

PROFESSIONAL SERVICES AGREEMENT

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

CIVIL ENGINEERING DESIGN SERVICES FOR THE FREDERICKSBURG (N. FLORES TO WOODLAWN) PROJECT

This 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

Poznecki-Camarillo, Inc.

5835 Callaghan Rd., Ste. 200

San Antonio, TX 78228

an Engineer duly licensed and practicing under the laws of the State of Texas (hereafter referred to as "Consultant") (City and Consultant hereafter individually referred to as "a Party" and collectively referred to as "the Parties"), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for **CIVIL ENGINEERING DESIGN SERVICES** set forth herein in connection with the above designated Project for City.

INDEX

<u>ARTICLE NO.</u>	<u>TITLE</u>	<u>PAGE</u>
ARTICLE I. DEFINITIONS		4
ARTICLE II. COMPENSATION		6
ARTICLE III. METHOD OF PAYMENT.....		7
ARTICLE IV. SCOPE OF SERVICES		11
ARTICLE V. TIME AND PERIOD OF SERVICE		13
ARTICLE VI. (RESERVED)		14
ARTICLE VII COORDINATION WITH CITY.....		15
ARTICLE VIII. REVISIONS TO DOCUMENTS		16
ARTICLE IX. OWNERSHIP OF DOCUMENTS		17
ARTICLE X. TERMINATION AND/OR SUSPENSION OF SERVICES		19
ARTICLE XI. CONSULTANT'S WARRANTY.....		22
ARTICLE XII. NON-DISCRIMINATION POLICY		23
ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST		24
ARTICLE XIV. INSURANCE REQUIREMENTS		25
ARTICLE XV. INDEMNIFICATION		29
ARTICLE XVI. CLAIMS AND DISPUTES.....		30
ARTICLE XVII. SEVERABILITY		33
ARTICLE XVIII. INTEREST IN CITY CONTRACTS PROHIBITED		34
ARTICLE XIX. TEXAS GOVERNMENT CODE §2270.002		35
ARTICLE XX. CONFLICTS OF INTEREST DISCLOSURE		36
ARTICLE XXI. STANDARD OF CARE/LICENSING		37
ARTICLE XXII. RIGHT OF REVIEW AND AUDIT		38

ARTICLE XXIII. ENTIRE AGREEMENT	39
ARTICLE XXIV. VENUE	40
ARTICLE XXV. NOTICES.....	41
ARTICLE XXVI. INDEPENDENT CONTRACTOR.....	42
ARTICLE XXVII. CAPTIONS.....	43
ARTICLE XXIX. CONFLICT RESOLUTION BETWEEN DOCUMENTS	45
EXHIBIT A SCOPE OF SERVICES/SCHEDULE OF PROJECT SERVICES/FEE SUMMARY.....	46
EXHIBIT B SUBCONSULTANT/SUPPLIER UTILIZATION PLAN, CHANGE OF UTILIZATION AND SBEDA ORDINANCE COMPLIANCE AND PROVISIONS	47
EXHIBIT C GENERAL CONDITIONS FOR CITY OF SAN ANTONIO	48
EXHIBIT D CERTIFICATE OF INTERESTED PARTIES	49
EXHIBIT E ADDENDUM	Error! Bookmark not defined.

ARTICLE I. DEFINITIONS

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

- I.1** “**AGREEMENT**” is this written document signed by City and Consultant, including any other document itemized and expressly referenced in, or attached to, and expressly made part of this Agreement, to include Consultant’s proposal, to the extent accepted by City and not in conflict with the **ARTICLES** of this Agreement: Scope of Services/Schedule of Project Services/Fee Summary – **EXHIBIT A**; Subconsultant/Supplier Utilization Plan, Change of Utilization and SBEDA Ordinance Compliance and Provision - **EXHIBIT B**; General Conditions for City of San Antonio - **EXHIBIT C**; Certificate of Interested Parties - **EXHIBIT D**; Addendum – **EXHIBIT E**.
- I.2** “**APPLICATION FOR COMPENSATION**” means written form for a request from Consultant to be paid for completed work.
- I.3** “**AMENDMENT**” is a written modification of the Contract prepared by City or Consultant and signed by City and Consultant (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Scope of Services or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.
- I.4** “**CCMS**” means City’s Contract Management System whereby payments made by Consultants to, and confirmed by, Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and which are monitored by City for compliance.
- I.5** “**CITY**” means City of San Antonio, Texas.
- I.6** “**CLAIM**” is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement terms, payment of money and/or extension of time or other relief, with respect to the terms of this Agreement. The term “Claim” also includes other disputes and matters in question between City and Consultant arising out of, or relating to, this Agreement.
- I.7** “**COMPENSATION**” means amounts paid for services under this Agreement.
- I.8** “**CONSULTANT**” means **Poznecki-Camarillo, Inc.** and its officers, partners, employees, agents and representatives, and all Sub-Consultants, if any, as well as all other persons or entities for which Consultant legally is responsible.
- I.9** “**DIRECTOR**” means the Director of City’s Transportation and Capital Improvements Department (hereafter referred to as “TCI”) or his/her designee.

- I.10** "OWNER DESIGNATED REPRESENTATIVE (ODR)" means a person designated by City to act for City.
- I.11** "PLANS AND SPECIFICATIONS" means the construction documents.
- I.12** "PRIMELINK" means City's internet-based, project management software for approving Task Orders and Applications for Compensation.
- I.13** "PROJECT" means the capital improvement/construction development undertaking of City.
- I.14** "PROPOSAL" means Consultant's Proposal to provide services for this Project.
- I.15** "PROPOSED TASK ORDER REQUEST" means a request to Consultant to submit a Proposal for a specific Project as further defined herein.
- I.16** "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.17** "PROJECT MANAGEMENT TEAM" means the assigned City staff overseeing the management of the Project. The Project Management Team typically includes a Project Manager and his or her staff.
- I.18** "DESIGN GUIDANCE MANUAL (DGM)" means the document that instructs design engineers on the procedures and formats to be followed in the design of capital improvement projects for the City of San Antonio. The DGM provides minimum standards for the project development process and deliverables.

END OF ARTICLE I

ARTICLE II. COMPENSATION

II.1 The Compensation for all services included in this Agreement and in the Scope of Services for this Agreement shall not exceed as reflected in **EXHIBIT A**. The amount to be paid to Consultant, including authorized adjustments, is the total amount payable by City to Consultant for performance of the Services under this Agreement. It is agreed and understood such amount shall constitute full compensation to Consultant for Services included in the Scope of Services and shall meet all applicable requirements of City's Design Guidelines. Unless and until City makes further appropriations for any additional services not included in the Scope of Services of this Agreement, the obligation of City to Consultant for Compensation in connection with this Agreement cannot and shall not exceed such sum of **EXHIBIT A** without further amendment to this Agreement.

II.2 REIMBURSABLE EXPENSES

When authorized by City in writing, the Consultant shall be entitled to reimbursement at actual incurred cost for services and related expenses for the following items:

II.2.1 Travel outside SAMSA only if approved in writing by City prior to such travel. Reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of Service under the 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 reimbursable charges. Travel expenses, if any, shall be negotiated with each Task Order issued. City does not pay for Consultant's travel within SAMSA.

II.2.2 Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under **ARTICLE IV** of this Agreement. These costs, if any, shall not exceed the amount noted in Article IV herein, without further approval of City. Consultant shall bear these costs unless agreed to, in writing, by City.

II.2.3 Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under **ARTICLE IV** of this Agreement. These costs shall not exceed the amount noted in **ARTICLE IV** without further approval of City. Consultant shall bear these costs unless agreed to, in writing, by City.

II.2.4 City does not allow a markup on any of the above reimbursable items and only shall reimburse approved hard costs incurred.

II.2.5 SUB-CONSULTANT WORK

City shall not pay a markup to Consultant for Sub-Consultant work. However, for additional services performed by Sub-Consultants as a direct pass through, Consultants are permitted up to a 5% markup for Sub-Consultant management costs subject to approval by the City.

END OF ARTICLE II

ARTICLE III. METHOD OF PAYMENT

III.1 Payments to Consultant shall be in the amount shown on the invoices and its supporting documentation submitted, and shall be subject to City's approval. All services shall be performed in accordance with the professional standard of care set forth in **ARTICLE XX.1** and to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which previously have not been approved by the Director. 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 Compensation for Additional Professional Services (attached hereto, incorporated by reference herein and labeled as "**EXHIBIT A**").

III.1.2 Monthly payments for services performed in the various additional services shall be reviewed by Director upon Consultant entering itemized invoices, with all required back-up, within **PRIMELink**. The invoice shall indicate the value of the additional services performed to date.

III.2 Consultant shall, within ten (10) calendar days following receipt of Compensation from City, pay all bills for services performed and furnished by Sub-Consultants, in connection with the Project and the performance of the work, and shall provide City with evidence of such payment through City's electronic Contract Management System ("CCMS"). Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid Sub-Consultant and its services. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on the Sub-Consultants as are applicable to Consultant hereunder, and shall require Sub-Consultants to provide confirmation to City of receipt of payments through CCMS. If Consultant has failed to make payment promptly to the Sub-Consultant for the Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City except in the event of a valid dispute between Consultant and that Sub-Consultant.

III.3 Consultant warrants title to all Services covered by an Application for Payment shall pass to City no later than the time of payment. Consultant further warrants, upon submittal of an Application for Compensation, all Services for which Applications for Compensation have been previously issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED**

BY PAYMENTS MADE BY CITY TO CONSULTANT.

III.4 Consultant may submit a request for Partial Compensation prior to the completion of services. A request for Partial Compensation must be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed, as reflected in the progress report and approved by the City. Partial payments are subject to the following:

III.4.1 Prior to submittal of the current design phase, partial payments cannot exceed 70% of the allocated fee for the current design phase.

III.4.2 Upon submittal of the current design phase, partial payment may be requested up to 90% of the allocated fee for the current design phase.

III.4.3 100% of the allocated fee for the current design phase may be requested upon approval of that design phase.

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

III.5 Project Close Out and Final Payment:

III.5.1 Final billing shall indicate "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, because of:

- a.** Delays in the performance of Consultant's work;
- b.** Third-party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to City is provided by Consultant;
- c.** Failure of Consultant to make payments properly to Sub-Consultants or vendors for labor, materials or equipment;
- d.** Reasonable evidence Consultant's work cannot be completed for the amount unpaid under this Agreement;
- e.** Damage to City; or

- f. 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 within a reasonable time. City shall not be deemed in default by reason of withholding compensation as provided for in this **ARTICLE III**.

- a. In the event of any dispute(s) between the Parties, regarding the amount properly compensable for any Phase or 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 dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.
- b. City shall make final compensation of all sums due Consultant not more than thirty (30) calendar days after Consultant's execution and delivery of a final Pay Application.
- c. Request of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.
- d. Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services or the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records, and shall have the right to audit same.

III.5.4 INTERNET-BASED PROJECT MANAGEMENT SYSTEM

City shall administer its services through an Internet-Based Project Management System (hereafter referred to as "PRIMELink"). In such case, Consultant shall conduct communication through PRIMELink and perform all Project-related functions utilizing PRIMELink, with the exception of Sub-Consultant payment monitoring activities through CCMS. This includes correspondence, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and other administrative activities. City shall administer the PRIMELink software, shall provide PRIMELink training to Project Team Members and shall make the software accessible via the Internet to all

necessary Project Team Members. All invoices shall be submitted through PRIMELink.

END IF ARTICLE III

ARTICLE IV. SCOPE OF SERVICES

[SUBJECT TO REVISION AS APPLICABLE]

- IV.1** Consultant shall provide Engineering Services and include in its Scope of Services all associated services required for Consultant to provide such Services pursuant to this Agreement, along with all Services which normally would be required by law or common due diligent practice.
- IV.2** Consultant shall comply with the standards of City's Design Guidance Manual throughout the duration of the subject Project and this Agreement, unless specifically and explicitly excluded from doing so in the approved Scope of Services attached hereto, incorporated by reference herein and labeled as "EXHIBIT A" and as described in this **ARTICLE IV**.
- IV.3** Consultant shall adhere to the requirements of the design phases described in City's Design Guidance Manual, to include performing the tasks and submitting deliverables as described therein, unless specifically and explicitly excluded in the approved Scope of Service in "EXHIBIT A" hereto and as described in this **ARTICLE IV**.
- IV.4** Consultant acknowledges and accepts its responsibilities, as defined and described in City's General Conditions for City of San Antonio Construction Contracts, attached hereto, incorporated by reference herein and labeled as "EXHIBIT C".
- IV.5** Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.
- IV.6** Consultant shall not commence service on any Task Order authorized under this Agreement until being thoroughly briefed on the scope of the project and being notified in writing to proceed. Should the scope subsequently change, either Consultant or City may request a review of the anticipated services, with an appropriate adjustment in compensation.
- IV.7** Consultant, in consideration for the compensation herein described, shall render the professional services described in this **ARTICLE IV** necessary for the advancement of the Project through Substantial Completion to Final Completion.
- IV.8** Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services outlined herein and in accordance with the Compensation for Additional Professional Services, attached and incorporated herein and labeled as "EXHIBIT C". The Scope of Services fully shall be described in Consultant's Proposal, as revised in accordance with negotiations with and approval by City for each authorized service task and as provided in this Agreement.

- IV.9** Compensation for Additional Professional Services, which includes pre-priced tasks and/or hourly rates, is described in “**EXHIBIT A**” hereto. Consultant may submit a request for Partial Compensation prior to the completion of Additional Professional Services. A request for Partial Compensation must be accompanied by a progress report detailing the Additional Professional Services performed. Any partial payment made shall be in proportion to the Additional Professional Services performed, as reflected in the progress report and approved by the City.
- IV.10** For each design phase submittal, Consultant shall submit the required number and type of deliverables as defined in the Design Guidance Manual, addressed to the City’s Project Management Team, for use by City.
- IV.11** Prior to the actual printing of the final Construction Documents (the Project Plans and Specifications), one (1) advance copy shall be submitted to City. Upon review and approval of said Construction Documents (hereafter referred to as “CDs”), Consultant shall provide and submit same to City as follows:
- IV.11.1** Consultant shall submit the required number and type of Construction Documents as defined in the Design Guidance Manual and the General Conditions for City of San Antonio Construction Contracts, addressed to the City’s Project Management Team, for use by City. In addition, Consultant shall submit the required number and type of Construction Documents to the Contractor for use by the Contractor as defined in the General Conditions for City of San Antonio Construction Contracts.
- IV.11.2** Consultant further shall deliver digital and/or print copies of the final City-accepted CDs to plan rooms during the bidding process. A listing of plan rooms will be provided by the City.
- IV.11.3** Consultant accepts and agrees at Project closeout that Consultant is responsible for and shall post the Project’s As-Built final Plans and Specifications to City’s Internet-Based Project Management System.

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 its execution by both Parties.
- V.2** Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the services under **ARTICLE IV** in a prompt and continuous manner, so as to not delay the development of services and so as to not delay the construction of the work for the Project, in accordance with the schedules approved by City. City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the Project.
- V.3** 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) calendar days from the occurrence of any event, for which time for performance by Consultant shall be significantly extended under this provision, Consultant shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City determines Consultant is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement.
- V.IV** This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract and the completion of the Project, including any extra work and any required extensions thereto, unless terminated, as provided for elsewhere in this Agreement.

END OF ARTICLE V

ARTICLE VI. (RESERVED)

END OF ARTICLE VI

ARTICLE VII. COORDINATION WITH CITY

- VII.1** Consultant shall hold periodic conferences with City through the end of the Project. The 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 coordination, City shall make available, for Consultant's use in planning and designing the Project, all existing plans, maps, statistics, computations and other data in City's possession, relative to existing facilities and to this particular Project, at no cost to Consultant. However, any and all such information shall remain the property of City and shall be returned by Consultant to City upon termination or the completion of the Project or if instructed to do so by the Director.
- VII.2** The Director or his/her representative shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions, with respect to materials, equipment, elements and systems pertinent to Consultant's services.
- 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, or any development affecting 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 the Project and other such approvals and consents from others, as may be necessary, for the completion of the 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

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

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

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

END OF ARTICLE VIII

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- IX.1** All documents, including the 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 to be understood City shall have free access to all such information and hold the right to make and retain copies of drawings, estimates, specifications and all other documents and data. Any reuse, without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.
- IX.2** Consultant acknowledges and agrees, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City, upon request, termination or completion of this Agreement without restriction on future use.
- 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 the Director.
- IX.4** Consultant hereby assigns all statutory and common law copyrights to any copyrightable work that, in part or in whole, was produced from this Agreement is the property of City, 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, 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 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 City, other Consultants and/or engineers and/or other persons, subsequent to the completion of the Project. City requires Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by other Engineers or other persons, including electronic copies, subsequent to the Final Completion of the Project. Following Final Completion of the Project, if City requests Consultant perform

additional scope beyond that listed in “**EXHIBIT A**” hereto, City appropriately shall compensate Consultant for such additional scope work performed by Consultant.

- 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 sealed and signed by Consultant. Files in editable electronic media format of text, data, graphics or other types, (such as DWG or DGN) furnished by Consultant to City or utility only are for convenience of City or utility. Any conclusion or information obtained or derived from such electronic files shall 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 as provided in this **ARTICLE X**.

X.1.2 The Party not in default must 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 it is in default. Upon receipt of such written Notice of Default, the Party in receipt shall have a period of ten (10) calendar days to cure any failure to perform under this Agreement. Upon the completion of said ten-day period, commencing upon receipt of 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

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**, which shall take effect on the twentieth (20th) calendar day following receipt of said notice or upon the scheduled completion date of the performance phase in 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 for the convenience of City by issuing a written and signed Notice of Suspension, citing this **ARTICLE X.3.1**, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall, in no way, guarantee what the total number of calendar days of suspension shall occur. Such suspension shall take effect immediately upon receipt of said Notice of Suspension by the Consultant.

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) calendar 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) calendar days from the effective date of the suspension. Termination, pursuant to this **ARTICLE X.3.2**, shall become effective immediately upon receipt of said written notice by City.

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

TERMINATION

- X.4.1** Upon receipt of a Notice of Termination 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 hereinabove, Consultant immediately shall begin the phase-out and the discontinuance of all services, in connection with the performance of this Agreement, and shall proceed promptly to cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) calendar days after receipt of such Notice of Termination, unless Consultant successfully has cured a 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 an extension to the time period for submittal of such statement.
- X.4.2** Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement, prior to the effective date of termination, shall be delivered to City, in the form requested by City, as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in **ARTICLE IX**.
- X.4.3** Upon the above conditions being met, absent any reason why City may be compelled to withhold fees, 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 the fee.
- X.4.4** City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon City. Consultant further acknowledges the failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement by Consultant.
- X.4.5** Failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to collect monies Consultant otherwise may be entitled to for services performed under this Agreement.
- X.5 PROCEDURES CONSULTANT TO FOLLOW UPON RECEIPT OF NOTICE OF SUSPENSION**
- X.5.1** Upon receipt of 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 this Agreement prior to the effective date of suspension.
- X.5.3** Copies of all completed or partially completed designs, plans and specifications, prepared under 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 the right to terminate one hundred twenty (120) calendar days after the effective suspension date, within thirty (30) calendar days after receipt by City of Consultant'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, absent any reason why City may be compelled to withhold fees, 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 the fee.
- X.5.7** City, as a public entity, has a duty to document the expenditure of public funds.
- X.5.8** Consultant acknowledges this duty imposed upon City. Consultant further acknowledges the failure of Consultant substantially to comply with the submittal of the statements and documents, as required herein, 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 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 Bexar County, Texas. Consultant further warrants 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 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 warranty, City shall have the right to terminate this Agreement under the provisions of **ARTICLE X**.

END OF ARTICLE XI

ARTICLE XII. NON-DISCRIMINATION POLICY

XII.1 NON-DISCRIMINATION

As a Party to a contract with City, 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 it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and shall 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 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 it understands and agrees 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 to City a detailed outreach and diversity plan for approval by City, including a 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 Internet-Based Project Management System. Consultant shall obtain approval in writing from City prior to adding, substituting or deleting any Sub-Consultant from this 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 TCI/Contract Services Department, which clearly shall be labeled "**FREDERICKSBURG (N. FLORES TO WOODLAWN) PROJECT**" 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 the furnished Certificate(s) represent Consultant's current coverages. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) must be signed by the Authorized Representative of the carrier and list the agent's signature and telephone number. The Certificate(s) shall 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 Department – 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 shall City allow modification 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. If a project does not justify these standard limits of insurance coverages, Consultant may request a review of the City's insurance requirements, to be considered on a project-by-project basis:

TABLE TO FOLLOW

<u>TYPE</u>	<u>AMOUNTS</u>
<ol style="list-style-type: none"> 1. Workers' Compensation 2. Employers' Liability 	<p><i>Statutory</i> \$1,000,000.00/\$1,000,000.00/ \$1,000,000.00</p>
<ol style="list-style-type: none"> 3. Commercial General Liability Insurance to include coverage for the following: <ol style="list-style-type: none"> a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury 	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of:</p> <p>\$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<ol style="list-style-type: none"> 4. Business Automobile Liability: <ol style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000.00 per occurrence</p>
<ol style="list-style-type: none"> 5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service. 	<p>\$1,000,000.00 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.</p>
*if applicable	

City may request, and 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, all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide to Consultant a Certificate of Insurance and endorsement naming Consultant and City as additional insureds. Policy limits of the coverages carried by Sub-Consultants and Subcontractors shall be determined as a business decision of Consultant. Consultant shall provide City with said Certificate(s) 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 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all required endorsements. Consultant shall be required to comply with any such requests by City and shall submit all requested documents to City at the address provided below within ten (10) days. Consultant shall pay any costs incurred resulting from the provision of said documents to City.

