documentation and/or experience with City projects. City may consider the history of the firm in complying with project programs, schedules and budgets on previous City of San Antonio projects. No items shall be submitted by Respondent for this portion of the criterion. Respondent shall not be penalized if it has not done work on City of San Antonio projects. Specific items for consideration may include, but are not limited to, the following:

A portion of the scoring for these criteria may be based on City's Consultants' Scorecard, other documentation and/or experience with City projects. City may consider the history of the firm in complying with project programs, schedules and budgets on previous City of San Antonio projects. No items shall be submitted by Respondent for this portion of the criterion. Respondent shall not be penalized if it has not done work on City of San Antonio projects. Specific items for consideration may include, but are not limited to, the following:

- Timely completion of City projects;
- Cooperative working relationship with City;
- Prompt payment of Subcontractors at all levels;
- Compliance with other contract terms;
- Compliance with City Ordinances on substitution/addition/deletion of Subcontractors;

- Provision of contracting opportunities for S/M/WBEs;
- Compliance with City standards;
- Conformance to City budget requirements.

Respondent is expected to examine this RFQ carefully, and understand the terms and conditions for providing the services listed herein and respond completely. Failure to complete and provide any of the above-referenced documents may result in the Respondent's submittal being deemed non-responsive and, therefore, disqualified from consideration by City.

D. SBEDA (20 Points)

SBEDA: SBE Prime Contracting Program – 10 Points

Certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Respondents proposing at least 51% SBE participation (Prime and/or Subconsultant) will receive Ten (10) evaluation criteria percentage points.

M/WBE Prime Contracting Program – 10 Points

Certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Respondents proposing at least 51% SBE participation (Prime and/or Subconsultant) will receive Ten (10) evaluation criteria percentage points.

No evaluation criteria percentage points will be awarded to Non-SBE or Non-M/WBE respondents through subcontracting SBE or M/WBE firms. There will be no SBEDA Subcontracting Goals API applied for this solicitation.

The SBEDA program was designed to remedy disparity by applying various goals & incentives for S/M/WBEs on City solicitations based upon the availability and utilization of qualified S/M/WBE businesses in a specified industry. The City of San Antonio has experienced success in the utilization of S/M/WBEs in the Architecture and Engineering industry category. Per the 2015 disparity study, S/M/WBEs make up 31% of the total businesses qualified to perform Architecture, Landscape Architecture and Engineering services in the San Antonio Metropolitan Statistical Area, and as of November 2018, payments made by the City to eligible S/M/WBEs in the Architecture and Engineering industry have exceeded the S/M/WBE availability in the San Antonio metro area.

For more details please contact the Small Business Office directly at (210) 207-3922. Please note that City Architecture and Engineering City solicitations may still include other SBEDA program requirements, such as subcontracting goals or mentorship.

Evaluation Criteria Summary	Maximum Points
A. Experience and Qualifications of Prime Firm and Key Sub-Consultants	35 Points
B. Understanding of the Project and Proposed Management Plan	20 Points
C. Team’s Experience with San Antonio Region Issues and Past Experience with City of San Antonio Contracts	25 Points
D-4. SBEDA – SBE Prime Contract Program	10 Points
SBEDA – M/WBE Prime Contract Program	10 Points
TOTAL:	100 Points

E. Required Forms (to be uploaded in CivCast individually):

1. **RESPONDENT SUBMITTAL COVER/SIGNATURE PAGE (Form #2)** – Respondent shall include the completed Submittal Cover/Signature Sheet with the other required forms. The Submittal Cover/Signature Sheet shall be signed by a person (or persons) authorized to bind Respondent and the entity/entities submitting the response. Signature pages signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures submittals require signatures from all firms participating in the joint venture. Submitting joint ventures are required to provide legal proof of the joint venture, such as a joint venture agreement.
2. **CONTRACTS DISCLOSURE FORM (Form #3)** – Respondent shall complete the form online at: <https://www.sanantonio.gov/eforms/att/ContractsDisclosureForm.pdf>, print a copy of the completed form and upload it into CivCast. If Respondent is proposing as a team or joint venture, each party to that team or joint venture shall complete and submit a separate Contracts Disclosure Form.
3. **LITIGATION DISCLOSURE FORM (Form #4)** – Respondent shall complete a Litigation Disclosure form, utilizing additional pages for explanation, if necessary, and submit the completed form. If Respondent is proposing as a team or joint venture, each party to that team or joint venture shall complete and submit a separate Litigation Disclosure Form.
4. **PROOF OF INSURABILITY** – Respondent shall submit a copy of its current insurance certificate.
5. **CERTIFICATE OF INTERESTED PARTIES TEC FORM 1295** – Effective January 1, 2016, the City of San Antonio is required to comply with Texas Government Code, Chapter 2252, Subchapter Z, and Section 2252.908 (hereafter referred to as “the Code”). The Code states City shall not enter into a contract with a business entity unless and until the business entity has submitted a Certificate of Interested Parties (hereafter referred to as “Form 1295”) to City for filing with the Texas Ethics Commission (hereafter referred to as “TEC”). The Form 1295 requirement imposed upon the City applies to all contracts:

- (a) Having a value greater than \$50,000.00;
- (b) Requiring San Antonio City Council approval and/or
- (c) Renewals, extensions or amendments requiring the approval of the San Antonio City Council.

TEC has made available on its website the new filing application that must be used by respondent to file its Form 1295 with City. Respondent shall use TEC's application to enter the required information on Form 1295 and print a copy of the form containing a unique certification number for that response.

An authorized agent of Respondent then must sign the printed copy of the form containing the unique certification number then must submit the form with Respondent's submittal to City, pursuant to this solicitation, to ensure City and Respondent meet the Code requirements.

Form 1295 must be completed on-line by the business entity. It is accessible at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

As a result of this new requirement imposed upon City by the Code, City is requiring all Respondents submitting on each project to complete Form 1295, print a copy showing the unique Certification Number and Date Filed in the Certification of Filing box at the upper right corner of Form 1295 for that submittal and sign it. City shall review Form 1295 as part of the Minimum Requirements Review performed upon all proposals received. Deficiencies in or missing Form 1295 shall not be a disqualifying error. Instead, City shall notify a Respondent of any requirements to cure the deficiency and/or to submit/re-submit Form 1295 within two (2) days of notice to remain eligible to be considered for a contract award. City shall include the selected Respondent's Form 1295 in its package prepared for the San Antonio City Council's consideration for contract award

VI. SUBMISSION INSTRUCTIONS

Online submission will be utilized via CivCast at <https://www.civcastusa.com/bids>. Online submission services will open on **Monday, March 10, 2020 and close on May 8, 2020 at 10:00 A.M. CT.**

Follow submittal instructions on <https://www.civcastusa.com/>. Hard Copies, facsimile or email will not be accepted.

Please adhere to the following criteria:

- No smaller than 11 point font;
- Be succinct and clear;
- Keep your submittal relevant to the project;
- Each submittal shall include the sections and attachments in the sequence listed in the **RFQ Section V**, Submittal Document Requirements & Evaluation Criteria, with each section divided by tabs and indexed, as indicated in this RFQ;
- All pages shall be numbered and all sections shall adhere to page limits. If a section does not have a page limit specified; there are no page limits for that section;

- Pages which have project photos, charts and graphs shall be counted towards the maximum number of pages;
- Front and back covers, Table of Contents pages and tabbed divider pages shall not be counted if they do not contain submittal information.

To correctly submit a response to this RFQ, Respondent shall reveal, disclose and state the true and correct name of the individual, proprietorship, corporation and/or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any) submitting the response. The true and correct name shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the Proposal.

VII. AMENDMENTS

Changes, amendments or written responses to questions received, in compliance with Section VIII, Restriction on Communication below, may be posted on the CivCast website at: <https://www.civcastusa.com/>.

It is Respondent's responsibility to review this website and ascertain whether any amendments have been made to this RFQ, prior to Respondent's submission of a proposal. If Respondent does not have access to the Internet, Respondent shall notify City, in accordance with Section VIII, Restrictions on Communication below, Respondent wishes to receive copies of changes, amendments or written responses to questions by mail or facsimile.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFQ and changes to the RFQ – if any – shall be made only in writing.

VIII. RESTRICTION ON COMMUNICATIONS

In accordance with and as authorized by Section 2-61 of the City Code, the following restrictions on communications apply to this solicitation: Respondents are prohibited from contacting 1) City officials, as defined by §2-62 of the City Code of the City of San Antonio, regarding the RFQ or proposal from the time the RFQ has been released until the contract is posted for consideration as an agenda item during a meeting designated as an A session; and 2) City employees from the time the RFQ has been released until the contract is approved at a City Council "A" session.

Restrictions extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFQ and/or proposal submitted by Respondent.

Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's proposal from consideration.