XIV.6 Consultant 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 City shall be bound by the AG opinion/decision. Similarly, Consultant agrees and accepts City shall 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.7 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:

XIV.7.1 Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, 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;

XIV.7.2 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;

XIV.7.3 Workers' compensation, employers' liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of City; and

XIV.7.4 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.7.5 All correspondences sent by Consultant to City, with regard to Consultant's insurance coverages and requests shall be sent to:

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

XIV.8 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance, should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

XIV.9 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 to stop work hereunder until Consultant demonstrates compliance with the requirements hereof.

XIV.10 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.11 It is agreed 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.12 It is understood and agreed the insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

XIV.13 Consultant and any Sub-Consultants and/or Subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE XV. INDEMNIFICATION

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

XV.1 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 Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by an authorized corporate officer (if Consultant is not a corporation, then an official of the company authorized to bind Consultant by his/her 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 TIME LIMIT ON CLAIMS

Claims by Consultant must be initiated in writing to City within twenty-one (21) calendar days after the occurrence of the event giving rise to such Claim.

XVI.3 CONTINUING CONTRACT PERFORMANCE

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

XVI.4 CLAIMS FOR ADDITIONAL TIME

If Consultant wishes to make a Claim for an increase in the time for performance, written notice, as stated in this **ARTICLE XVI**, must 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 CLAIMS FOR CONSEQUENTIAL DAMAGES

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 both to claims by Consultant and to claims by City:

XVI.5.1No consequential damages shall be allowed; and

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

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

XVI.6 NO WAIVER OF GOVERNMENTAL IMMUNITY

NOTHING IN THIS SECTION XVI SHALL BE CONSTRUED TO WAIVE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT

CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.

XVI.7 ALTERNATIVE DISPUTE RESOLUTION

XVI.7.1 CONTINUATION OF SERVICES PENDING DISPUTE RESOLUTION

Each Party 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 under the circumstances.

XVI.7.2 REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS

Before invoking mediation or any other alternative dispute process set forth herein, the Parties 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) calendar days, after a Party delivers a written notice of such dispute, then the Parties shall proceed with the mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

XVI.7.3 MEDIATION

- a.** In the event City or Consultant shall contend 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.
- b.** Request for mediation shall be in writing, and shall request 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.
- c.** 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) calendar days following the date of the request for mediation, all conditions precedent in this **ARTICLE XVI** shall be deemed to have occurred.
- d.** 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 Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction

thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement shall be deemed consent to suit.

END OF ARTICLE XVI

ARTICLE XVII. SEVERABILITY

If, for any reason, any one or more **ARTICLE(s)** and/or paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining **ARTICLE(S)** and/or paragraphs of this Agreement but shall be confined in its effect to the specific **ARTICLE**, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any **ARTICLE**, 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 be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City's Public Service Board, SAWS and other City boards and commissions, which are more than purely advisory. The prohibition also applies to Sub-Contracts on City projects.

XVIII.2 Consultant acknowledges it is informed the Charter of the 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. 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:

XVIII.2.1 A City officer or employee;

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

XVIII.2.3 A business entity in which 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; or

XVIII.2.4 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.

XVIII.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, Consultant, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies 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 CODE §2270.002

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.

END OF ARTICLE XIX

ARTICLE XX. CONFLICTS OF INTEREST DISCLOSURE

Consultant must 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 shall constitute a violation of City's Ethics Code. To be "associated" in a business venture or business dealings includes: a) being in a partnership or joint venture with a City officer or employee; b) having a contract with a City officer or employee; c) being joint owners of a business with a City officer or employee; d) 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 e) 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

- XXI.1** Services provided by Consultant under this Agreement shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- XXI.2** Consultant shall be represented by personnel with appropriate licensure, registration and/or certification(s) at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings, pre-bid meetings and preconstruction meetings.
- XXI.3** Consultant acknowledges the Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723 and/or the Texas Board of Architectural Examiners, Hobby Building, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, (512) 305-9000 has licensing jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.

END OF ARTICLE XXI

ARTICLE XXII. RIGHT OF REVIEW AND AUDIT

XXII.1 Consultant grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Work under this Agreement, during the term of this Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

XXII.2 City agrees it shall exercise the right to audit, examine or inspect Consultant's records only during City's regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, Consultant's facilities and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

XXII.3 Consultant shall include this audit clause in any 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 may be amended only 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. If legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in 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 in the United States Postal Service, addressed to the applicable address shown below, unless and until either Party otherwise is notified in writing by the other Party of a change of such address. Mailed notices shall be deemed communicated as of five (5) calendar days of mailing.

If intended for City, to:

City of San Antonio
TCI
Attention: Contract Services
114 West Commerce, 9th Floor
San Antonio, Texas 78205

If intended for Consultant, to:

Poznecki-Camarillo, Inc.
5835 Callaghan Rd., Ste. 200
San Antonio TX 78228

END OF ARTICLE XXV

ARTICLE XXVI. INDEPENDENT CONTRACTOR

In performing services under this Agreement, the relationship between City and Consultant is Consultant is and shall remain 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 as 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

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.

END OF ARTICLE XXVII

ARTICLE XXVIII. ATTORNEY FEES

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

END OF ARTICLE XXVIII

ARTICLE XXIX. CONFLICT RESOLUTION BETWEEN DOCUMENTS

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

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

Executed by City and effective on this 28th day of September, 20 18.

CITY OF SAN ANTONIO

POZNECKI-CAMARILLO, INC.

for 
PETER ZANONI
DEPUTY CITY MANAGER


FERNANDO CAMARILLO
VICE PRESIDENT

APPROVED AS TO FORM:


CITY ATTORNEY
for

END OF ARTICLE XXIX

**EXHIBIT A SCOPE OF SERVICES/SCHEDULE OF PROJECT SERVICES/FEE
SUMMARY**

**(TO INCLUDE REIMBURSEABLES, IF ANY)
AND TIMELINE FOR DESIGN PHASE SERVICES**

(Shall include the role and responsibilities of Consultant, as detailed in City's General Conditions attached hereto)

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

CITY OF SAN ANTONIO
TRANSPORTATION AND CAPITAL IMPROVEMENTS
Interdepartmental Correspondence

TO: Kelcey Young, Contract Administrator

FROM: David McBeth, P.E., Capital Programs Manager 

COPIES: Eric Salazar, P.E., Project Manager; File

SUBJECT: Request to Prepare Civil Engineering Design Services Contract
Fredericksburg Road (North Flores Street to West Woodlawn Avenue)

DATE: September 18, 2018

I am requesting the preparation of the Civil Engineering Design Contract for the above referenced 2017-2022 Bond Project. The following is a summary of the not-to-exceed amount of the contract:

COSA Basic Design Services	\$750,969.78
COSA Additional Services/Allowances	\$204,618.44
Total Not-to-Exceed Amount	\$955,588.22

The attached documentation is provided to assist in the preparation of the contract. If any additional information is needed, please contact the Project Manager copied on this memo. Please provide a copy of the contract for review when it is sent to the design consultant.

ATTACHMENTS (x if supplied):

<u> </u> X	Engineering Fee Approval Letter
<u> </u> X	Fee Summary and Timeline
<u> </u> X	Scope of Services
<u> </u> X	Design Proposals & Project Work Plans
<u> </u> X	Exclusions Form
<u> </u> X	Scoping Meeting Minutes
<u> </u> X	Change to Utilization Plan



CITY OF SAN ANTONIO

Transportation & Capital Improvements
Horizontal Division
P.O. Box 839966
San Antonio, Texas 78283-3966

September 18, 2018

Fernando Camarillo, P.E.
Posnecki-Camarillo, Inc.
5835 Callaghan, Ste. 200
San Antonio, TX 78228

Subject: Fredericksburg Rd (Culebra to W. Craig Place) - Fee Approval

Mr. Camarillo,

The City of San Antonio Transportation and Capital Improvements (TCI) has approved your fee proposal in the not-to-exceed amount of \$955,588.22. Of this amount, \$750,969.78 is for basic design services and \$204,618.44 is for design allowances.

Item 9, Accelerated Design Schedule Fee has been created to mitigate delays **not** caused by the consultant. These acceleration fees are established to reduce the milestone durations of 40% and 70% design phases. The following are the milestones reductions associated with the Acceleration Schedule Fee:

- 40% Design Phase reduced by 15 calendar days
- 70% Design Phase reduced by 15 calendar days

Authorization of the acceleration fee will be generated as part of the NTP as determined by the Project Team.

The approved fee covers all design and professional services required to fulfill the scope of work in accordance with the City of San Antonio's Design Guidance Manual (DGM). All services and deliverables are required to comply with the DGM unless specifically excluded or modified on the attached list.

The TCI Contract Services Division will be contacting you to finalize and execute your professional services agreement. If you have any questions, please contact me at 210-207-8128 or Emilio Rodriguez at 210-207-2171.

Respectfully submitted,

Eric Salazar, P.E.
Project Manager
Transportation & Capital Improvements



5835 Callaghan Rd. Ste 200
San Antonio, TX 78228
Tel (210) 349-3273
Fax (210) 349-4395
www.pozcam.com

September 14, 2018

Eric Salazar, P.E.
Project Manager
City of San Antonio - TCI
114 W. Commerce, 5th Floor
San Antonio, TX 78205

RE: 2017-2022 Bond Program – Fredericksburg Rd (Culebra to W. Craig Place)

Dear Mr. Salazar:

Poznecki-Camarillo, Inc.(PCI) is pleased to submit our revised proposal for the engineering services for the Fredericksburg Road project. This task order is intended to provide final design and surveying services through the construction phase of this project. Complete terms of this proposal will be provided through a professional services agreement between PCI and the City of San Antonio. A detailed description of the proposed services is provided in the attached Scope of Services.

In our proposal, we have prepared a basic services and additional services fee for work required to reconstruct Fredericksburg Road from Culebra to West Craig. We have also prepared a construction cost estimate for the project. The reconstruction cost for this project developed is \$6,608,000.00 however with changing the pavement section to a variable depth mill and overlay is estimated to be \$6,089,000.00

We are proposing a fee not to exceed \$ 750,969.78 for the Basic Services, with an allowance budget of \$204,618.44 for Additional Services, as detailed on the attached project work plan. This work is a not to exceed which will be invoiced monthly on a percent complete basis.

We have also provided the scheduled days for the design. We have accounted some time for the UPRR permit process and have also allotted time for an accelerated design schedule. Once we have agreed on the number of days, we can prepare a detailed schedule for the contract.

If you have any questions, please do not hesitate to call me or Mike Guerra, P.E. at 210-349-3273.

Sincerely,
POZNECKI-CAMARILLO, INC.


Fernando Camarillo, P.E.
Principal

Attachments

ENGINEERING • SURVEYING • ENVIRONMENTAL

City of San Antonio - Transportation & Capital Improvements Department
FEE SUMMARY AND TIMELINE FOR PROFESSIONAL SERVICES

Project: **Fredericksburg Rd - (Culebra to W Craig Place 23-01582)**
 Prime Consultant: **Poznecki-Camarillo, Inc.**
 Proposal Date: **9/10/2018**
 Prepared By: **Fernando Camarillo, P.E.**

Scope of Work: **See Attached Scope of Work**
 Base Fee (Limits of Project) **Reconstruct Culebra to W. Craig Place**

ACTIVITY	TIMELINE (CALENDAR DAYS)	FEE
40% Design Phase	75*	\$334,832.28
1. Prime Consultant		\$263,691.20
2. Camacho-Hernandez		\$24,857.46
3. Pape-Dawson		\$5,520.00
4. Sanchez-Salazar		\$8,975.62
5. WSP		\$8,008.00
6. YPR		\$12,830.00
7. Arias & Associates		\$10,950.00
70% Design Phase	45	\$198,838.30
1. Prime Consultant		\$112,260.00
2. Camacho-Hernandez		\$16,686.56
3. Pape-Dawson		\$44,130.00
4. Sanchez-Salazar		\$11,215.74
5. WSP		\$4,266.00
6. YPR		\$10,280.00
95% Design Phase	30	\$120,462.32
1. Prime Consultant		\$58,736.00
2. Camacho-Hernandez		\$5,911.16
3. Pape-Dawson		\$40,740.00
4. Sanchez-Salazar		\$6,480.16
5. WSP		\$4,170.00
6. YPR		\$4,425.00
Bid Phase	60	\$27,980.00
1. Prime Consultant		\$20,592.00
2. Pape-Dawson		\$6,890.00
3. Camacho-Hernandez		\$498.00
Construction Phase		\$56,874.00
1. Prime Consultant		\$44,334.00
2. Pape-Dawson		\$11,295.00
3. Camacho-Hernandez		\$1,245.00
Project Closeout		\$11,982.88
1. Prime Consultant		\$6,708.00
2. Pape-Dawson		\$4,415.00
3. Camacho-Hernandez		\$859.88
BASE FEE TOTAL	210	\$750,969.78
Additional Services and Allowances		
1. Additional Survey to Re-establish Control		\$5,162.00
2. SUE Level B		\$30,236.00
3. SUE Level A		\$65,892.00
4. Signal Warrant Analysis (Ashby)		\$8,765.00
5. Photometric Study		\$8,553.30
6. Storm Drain Point Repairs		\$10,899.14
7. Plats & Field Notes ROW Acq/Easments (Est. 5 @ \$4,000/Ea.)		\$20,000.00
8. Joint Bid Package (Fredericksburg Rd & Five Points)		\$9,902.00
9. *Accelerated Design Schedule		\$25,209.00
10. Additional Services Allowance		\$20,000.00
ADDITIONAL SERVICES TOTAL		\$204,618.44
GRAND TOTAL WITH ADDITIONAL SERVICES		\$955,588.22

City of San Antonio
Transportation and Capital Improvement (TCI)
Scope of Services for
Fredericksburg Road (23-01582)

Project Description

The Services to be performed by the DESIGN CONSULTANT under this Agreement are generally described as engineering and surveying services for the preparation of Plans, Specifications and Estimates (PS&E) and related documents for the rehabilitation of Fredericksburg Road as proposed on the schematic layout provided by TCI. Proposed improvements of Fredericksburg Rd from Culebra Rd to W. Craig Place for road transformation and mill & overlay are to include pavement base repair, curbs, sidewalks, driveways, curb ramps, storm drain inlets, traffic signals, cross walks, medians, signage, pavement markings, concrete bus pads, retaining walls, adjusting/reconstructing manholes, flashing beacons, street lighting, and UPRR crossing.

Basic Service

1. Project Management and General Items
 - 1.1 DSR Preparation
 - 1.2 Complete Streets Assessment
 - 1.3 General Sheets – Index, Summaries / Quantities, Notes
 - 1.4 Design review meetings
 - 1.4.1 Initial Scoping Meeting
 - 1.4.2 40% Plans Review Meeting
 - 1.4.3 70% Plans Review Meeting
 - 1.4.4 95% Plans Review Meeting
 - 1.4.5 100% Plans review Meeting
 - 1.5 Prepare meeting minutes
 - 1.6 Project Schedule, includes construction
2. Right of Way Surveying
 - 2.1 Survey ROW
 - 2.1.1 Boundary — No ROW to be acquired
 - 2.2 Apparent ROW

2.2.1 Research plats, right of way (ROW) maps, deeds, easements and survey for fence corners, monuments, iron pins, etc. within the existing ROW and/or buildings and analyze to establish existing apparent right of way.

2.2.2 Prepare a preliminary base map in .dgn format. Develop the proposed alignment and its position relative to the apparent ROW. This preliminary base map will show lot or property lines, land ownership and addresses as per Bexar County Appraisal District Records.

2.3 Monument ROW – No ROW to be acquired

2.4 Prepare ROW Map – No ROW to be acquired

3. Topographic Survey / Base Mapping

Surveying Limits are approximately 4850 linear feet of street that includes Fredericksburg from Culebra to W Craig, including 50 feet into all lateral streets.

3.1 Establish Primary Horizontal and Vertical Project Control - Horizontal control will be based on State plane coordinates, South Central Zone adjusted to surface using the Bexar County Combined Adjusted Factor. Horizontal control will be based on NAD 83. Vertical control will be based on NAVD 88. All control work will be established using static GPS and conventional methods. Re-establish project control one additional time for contractor prior to construction, as requested.

3.2 Establish Secondary Project Control

3.3 Set Project centerline or baseline – one time stake out of project centerline/baseline stationing for the purpose of utility/design coordination during design plans stage of development, as requested.

3.4 Survey Topographic Features – Perform a topographic survey including cross sections at 50-foot intervals within existing apparent right of way and/or within existing building. Prepare a preliminary Digital Terrain Model (DTM). The DTM will contain all break lines such as: edge of pavement, crown of roadway, apparent right of way, buildings' finished floor elevations, limits of bricks or pavers, changes of slope or grade breaks and spot shot elevations as needed to ensure that the model represents the terrain and adequately maps existing features.

3.5 Obtain x, y and z of accessible existing sanitary sewer, water and storm sewer lines and structures, and locate all visible utilities and signs within the apparent ROW and/or within existing buildings.

3.6 Locate improvements within the apparent right of way and/or within existing buildings.

- 3.7 Locate, identify and tag all trees 6" in diameter or greater within the apparent ROW and/or within existing buildings.
- 3.8 Locate on the ground traffic signal equipment, sign descriptions and types.
- 3.9 Provide engineer with MicroStation V8, 2D and 3D drawing files with an ASCII file in compliance with the CoSA V8 level structure, along with .tin and .dat files for the DTM model in Geopak and provide horizontal and vertical project control sheets.
- 3.10 Provide a Parcel Identification Map (no strip map will be provided).
- 3.11 Request Utility Block Maps
 - 3.11.1 Water
 - 3.11.2 Sanitary Sewer
 - 3.11.3 Natural Gas
 - 3.11.4 Unground/Overhead Electric
 - 3.11.5 Underground/Overhead Telephone
 - 3.11.6 Underground/Overhead Cable Television

EXCLUSIONS

- No actual Right of Way recovery or staking of ROW limits is included in this scope and fee.

4. Roadway Design

- 4.1 Prepare existing and proposed Typical Roadway Sections. Proposed pavement width for Fredericksburg Rd is to be provided from the schematic and field survey. Street typical sections would propose sidewalks in both directions, generally limited to the ROW limits or face of adjacent building.
- 4.2 Prepare project layout sheets in 1" = 100' scale.
- 4.3 Develop Horizontal Alignments.
- 4.4 Develop Vertical Alignments, to include profile of Fredericksburg Rd baseline and profiles for the intersecting streets. Top of curb elevations will be displayed in profile and also as needed to address variable curb heights.
- 4.5 Street Cross sections Roadway Cross Sections - Develop roadway cross sections for every 50-foot station, plus any intermediate stations if field conditions so dictate, at a scale of 1" = 20' horizontally and 1" = 10' vertically, for the purpose of estimating preliminary earthwork, impacts to sidewalk drainage of narrowing the roadway, and implications on the right of way or construction easement requirements. Known utilities will be shown on the cross sections. A cross section will be included at each driveway.

- 4.6 Develop Plan and Profile Sheets in 1" = 40' scale to include roadway profile. Also include driveway penetrations if necessary on the profile sheets. Drainage profile will be shown on Storm Drain Plan and Profile sheets.
 - 4.7 Prepare Driveway summary sheet with details showing grades, penetrations, and widths.
 - 4.8 Prepare Driveway Plats which will include exhibits where proposed work is expected beyond the limits of the apparent ROW. This will include improvements such as sidewalk reconstruction and sidewalk drains that tie into the face of buildings.
5. Drainage Design
 - 5.1 Establish Design Discharges (See C-H Subconsultant Scope of Services)
 - 5.2 Design storm drainage facilities (See C-H Subconsultant Scope of Services)
 6. Geotechnical Engineering (See Arias Subconsultant Scope of Services)
 7. Utility Coordination / Management
 - 7.1 Prepare Utility Base Map and Utility Layouts from block maps and surface features.
 - 7.2 Utility Coordination with Utility Companies/Agencies
 8. Traffic Control Plan
 - 8.1 Develop typical Traffic Control Plan (TCP) Typical Sections showing location and direction of traffic, work limits, and basic method of channelization for the construction phasing of the roadway and storm drainage.
 - 8.2 Prepare an overall project phasing layout for the construction phasing at a scale of 1" = 100'.
 - 8.3 Develop the sequence of construction narrative to be phased with two-way traffic maintained on Fredericksburg Rd. Develop a narrative summary of the sequence of work for the construction phasing. Include conceptual strategy for maintaining intersection access, storm drainage, utility services, ROW limitations, and constructability during all phases of construction.
 - 8.4 Develop a Schedule of Advance Warning Devices and TCP General Notes sheets.
 - 8.5 The number of sheets to be produced under this scope of services is intended to provide for two basic construction phases for Fredericksburg Rd. The DESIGN CONSULTANT will develop TCP Layout Sheets for the two phases of construction. The layouts will illustrate situations where traffic handling during construction is not covered by the current Texas MUTCD, the current TxDOT Barricade and Construction (BC) Standards, or the current TxDOT Traffic Control Plan Standards (TCP). TCP Layouts will address work limits, location of channelizing devices and positive barrier, tapers, work zone pavement markings, locations requiring temporary drainage structures,

locations of pedestrian routes and crossings, access to businesses, homes, and side streets.

9. Other Plans

- 9.1 Intersection Layouts – Intersection layouts will be developed for 6 intersections to include Fredericksburg intersections at Culebra, Blanco, Colorado, Cincinnati, Ashby, and W Craig. These will be prepared at a scale of 1"=20'
- 9.2 Sidewalk Layouts/Details – Sidewalk layout files will be prepared for entire project to include 1"=20' scale with plan views only. This layouts will depict elevation details, limits of sidewalks, variable curb, cross slope requirements, sidewalks drains, existing vaults, benches, trashcans, etc.
- 9.3 Traffic Signal Plans
(See Pape-Dawson Subconsultant Scope of Services)
- 9.4 Removals and Historical Preservation layouts
(See SSA Subconsultant Scope of Services)
- 9.5 Pavement Markings and Signing Plans
(See WSP Subconsultant Scope of Services)
- 9.6 Prepare SW3P Layouts, narrative and details.
- 9.7 Tree Preservation Plan will be prepared including a tree protection requirements.
- 9.8 Details, Standards and Specifications, Special Details, Special Provisions, Special Specifications.
- 9.9 2-CD's with drawings both in PDF and DGN format, list of governing specifications, special provisions, and special specifications.

10. Environmental and Regulatory Coordination

- 10.1 Coordination with CoSA ENV
- 10.2 Prepare TDLR review and permit process and address comments.

11. Cost Estimating

- 11.1 40% Plans Cost Estimate
- 11.2 70% plans cost Estimate
- 11.3 95% Plans cost Estimate

12. Public Communications

- 12.1 Scoping and Exhibits
- 12.2 Public Meetings and Exhibits

13. Bid Phase.

- 13.1 Submit 100% Plans With All Joint-Bid Utilities
- 13.2 Final Project Specifications Book (Forms provided by CoSA Contracting)
- 13.3 Finalize Constructability Issues
- 13.4 Review Utility Conflict Report and Address Pending Items
- 13.5 Attend 100% Review Meeting

Fredericksburg Road (23-01582)
City of San Antonio TCI Department
Poznecki-Camarillo, Inc.(PCI) (Design Consultant)

- 13.6 Assist the City in Preparing Advertising Documents
- 13.7 Distribute Plans and Specifications to Contractors and Plan Rooms
- 13.8 Attend Pre-Bid Meeting
- 13.9 Respond to Contractor Questions
- 13.10 Prepare and Distribute Necessary Addenda
- 13.11 Prepare Bid Tabulation and Letter of Recommendation

14. Construction Phase

- 14.1 Review Contractor Pay Estimates
- 14.2 Review / Negotiate Change Orders
- 14.3 Review Submittals / Shop Drawings
- 14.4 Respond to RFI's
- 14.5 Project Site Visits and Reports (Minimum Two Per Month)
- 14.6 Participate in Construction Progress Meetings and Prepare Meeting Minutes
- 14.7 Final Walkthrough and Punch list Review
- 14.8 TDLR Inspection

Additional Services

1. Re-establish Project Control Points and reset any damaged or removed control monuments as needed; this is to be in addition to the instances not already covered according to DGM guidelines.
2. Survey Quality Level B/C Locates - Services includes locating existing utilities to Level B for the following items:
 - a. Water
 - b. Sanitary Sewer
 - c. Natural Gas
 - d. Underground/Overhead Electric (QL C)
 - e. Underground/Overhead Telephone (QL C)
 - f. Underground/Overhead Cable Television (QL C)
 - g. Update Utility Base map
3. Level A Potholes – Services includes potholing up to 25 potholes. Additional cost may be required if a facility which is wide requires more than a single pothole to determine size (See SoftDig Subconsultant Scope of Services)
4. Traffic Signal Warrant Analysis
(See Pape-Dawson Subconsultant Scope of Services)
5. Photometric Study (See CNG Subconsultant Scope of Services)
6. Storm Drain Point Repairs (See C-H Subconsultant Scope of Services)

Fredericksburg Road (23-01582)
City of San Antonio TCI Department
Poznecki-Camarillo, Inc.(PCI) (Design Consultant)

7. Survey Plat & Field Notes exhibits as related to ROW Acquisitions and/or Easements. Flag existing corners, set new corners, etc as needed.
8. Joint Bid Construction Package services to include providing combined bidding documents for Fredericksburg Rd and Five Points projects as one construction advertisement and bid package, to include TCP (Traffic Control Plan) integration.
9. Accelerated design schedule: 75 days 40% Design (Original baseline schedule 90 days), 45 days 70% Design (Orig. baseline schedule 60 days), 30 days 95% Design, 60 days Bid Phase. Total Design & Bid Phase Schedule: **210** days (Original baseline 240 days).
10. Miscellaneous Engineering Services - An allowance of \$20,000.00 will be included in this contract for engineering miscellaneous services. The actual scope and fee will be negotiated at the time the additional services are requested. Prime and Sub consultant will use the same rates used to determine the fee for the "Basic" Design Phase Services Fee.

City of San Antonio - Transportation & Capital Improvements Department
 PROJECT WORK PLAN AND FEE PROPOSAL BREAKDOWN

Project: Fredericksburg Rd - Culverts to W Cragg Place 22-01882
 Prime Consultant: Perneck-Camarillo, Inc.
 Proposal Date: 8/10/2018
 Prepared By: Fernando Camarillo, P.E.

Quantity	Estimating Unit	Unit Cost	Principal/Partner \$	Senior Manager \$	Senior Engineer \$	Design Engineer \$	BIT \$	CAADD \$	RPLS \$	Survey Head \$	Class Crew \$	Lab Crew \$	SFT \$	Senior Technician \$	Survey Technician \$	Architect Admin \$	Project Admin \$	Total Hrs	Task Budget
1	meeting		76.5	72	168	29	206	198	90	170	44	530	12	118	180	60	12	4	\$ 9,280.00
1.1	Project Management and General Items																		\$ 9,280.00
1.1.1	DSR Preparation		1	2	2	2												4	\$ 4,800.00
1.1.2	Design Meeting		1	2	2	2												4	\$ 4,800.00
1.2	General Sheets - Inks, Summaries / Quainties, Notes	3.50	1	2	8		16	8										35	\$ 4,000.00
1.4	Design Review Meeting		2	2	2													25	\$ 1,100.00
1.5	Prepare Meeting Minutes		1	2	2													13	\$ 410.00
1.6	Project Schedule (Outside Consultant)		1	2	10													13	\$ 2,140.00
2	Right of Way Survey																		\$ 48,326.20
2.1	Acquire Ownership Information		2						4						32			38	\$ 3,400.00
2.2	Prepare Parcel Identification Map		2						2									20	\$ 1,800.00
2.3	Secure Right of Entry (Pole/Signs Etc Two Miles)		2						8									262	\$ 5,492.00
2.4	Survey ROW	7.35	2							4	116		38	68	30			180	\$ 34,634.00
3	Topographic Surveying / Base Mapping (w/ L.F. of Roadway)																		\$ 118,776.00
3.1	Establish Preliminary Control Locations		4							8	105				2			180	\$ 25,545.00
3.2	Establish Project Control and Survey Horizontal by GPS methods		2							2	32		18					28	\$ 7,956.00
3.3	Survey Vertical Control / Digital or Conventional Methods		2							4	65		32					31	\$ 3,900.00
3.4	Coordinate and/or Establish Control Points / Horizontal by GPS methods		2							2	8		2					24	\$ 3,920.00
3.5	Coordinate and/or Establish Control Points / Vertical by Conventional Methods		2							2	8		2					24	\$ 1,260.00
3.6	Coordinate and/or Establish Control Points / Horizontal by GPS methods		2							2	8		2					24	\$ 1,260.00
3.7	Coordinate and/or Establish Control Points / Vertical by Conventional Methods		2							2	8		2					24	\$ 1,260.00
3.8	Coordinate and/or Establish Control Points / Horizontal by GPS methods		2							2	8		2					24	\$ 1,260.00
3.9	Coordinate and/or Establish Control Points / Vertical by Conventional Methods		2							2	8		2					24	\$ 1,260.00
4	Roadway Design																		\$ 24,867.48
4.1	Typical Sections - Existing and Proposed		4							8	105							180	\$ 25,545.00
4.2	Horizontal Roadway Alignments		2							2	32		18					28	\$ 7,956.00
4.3	Vertical Roadway Alignments		2							4	65		32					31	\$ 3,900.00
4.4	Street Cross Sections		2							2	8		2					24	\$ 3,920.00
4.5	Plan and Profile Sheets		11							2	8		2					24	\$ 1,260.00
4.6	Plan and Profile Sheets		11							2	8		2					24	\$ 1,260.00
5	Drainage Design																		\$ 24,867.48
5.1	Drainage Design																		\$ 24,867.48
6	UPRR Form (Diagnostic Exhibit & 1 Coordination Meeting)		2																\$ 6,700.00
7	Utility Coordination / Management																		\$ 3,200.00
7.1	Utility Coordination / Management		4																\$ 3,200.00
7.2	Utility Coordination (Section 5.0 of the DGM)		4																\$ 3,200.00
7.3	Integrate Joint Bed Utility Plans		4																\$ 3,200.00
8	Traffic Control Plan																		\$ 19,660.00
8.1	Traffic Control Plan		8																\$ 19,660.00
8.2	Construction Phase and Balance of Work		3																\$ 5,100.00
8.3	Conceptual Connection Phasing Layouts		3																\$ 5,100.00
9	Other Plans																		\$ 8,774.00
9.1	Intersection Layouts		5																\$ 8,774.00
9.2	Subway Layouts (8' 1" x 20' double track)		4																\$ 3,070.00
9.3	Traffic Signal Plans		11																\$ 2,662.00
9.4	Remnants & Historical Preservation Layouts		4																\$ 2,662.00
9.5	Footcandle Mapping and Spacing Plan		4																\$ 2,662.00
10	Environmental and Regulatory Coordination																		\$ 1,712.00
10.1	Coordination with CSEA/ENV		2																\$ 1,712.00
11	General/Professional Engineering																		\$ 10,860.00
11.1	General/Professional Engineering		2																\$ 10,860.00
12	Cost Estimating																		\$ 3,182.00
12.1	Cost Estimating		2																\$ 3,182.00
13	Public Communications																		\$ 6,040.00
13.1	Public Communications		4																\$ 6,040.00
13.2	Public Meeting and Exhibits		4																\$ 6,040.00

City of San Antonio - Transportation & Capital Improvements Department
PROJECT WORK PLAN AND FEE PROPOSAL BREAKDOWN

Project: Friedricksburg Rd. - (Cubela to W Gray Place 22-0182)
 Prime Consultant: Pasznick-Camarillo, Inc.
 Proposal Date: 8/10/2018
 Prepared By: Fernando Camarillo, P.E.

Task	Quantity	Estimating Unit	Unit Cost	Principal/Partner	Senior Project Manager	Senior Engineer	Design Engineer	BIT	CADD	RPLS	Survey	3-Man Crew	4-Man Crew	Survey Technician	Abstractor	Project Admin	Tool Mts	Task Budget
1.00 Design Management and General Items																		\$ 7,078.00
1.1 General Sheets, Index, Summaries / Quantities, Notes	10	Sheet	3.98	64.5	1	2	4	14										\$4,290.00
1.2 Design Review Meetings	1	meeting		0	2	2	2											\$ 900.00
1.3 Design Review Meetings	1	meeting		1	4	1												\$1,086.00
1.4 Project Schedule (includes Construction)																		
2.00 Preliminary Studies																		\$ 34,854.00
2.1 General Location, Existing and Proposed	4	SHF	10.00	4	6	6	4	12	12									\$3,000.00
2.2 Project Layout Sheets	4	SHF	6.50	2	2	6	4	6	6									\$3,108.00
2.3 Horizontal Right-of-Way Alignments	2	SHF	10.00	2	2	2	2	4	4									\$2,000.00
2.4 Street Cross Sections	100	XSEC	0.36	2	2	8	8	16	8									\$4,200.00
2.5 Plan and Profile Sheets	11	SHF	5.09	4	6	6	6	24	20									\$5,600.00
2.6 Driveway/Encroachment Exhibits	15	SHF	2.27	2	2	2	2	15	15									\$3,400.00
3.00 Drainage Design																		\$ 18,688.54
3.1 Utility Coordination / Memorandum																		\$ 15,628.54
4.00 Utility Coordination (Section 5.0 of the DSM)																		\$ 18,150.00
4.1 Inappropriate Lane Use Utility Plans	2			2	2	6	4	4										\$3,108.00
4.2 Inappropriate Lane Use Utility Plans	2			2	2	18	8	8										\$3,108.00
4.3 Inappropriate Lane Use Utility Plans	2			2	2	18	8	10										\$3,990.00
5.00 Traffic Control Plans																		\$ 14,396.00
5.1 Traffic Control Plans - Signal Stations	1	SHF	10.00	2	2	8	8	16	12									\$4,000.00
5.2 Signal Station Plans - Signal Stations	2	SHF	20.00	2	2	8	8	16	12									\$4,000.00
5.3 Signal Station Plans - Signal Stations	2	SHF	20.00	2	2	8	8	16	12									\$4,000.00
5.4 Advance Warning Signs	4	SHF	6.00	2	2	6	4	4	4									\$2,400.00
5.5 Control Plan Utility Layouts	4	SHF	6.00	2	2	6	4	4	4									\$2,400.00
6.00 Other Plans																		\$ 4,188.74
6.1 Traffic Signal Plans	5	SHF	10.20	1	2	18	10	12	16									\$5,984.00
6.2 Signal Plans	11	SHF	4.64	1	2	18	10	12	16									\$5,984.00
6.3 Signal Plans																		\$ 451.74
6.4 Renewals & Historical Preservation Layouts																		\$ 451.74
6.5 Pavement Marking and Signing Plan																		\$ 11,212.74
7.00 Environmental and Regulatory Coordination																		\$ 2,702.00
7.1 General Environmental Coordination																		\$ 2,702.00
8.00 Cost Estimating																		\$ 2,956.00
8.1 Prime Cost Estimate																		\$ 2,956.00
9.00 Communications																		\$ 2,956.00
9.1 Public Meeting and Exhibit																		\$ 2,956.00
9.2 Public Meeting and Exhibit																		\$ 2,956.00
9.3 Stakeholder Meetings																		\$ 2,956.00



142 Chula Vista, San Antonio, Texas 78232 • Phone: (210) 308-5884 • Fax: (210) 308-5886

July 11, 2018 (REV. I – 9/14/2018)
Arias Job No. 2018-650

VIA Email: MGuerra@PozCam.com

Mr. Mike Guerra, P.E.
Engineer 3
Poznecki-Camarillo, Inc.
5835 Callaghan Road, Suite 200
San Antonio, Texas 78228

RE: Proposal for Geotechnical Engineering Services
Fredericksburg Road (Culebra Road to West Craig Place)
2017 City of San Antonio (CoSA) Bond Project
San Antonio, Texas

Dear Mr. Guerra:

Arias & Associates, Inc. (Arias) is pleased to submit this proposal for geotechnical engineering services for the proposed project. ***We understand that we have been preselected for this project based upon our qualifications.*** Arias provides our clients with innovative and cost-effective solutions to the geotechnical challenges present in the San Antonio area. The purpose of this proposal is to provide a work scope, fee estimate, and General Conditions so that Poznecki-Camarillo (PC) can negotiate the fee for this project with the City of San Antonio (CoSA).

Project Information

Arias & Associates, Inc. (Arias) will provide Geotechnical Services for the Fredericksburg Road Project. The project is an approximate 4,200-foot long segment of Fredericksburg Road that begins at Culebra Road and extends north to West Craig Place.

It is our understanding that the project is slated to be a mill and overlay with spot base repairs as opposed to a total reconstruction. Therefore, our report will include recommendations and/or potential alternatives for spot base repairs prior to overlay construction in lieu of total reconstruction recommendations.

If any of this information is incorrect, we should be contacted immediately in order to review and revise our proposal as necessary.

Proposal Assumptions

Items that need to be addressed prior to our field exploration and engineering analysis include the following:

1. PC and Arias will select boring locations and PC will provide GPS coordinates at the proposed boring locations so that Arias can prepare a boring location plan on a recent aerial photograph. Arias will submit the boring location plan with road-cut permit applications to CoSA, will mark borings in the field and call in utility locates.

Proposed Scope of Services

Arias proposes the following geotechnical services for the project:

1. Once the boring locations are established, Arias will obtain road-cut permits from the CoSA for the borings anticipated to be drilled within the existing roadway. We anticipate that a maximum of 4 permits will be required.
2. A pre-drilling field reconnaissance operation will be conducted in order to determine existing site conditions at each of the boring locations and to initiate the subsurface utility clearance activities. Information will be collected as needed to determine access to the boring locations (to include the need for site clearing) and to determine the necessary traffic control measures for the field drilling activities.
3. Traffic control measures will be implemented as required in the CoSA permit during the drilling activities. Partial lane closures are anticipated at this time. Either two flagmen and/or a police officer will be provided as directed by the CoSA on the road-cut permit. ***Our scope and fee does not include services or fees for full lane closures at this time. Should full lane closures be required, we should be notified immediately as additional services and costs would apply.***
4. As requested by the Client, our scope of services will include four (4) borings each drilled to a maximum depth of about 10 feet through the existing pavement section in the areas of the planned mill and overlay. Arias will retain a subcontract driller to perform drilling; however, Arias personnel will work with you and on-site personnel to locate the borings, will direct the sampling efforts, and will visually classify recovered samples. Arias will core through the existing pavement section and then perform borings using auger drilling techniques to the depth specified above. Soil samples will be obtained at 2-ft intervals to a depth of 10 feet. Clay soils will be sampled by pushing thin-walled tubes in general accordance with ASTM D 1587 or by driving a split-barrel sampler in general accordance with ASTM D 1586 for the Standard Penetration Test (SPT). For gravel, sand, and/or silt soils, samples will be obtained by performing SPT sampling. A bulk sample will be obtained for the CBR test and the lime series curve noted below.

Groundwater levels within the open boreholes will be recorded during and after completion of drilling. Borings drilled through the existing pavement will be backfilled upon the completion of drilling and/or groundwater measurements. In pavement areas, the upper 3 feet will be backfilled with flowable fill per CoSA requirements.

5. PC will have the as-drilled boring locations surveyed to determine the coordinates and surface elevations, and will provide the survey information to Arias.
6. Laboratory testing will be performed on recovered samples selected by our geotechnical engineer to aid in soil classification and to measure engineering properties. Laboratory testing is expected to include moisture content, Atterberg limits, fines content, sulfate tests, unconfined compression tests, CBR, and lime series to evaluate lime treatment. The actual laboratory program will depend upon the type of soils encountered.
7. We will issue an electronic copy of our formal engineering report prepared by a licensed professional engineer in Texas that will include:
 - Description of the field exploration program;
 - Description of the laboratory testing program;
 - Soil boring plan that depicts borehole locations on a base map provided by Client;
 - Soil boring logs with soil classifications based on the Unified Soil Classification System (ASTM D 2487);
 - Thickness measurements of the existing asphalt and base (pavement materials) at the boring locations;

- Description of site geology based on location of the site on the Geologic Atlas of Texas;
- Generalized site stratigraphy and engineering properties developed from field and laboratory data at the explored locations;
- Depth where groundwater was encountered during drilling and its impact on construction; and,
- Recommendations/potential alternatives for spot base repairs in accordance with the CoSA Capital Improvements Management Services (CIMS) Design Guidance Manual, Appendix 10-A "City of San Antonio Pavement Design Standards. Recommendations will be based on the 1993 AASHTO Guide for Design of Pavement Structures (i.e. not based on TxDOT Pavement Design Methodologies).