Exceptions to the Restrictions on Communication with City employees include:

1. Respondents may ask verbal questions concerning this RFQ at the Pre-Submittal Conference. Respondent may submit written questions concerning this RFQ through <https://www.civcastusa.com/> until **4:00 P.M. Central Time, MONDAY, APRIL 20, 2020**. Questions received after the stated deadline shall not be answered.
2. Exceptions to the Restrictions on Communication with City employees include: Respondents and/or their agents are encouraged to contact the Small Business Office of the Economic Development Department for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact, Diane Nicho, Interim Economic Development Manager, may be reached by email at Diane.Nicho@sanantonio.gov. This exception to the restriction on communication does not apply, and there is no contact permitted to the Small Business Office regarding this solicitation, after the solicitation closing date.
3. Respondent shall provide responses to any questions asked of it by the Staff Contact Person and/or his/her designee about City's SBEDA Program, both before and after responses are received and opened. During interviews, if any, verbal questions addressed to Respondent and its explanations shall be permitted. If interviews are conducted, Respondents shall not bring lobbyists. City reserves the right to exclude any persons from any selection committee meetings it deems in City's best interests.

IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

City reserves the right to award one, more than one or no contract(s) in response to this RFQ.

- A. A contract or contracts, if awarded, shall be awarded to the selected Respondent(s) whose submittal(s) is/are deemed most advantageous to City, as determined by the selection committee and upon approval by City Council.
- B. City may accept any submittal in whole or in part. If subsequent negotiations are conducted, those negotiations shall not constitute a rejection or alternate RFQ on the part of City. However, final selection of a Respondent is subject to City Council approval.
- C. City reserves the right to accept one or more submittals or reject any or all submittals received in response to this RFQ and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFQ, reissue a subsequent solicitation and/or remedy technical errors in the RFQ process.
- D. City shall require the selected Respondent(s) to execute a contract with City in substantially the same form as the one attached, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of bonds and insurance as required in this RFQ and the contract. Contract documents are not binding until approved by the San Antonio City Attorney's office. In the event the parties cannot negotiate and execute a contract within the time specified by City, City reserves the right to terminate negotiations with that selected Respondent and commence negotiations with another Respondent.

- E. This RFQ does not commit City to enter into a contract or award any services related to this RFQ, nor does it obligate City to pay any costs incurred in preparation or submission of a response or in anticipation of a contract.
- F. City administers its design and construction management through an internet-based project management system. All vendors shall be required to use City's internet-based system and submit Project schedules.
- G. Conflicts of Interest: Respondent acknowledges it is informed the Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. 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: City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a Subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- H. Respondent is required to warrant and certify it, its officers, employees and agents neither are officials nor employees of City, as defined in Section 2-42 of City's Ethics Code. (Discretionary Contracts Disclosure) – Instructions and web-link to electronic form are included in Form 3 of RFQ.
- I. Independent Contractor: Respondent agrees and understands, if selected, it and all persons designated by it to provide services in connection with a contract, is, are and shall be deemed to be an independent contractor(s), is/are responsible for its/their respective acts or omissions, City shall in no way be responsible for Respondent's actions and none of the parties hereto shall have the authority to bind the other(s) or to hold out to third parties it/they has/have such authority.
- J. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires persons or their agents, who seek to contract for the sale or purchase of property, goods or services with City, shall file a completed conflict of interest questionnaire with City Clerk not later than the seventh (7th) business day after the date the person:
1. begins contract discussions or negotiations with City; or
 2. Submits to City an application, response to a request for submittal, offers, correspondence or another writing related to a potential agreement with City. The CIQ form is available from the Texas Ethics Commission at:

<https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>

or

<http://www.sanantonio.gov/atty/ethics/pdf/OCC-CIQ-Addendum.pdf>
- In addition to the CIQ form, City requires individuals to submit a CIQ Addendum. The CIQ Addendum is available from City:

<https://www.sanantonio.gov/Portals/0/Files/Ethics/OCC-CIQ-Addendum.pdf>

Completed CIQ forms and CIQ addendum forms may delivered by hand to the Office of the City Clerk, Municipal Records Facility, at 719 S. Santa Rosa, San Antonio, TX 78204 or may be mailed to the Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966.

Respondent shall consult its own legal advisor if it has any questions regarding the statute, CIQ form or CIQ Addendum.