Our report will not provide pavement reconstruction recommendations, utility recommendations, nor global stability evaluations for site slopes, retaining walls, or shoring systems. We would be pleased to provide these services for an additional scope and fee if desired and project conditions dictate.

In addition, our scope and fee does not include any environmental consulting, testing, analysis or reporting of any kind.

CoMET Services

Please be advised that Arias can perform Construction Materials Engineering and Testing (CoMET) services for this project. If requested, we would be pleased to provide a scope of work and fee for these services.

Proposed Fee

We propose a Lump Sum Fee of **\$10,950.00** for the performance of the scope of work for this project as presented herein, and that the work will be performed as outlined in the General Conditions listed below. A breakdown of our estimated fee is provided as Exhibit A to this document for the work scope outlined herein. We will invoice completed tasks on a monthly basis for the estimated percentage of completion.

We have prepared our scope and fee with the understanding that no site clearing will be required, the borings will be drilled with a truck-mounted drill rig, and no special access will be required. We have assumed that you will provide free access to the site. We understand that traffic control requirements will be established by CoSA when they issue road-cut permits to Arias. We have assumed partial lane closures for the purposes of this proposal, and we should be notified immediately if this or any other information is not correct.

Upon receiving written authorization, Arias will mark the boring locations, coordinate utility locates, and obtain road-cut permits from CoSA, which we anticipate will take about 2 to 3 weeks. The field study can typically begin 2 to 3 days after receipt of permits and utility clearances and will take 1 work day to complete. Laboratory testing will require about 7 to 10 days. Our geotechnical report will be delivered to you about 2 weeks after completion of our laboratory testing. Accordingly, our report is anticipated to be submitted about 7 to 8 weeks after receiving written authorization to proceed.

Delays sometime occur due to adverse weather, utility clearance requirements, obtaining road-cut permits, obtaining Right of Entries and other factors outside of our control. In this event, we will communicate the nature of the delay with you and provide a revised schedule at the earliest possible date.

Proposal Acceptance

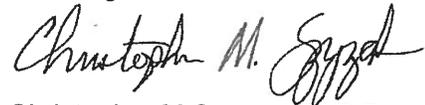
Please let us know if this proposal meets your expectations. Please return the entire signed proposal to us by fax, mail or email to cszymczak@ariasinc.com. If the billing address is different, please include that information as well.

Should you have any questions, please do not hesitate to contact me on my direct line at (210) 499-6834. We appreciate the opportunity provided and look forward to becoming an integral part of the Project Team.

Sincerely,

ARIAS & ASSOCIATES, INC.

TBPE Registration No: F-32



Christopher M Szymczak, P.E.
Senior Geotechnical Engineer

Attachments: Cost Estimate Breakdown

“The bitterness of poor quality is remembered long after the sweetness of low price has faded from memory”

June 17, 2018

EXHIBIT A -

Underground Services Inc #682840

COSA Work

Fredericksburg RD 2017 Bond

Exhibit - Fee Schedule/Budget

DIRECT COST ITEM	Unit Cost	UNIT	Quantity	TOTAL
Lodging (Current State)	Current State	day/person	NA	
Lodging Taxes & Fees	Current State	day/person	NA	
Meals (Overnight stay required)	Current State	day/person	NA	
Meals (6 hour duration required)	Current State	day/person	NA	
Mileage (Current State)	Current State	mile	NA	
Rental Car	\$0.00	day	NA	
Rental Car Fuel	\$0.00	gallon	NA	
Toll Charges	\$0.00	each	NA	
UNIT COST ITEM				
Underground Services, Inc. dba SoftDig®				
Mobilization / Demobilization	\$0.00	miles	0	\$0.00
Level C and D. Includes labor & equip for records research, CADD and mapping	\$0.40	L.F.		\$0.00
Level B (Designation). Includes labor and equipment for designating.	\$0.90	L.F.	15,000	\$13,500.00
Level A (Location, Test Holes) Includes labor & equipment for vacuum excavation.				\$0.00
Level A: 0 to 5 ft.	\$550.00	each	15	\$8,250.00
Level A: >5 to 8 ft.	\$800.00	each	10	\$8,000.00
Level A: >8 to 13 ft.	\$1,100.00	each	0	\$0.00
Level A: >13 to 20 ft.	\$1,400.00	each	0	\$0.00
Level A: > 20 ft.	\$90.00	per vertical foot	0	\$0.00
SUE Field Services One (1) person w/equipment	\$100.00	hour	0	\$0.00
SUE Field Services Two (2) persons w/equipment	\$165.00	hour	0	\$0.00
One (1) - Person Survey Crew (GPS and Robotic Total Stations included in indirect cost rate, Mileage not included)	\$100.00	hour	0	\$0.00
Two (2) - Person Survey Crew (GPS and Robotic Total Stations included in indirect cost rate, Mileage not included)	\$150.72	hour	0	\$0.00
Three (3) - Person Survey Crew (GPS and Robotic Total Stations included in indirect cost rate, Mileage not included)	\$175.00	hour	0	\$0.00
Four (4) - Person Survey Crew (GPS and Robotic Total Stations included in indirect cost rate, Mileage not included)	\$200.00	hour	0	\$0.00
Traffic Control Services, Arrow Boards and Attenuator trucks - Medium Project (Includes labor, equipment and fuel)	\$2,250.00	day	8	\$18,000.00
TOTAL DIRECT & UNIT COSTS				\$47,750.00

TOTAL FEES	\$47,750.00
-------------------	--------------------

August 28, 2018

Poznecki-Camarillo, Inc.
Attn: Mike Guerra, P.E.
5835 Callaghan Road, Ste. 200
San Antonio, Texas 78228

Re: 2017 COSA Bond Program – Fredericksburg Rd Project (Culebra to W Craig)

Dear Mr. Guerra:

Camacho Hernandez & Associates is pleased to submit this proposal for engineering services to Poznecki-Camarillo for the above referenced project. We propose to perform work as described in the attached fee schedule and as per the 2017 COSA DGM; appendix 2C. Any exclusions or modifications to the scope of services have been include with the master scope of services.

We propose a lump sum fee to be paid as shown in the table below. Payment will be made as work is completed and approved by CoSA for each phase/task as summarized below.

Phase	
Base Fee	
40% Design Phase	\$24,857.46
70% Design Phase	\$16,686.56
95% Design Phase	\$5,911.16
Bid Phase	\$498.00
Construction Phase	\$1,245.00
Closeout	\$859.88
Total Base Fee	\$50,058.06
Additional Services	
70% Design Phase	\$5,839.28
95% Design Phase	\$3,139.86
Total Additional Service Fee	\$8,979.14

Should you have any questions please call me at 210-341-6200.

Sincerely,



John Hernandez, P.E.
Project Manager
Camacho-Hernandez & Associates, LLC

ATTACHMENTS
Project Work Plan

City of San Antonio
 Transportation and Capital Improvements
 Rate Proposal Breakdown for Professional Services

Project Name: Fredericksburg Rd (N Flores to W Woodla
 Prime Consultant: Poznecki-Camarillo, Inc.
 Name of Firm/Subconsultant: Carnacho-Hernandez & Associates, LLC-
 Date Proposal Submitted: 8/29/2018
 Project Manager: John Hernandez, P.E.

Position/Personnel Title	Principal	Project Manager	Project Engineer	Design Engineer	EIT I	EIT III	Engineering Tech III	CADD Tech II, Admin/Clerical	Task/Phase Fee		
Fully-Loaded Hourly Wage Rates * (as defined below)	\$198.00	\$165.00	\$135.00	\$124.50	\$96.50	\$103.88	\$85.22	\$83.66	\$62.00		
Task to be performed/Phase Description (including Sub-consultant work)	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Task Hours	Task/Phase Fee	
BASE SERVICES											
40% Design	0	7	20	59	0	52	64	32	2	236	\$24,857.46
Design Review Meeting										3	\$373.50
Coordination with Prime Consultant										2	\$902.50
Drainage Design											
Data Gathering						4				4	\$913.52
Gather as-builts and survey data						2				2	\$249.00
Analyze as-builts and survey data						2				2	\$249.00
Drainage Area Map & Hydrologic Data Sheets		2		12		8	20	20		62	\$6,032.64
Calculate Design Discharges & Hydraulic Data Sheets				3		8	16			29	\$2,896.06
Prepare preliminary drainage report		2		4		8				8	\$3,378.80
Roadways and Storm Drainage System (7 Sheets)		8		12		12		12		56	\$5,847.12
Inlet Details		1		4		8				29	\$3,213.80
Cost Estimating											
40% Plans Opinion of Probable Construction Costs			1	2		4				7	\$799.52
70% Design	0	6	24	38	0	26	34	20	2	152	\$16,686.56
Summaries/Quantities										4	\$1,183.64
Design Review Meeting										3	\$373.50
Coordination with Prime Consultant										2	\$902.50
Drainage Design											
Drainage Area Map & Hydrologic Data Sheets		1		8		4	6	6		25	\$2,589.80
Calculate Design Discharges & Hydraulic Data Sheets		1		2		4	6			13	\$1,340.84
Prepare preliminary drainage report		1		2		4	4			15	\$1,669.40
Roadways and Storm Drainage System (7 Sheets)		4		4		8	6	6		28	\$2,882.32
Inlet Details		1		3		4	4			16	\$1,854.90
Details and Standards (Drainage)											
Special Details (Drainage)		1		4				4		11	\$1,267.64
List of Governing Specifications (Drainage)		1		4			8			15	\$1,614.76
Special Provisions (Drainage)										2	\$270.00
Special Specifications (Drainage)										2	\$270.00
Cost Estimating											
70% Plans Opinion of Probable Construction Costs			1	1		2				4	\$467.26

City of San Antonio
Transportation and Capital Improvements

Rate Proposal Breakdown for Professional Services

Project Name	Fredericksburg Rd (N Flores to W Woodlaw)
Prime Consultant	Poznecki-Camarillo, Inc.
Name of Firm/Subconsultant	Carnacho-Hernandez & Associates, LLC - S
Date Proposal Submitted	8/29/2018
Project Manager	John Hernandez, P. E.

Position/Personnel Title	Principal		Project Manager		Project Engineer		Design Engineer		EIT I		EIT III		Engineering Tech III		CADD Tech II		Admin/Clerical		Task/Phase Fee	
	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate		
ADDITIONAL SERVICES																				
Task to be performed/Phase Description (including Sub-consultant work)																				
70% Design	0		0		0		4		22		10		10		10		8		54	
Drainage Design																				\$5,839.28
Design and Analyze Storm Sewer (assuming 5 Lateral replacements)					2		2		16											\$2,262.00
Develop Storm Sewer Profile Sheets (assuming 5 Lateral replacements)					2		2		4											\$2,950.08
Incorporate Storm Sewer into Drainage Report									2											\$627.20
95% Design	0		0		0		3		11		5		6		4		4		29	
Drainage Design																				\$3,139.68
Design and Analyze Storm Sewer (assuming 5 Lateral replacements)					2		2		8											\$1,266.00
Develop Storm Sewer Profile Sheets (assuming 5 Lateral replacements)					1		1		2											\$1,475.04
Incorporate Storm Sewer into Drainage Report									1											\$398.82
Total Hours	0		0		0		7		33		15		16		12		0		83	
Total Fee Proposal (Not to Exceed)	\$0.00		\$0.00		\$945.00		\$4,109.50		\$0.00		\$1,558.20		\$1,369.52		\$1,033.92		\$0.00		\$8,979.14	

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).



July 30, 2018

Mr. Mike Guerra, P.E.
Poznecki-Camarillo, Inc.
5835 Callaghan Road, Suite 200
San Antonio, Texas 78228

Re: CoSA Fredericksburg Rd 2017 Bond
W. Craig to Culebra Rd.
San Antonio, Texas
CNG Project No. 9052-18

Dear Mr. Guerra,

As per your request, enclosed you will find CNG Engineering's Fee Proposal Worksheet and Scope Assumptions Letter for Photometric Study of existing lighting along Fredericksburg Rd.

If you have any questions or require any additional information, please do not hesitate to contact us.

Sincerely,

Travis E. Wiltshire, P.E.

Travis E. Wiltshire, P.E.
President

City of San Antonio
Transportation and Capital Improvements

Rate Proposal Breakdown for Professional Services
Additional Services Request

Project Name:	Fredericksburg Rd (Culebra Rd to W Cral
Prime Consultant:	Poznecki-Camarillo, Inc.
Name of Firm/Subconsultant:	CNG Engineering - SUB
Date Proposal Submitted:	7/13/2018
Project Manager:	

Position/Personnel Title	Principal	Project Manager	Senior Engineer	Engineering Tech II	Admin/Clerical	Total Hours
Fully-Loaded Hourly Wage Rates * (as defined below)	\$187.25	\$144.45	\$112.70	\$80.25	\$53.50	
Task to be performed/Phase Description (including Sub-consultant work)	Hours	Hours	Hours	Hours	Hours	Total Hours
Fredericksburg Rd Photometric Study						0
1.00 - Prepare CAD Sheet files for Photometric Study		3		4		7
1.01 - Illumination Photometric Study of Existing Street Roadway lighting	3	8		24		35
1.02 - CPSE and Client coordination Review Meetings (2)	1	8		1		12
1.03 - Internal QA/QC		4	4	2		11
1.04 - Final Submission		2		2		5
Total Hours:	4	25	4	33	4	70
Total Fee Proposal (Not to Exceed):	\$749.00	\$3,611.25	\$450.80	\$2,648.25	\$214.00	\$7,673.30

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).



July 30, 2018
Revised: August 30, 2018

Mr. Mike Guerra, P.E.
Poznecki-Camarillo, Inc.
5835 Callaghan Road, Ste. 200
San Antonio, TX 78228

Re: Fredericksburg Road Traffic Signal Design (CoSA Bond)

Dear Mr. Guerra:

Please accept this fee estimate for the design of traffic signals at the intersections of Fredericksburg Road with Cincinnati Avenue, Colorado Street, Blanco Road, and Culebra Road. A traffic signal warrant analysis is also included for the intersection of Fredericksburg Road and Ashby Place as an additional service. This work is to be performed as part of an executed contract agreement between Poznecki-Camarillo, Inc. and Pape-Dawson Engineers for the City of San Antonio Fredericksburg Road Bond Project. An overview of the work to be performed is included below.

Task 1: Traffic Signal Design

We will prepare a traffic signal design for the intersections of Fredericksburg Road with Cincinnati Avenue, Colorado Street, Blanco Road, and Culebra Road. The traffic signals will be designed for the ultimate roadway conditions associated with roadway improvements that are part of the Fredericksburg Road bond project. It is expected that the traffic signal improvements will retrofit the intersections with new traffic signal controller cabinets, signal mast arms, and other signal equipment. We will use existing conduit where available for installing new conductors. We will utilize survey collected by others for these locations. As part of the traffic signal design process, Pape-Dawson will coordinate with utility companies to determine the locations of overhead and underground utilities to reduce potential utility conflicts. Plans will include, at a minimum: intersection layouts, traffic signal plans, details and specifications, special details (as needed), a list of governing specifications, special provisions, and special specifications. Quantities will also be included in the plan set. An engineer's cost estimate of the traffic signal will be provided. We will submit the design plans to the City for review.

Task 2: Bid Phase/Construction Phase Services/Project Closeout

Pape-Dawson will provide bid phase and construction phase services for the signal designs in the Fredericksburg Road corridor. Bid phase services will be provided to assist if any questions arise

during the Bid phase of the project. Construction phase services will be provided to assist in answering questions that may arise during construction of the signal. Project Closeout will be performed to prepare a record drawing of the proposed improvements.

Task 3: Additional Services: Traffic Signal Warrant

Pape-Dawson will prepare a Traffic Signal Warrant Analysis for the intersection of Fredericksburg Road and Ashby Place. This work will include the collection and processing of traffic count data, including 12-hour turning movement count data, for the analysis. Pape-Dawson will use the collected traffic count data and will perform a Traffic Signal Warrant Analysis which examines whether the intersection meets the accepted traffic signal warrants outlined in the Texas Manual on Uniform Traffic Control Devices (TMUTCD). Throughout the process, Pape-Dawson will coordinate with the appropriate agencies, including the City of San Antonio, through communication and meetings.

Meetings and Coordination

We will coordinate review of the traffic signal plans with the City of San Antonio Transportation & Capital Improvements Department staff. Based on our past experience with signal plan review with the City, and since four locations are included in our design task, we estimate at least one meeting with each submittal.

Moreover, we will attend field meetings with utility company representatives, including CPS energy for underground electric and/or gas facilities and power service for the traffic signals and one or more utility locate companies for phone lines and duct banks, fiber optic lines and other utilities. Project coordination and review meetings are also included with Poznecki-Camrillo, Inc. and other members of the engineering design team.

Basis of Compensation

Pape-Dawson's compensation for the above services will be charge for personnel services. The labor budget below is the cost of Pape-Dawson's current understanding of the services identified in the scope of services. The budget figure will not be exceeded without written modification of this agreement. Our proposed fee for the above referenced scope is listed as follows:

Traffic Signal Design	\$90,390.00
Bid Phase/Construction Phase/Project Closeout Services	\$ 22,600.00
<u>Additional Services: Traffic Signal Warrant</u>	<u>\$ 7,885.00</u>
TOTAL	\$ 120,875.00

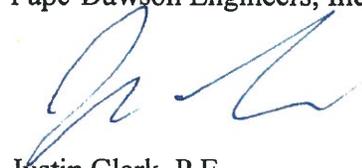
Mr. Mike Guerra, P.E.
Fredericksburg Road Traffic Signal Design
July 30, 2018
Revised: August 30, 2018
Page 3 of 3

ASSUMPTIONS

- *The City of San Antonio will provide review and approval for the traffic signal modification plans at the intersections described in this proposal.*
- *Topographic survey data will be provided by others. Pape-Dawson can provide topographic surveying services for an additional fee.*
- *No traffic signal design services are provided for Ashby Place and Fredericksburg. Traffic signal design for this intersection can be prepared for an additional fee.*

We appreciate the opportunity to work with you on this project. Please do not hesitate to contact our office should you have any questions about the fee estimate or the work to be performed.

Sincerely,
Pape-Dawson Engineers, Inc.



Justin Clark, P.E.
Project Manager

O:\Marketing\Proposals\Letters\2018\1807\180730b6 SA R1.docx (18-02352)

July 28, 2018

Mike Guerra, P.E.
Engineer 3
Poznecki-Camarillo, Inc.

Re: Proposal for Professional Engineering Service – Fredericksburg Road 2017 Bond - Culebra Rd to W Craig (CD1)

Dear Mr. Guerra,

Sanchez-Salazar & Associates, LLC (SSA) is pleased to provide our proposal for civil engineering services for the above referenced project. Services to be provided by SSA under this contract include professional engineering services related to the Removal and Historical Preservation Layouts.

The proposed fee for the layouts is \$26,671.52. It is our understanding that Poznecki-Camarillo, Inc. will provide any and all comments from the 40%,70% & 95% review meetings with the CoSA.

If you have any questions or require any additional information, please do not hesitate to call me at 210-324-2907.

Sincerely,



Juan Carlos Sanchez, PE
President
Sanchez-Salazar & Associates, LLC

Attachments: Level of Effort of Spreadsheet

City of San Antonio
 Transportation and Capital Improvements
 Rate Proposal Breakdown for Professional Services

Project Name	Fredericksburg Rd (Culebra Rd to W Craig)
Prime Consultant	Poznecki-Camarillo, Inc.
Name of Firm/ Subconsultant	Sanchez-Salazar & Associates, LLC - SUB
Date Proposal Submitted	7/11/2018
Project Manager	Juan Carlos Sanchez, PE

Position/Personnel Title	Sr. Project Manager	Project Engineer	EIT III
Fully-Loaded Hourly Wage Rates * (as defined below):	\$ 190.00	\$ 156.50	\$ 104.53
Task to be performed/Phase Description (including Sub-consultant work)	Hours	Hours	Hours
40% Design			Total Hours
01. Project Management and General Items			
01.030. General Sheets - Index, Summaries / Quantities, Notes	1	2	2
09. Other Plans			
09.100. Removal Sheets (12 Sheets @ 1"=40')	4	8	48
11. Cost Estimating			
11.010. Prepare Cost Estimate	1	4	4
Total Hours	6	14	54
Total Fee Proposal 40%:	\$ 1,140.00	\$ 2,191.00	\$ 5,644.62
70% Design			
01. Project Management and General Items			
01.030. General Sheets - Index, Summaries / Quantities, Notes	1	2	2
09. Other Plans			
09.090. Details and Specifications			
09.090.010. Special Details	1	4	4
09.090.020. List of Governing Specifications	1	1	2
09.090.030. Special Provisions	1	1	2
09.090.040. Special Specifications	1	2	3
09.100. Removal Sheets (12 Sheets @ 1"=40')	4	8	48
11. Cost Estimating			
11.010. Prepare Cost Estimate	1	4	4
Total Hours	9	22	59
Total Fee Proposal 70%:	\$ 1,710.00	\$ 3,443.00	\$ 6,062.74
95% Design			
01. Project Management and General Items			
01.030. General Sheets - Index, Summaries / Quantities, Notes	1	2	2
09. Other Plans			
09.090. Details and Specifications			
09.090.010. Special Details	1	2	2
09.090.020. List of Governing Specifications	1	1	2
09.090.030. Special Provisions	1	1	2
09.090.040. Special Specifications	1	1	2
09.100. Removal Sheets (12 Sheets @ 1"=40')	4	8	16
11. Cost Estimating			
11.010. Prepare Cost Estimate	1	2	2
Total Hours	8	17	22
Total Fee Proposal 95%:	\$ 1,520.00	\$ 2,650.50	\$ 2,299.66
Total Base Hours:	23	53	134
Total Base Fee Proposal:	\$ 4,370.00	\$ 8,294.50	\$ 14,007.02

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).



July 27, 2018

WSP USA Inc.
1601 S. Mopac Expressway
Suite 325
Austin, Texas 78746

Poznecki Camarillo, Inc.
5835 Callaghan Road
Suite #200
San Antonio, Texas 78228
Attention: Mike Guerra, PE

Subject: Fredericksburg Rd 2017 Bond-Culebra Rd to W Craig (CDI)

Please see the attached spreadsheet with the fee detail for the Fredericksburg Rd 2017 Bond project. I have used similar previously submitted rates for the City of San Antonio projects.

Let me know if you have any questions or require more information. Otherwise, I will wait for a subcontract and notice to proceed to officially start the project.

Sincerely,

A handwritten signature in blue ink that reads 'Rene U. Garza'. The signature is written in a cursive style and is positioned above a horizontal line.

Rene U. Garza, PE, PTOE
Supervising Engineer

Cc: Kerri Collins
Eric Ploch

City of San Antonio
 Transportation and Capital Improvements
 Rate Proposal Breakdown for Professional Services

Project Name:	Fredericksburg Rd (Cuebra Rd to W Craig)
Prime Consultant:	Poznecki-Camantillo, Inc.
Name of Firm Subconsultant:	WSP - SUB
Date Proposal Submitted:	
Project Manager:	Rene U. Garza, P.E.

Inserted other positions as needed

Position/Personnel Title	Principal	Vice President/Executive	Department Head/Sr. Project Manager	Project Manager	Project Engineer I	Project Engineer II	Project Engineer III	Senior Engineer	EIT II	Survey Department Head	Sr. Traffic Engineer	Total Hours
Fully-Loaded Hourly Wage Rates * (as defined below)	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours
Task to be performed/Phase Description (including Sub-consultant work)	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours
PRELIMINARY PHASE												
1. Field Data Collection												
1.1 Field Visit				1								1
1.1.1 Field Inventory												4
1.1.2 Sign and Marking Layout												4
40% DESIGN PHASE												
1. Signing and Pavt Marking												
1.1 Prepare Preliminary Sign and Pavt Marking Plans (1"=40' plans)				4	8							36
2. Estimate and Quantities												
2.1 Prepare Summary of Estimated Quantity Sheet				1	1							2
2.2 40% Plans Cost Estimate				1	1							2
70% DESIGN PHASE												
1. Signing and Pavt Marking												
1.1 Update Preliminary Sign and Pavt Marking Plans (1"=40' plans)				2	6							24
1.2 Select Standard Sheets				1	1							2
2. Estimate and Quantities												
2.1 Prepare Summary of Estimated Quantity Sheet				1	1							2
2.2 70% Plans Cost Estimate				1	1							2
95% DESIGN PHASE												
1. Signing and Pavt Marking												
1.1 Prepare Final Sign and Pavt Marking Plans (1"=40' plans)				1	3							6
1.2 Update Standard Sheets and Detail sheets (if needed)				1	1							2
2. Estimate and Quantities												
2.1 Prepare Summary of Estimated Quantity Sheet				1	1							2
2.2 95% Plans Cost Estimate				1	1							2
100% DESIGN PHASE												
1. Signing and Pavt Marking												
1.1 Submit final Signed & Sealed Sign and Pavt Marking Plans				1	1							2
2. Estimate and Quantities												
2.1 Prepare Summary of Estimated Quantity Sheet				1	1							2
2.2 100% Plans Cost Estimate				1	1							2
PROJECT MANAGEMENT												
1. Project Management												
1.1 Attend Coordination Meetings/Invoices				1	4							5
1.2 Attend Client Meeting				1	1							2
TOTAL	\$0.00	\$0.00	\$0.00	\$3,080.00	\$3,480.00	\$0.00	\$0.00	\$0.00	\$9,604.00	\$0.00	\$0.00	\$16,444.00

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).



YOUNG PROFESSIONAL RESOURCES

September 5, 2018

Mike Guerra, PE
Engineer III
Poznecki-Camarillo, Inc.
5835 Callaghan Road, Ste. 200
San Antonio, Texas 78228

Re: Proposal for Engineering Services
Fredericksburg Road
2017-2022 COSA Bond Program

Dear Mr. Guerra:

Young Professional Resources is pleased to submit this lump sum proposal for the Utility Coordination Services for the above referenced project.

The Basic Service Fee of \$27,535.00 is based upon Attachment "A", Engineering Service Fee Breakdown. It is understood that these design services are based on a percentage of construction estimate and complies with the range limits as defined in Table 1.

We propose a lump sum fee to be paid as shown in the table below. Payment will be made as work is completed and approved by SAWS to include 40% plans, 70% plans, and 95% plans.

Phase	Utility Layout
Design Phase 40%	\$12,830.00
Design Phase 70%	\$10,280.00
Design Phase 95%	\$4,425.00
Base Fee Total	\$27,535.00

Project will be completed per the approved schedule. Work will be in accordance with the City of San Antonio Design Guidance Manual. Should you have any questions please contact me or Jaime Noriega at (210) 590-9215.

Sincerely,
Young Professional Resources

Leonard D. Young, P.E.

Attachment – Fee Breakdown

Consultant: Young Professional Resources
 Project: Frederickburg - COSA 2017 Bond
 Date: 09-04-2016

Task to be performed/Phase Description (including Sub-consultant work)	Principal/Partner	Project Manager	Project Engineer	Design Engineer	EIT	CADD Tech III/Eng. Tech. III	Admin/Clerical	Construction Rep.	Total Hours	Cost
	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Fully-Loaded Hourly Wage Rates * (as defined below)	\$175.00	\$155.00	\$135.00	\$130.00	\$115.00	\$85.00	\$45.00	\$95.00		
UTILITY COORDINATION										
40% PHASE										
Group Utility Meetings									0	
Pothole and Survey Coordination									0	
Secure/Review Utility Record Drawings	2	4	4	2			3		11	
Utility File Development	1	3	3	3	4	2			13	
Meeting with Design Teams	1	1	3	3	6	8			19	
Utility Coordination Report and Conflict Report	1	2	2	3	5	16			27	
Individual Utility Company Meetings	4	4	4	3	5				8	
Site Visits	2	2	2	3	5				16	
HOURS	1	17	25	14	20	26	7	0	110	
Phase Fee	\$175.00	\$2,635.00	\$3,375.00	\$1,820.00	\$2,300.00	\$2,210.00	\$315.00	\$0.00		\$12,830.00
70% PHASE										
Group Utility Meetings										
Utility Proposed Plan Reviews	2	2	2	2			3		9	
Meeting with Design Teams	2	4	4	7	8				21	
Utility Coordination Report and Conflict Report	1	2	3	2	3				11	
Utility Conflict Resolution Meetings/Coordination	3	4	4	2	3				12	
Update Utility File	1	2	2	3	3	6			18	
Site Visits	2	2	2	2	2	4			8	
HOURS	1	15	21	16	14	10	9	0	86	
Phase Fee	\$175.00	\$2,325.00	\$2,835.00	\$2,080.00	\$1,610.00	\$850.00	\$405.00	\$0.00		\$10,280.00
95% PHASE										
Group Utility Meetings										
Utility Proposed Plan Reviews	2	2	2	2			2		8	
Final Conflict Resolution Meetings/Coordination	2	2	3	2	5				12	
Final Utility Coordination Report	1	1	1	4	4	2	3		5	
HOURS	1	7	9	4	9	2	5	0	37	
Phase Fee	\$175.00	\$1,085.00	\$1,215.00	\$520.00	\$1,035.00	\$170.00	\$225.00	\$0.00		\$4,425.00
CONSTRUCTION										
Attend Construction Issue Meetings									0	
Individual Conflict Resolutions									0	
HOURS									0	
Phase Fee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00
Total Hours:	3	39	55	34	43	38	21	0	233	
Total Fee Proposal (Not to Exceed):	\$525.00	\$6,045.00	\$7,425.00	\$4,420.00	\$4,945.00	\$3,230.00	\$945.00	\$0.00		\$27,535.00

* A fully-loaded Hourly Wage Rate is defined as an employee's base hourly rate plus labor overhead (including fringe benefits), general and administrative (indirect) expenses, profit and escalation (if applicable).

TOTAL UTILITY COORDINATION FEE \$27,535.00

City of San Antonio Design Guidance Manual
 Scope Exclusions and Modifications

Project Name: Fredericksburg Road (Culebra to W. Craig Place)
 Project Number (WBS): 23-01582
 Consultant: Poznecki-Camarillo, Inc
 COSA Project Manager: Eric Salazar, P.E.

Exclusion / Modifications	Reason for Exclusion / Modifications
1. Initial Scope Meeting	
1.1. Complete DSR, Meeting and minutes	
1.2. Prepare Preliminary Engineering Report (if required)	Scope does not require service
2. Right of Way Surveying	
2.1. Acquire Ownership information	
2.2. Secure Right of Entry	
2.3. Survey ROW	Scope does not require service
2.3.1. Boundary	Scope does not require service
2.3.2. Apparent ROW only	
2.4. Monument ROW	Scope does not require service
2.5. Prepare ROW Map	Scope does not require service
2.6. Prepare plats and field notes of parcels to be acquired	Captured as an Additional Service
2.7. Flag existing corners, set new corners, etc.	Captured as an Additional Service
3. Topographic Surveying/ Base Mapping	
3.1. Establish Primary Project Control	
3.2. Establish Secondary Project Control	
3.3. Set Project centerline or baseline	
3.3.1. Interval _____	
3.4. Survey topographic features	
3.5. Survey Cross sections / spot elevations to develop DTM/cross sections	
3.5.1. To ROW only	
3.5.2. _____ feet into adjacent property [everywhere] [where required] [only where ROE can be secured]	Scope does not require service
3.6. Secure utility maps	
3.6.1. Water	
3.6.2. Sanitary Sewer	
3.6.3. Natural Gas	
3.6.4. Underground Electric	
3.6.5. Overhead Electric	
3.6.6. Underground Telephone	
3.6.7. Overhead Telephone	
3.6.8. Underground Cable Television	
3.6.9. Overhead Cable Television	
3.7. Survey Quality Level C locates	

City of San Antonio Design Guidance Manual
 Scope Exclusions and Modifications

Exclusion / Modifications	Reason for Exclusion / Modifications
3.7.1. Water	
3.7.1.1.Valve Box elevations	
3.7.1.2.Valve Stem elevations	
3.7.2. Sanitary Sewer	
3.7.2.1.Manhole Rings and Covers elevations	
3.7.2.2.Invert elevations and details (sizes, configurations, flow directions, north arrow)	
3.7.3. Natural Gas	
3.7.3.1.Valve Box elevations	
3.7.3.2.Valve Stem elevations	
3.7.3.3.Test box elevations	
3.7.4. Storm Drainage	
3.7.4.1.Manhole rings and covers elevations	
3.7.4.2.Invert elevations and details	
3.7.4.3.Curb inlets	
3.7.4.3.1. Top elevations	
3.7.4.3.2. Floor and invert elevations	
3.7.4.3.3. Lateral details (sizes, configurations, flow directions, north arrow)	
3.7.4.4.Outfall elevations	Scope does not require service
3.7.4.5.Culvert and headwall dimensions and elevations	Scope does not require service
3.7.5. Underground Electric	
3.7.5.1.Manhole rings and covers elevations	
3.7.5.2.Vault elevations and dimensions	
3.7.5.3.Conduit elevations at Vaults	
3.7.6. Underground Telephone	
3.7.6.1.Manhole rings and covers elevations	
3.7.6.2.Vault elevations and dimensions	
3.7.6.3.Conduit elevations at Vaults	Scope does not require service
3.7.7. Underground Cable Television	
3.7.7.1.Manhole rings and covers elevations	
3.7.7.2.Vault elevations and dimensions	
3.7.7.3.Conduit elevations at Vaults	Scope does not require service
3.7.8. Develop Utility Basemap	
3.7.9. Mains only	
3.7.10. Mains and services	
3.8. Survey Trees	
3.8.1. All trees	
3.8.2. All trees with trunk diameter ≥ 4 "	
3.8.3. Show	
3.8.3.1.Species	
3.8.3.2.Trunk diameter	
3.8.3.3.Spread	
3.9. Survey Bridges and Structures	Scope does not require service
3.9.1. Full measure up (secure all relevant measurements needed)	Scope does not require service

City of San Antonio Design Guidance Manual
 Scope Exclusions and Modifications

Exclusion / Modifications	Reason for Exclusion / Modifications
3.9.2. Locate Columns, abutments, and bridge deck only	Scope does not require service
3.9.3. Profile grade lines	
3.9.3.1.Centerline	
3.9.3.2.Break back line(s)	
3.9.3.3.Curblines	
4. Roadway and Drainage Design	
4.1. Establish Typical Roadway Cross sections showing lane, sidewalk, and clear zone widths, etc. for various roadways in project area	
4.2. Develop Plan and Profile sheets for 1" = ____' plans; Existing ground profiles at	
4.2.1. Centerline	
4.2.2. ____ feet left of centerline	
4.2.3. ____ feet right of centerline	
4.3. Establish Horizontal Roadway alignments showing	
4.3.1. Centerline geometry (centerline bearings, PI, PC, and PT stations, centerline curve data, curb return radii, etc.)	
4.3.2. Curb locations and geometry	
4.3.3. Lane widths	
4.3.4. Sidewalk widths and locations	
4.3.5. Transitions and extent of construction of intersecting streets (coordinate with SAWS)	
4.3.6. Prepare Retaining wall plans for all retaining walls in excess of 3'	Scope does not require service
4.4. Establish Horizontal Channel alignments showing	Scope does not require service
4.4.1. Centerline geometry (centerline bearings, PI, PC, and PT stations, centerline curve data, etc.)	
4.4.2. Bottom width, horizontal distance to top of design section slope, etc	Scope does not require service
4.5. Establish Roadway profiles	
4.5.1. Estimate storm drainage velocities	
4.5.2. Establish maximum flow capacity	
4.6. Establish Design Discharges	
4.6.1. Delineate drainage areas and establish flow patterns	
4.6.2. Develop runoff coefficients	
4.6.3. Develop times of concentration and related intensities	
4.6.4. Calculate preliminary design discharges	
4.7. Design storm drainage facilities	Scope does not require service
4.7.1. Roadways	
4.7.1.1.Establish inlet locations and design discharges	

City of San Antonio Design Guidance Manual
 Scope Exclusions and Modifications

Exclusion / Modifications	Reason for Exclusion / Modifications
4.7.1.2. Develop storm drainage facility sizes, incremental times of concentration, effective drainage areas, design discharges, friction and junctions losses, etc	Scope does not require service
4.7.1.3. Establish preliminary horizontal and vertical alignments of storm drainage facilities (Max EGL is 1.3 feet below top of curb)	Scope does not require service
4.7.1.4. Identify potential utility conflicts and locations for SUE	
4.7.1.5. Establish lateral sizes	Scope does not require service
4.7.1.6. Lateral details [with] [without] underground utilities	
4.7.2. Channels	Scope does not require service
4.7.2.1. Model existing drainage channel	Scope does not require service
4.7.2.2. Establish analysis nodes	Scope does not require service
4.7.2.3. Develop channel sizes, slopes, velocities, incremental times of concentration, effective drainage areas, design discharges, friction and structure losses, etc.	Scope does not require service
4.7.2.4. Develop pre-project and post-project water surface profiles	Scope does not require service
4.7.2.5. Identify and design energy dissipation facilities	Scope does not require service
4.7.2.6. Establish channel armoring and erosion control areas	Scope does not require service
4.7.3. Bridges	Scope does not require service
4.7.3.1. Model bridges and bridge class structures pre-project and post project	Scope does not require service
4.7.4. Regulatory Coordination	Scope does not require service
4.7.4.1. Tie to FEMA models	Scope does not require service
4.7.4.2. Secure CLOMR	Scope does not require service
4.7.4.3. Secure LOMR	Scope does not require service
5. Pavement Design	
5.1 Design pavement sections using CoSA Pavement Design Standards – Appendix 10-A	
6. Prepare Cross sections	
6.1. Roadway cross sections	
6.2. Channel cross sections	Scope does not require service
6.3. Box culvert excavation cross sections	Scope does not require service
7. Proposed Utility Plans	
7.1. Prepare Sanitary Sewer plan and profiles	
7.1.1. Coordinate with SAWS on service history, video results, adequacy, etc.	
7.1.2. Establish extent of sanitary sewer construction (to nearest manhole) (coordinate with roadway design)	
7.2. Prepare Water line plans	

City of San Antonio Design Guidance Manual
 Scope Exclusions and Modifications

Exclusion / Modifications	Reason for Exclusion / Modifications
7.2.1. Coordinate with SAWS on service history, adequacy, etc.	
7.2.2. Establish extent of water construction (coordinate with roadway design)	
7.3. Prepare Gas line plans	
7.3.1. Probe main	
7.3.2. Probe services	
7.3.3. Establish extent of gas line construction	
8. Other Plans	
8.1. Prepare Pavement Marking and Signing Plan	
8.2. Prepare Traffic Signal Plans	
8.3. Prepare Construction Sequencing Plan	
8.4. Prepare Traffic Control Plan	
8.5. Prepare SW3P	
8.6. Prepare Driveway Plats	
9. Meetings and Coordination (including meeting minutes)	
9.1. Public meetings	
9.2. Utility coordination meetings	
9.3. Initial scope meeting	
9.4. Complete Streets Public Meeting and Field Analysis Checklist	
9.5. Preliminary Engineering Report Review	Scope does not require service
9.6. 40% Plans Review Meeting	
9.7. 70% Plans Review Meeting	
9.8. 95% Plans Review Meeting	
9.9. 100% Plan Review Meeting	
9.10. Pre bid Meeting	
9.11. Pre-Construction meeting	
10. Cost Estimating	
10.1. Preliminary Engineering Report Cost Estimate (if required)	Scope does not require service
10.2. 40% Plans Cost Estimate	
10.3. 70% Plans Cost Estimate	
10.4. 95% Plans Cost Estimate	
10.5. Evaluate bids and recommend award, etc	
11. Construction Phase	
11.1. Stake center line (or ROW) of roadway and/or channel for utility adjustment prior to the project bid	
11.2. Reestablish project control points for contractor's use before construction	
11.3. Attend citizen meeting(s) at the start of construction	

City of San Antonio Design Guidance Manual
Scope Exclusions and Modifications

Exclusion / Modifications	Reason for Exclusion / Modifications

Meeting Minutes

TO: Meeting Attendees
CC: Project File
FROM: Fernando Camarillo, P.E.
SUBJECT: Fredericksburg Rd – N Flores St to W Woodlawn Ave (CD1)
MEETING DATE: December 19, 2017
MEETING TIME: 9:30 am
VENUE: COSA TCI - Municipal Plaza Bldg. 5th Floor Conference Rm.

PROJECT ADMINISTRATION

Project Scope: Construct corridor improvements on Fredericksburg from Culebra to Craig Place. Includes drainage, pedestrian amenities and enhancements as appropriate and within available funding.

COSA Project Management Team: Eric Salazar, P.E., Project Manager
Kathryn Otto, P.E., Project Engineer
Emilio Rodriguez, EIT, Senior Engineering Associate

Design Firm: Poznecki-Camarillo, Inc (PCI)
Fernando Camarillo, P.E., Project Manager
fcamarillo@pozcam.com

Estimated Construction Cost: \$5.5 Million

Project Delivery Method: Design-Bid-Build

Background and History: Street section needs corridor improvements to support pedestrian mobility and promote economic growth.