- K. All submittals become the property of City upon receipt and shall not be returned. Any information deemed to be confidential by Respondent should clearly be noted on the page(s) where confidential information is contained; however, City cannot guarantee it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law or pursuant to a Court order.
- L. Any cost or expense incurred by Respondent associated with the preparation of its submittal, attendance at the Pre-Submittal Conference, if any, or incurred during any phase of the selection process shall be borne solely by Respondent.
- M. Solicitation Process Review: If Respondent desires a review of the solicitation process, Respondent shall deliver a written request to the Director of Public Works within seven (7) calendar days from the date the notice of non-selection was sent. When the Public Works Director receives a timely written request, the Public Works Director or his/her designee shall review Respondent's concerns and the solicitation process utilized for legitimacy and procedural correctness. After performing a full review, the Public Works Director shall notify Respondent in writing of his/her determination of the solicitation process utilized.
- N. Debriefings: In an effort to improve solicitation responses, Public Works is making available on its web site a "Solicitation Response Tip List" that includes the top common items that "make or break" submissions. Providing this information, prior to the due date of the submittal, provides Respondent an opportunity to develop a better response for each solicitation. As a result of this up-front effort, each Respondent is entitled to a one (1) debriefing per calendar year after the San Antonio City Council has made an award of a contract on a project if:
 - (a) Respondent is not the selected Respondent for the project; and
 - (b) Respondent has not been debriefed since January 1, 2020Once a firm has been debriefed, it shall not be eligible for future debriefings within that calendar year. A Respondent meeting the above criteria desiring an individual submittal debriefing shall deliver a written request to the Public Works Contract Services Division within seven (7) calendar days from the date a notice of non-selection was sent.
- O. City reserves the right to verify any and all information submitted by Respondents at any time of the solicitation/evaluation process.
- P. Final approval of a selected firm(s) is subject to the action of the San Antonio City Council.

Q. City reserves the right to contact any Respondent to negotiate a contract, if such contact is deemed desirable by City.

ADDITIONAL REQUIREMENTS

Boycott Israel Check

If the contract is (1) between a governmental entity and a company with 10 or more full-time employees and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity, then the governmental entity may not contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. Prior to award, the Contract Developer (purchaser) must check the divestment lists to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by the Texas Safekeeping Trust Company and posted to the CPA website. If the potential awardee is on the list, the contract may not be awarded to that vendor.

Iran, Sudan, & Foreign Terrorist Organization Check

Governmental entities may not contract with a company doing business with Iran, Sudan, or a foreign terrorist organization. Prior to award, the Contract Developer (purchaser) must check the divestment lists to determine if the potential awardee is in violation of this requirement. The divestment lists are maintained by the Texas Safekeeping Trust Company and posted to the CPA website. If the business is in violation, the contract may not be awarded to that vendor.

Intellectual Property.

If selected, Respondent agrees to abide by the following regarding intellectual property rights:

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

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Respondent will immediately:

Either:

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

alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

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

Respondent further agrees to:

assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Contract,

assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

Respondent is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Respondent agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,

the Software or the equipment is used by the City in the form, state, or condition as delivered by Respondent or as modified without the permission of Respondent, so long as such modification is not the source of the infringement claim,

the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Respondent with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Respondent assumes responsibility under this section.

Ownership and Licenses

In accordance with Texas law, Respondent acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Respondent pursuant to the resulting contract shall be the subject of any copyright or proprietary claim by Respondent.

The term "local government record" as used in this document means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Respondent acknowledges and agrees that all local government records, as described in this document, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Respondent, if awarded a contract, will be required to turn over to City, all such records as required by said contract. Respondent, if awarded a contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

Respondent, if selected, agrees to comply with all applicable federal, state, and local laws, rules, and regulations governing documents and ownership, access and retention.

S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated

expenditure of at least \$1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a given fiscal year, Respondent acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this RFQ and any resulting contract. Respondent agrees that the contract can be terminated if Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

By submitting a proposal, Respondent warrants and certifies, and a contract awarded pursuant to this RFQ is made in reliance thereon, that it, has not knowingly or intentionally failed to comply with this subchapter in a previous RFQ or contract. City hereby relies on Respondent's certification, and if found to be false, City may reject the proposal or terminate the Contract for material breach.



CITY OF SAN ANTONIO PUBLIC WORKS DEPARTMENT

AMENDMENT 2

PROJECT NAME: UNDERGROUND STORM DRAIN VIDEO INSPECTION PROGRAM
RFQ-PublicWorks03232020JEC

DATE: April 27, 2020

A. Remove and replace the following:

1. Remove: Section VI. Submission Instruction:
 - i. Online submission will be utilized via CivCast at <https://www.civcastusa.com/bids>.
Online submission services will open on Monday, March 10, 2020 and close on May 8, 2020 at 10:00 A.M. CT.

 2. Replace: Section VI. Submission Instruction:
 - i. Online submission will be utilized via CivCast at <https://www.civcastusa.com/bids>.
Online submission services will open on Tuesday, March 23, 2020 and close on Monday, May 11, 2020 at 10:00 A.M. CST.
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End of Amendment 2