Project Goals:

1. Culebra to Cincinnati Ave. – Modify curb line to accommodate 38' pavement section. Pavement section will be composed of 2-11' travel lanes in each direction with appropriate buffers and 12' center turn lane.
2. Cincinnati Ave. to Craig Place – Modify curb line to accommodate 34' pavement section. Pavement section will be composed of 2-11' travel lanes in each direction with appropriate buffers and 8' on street parking.
3. Schematic layout to be provided by others.

Adjacent Projects: 2017 Bond - North Flores Street/Fredericksburg Rd. Intersection (Five Points), District 7 Sidewalks, Monticello Park (Area Streets), Thomas Jefferson High School (Area Streets)

PROGRAMMING AND FUNDING

Program Funding: \$8,000,000* **Funding Type:** Streets, Bridges & Sidewalk Improvements

(*) Includes: Estimated Construction Cost, Design Cost, Real-estate, Environmental Cost, Material Testing, Project Administration Cost, Permit Requirement Cost, Primelink Cost and related Contingencies.

EXISTING ELEMENTS

I. Existing Conditions

- A. Apparent Existing width of right-of-way:** Varies, approximately ≈ 54-60 FEET
- B. Approximate Existing width of pavement:** Varies, approximately ≈ 42-48 FEET
- C. Curb/gutter/sidewalks present?** YES
- D. Existing drainage infrastructure:** Underground
- E. Existing utilities**
 - 1. CPS Overhead Electric:** YES
 - 2. CPS Underground Electric:** YES
 - 3. CPS Gas:** YES
 - 4. SAWS Water:** YES
 - 5. SAWS Sewer:** YES
 - 6. Spectrum:** Unknown
 - 7. AT&T:** YES
 - 8. Grande:** YES
 - 9. Other:** Unknown
- F. Existing features (trees, landmarks, schools, etc.):**
- G. Potential hazards:** _____
- H. Predominant land use:** The corridor has a mix of commercial and multi-family parcels adjacent to the roadway.

II. Stakeholders

- A. Neighborhood Associations:** Uptown, Beacon Hill, Five Points

B. Community Groups:

- TCI Council Liaison: Jeanette Morin

C. Businesses: Many small businesses

D. Schools:

- Beacon Hill Elementary School
- Higgs, Carter, King Gifted and Talented Charter Academy

E. Other:

- Priority has been placed for providing on street parking and will be identified in the schematic phase.
- Known existing acequia in the area. Mapping is available for download from the Office of Historic Preservation website under the Archaeology section.

PROPOSED DESIGN ELEMENTS AND SCOPE

III. Roadway / Drainage Requirements

A. Street Typical Section

1. **Proposed Right-of-Way:** No ROW acquisition
2. **Number of traffic lanes:** Varies, 2-3 lanes (see project goals)
3. **Traffic lane widths:** 11-FT
4. **Raised Medians:** No
5. **Bike Lanes:** No
6. **Shared-Use Paths:** No
7. **Sidewalk Width:** Varies, 6-8 FEET (Both Sides – Follow DGM requirements)
8. **Parkway Width:** None
9. **Other Elements:** Ensure DGM requirements are fulfilled

10. Diagram: N/A

B. Cross Sections

1. **Every 50 feet**
2. **At all driveways** (Exhibits will be required for penetrations)
3. **Channel cross sections** – N/A
4. **Include ROW lines and existing fences (if encroaching)** – Apparent ROW

C. Drainage (Follow DGM) – Storm Water scoping sheet provided

1. **Design Requirements:** DGM & UDC
2. **Bridges / Culverts:**
3. **Required Permitting:** Flood Plain Development Permit may be needed. Flood plain is shown on GIS map to touch the Southern end of the project (verify the Southern project limit on schematic layout to confirm).
4. **Other Considerations:**
 - If within the project budget, may want to consider replacing existing inlets and upsizing if possible.
 - Topographic peak near Russell & Craig which provides for two different areas to existing outfalls.
 - LID will not be needed.
 - Storm drainage record drawings & televising to be provided by COSA if the information is available.
 - Drainage considerations for VIA bulb outs (as needed)
 - Storm drainage televising – Additional Services (as needed)

D. Traffic (Follow DGM)

1. **Traffic Signals:** Existing traffic signals to be replaced/ upgraded and to include illuminated street name signage and PTZ cameras.
2. **Pavement Markings:**
3. **Signage:**

4. Specialized Crossings (e.g. Schools, HAWK): School zone to be replaced

5. Other Considerations:

- VIA route located along the project
- On street parking desired on the project
- Schematic layout nearly completed and to be provided by COSA
- ITSD communications to be provided by COSA
- Directional PED ramps desired
- Street light illumination may be located on traffic signal poles (study needed by CPS)
- Pedestrian illumination has not been formally discussed at this point. Pending schematic and COSA consideration
- Photometric study – Additional Services (as needed)

E. Surveys (Follow DGM)

1. Topographic Survey:

2. Apparent Right-of-Way or Right-of-Way Survey: Apparent ROW

3. Plats and Field Notes: (Additional Services – per each)

F. Enhancements / Landscaping / Public Art: None proposed at this time

G. Low Impact Development (LID): NO

H. Complete Streets

1. Bicycle Facilities - NO

2. Pedestrian Connectivity - YES

3. Transit Considerations (VIA) – May require additional meeting with VIA

Utilities

I. CPS Overhead Electric: Overhead distribution along Fredericksburg for project length.

J. CPS Underground Electric: Minimal underground services along the project. Some infrastructure located near the five points area. Transmission crossing San Marcos.

K. CPS Gas: Existing 2-in plastic along NE side of Fredericksburg; adjustments only as needed pending roadway/drainage design. Existing 12-in main crossing at Cincinnati.

L. SAWS Water:

- Most facilities have been replaced previously. SAWS Block maps have been uploaded to PRIMELink. SAWS scope letter and CD provided.

M. SAWS Sewer:

- Most facilities have been replaced previously. SAWS Block maps have been uploaded to PRIMELink. SAWS scope letter and CD provided.

N. Spectrum:

O. AT&T: Block maps have been uploaded to PRIMELink.

P. Grande: Pedestal located at NE corner of Russell and Fredericksburg. Also overhead facilities on the South side of Fredericksburg near W Ashby and Colorado, and East Side of Grant towards Fredericksburg and other areas along the corridor.

Q. Other:

IV. Environmental Considerations (Follow DGM)

A. Hazmat: Superfund site near Southern end of the project. Phase I ESA to be done by COSA Environmental consultant. If contamination found, areas would need to be delineated on the plans and quantities.

B. Known Landfills: NO

C. Jurisdictional Waters / USACE 404: Likely will not be needed

D. Archaeological: Alazan ditch located along the project. Acequia to be located on the plans.

- E. **Historical:** Historic work to be performed by COSA
- F. **SWPPP:** To be part of PCI base services
- G. **Karst:** Zone 3 along the middle of the project; the outer limits of the project are Zone 5

V. Geotechnical Considerations (Follow DGM)

- A. **Subgrade Investigation:**
- B. **SUE Expectations:** (Additional Services – per each)
 - Consultant to identify locations for SUE investigation.
- C. **Pavement Design (Include sulfate investigation, lime series curve, and tested CBR values [not assumed]):**
- D. **Embankment Analysis (Bridge approaches):** Not needed
- E. **Split Sample Collection with Environmental:** Not needed

VI. Permitting (Follow DGM)

- A. **TDLR Review & Inspection:** YES
- B. **TxDOT Permit:** NO
- C. **Tree Permit:** Coordination currently, will revisit at 40%
- D. **Railroad Permit:** YES
- E. **Water Pollution Abatement Plan (WPAP):** NO
- F. **Floodplain Development Permit:** TBD
- G. **Provide Exhibits for Environmental Permits:** As needed (Hazmat)

H. LOMR: NO

PROJECT PROCESSES AND DELIVERABLES

VII. Design Phases

- A. **Standard Phases:** 40%, 70%, 95%, Bid Phase (100%), and Construction
- B. DGN files to utilities at all phases (Utility design based on approved 40% design)
- C. Intermediate Phases (reference DGM for complete list)
 - 1. Utility Kick-Off
 - 2. 20% Utility Meeting (assign alignments / corridors)

VIII. Construction Phase

- A. Re-establish benchmarks prior to construction
- B. Bi-Weekly Construction Update Meetings
 - 1. Draft meeting minutes distributed by the second business day
 - 2. Final meeting minutes by the fifth business day
- C. Construction Observation Reports to be prepared monthly
- D. Review Monthly Estimates
- E. Prepare Shop Drawing List and Review/Approve submittal(s)
- F. Review Change Order(s)
- G. RFI Review and Responses
- H. Final Inspection & provide punchlist report
- I. Attend 1-year warranty inspection
- J. Quarterly Updates of Record Drawings

IX. Project Closeout

- A. Record Drawing Submittal

X. Public Relations

A. Three Public Meetings

B. Attend public meetings and prepare of exhibits for each meeting.

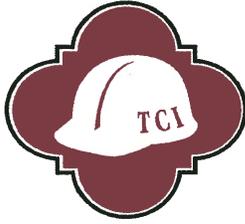
XI. Fee Proposal Deliverables

A. Scope of Work Narrative / Meeting Minutes

1. Draft meeting minutes – distribute to all who attended scoping meeting by the second business day (Due Thursday Dec. 21).
2. Final meeting minutes by the fifth business (Due Tuesday Jan. 2)

B. Fee Proposal Package Due 4 Weeks After Scoping Meeting

1. Basis of Fee Construction Cost Estimate (2 to 3 Weeks from Scoping Meeting)
2. Fee Proposal (Submitted with Basis of Fee Construction Cost Estimate)
3. Design Schedule
 - 40% Milestone (duration) 90 (days)
 - 70% Milestone (duration) 60 (days)
 - 95% Milestone (duration) 30 (days)
4. Joint-Design Fee Proposal (e.g. SAWS, CPS)
5. DGM Exclusions Form
6. Fee proposal will be developed based upon the draft DGM if the final version is not available prior to fee proposal deadline. DGM will be uploaded to PRIMELink.



CITY OF SAN ANTONIO
TRANSPORTATION & CAPITAL IMPROVEMENTS
Storm Water Engineering

Project: Fredericksburg Road (N. Flores to W. Woodlawn)

Project Manager: Eric Salazar, PE

Meeting Type: Scoping / 2017 Bond (Streets, Bridges, & Sidewalks)

Meeting Date: December 19, 2017

GENERAL REQUIREMENTS

- Guidance governing drainage design:
 - Design Guidance Manual, Section 4
 - UDC Appendix H – Storm Water Design Criteria Manual
 - UDC Appendix F – Floodplain Ordinance
 - TXDOT design criteria (LAM projects)
- Adverse Impact Analysis:
 - Storm Water Management Report (SWMR)
 - Flood Study in lieu of Conditional Letter of Map Revision (CLOMR)
- Digital copy of H&H models/GIS datasets (as applicable)
- Update and submit digital copies of H&H report and/or models at each design milestone
- Floodplain Development Permit (FPDP) required
- Letter of Map Revision required if FEMA 100-year floodplain is altered (post-project)

HYDROLOGY & HYDRAULICS

- Facility Design Frequencies: Refer to Table 2 in DGM Section 4 for specific references
 - watercourse/channel
 - streets
 - storm sewer systems
 - bridge/culvert
 - other:
- Drainage infrastructure design: drainage areas < 100 ac. = Q25, drainage areas ≥ 100 ac. = Q100.
- Drainage design based on Ultimate Development flows (from contributing watershed)
- Drainage design should be able to accommodate adjacent/future/successive capital project phases
- Flood control/channel improvement projects: check hydrologic routing for impact on flows
- Watercourse/channel: adverse impact reminders
 - Velocities: check potential adverse impact (earthen watercourses only)
 - WSE increases: check potential adverse impact or contained in easement/ROW

OTHER CONSIDERATIONS

- Existing storm drain infrastructure within project limits
- Record of multiple complaints (311s) in or near project area
- Check drainage right-of-way or easements are in place or identify need to acquire
- Low Impact Development (LID): Any LID features incorporated into the design will require review by Storm Water Engineering and Storm Water Operations. Coordinate LID design as early as feasible. Utilize the San Antonio River Basin LID Technical Guidance Manual for design criteria and guidance.
- Review coordination with TCI Storm Water Operations is often necessary and is typically required during design for the following general areas of maintenance responsibility: water quality features (basins, inlets, LID), mow/no mow areas, storm sewer systems, detention ponds, ingress/egress access. Digital data may be required for tracking purposes.

- Unsteady 1D or 2D hydraulic modeling approaches: Consult with Storm Water Engineering review staff as soon as possible to discuss justification. Increased level of effort and additional documentation for these approaches should be expected.
- Project is adjacent to or in the vicinity of another project or project phase: **None identified.**
- Attachments included
- ADDITIONAL CONSIDERATIONS:** Fredericksburg Rd. has a topographic peak approximately located around the intersections of Fredericksburg and W. French Place and Fredericksburg and W. Russell Place; roadway drains in two directions to different outfall locations

CONTACT INFORMATION: TCI Storm Water Engineering technical review points of contact

Jeremy George, PE, CFM
 Phone: 210-207-7788
 Email: Jeremy.George@sanantonio.gov

Lyndon J. Duano, CFM
 Phone: 210-207-2540
 Email: Lyndon.Duano@sanantonio.gov



Notes: 2017 aerial imagery shown

Disclaimer: The City of San Antonio (COSA) does not guarantee the accuracy, adequacy, completeness, or usefulness of any information. COSA does not warrant the completeness, timeliness, or positional, thematic, and attribute accuracy of the GIS Data. The GIS data, cartographic products, and associated applications are not legal representations of the depicted data. All storm water infrastructure should be field verified.

SIGN IN SHEET

Project: Fredericksburg Road (North Flores St. to West Woodlawn Ave.)

Date/Time: December 19, 2017 / 9:30 am **Mtg Rm.:** 5th Floor Conference Room

Review: [] 40% Design [] 70% Design [] 95% Design [] Pre-Bid [] Pre-Com [X] Other Scoping Meeting

<u>NAME</u>	<u>COMPANY</u>	<u>PHONE#</u>	<u>Email Add.</u>
Eric Salazar (Project Manager) <i>ES</i>	COSA/TCI	207-8128	Eric.Salazar@sanantonio.gov
Kathryn Otto (Project Engineer) <i>KO</i>	COSA/TCI	207-7167	Kathryn.Otto@sanantonio.gov
Emilio Rodriguez (Sr. Eng. Associate) <i>ER</i>	COSA/TCI	207-2171	Emilio.Rodriguez@sanantonio.gov
Peter Rodriguez (Capital Project Officer)	COSA/TCI	207-2109	Pete.Rodriguez@sanantonio.gov
Jennifer DiLocco	COSA/TCI/EMD	207-1499	jennifer.dilocco@sanantonio.gov
DAVID HALOEMAN	TCI TRAFFIC	207-7756	DAVID.HALOEMAN@TCI
Jake Martinez	CPS-UC	353-8865	jmartinez13@cpsenergy.com
Bill Fey	CPS-Gas		
John Rayne	Grande Comm.	(210)540-0873	john.rayne@nygrande.com
Mike Montesano	COSA TCI-ENV	207-1442	Michael.Montesano@sanantonio.gov
Marjorie Normani	COSA TCI-ENV		
Jeremy George	COSA TCI SWE	207-7788	jeremy.george@sanantonio.gov
Charles Johnson	COSA Architect Office	207-0178	charles.johnson@sanantonio.gov
Fernando Camacho	PCI	210 349-3273	Fcamacho@pci.com
Michael Camacho	PCI	210-305-1801	Michael.Camacho@pci.com
MARY L. FOLS	TCI R/E	207-4083	MARY.L.FOLS@sanantonio.gov
CHARIS GEORGE	TCI SIGNALS	207-4507	CHARIS.GEORGE@sanantonio.gov
Eric Muth	TCI Stormwater	207-8494	eric.muth@sanantonio.gov

EXHIBIT B SUBCONSULTANT/SUPPLIER UTILIZATION PLAN, CHANGE OF UTILIZATION AND SBEDA ORDINANCE COMPLIANCE AND PROVISIONS

Exhibit B

A. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

ESBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 3. (b), this contract is being awarded pursuant to the ESBE Prime Contract Program, and as such, CONSULTANT affirms that if it is presently certified as an ESBE (see *Emerging Small Business Enterprise* definition), CONSULTANT responding as the prime and proposing at least 51% ESBE participation (Prime and/or Sub-Consultant) will receive two (2) evaluation criteria points AND agrees not to sub-consult more than 49% of the contract value to a non-ESBE firm, **and**

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 3. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONSULTANT affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), CONSULTANT responding as the prime and proposing at least 51% SBE participation (Prime and/or Sub-Consultant) will receive five (5) evaluation criteria points AND agrees not to sub-consult more than 49% of the contract value to a non-SBE firm, **and**

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 4. (b), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONSULTANT affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONSULTANT responding as the prime and proposing at least 51% M/WBE participation (Prime and/or Sub-Consultant) will receive five (5) evaluation criteria points AND agrees not to sub-consult more than 49% of the contract value to a non-M/WBE firm, **and**

Aspirational Subcontracting Goals. In accordance with the SBEDA Ordinance, Section III. E. 3, this contract is being awarded pursuant to the Aspirational SBE, M/WBE, and AABE Subcontracting Goals, that are non-mandatory percentage goal(s) for overall S/M/WBE subcontractor participation on selected contracts. The goals are set by the GSC based upon the S/M/WBE availability by industry in accordance with the City's 2015 Disparity Study findings, along with relative S/M/WBE availability data to be collected by the City through its CVR system, and the utilization of S/M/WBEs. These Aspirational SBE, M/WBE, and AABE Subcontracting Goals are not mandatory but the City encourages all CONSULTANTS to meet the goals to achieve higher scores on the solicitation.

- a. **Thirty percent (30%) SBE Subcontracting Aspirational Goal.** In accordance with SBEDA Ordinance this contract is being awarded pursuant to the SBE Subcontracting Program. CONSULTANT agrees to subcontract or self-perform at least **30%** of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA).
- b. **Twenty percent (20%) M/WBE Subcontracting Aspirational Goal.** In accordance with SBEDA Ordinance this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONSULTANT agrees to subcontract or self-perform at least **20%** of its prime contract value to certified M/WBE firms headquartered or having a

Exhibit B

Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). This twenty percent (20%) subcontracting goal will also count toward the aforementioned thirty percent (30%) SBE subcontracting goal.

- c. **Three percent (3%) AABE Subcontracting Aspirational Goal.** In accordance with SBEDA Ordinance, this contract is being awarded pursuant to Segmented M/WBE Goal(s). CONSULTANT agrees to subcontract at least **3%** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This three percent (3%) subcontracting goal will also count toward the aforementioned twenty percent (20%) M/WBE subcontracting goal and the thirty percent (30%) SBE subcontracting goal.

Self-Performance. If the Prime CONSULTANT is a certified SBE, M/WBE and AABE firm, then the CONSULTANT is allowed to self-perform up to the entire SBE and/or M/WBE and/or AABE subcontracting goal(s) amount with its own forces. To the extent that the certified SBE, M/WBE and AABE Prime CONSULTANT does not self-perform a portion of the SBE and/or M/WBE and/or AABE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

Mentor Protégé Program. In accordance with the SBEDA Ordinance, Section III. D. 3. (e), this contract is being awarded pursuant to the Mentor-Protégé Program, and as such, if a prime CONSULTANT is awarded any of the contracts listed below, they will be required to serve in the City's Mentor Protégé Program. If the prime CONSULTANT is already registered in the City's Mentor Protégé Program, then CONSULTANT will be required to continue their service in the Program for a two year period per the date of contract award. Please refer to the website at <https://besanantonio.com/> or contact Janice Wehrman, Program Administrator at (210) 486-5904 for the City's Mentor Protégé Program to learn more about the application process and Program requirements if awarded one or more of the contracts requiring mentorship participation.

Contracts that require the prime CONSULTANT to serve in the City's Mentor Protégé Program:

- **Civil Engineering**
 - **Bulverde Rd Phase 1 (Butterleigh to North of Quiet Meadows)**
 - **Seeling Channel Phase 3 Drainage**
- **Architecture:**
 - **District 9 Senior Center**
- **Landscape Architecture:**
 - **Brackenridge Park**

The Subcontractor/Supplier Utilization Plan which CONSULTANT submitted to City with its response for this contract, and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by CONSULTANT on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE Subcontractor, and documentation including a description of each SBE, M/WBE and AABE Subcontractor's scope of work and confirmation of each SBE, M/WBE and AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount, is hereby attached and incorporated by reference into the material terms of this Agreement.

Exhibit B

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE, M/WBE and AABE subcontracting goal of 30%, 20% and 3% respectively, that has been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio architecture and engineering industry, as reflected in the City's Centralized Vendor Registration system for the month of May 2017, African-American owned firms represent approximately 1.97% of available subcontractors, Hispanic-American firms represent approximately 11.41%, Asian-American firms represent approximately 1.69%, Native American firms represent approximately 0.42%, and Women-owned firms represent approximately 7.32% of available architecture and engineering subcontractors.

B. SBEDA Program Compliance – General Provisions

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

1. CONSULTANT shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONSULTANT's utilization and payment of Sub-Consultants, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Sub-Consultants with this term;
2. CONSULTANT shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONSULTANT or its Sub-Consultants or suppliers;
3. CONSULTANT shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview

Exhibit B

Sub-Consultants and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONSULTANT shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONSULTANT's Sub-Consultant / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONSULTANT to replace the Sub-Consultant / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Sub-Consultant / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONSULTANT of work previously designated for performance by Sub-Consultant or supplier, substitutions of new Sub-Consultants, terminations of previously designated Sub-Consultants, or reductions in the scope of work and value of work awarded to Sub-Consultants or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONSULTANT shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONSULTANT shall retain all records of its Sub-Consultant payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONSULTANT's Sub-Consultant / Supplier Utilization Plan, the CONSULTANT shall not be given credit for the participation of its S/M/WBE or HUBZone Sub-Consultant(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONSULTANT and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONSULTANT acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONSULTANT for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONSULTANT has represented to CITY which primary commodity codes each Sub-Consultant will be performing under for this contract. CITY recommends all Sub-Consultants to be registered in the CVR.

Exhibit B

C. Commercial Nondiscrimination Policy Compliance

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

D. Prompt Payment

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

E. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or

Exhibit B

document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONSULTANT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

I. Definitions

Affirmative Procurement Initiatives (API) – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to this Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

Award – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Sub-Consultant or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

Best Value Contracting – a purchasing solicitation process through which the Originating Department

Exhibit B

may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

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

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

Certification Application – this form shall be completed by vendors when applying for Certification and/or re-Certification status for participation in the City of San Antonio's S/M/WBE Program. This form shall be submitted, to the City's certifying agency, every two years by each certified vendor by the anniversary date of its original Certification.

City – refers to the City of San Antonio, TX.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct

Exhibit B

the day-to-day management and operation of a business enterprise without interference from others.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Emerging SBE (ESBE) – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Emerging M/WBE – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

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

Formal Solicitation – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

Goal Setting Committee (GSC) – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all

Exhibit B

qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Sub-Consultants; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and Consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Sub-Consultants.)

Graduation – an SBE or M/WBE firm permanently graduates from the City of San Antonio S/M/WBE program when it meets the criteria for graduation set forth in Section III.E.7 of this Ordinance. A firm's graduation or temporary suspension from the S/M/WBE program does not necessarily affect its eligibility to be recertified and to participate in the City's S/M/WBE Program as an SBE or M/WBE. Graduated SBE or M/WBE firms shall be eligible to apply for SBE or M/WBE re-Certification following the expiration of the two-year period immediately following graduation. Such application for SBE or M/WBE re-Certification shall only be granted on condition that the graduated SBE or M/WBE firm presents documentation as required by the SBO that establishes that the SBE or M/WBE firm's annual revenues and number of employees have fallen below the SBA's small business size standards for the Relevant Industry for two consecutive years of the post-graduation period. However, a graduated SBE or M/WBE firm may continue to participate in and benefit from other Race-Neutral non-industry-specific remedies of the S/M/WBE Program as described in Section III.C of this Ordinance.

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

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

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

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

Minority/Women Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready,

Exhibit B

willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.

M/WBE Evaluation Preference – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Architectural & Engineering and Professional Services contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

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

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

African-Americans: Persons with origins in any of the black racial groups of Africa.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

Payment – dollars actually paid to Prime Contractors and/or Sub-Consultants and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City

Exhibit B

of San Antonio for purposes of providing goods or services for the City.

Race-Conscious – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

Race-Neutral – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by this Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

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

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

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.

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

Exhibit B

Small Business Advocacy Committee (SBAC) – an eleven-member citizens committee made up of trade groups and members of the general business community, and appointed by the City Council as an advisory group to: (a) assist the Director of Economic Development Department (EDD) or designee, the City Manager or designee, and City Council in reviewing the continuing programs for contractors and Prime Contractors and Sub-Consultants that promote S/M/WBE participation; (b) coordinate activities and actions with the City Council Economic and Human Development Committee (EHDC) or corresponding committee designated by the Mayor and/or City Council; and (c) make recommendations to the Director of EDD or designee, the City Manager or designee, and City Council concerning modifications of such programs and procedures established pursuant to this Ordinance. Committee members may participate as advisory non-voting members of Goal Setting Committees.

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

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

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

Solicitation Incentives – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

Sub-Consultant – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Sub-Consultant shall be submitted prior to the City's issuance of a notice to proceed.

Suspension – the temporary stoppage of an SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

Exhibit B

Utilization Documentation – a binding part of the contract which includes the name of all Sub-Consultants to be utilized in the contract, specifying the S/M/WBE Certification category for each, as approved by the EDD Director or designee. Additions, deletions or modifications of the utilization amounts or substitutions or deletions of S/M/WBE Sub-Consultants requires an amendment to be approved by the EDD Director or designee.

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



CITY OF SAN ANTONIO SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

SOLICITATION NAME: **2017-2022 General Obligation Bond Program**

PRIME CONSULTANT NAME: Poznecki-Camarillo, Inc.

Please review the following information before completing the form:

1. Prime consultant must list **ALL** certified and non-certified Sub-consultants/Suppliers that will be utilized for the entire contract period (see page 2).
2. For a Prime consultant or Sub-consultant to count toward City's **aspirational subcontracting goals**, the Prime consultant or Sub-consultant must be SBEDA eligible and have the same certification(s) from the South Central Texas Regional Certification Agency (www.SCTRCA.org) as the City's **aspirational subcontracting goal(s)**. Although these Aspirational SBE, M/WBE, and ABE Subcontracting Goals are not mandatory TCI and EDD encourage all CONSULTANTS to meet the goals to achieve higher scores on the solicitation.
3. To be SBEDA eligible, a Prime consultant or Sub-consultant must be certified as a Small Business Enterprise (SBE) through SCTRCA **AND** must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area. SBEDA eligibility can be verified through the link <http://www.sanantonio.gov/purchasing/vendorinformation/cosavendorlisting>. 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 Consultant	
SOLICITATION API's	EVALUATION POINTS APPLIED	ASPIRATIONAL SUBCONTRACTING GOAL	PERCENT SBEDA ELIGIBLE PARTICIPATION	MEETING THE GOAL? (Y/N)
Small Business Enterprise (SBE) Subcontracting Program (Aspirational)		30%	79%	YES
Minority and/or Woman Owned Business Enterprise (M/WBE) Subcontracting Program (Aspirational)*		20%	79%	YES
African American Business Enterprise (AABE) Subcontracting Program (Aspirational)*		3%	3%	YES
Small Business Enterprise (SBE) Prime Contract Program	5 points			YES
Minority and/or Woman Owned Business Enterprise (MWBE) Prime Contract Program	5 points			YES
Emerging Small Business Enterprise (ESBE) Prime Contract Program	2 points			YES

***Please note that the participation by MWBE sub-consultants automatically counts towards the SBE subcontracting goal AND AABE sub-consultants towards the MWBE & SBE subcontracting goals.**

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 Sub-consultants/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 Consultant Authorized Agent: Sign and Date *Fernando Camarillo* 6/16/17 Name Fernando Camarillo, P.E. Title Vice-President

Director or Designee of Economic Development: Sign and Date

All sections of the following table must be completed for all firms listed. List all *certified or non-certified* Sub-Consultant/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 CONSULTANT	Poznecki-Camarillo, Inc.	Yes		50	
SUB	Pape-Dawson Engineering	No		8	
SUB	Sanchez-Salazar & Associates, LLC.	Yes		8	
SUB	Brown & Gay, Inc.	No		6	
SUB	Arias and Associates	Yes		5	
SUB	Camacho Hernandez	Yes		8	
SUB	CFZ	Yes		5	
SUB	WSP USA, Inc.	No		7	
SUB	CNG Engineering	Yes		3	
SUB					



CHANGE TO UTILIZATION PLAN

List all changes in the use of certified or non-certified Subcontractors/Suppliers in relation to the Prime Contractor's Original Utilization Plan or latest Change to Utilization Plan approved by the Economic Development Department for the contract listed below.

Name of Prime Contractor: Poznecki-Camarillo, Inc.

Name of Contract: COSA 2017-2022 General Obligation Bond

CHANGES:

All sections of the following table must be completed. Additional Subcontractor rows provided on back page if needed.

ROLE	NAME OF FIRM	CERTIFICATIONS (SELECT ALL)			NEW*/REMOVE**/ CHANGE VALUE	\$ ESTIMATED TOTAL CONTRACT VALUE	NIGP CODE (5 DIGIT)	START DATE (NEW SUB ONLY)
		SBE & ESBE	MBE	AABE				
SUB	Young Professional Resources	NONE	MBE	AABE	NEW	\$27,535.00	09/05/18	
SUB	Pape-Dawson Engineering	NONE	NONE	NONE	CHANGE VALUE	\$120,875.00		
SUB	Sanchez-Salazar & Associates, LLC.	SBE & ESBE	MBE	HABE	CHANGE VALUE	\$26,671.00		
SUB	Brown & Gay, Inc	NONE	NONE	NONE	CHANGE VALUE	\$70,000.00		
SUB	Arias and Associates	SBE	MBE	HABE	CHANGE VALUE	\$14,800.00		

***IF A NEW FIRM IS ADDED TO THE CONTRACT, ENSURE THEY ARE REGISTERED IN THE CITY'S CENTRAL VENDOR REGISTRY (SAePS).**
****IF REMOVING/REDUCING THE DOLLAR VALUE FOR A FIRM, ATTACH DOCUMENTATION ESTABLISHING THE FIRM WAS NOTIFIED.**

Note: If the Subcontractor changes listed on this document result in not meeting the subcontracting goal for this contract, you will be contacted by the City for further action.

JUSTIFICATION FOR ALL CHANGES TO UTILIZATION:

Added Young Professional Resources to perform utility coordination tasks. Others have been updated with current anticipated work distribution.

I hereby affirm that the above information is true and complete to the best of my knowledge and belief. I possess internal documentation from all proposed new Subcontractors/Suppliers confirming their intent to perform the scope of work for the price indicated above. All Subcontractors/Suppliers removed or reduced in dollar value have been notified of the change in writing. In addition, all new firms have been notified of their addition to the contract as a Subcontractor and have registered in SAePS. I understand and agree that, if this change to utilization is approved, this document shall be attached thereto and become a binding part of the contract.

Prime Contractor's Authorized Agent: _____ Sign & Date *Fernando Camarillo* 9/18/18 Print Name Fernando Camarillo

Director or Designee of Originating Department: _____ Sign & Date *Fernando Camarillo* 9-18-18 APPROVED DENIED

Director or Designee of Economic Development: _____ Sign & Date _____ APPROVED DENIED

CHANGES:
All fields must be completed per firm listed.

ROLE	NAME OF FIRM	CERTIFICATIONS (SELECT ALL)			NEW/REMOVE*/ CHANGE VALUE	\$ ESTIMATED TOTAL CONTRACT VALUE	NIGP CODE (5 DIGIT)	START DATE (NEW SUB ONLY)
		SBE & ESBE	MBE	HABE				
SUB	Camacho-Hernandez	SBE & ESBE	MBE	HABE	CHANGE VALUE	\$59,000.00		
SUB	CFZ	SBE & ESBE	MBE & WBE	HABE	CHANGE VALUE	\$50,000.00		
SUB	WSP USA, Inc	NONE	NONE	NONE	CHANGE VALUE	\$16,444.00		
SUB	CNG Engineering	SBE	MBE	AABE	CHANGE VALUE	\$8,500.00		
SUB								
SUB								
SUB								
SUB								
SUB								
SUB								
SUB								
SUB								
SUB								
SUB								
SUB								
SUB								

EXHIBIT C GENERAL CONDITIONS FOR CITY OF SAN ANTONIO

EXHIBIT C

GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

TABLE OF CONTENTS

ARTICLE I. GENERAL PROVISIONS	5
I.2 PRELIMINARY MATTERS.	12
I.3 CONTRACT DOCUMENTS.	13
ARTICLE II. CITY	18
II.1 GENERAL.	18
II.2 INFORMATION AND SERVICES TO BE PROVIDED BY CITY.	18
ARTICLE III. CONTRACTOR.....	20
III.1 GENERAL.	20
III.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.	20
III.3 SUPERVISION AND CONSTRUCTION PROCEDURES	21
III.4 LABOR AND MATERIALS.	23
III.5 WARRANTY.	26
III.6 TAXES.	28
III.7 PERMITS, FEES AND NOTICES.	29
III.8 ALLOWANCES.	29
III.9. SUPERINTENDENT/KEY PERSONNEL.	30
III.10 CONTRACTOR’S PROJECT SCHEDULES.	31
III.11 DOCUMENTS AND SAMPLES AT THE SITE.	41
III.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.	41
III.13 USE OF SITE.	43
III.14 CUTTING AND PATCHING.	44
III.15 CLEANING UP.	45
III.16 ACCESS TO WORK.	45
III.17 PATENT FEES AND ROYALTIES.	45
III.18 INDEMNITY PROVISIONS.	45
III.19 REPRESENTATIONS AND WARRANTIES.	48
III.20 BUSINESS STANDARDS.	48
ARTICLE IV. ADMINISTRATION OF THE CONTRACT	50

IV.1	ROLES IN ADMINISTRATION OF THE CONTRACT.	50
IV.2	CLAIMS AND DISPUTES	51
IV.3	RESOLUTION OF CLAIMS AND DISPUTES.	58
IV.4	ALTERNATIVE DISPUTE RESOLUTION.	59
ARTICLE V. SUBCONTRACTORS.....		61
V.1	AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.	61
V.2	SUB-CONTRACTUAL RELATIONS.	62
V.3	CONTINGENT ASSIGNMENT OF SUBCONTRACTS.	62
ARTICLE VI. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTS.....		63
VI.1	CITY’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.	63
VI.2	MUTUAL RESPONSIBILITY	63
VI.3	CITY’S RIGHT TO CLEAN UP.	64
ARTICLE VII. CHANGES IN THE WORK.....		65
VII.1	GENERAL	65
VII.2	CHANGE ORDERS	65
VII.3	FIELD WORK DIRECTIVES	66
VII.4	MINOR CHANGES TO THE WORK.	68
VII.5	TIME REQUIRED TO PROCESS CHANGE ORDERS.	68
ARTICLE VIII. TIME		69
VIII.1	PROGRESS AND COMPLETION.	69
VIII.2	DELAYS AND EXTENSIONS OF TIME.	69
ARTICLE IX. PAYMENTS AND COMPLETION.....		71
IX.1	CONTRACT SUM.	71
IX.2	SCHEDULE OF VALUES.	71
IX.3	APPLICATIONS FOR PAYMENT.	71
IX.4	PAY APPLICATION APPROVAL.	72
IX.5	DECISIONS TO REJECT APPLICATION FOR PAYMENT.	73
IX.6	PROGRESS PAYMENTS.	74
IX.7	SUBSTANTIAL COMPLETION.	75
IX.8	PARTIAL OCCUPANCY OR USE	76
IX.9	FINAL COMPLETION AND FINAL PAYMENT	77
IX.10	ADDITIONAL INSPECTIONS.	77
ARTICLE X. PROTECTION OF PERSONS AND PROPERTY		79

X.1	SAFETY PRECAUTIONS AND PROGRAMS.	79
X.2	SAFETY OF PERSONS AND PROPERTY.	80
X.3	EMERGENCIES.	81
X.4	PUBLIC CONVENIENCE AND SAFETY	82
X.5	BARRICADES, LIGHTS AND WATCHMEN.	83
X.6	PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.	83
X.7	TEMPORARY STORM SEWER AND DRAIN CONNECTIONS.	83
X.8	ADDITIONAL UTILITY AARRANGEMENTS AND CHARGES	84
X.9	USE OF FIRE HYDRANTS.	84
X.10	ENVIRONMENTAL COMPLIANCE	84
ARTICLE XI. INSURANCE AND BONDS.....		87
XI.1	CONTRACTOR'S LIABILITY INSURANCE.	87
XI.2	PROPERTY INSURANCE	92
XI.3	PERFORMANCE BONDS AND PAYMENT BONDS.	93
XI.4	'UMBRELLA' LIABILITY INSURANCE.	95
XI.5	POLICY ENDORSEMENTS AND SPECIAL CONDITIONS.	95
ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK.....		97
XII.1	INSPECTING WORK.	98
XII.2	UNCOVERING WORK.	98
XII.3	CORRECTING WORK.	98
XII.4	ACCEPTANCE OF NONCONFORMING WORK.	100
ARTICLE XIII. COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION		100
XIII.1	FINAL COMPLETION OF CONTRACT.	101
XIII.2	WARRANTY FULFILLMENT.	101
XIII.3	TERMINATION BY CITY FOR CAUSE.	101
XIII.4	TEMPORARY SUSPENSION OF THE WORK.	104
ARTICLE XIV. MISCELLANEOUS PROVISIONS.....		105
XIV.1	SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY.	105
XIV.2	GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS.	106
XIV.3	SUCCESSORS AND ASSIGNS.	106
XIV.4	RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY CITY.	106
XIV.5	INTEREST.	106
XIV.6	INDEPENDENT MATERIALS TESTING AND INSPECTION.	107
XIV.7	FINANCIAL INTEREST	107

XIV.8 VENUE.	107
XIV.9 INDEPENDENT CONTRACTOR.	108
XIV.10 NON-DISCRIMINATION.	108
XIV.11 BENEFITS TO PUBLIC SERVANTS	108
ARTICLE XV. AUDIT	109
XV.1 RIGHT TO AUDIT CONTRACTOR'S RECORDS.	109
ARTICLE XVI. ATTORNEY FEES	110
SPECIAL CONDITIONS FOR HORIZONTAL PROJECTS	111
SPECIAL CONDITIONS FOR TASK ORDER CONTRACTS	117

**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.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 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 notify City through a Time Impact Analysis when an event giving rise to a claim has been resolved which may justify an extension of Contract time or adjustment of milestone dates. Said notice shall be made in accordance with **ARTICLE IV.2.2**. Future consideration of that statement shall not be permitted and Contractor forfeits its right to subsequently request a time extension or time suspension, unless the circumstances prove Contractor could not reasonably have knowledge of the impact.
- b. When changes are initiated or impacts are experienced, Contractor shall submit to City a written Time Impact Analysis describing the influence of each change or impact. A “**TIME IMPACT ANALYSIS**” is an evaluation of the effects of changes in the construction sequence, contract, Plans or site conditions on Contractor's plan for constructing the Project, as represented by the schedule. The purpose of the Time Impact Analysis is to determine if the overall Project has been delayed and, if necessary, to provide Contractor and City a basis for making adjustments to the Contract.
- c. 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.

- d. 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.

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, written notice, as required in this **ARTICLE IV.2** shall be given. Contractor's Claim shall include an estimate of probable impact of delay on progress of the Work in accordance with **ARTICLE III.10.11**. In the case of a continuing delay, only one Claim is necessary.
- b. Contractor shall be entitled to an extension of the Contract Time for delays or disruptions to the Project's critical path due to unusually severe weather in excess of weather normally experienced at the job site, as determined from Baseline Seasonal weather conditions incorporated into the Contractor's project using the table in **ARTICLE III.10.6.e** Contractor shall bear the entire economic risk of all weather delays and disruptions. Contractor shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. With regard to Vertical projects with City, requests for an extension of time, pursuant to this **ARTICLE 4.3.6**, shall be submitted to City and Design Consultant not later than the fifteenth (15th) calendar day of the month following the month during which the delays or disruptions occurred and shall include documentation and all details reasonably available, demonstrating the nature and duration of the delays or disruptions and their effect on the critical path of the Schedule. With regard to Horizontal projects with City, upon Contractor reaching Substantial Completion, the City and Contractor shall implement the following process to review and determine inclement weather days that impacted the critical path of the project.
 - i. Thru its on-site Project Inspector, City and Contractor shall discuss inclement weather days after potential inclement weather events during each

two week period and tally the events before each construction progress meeting.

- ii. A discussion of the inclement weather days will be added to the construction progress meeting agenda. If an agreement regarding the number of days cannot be reached, the Contractor may request the City project manager to further examine the dispute and provide a final decision by the next construction progress meeting.
- iii. Conclusion regarding the amount of inclement weather days will be documented in the meeting minutes and posted on PrimeLink.
- iv. All inclement weather days will be totaled when the project reaches Substantial Completion from the Contract Time Statements and from the documented conclusions in the Construction Progress Meeting minutes.
- v. The total inclement weather days counted by the previous steps for the project will be subtracted by the number of inclement weather days already factored into the project from the table provided in **ARTICLE III.10.6.8**.

Only actual inclement weather days in excess of the cumulative inclement weather days provided in the table will be considered for a time extension. Any time extension granted to Contractor for either Vertical or Horizontal projects under **ARTICLE IV.2.6** shall be non-compensatory.

IV.2.7 INJURY OR DAMAGE TO PERSON OR PROPERTY.

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

IV.2.8 CHANGE IN UNIT PRICES.

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

IV.2.9 CLAIMS FOR CONSEQUENTIAL DAMAGES.

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

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

IV.2.10 SUBCONTRACTOR PASS-THROUGH CLAIMS.

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

- a. The requirements of **ARTICLE IV.2.6** of these General Conditions; and
- b. The following additional three (3) requirements listed below, all three of said additional requirements shall be conditions precedent to the entitlement of Contractor to seek and assert such Claim against City:
 - i. Contractor shall:

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

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

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

- a. If Contractor falls behind the approved construction schedule for whatever reason, City shall have the right, in City's sole discretion, to order Contractor to develop a schedule recovery plan to alter its work sequences or to otherwise accelerate its

progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as City reasonably may direct. Upon receipt, Contractor shall take any and all action necessary to comply with City's order. In such event, any possible right, if any, of Contractor to additional compensation for any acceleration shall be subject to the terms of this **ARTICLE IV.2.11.**

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

IV.2.12 NO WAIVER OF GOVERNMENTAL IMMUNITY.

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

IV.3 RESOLUTION OF CLAIMS AND DISPUTES.

- IV.3.1** Claims by Contractor against City and Claims by City against Contractor, including those alleging an error or omission by Design Consultant but excluding those arising under **ARTICLE X**, shall be referred initially to Design Consultant for consideration and recommendation to City.
- IV.3.2** An initial recommendation by Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the Parties arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to Design Consultant with no recommendation having been rendered by Design Consultant.
- IV.3.3** Design Consultant shall review Claims and, within ten (10) work days of receipt of a Claim, take one or more of the following actions:
- a.** Request additional supporting data from the Party making the Claim;
 - b.** Issue an initial recommendation;
 - c.** Suggest a compromise; or
 - d.** Advise the Parties that Design Consultant is unable to issue an initial Recommendation, due to a lack of sufficient information or conflict of interest.
- IV.3.4** Following receipt of Design Consultant's initial recommendation regarding a Claim, City and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement is reached, either Party may request mediation of the dispute, pursuant to **ARTICLE IV.4**.
- IV.3.5** If Design Consultant requests either or any Party to provide a response to a Claim or to furnish additional supporting data, such requested Party shall provide a response or the requested supporting data to Design Consultant, advise Design Consultant when the response or supporting data shall be furnished or advise Design Consultant that no response of supporting data shall be furnished.
- IV.3.6** With receipt of all information requested by Design Consultant, Design Consultant shall review the Claim and all received information within ten (10) calendar days of receipt of the information and shall take one of the following actions:
- a.** Issue a recommendation;
 - b.** Suggest a compromise; or
 - c.** Advise the Parties Design Consultant is unable to issue a recommendation due to lack information or conflict of interest.

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

IV.3.8 WAIVER OF LIEN.

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

IV.4 ALTERNATIVE DISPUTE RESOLUTION.

IV.4.1 CONTINUATION OF WORK PENDING DISPUTE RESOLUTION.

Each Party is required to continue to perform its obligations under this Contract pending the final resolution of any dispute arising out of or relating to this Contract, unless it would be impossible or impracticable under the circumstances then present.

IV.4.2 REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.

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

IV.4.3 MEDIATION.

In the event that City and/or Contractor contend that the other has committed a material breach of this Contract, or the Parties cannot reach a resolution of a claim or dispute pursuant to **ARTICLE IV.4**, as a condition preceding to filing a lawsuit, either Party shall request mediation of the dispute with the following requirements:

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

- b. In the event City and Contractor are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **ARTICLE IV.4** shall be deemed to have occurred.
- c. The Parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

IV.4.4 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS.

At its option, City may administer its design and construction management through an Internet-based Project Management system (also referred to as "PRIME*Link*"). In such cases, Contractor shall conduct communication through this medium and perform all Project-related functions utilizing this management system, to include all correspondences, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders and other administrative activities. When such a management system is employed, City shall administer the software, provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

END OF ARTICLE IV

ARTICLE V. SUBCONTRACTORS

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

V.1.1 Contractor shall, prior to entering into an agreement with such Subcontractor, notify City in writing of the names of all proposed first-tier Subcontractors for the Work.

V.1.2 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom City may have reasonable objection. A Subcontractor or other person or organization identified in writing to City, prior to the Notice of Award and not objected to in writing by City prior to the Notice of Award, shall be deemed acceptable to City. Acceptance of any Subcontractor, other person or organization by City shall not constitute a waiver of any right of City to reject defective Work. If City, after due investigation, has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall be required to submit an acceptable substitute. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

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

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

V.1.5 SBEDA/DBE REPORTING AND AUDITING.

During the term of the contract, Contractor must report the actual payments to all SBEDA or DBE (as applicable) Subcontractors and Suppliers in the time intervals and format prescribed by City. City reserves the right, at any time during the term of this Contract, to request additional information, documentation or verification of payments made to such Subcontractors and suppliers in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of

canceled checks paid to SBEDA or DBE Subcontractors and suppliers and/or confirmation inquiries directly to the SBEDA or DBE participants. Proof of payments, such as copies of canceled checks, properly must identify the Project name or Project number to substantiate a SBEDA or DBE payment for the Project.

V.1.6 SMALL BUSINESS SUBCONTRACTOR SUBSTITUTIONS.

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

V.2 SUB-CONTRACTUAL RELATIONS.

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

V.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.

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

- V.3.1** An assignment is effective only after termination of the Contract by City and only for those Subcontractor agreements which City accepts by notifying Subcontractor and Contractor in writing; and
- V.3.2** An assignment is subject to the prior rights of the Surety, if any, obligated under bond relating to the Contract.
- V.3.3** Upon any such assignment, if the Work has been suspended for more than thirty (30) calendar days, Subcontractor's compensation equally shall be adjusted for increase in cost resulting from the suspension.

END OF ARTICLE V

ARTICLE VI. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTS

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

- VI.1.1** City reserves the right to perform construction or operations related to the Project with City's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under General Conditions of the Contract identical or substantially similar to these. If Contractor claims that a delay or additional cost is involved, due to such action by City, Contractor shall make a Claim as provided in **ARTICLE IV.2.6**.
- VI.1.2** When separate contracts are awarded for different portions of the Project or for other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor that executes each separate City-Contractor contract.
- VI.1.3** City shall provide for coordination of the activities of City's own forces and of each separate contractor with the Work of Contractor and Contractor fully shall cooperate with said coordination. Contractor shall participate with other separate contractors and City in reviewing all construction schedules when directed by City to do so. Contractor shall make any revisions to its construction schedule deemed necessary after said joint review and mutual agreement. The revised construction schedules then shall constitute the schedules to be used by Contractor, separate contractors and City until subsequently revised.
- VI.1.4** Unless otherwise provided in the Contract Documents, when City and City's own forces perform construction or operation related to the Project, City shall be subject to the same obligations and to have the same rights that apply to Contractor under these General Conditions and the Contract Documents.

VI.2 MUTUAL RESPONSIBILITY

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

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

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

VI.2.4 Contractor promptly shall remedy any damage wrongfully caused by Contractor or its Subcontractor(s) to any completed or partially completed construction or to property of City or City's separate contractor(s).

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

VI.3 CITY'S RIGHT TO CLEAN UP.

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

END OF ARTICLE VI

ARTICLE VII. CHANGES IN THE WORK

VII.1 GENERAL

- VII.1.1** Changes in the Work may be accomplished, after the execution of the Contract and without invalidating the Contract, by Change Order, Field Work Directive/Force Account or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this **ARTICLE VII** and elsewhere in the Contract Documents.
- VII.1.2** A Change Order shall be based upon agreement between City and Contractor; a Field Work Directive requires a directive by City and, if necessary, Design Consultant and may or may not be agreed to by Contractor; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by City.
- VII.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents and Contractor promptly shall proceed with the changed Work, unless otherwise provided in a Change Order, Field Work Directive or order for a minor change in the Work or in this **ARTICLE VII**.
- VII.1.4** Changes resulting from Change Orders, Field Work Directives or orders for minor changes shall be recorded by Contractor on the As-Built record documents.

VII.2 CHANGE ORDERS

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

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

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

VII.3 FIELD WORK DIRECTIVES

VII.3.1 A Field Work Directive is a written directive signed by City and, if necessary, Design Consultant directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum or Contract time, or both. City may, by Field Work Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with any changes to the Contract Sum and/or the Contract Time to be adjusted according to the terms of this **ARTICLE VII.3.**

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

VII.3.3 Upon receipt of a Field Work Directive, Contractor promptly shall proceed with the change in the Work involved and, in writing, advise City of the Contractor's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

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

VII.3.5 If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall initially be determined by Design Consultant on the basis of reasonable costs and savings attributable to the change including, in case of an increase in the Contract Sum, as applicable, a reasonable allowance for overhead and profit. In such case, and also under **ARTICLE VII.3.4.c**, Contractor shall keep and present, in such form as City may prescribe, an

itemized and detailed accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **ARTICLE VII.3.5** shall be limited to the following:

- a. Costs of all labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;
- b. Costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;
- c. Rental costs of all machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;
- d. Expenses incurred in accordance with Contractor's standard personnel policy for travel approved in writing by City in advance;
- e. Costs of premiums for all bonds and insurance, permit fees and allowable sales, use or similar taxes related to the Work;
- f. All additional costs of supervision and field office personnel directly attributable to the change; and
- g. All payments made by the Contractor to Subcontractors.
- h. The amount of credit to be allowed by Contractor to City for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus Contractor's allocated percent for profit and overhead, as confirmed by Design Consultant, subject to any equitable adjustment recommended by Design Consultant and approved by City. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.
- i. If City and Contractor agree with the determination made by Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.
- j. If City and Contractor cannot reach an agreement on either an adjustment on the Contract Sum and Contract Time, pursuant to an issued Field Work Directive, City and Contractor shall execute a Change Order for the adjustment on the Contract Sum or Contract Time, if any, the Parties do agree upon for the Work

performed and Contractor reserves the right to file a Claim for any disagreements in Contract Sum or Contract Time not addressed in the Change Order, pursuant to **ARTICLE IV.3**. If City and Contractor cannot agree on both the adjustment in the Contract Sum and the Contract Time associated with an issued Field Work Directive, City unilaterally shall file a Change Order listing City's adjustments in the Contract Sum and/or Contract Time and Contractor reserves the right to file a Claim for payment and/or time, pursuant to **ARTICLE IV.3**.

VII.4 MINOR CHANGES TO THE WORK.

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

VII.5 TIME REQUIRED TO PROCESS CHANGE ORDERS.

VII.5.1 All responses by Contractor to proposal requests from City or Design Consultant shall be accompanied by a complete itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow City and Design Consultant a minimum of thirty (30) calendar days after receipt by City to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in Contractor's response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution or other grounds for seeking extra compensation or additional time under the Contract Documents, without reservation or further recourse.

VII.5.2 All Change Orders require written approval by either City or City Council or, where authorized by the state law and City ordinance, by City's City Manager or designee, pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to City in final form with all supporting data. Receipt of a submission by City does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal shall be authorized by City or City Council Resolution or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM SHALL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Contractor shall proceed with the work under a pending Change Order only if directed in writing to do so by CITY.

END OF ARTICLE VII

ARTICLE VIII. TIME

VIII.1 PROGRESS AND COMPLETION.

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

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

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

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

VIII.2 DELAYS AND EXTENSIONS OF TIME.

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

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

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

VIII.2.4 This Contract does not permit the recovery of damages by Contractor for delay, disruption or acceleration, other than those described in **ARTICLE VIII.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 CONTRACTOR'S LIABILITY INSURANCE.

XI.1.1 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"), which shall be clearly labeled "*insert name of project/contract*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) shall be signed by the Authorized Representative of the insurance carrier and shall include the agent's original signature and telephone number. The Certificate(s) shall 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 its obligations under this Contract until such Certificate(s) and endorsements have been received and approved by City's TCI Department. No officer or employee of City, other than the City of San Antonio's Risk Manager, shall have authority to waive this requirement.

XI.1.2 City reserves the right to review the insurance requirements of this **ARTICLE XI** during the effective period of this Contract and to modify insurance coverages and limits when deemed necessary and prudent by the City of San Antonio's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereby City may incur increased risk.

XI.1.3 Contractor's financial integrity is of interest to City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect, for the duration of this Contract and at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TABLE ON FOLLOWING PAGE

<u>TYPE</u>	<u>AMOUNTS</u>
<p>1. Workers' Compensation</p> <p>2. Employers' Liability</p>	<p><i>Statutory</i></p> <p>\$1,000,000.00/\$1,000,000.00/ \$1,000,000.00</p>
<p>3. Commercial General Liability Insurance to include coverage for the following:</p> <p>a. Premises/Operations</p> <p>b. Products/Completed Operations</p> <p>c. Personal/Advertising Injury</p> <p>*d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.</p> <p>*e. Explosion, Collapse, Underground</p>	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of:</p> <p>\$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<p>4. Business Automobile Liability:</p> <p>a. Owned/leased vehicles</p> <p>b. Non-owned vehicles</p> <p>c. Hired Vehicles</p>	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000.00 per occurrence</p>
<p>5. *Professional Liability (Claims-made basis)</p> <p>To be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p>	<p>\$1,000,000.00 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.</p>
<p>6. Umbrella or Excess Liability Coverage</p>	<p>\$5,000,000.00 per occurrence combined limit <u>Bodily Injury</u> (including death) and <u>Property Damage</u>.</p>
<p>7. *Builder's Risk</p>	<p>All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.</p>
<p>*if applicable</p>	

XI.1.4 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. Contractor shall provide City with said Certificate and endorsement prior to the commencement of any work by the Subcontractor. This Subcontractor insurance provision may be modified by the City of San Antonio's Risk Manager, without subsequent San Antonio City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such insurance coverage modification may be enacted by letter signed by the City of San Antonio's Risk Manager, which shall become a part of this Contract for all purposes.

XI.1.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of all insurance policies, declaration pages and all required endorsements associated with this Work. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within ten (10) calendar days. Contractor shall pay any and all costs incurred resulting from provision of said documents to City.

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

XI.1.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name City, its officers, officials, employees, volunteers, and elected representatives as additional insured(s) by endorsement, with respect to operations and activities of, or on behalf of, the named insured performing under this Contract with City, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement reflecting the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy;
- c. Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City.
- d. Provide advance written notice directly to City, at the address cited above, of any suspension or non-renewal in coverage of Contractor's insurance policy/policies associated with this Work and not less than ten (10) calendar days in advance notice for Contractor's nonpayment of premium(s).

- XI.1.7** Within five (5) calendar days of a suspension, cancellation or non-renewal of insurance coverage associated with this Work, Contractor shall provide a replacement Certificate(s) of Insurance and applicable endorsement(s) to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- XI.1.8** In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance and/or policy endorsements to the extent and within the time required, City shall have the right to order Contractor to stop work hereunder and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the insurance requirements hereof.
- XI.1.9** Nothing contained herein shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its Subcontractors' performance of the Work covered under this Contract.
- XI.1.10** Contractor accepts and agrees Contractor's insurance shall be deemed primary and non-contributory, with respect to any insurance or self insurance carried by City, for liability arising out of Contractor's operations under this Contract.
- XI.1.11** Contractor understands, accepts and agrees the insurance required of Contractor by this Contract is in addition to and separate from any other obligation contained in this Contract and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- XI.1.12** Contractor and any of Contractor's Subcontractors are responsible for any and all damage to their own equipment and/or property.
- XI.1.13** Without limiting any of the other obligations or liabilities of Contractor under the Contract Documents, Contractor shall purchase and maintain, during the term of the Contract and at Contractor's own expense, the minimum liability insurance coverage described below with insurance companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to City. Contractor also shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain levels of insurance necessary and appropriate for the Work performed during the term of the Contract, said levels of insurance comply with all applicable laws. Subcontractor's liability insurance shall name Contractor, City and Design Consultant as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in **ARTICLE XI.1.2** shall show the existence of each policy, together with copies of all policy endorsements showing City and Design Consultant as an additional insured, and shall be delivered to City before any Work is started. Contractor promptly shall furnish, upon the request of and without expense to City, a copy of each policy required, including all endorsements, which shall indicate:

- a. Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to City; Employer's Liability Insurance of not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease for each employee and \$1,000,000.00 disease policy limit;
- b. Commercial General Liability Insurance, Personal Injury Liability, Independent Contractor's Liability and Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (and/or Subcontractor's) liability for injury to or death of City's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000.00 per occurrence, \$2,000,000.00 annual aggregate. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. City shall be named as additional insured by using endorsement CG 20 26 or broader. The general liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with City. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the Project in question.
- c. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.
- d. Five (5) calendar days prior to 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.

XI.1.14 If any insurance company providing insurance coverage(s) required under the Contract Documents for Contractor becomes insolvent or becomes the subject of any rehabilitation, conservatorship, liquidation or similar proceeding, Contractor immediately shall procure, upon first notice to Contractor or City of such occurrence and without cost to City, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

XI.2 PROPERTY INSURANCE

XI.2.1 As stated in **ARTICLE XI.1** Contractor shall obtain at its expense and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, City shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be in the name of Contractor and naming City, Design Consultant and Subcontractors, as well as any Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

- a.** This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- b.** Loss, if any, shall be adjusted with and made payable to Contractor or City and Contractor as trustee for the insureds as their interests may appear.

XI.2.2 BOILER AND MACHINERY INSURANCE.

If applicable, City shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by City. This insurance shall include the interests of City, Contractor, Subcontractors and Sub-Subcontractors in the Work, and City and Contractor shall be named insureds.

XI.2.3 LOSS OF USE INSURANCE.

City, at City's option, may purchase and maintain such insurance as shall insure City against loss of use of City's property due to fire or other hazards, however caused.

XI.2.4 Contractor shall provide to City a Certificate of Insurance evidencing all property insurance policies procured under this **ARTICLE XI.2** and all endorsements thereto, before any exposure to loss may occur.

XI.2.5 Partial occupancy or use in accordance with **ARTICLE IX.9** shall not commence until the insurance company/companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. City and Contractor shall take reasonable steps to obtain consent of the insurance company/companies and shall take no

action without mutual written consent with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

XI.2.6 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.

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 stores records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in 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-Authority clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

City may elect at time of solicitation to stipulate bonding requirements. City may choose to require Performance and Payment Bonds for the entire Task Order Contract Sum, for half of the Task Order Contract Sum at a time or allow for bonding per task order.

a. PERFORMANCE BOND. Contractor shall furnish a Performance Bond to City. At City's discretion at time of award, Contractor shall furnish either:

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; or

A good and sufficient Performance Bond in an amount equal to half the Task Order Contract Sum at a time; or

A good and sufficient Performance Bond in an amount equal to each task order, provided Contractor has furnished City with documentation of eligibility for bonding capacity to sufficiently complete all task orders in a timely manner.

- b. PAYMENT BOND.** Contractor shall furnish a Payment Bond to City. At City's discretion at time of award, Contractor shall furnish either:

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; or

A good and sufficient Payment Bond in an amount equal to half the Task Order Contract Sum at a time; or

A good and sufficient Payment Bond in an amount equal to each task order, provided Contractor has furnished City with documentation of eligibility for bonding capacity to sufficiently complete all task orders in a timely manner.

XI.3.2 If the Task Order is greater than \$100,000.00 and City has allowed Contractor to Bond by Task Order, a Payment Bond and a Performance Bond equaling one hundred percent (100%) of the Task Order are mandatory and shall be provided by Contractor. If the Task Order is greater than \$50,000 but less than or equal to \$100,000, only a Payment Bond equaling one hundred percent (100%) of the Contract amount is mandatory; provided, however, Contractor also may elect to furnish a Performance Bond in the same amount if Contractor so chooses. If the Task Order is less than or equal to \$25,000, 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 Task Order 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.

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

ARTICLE XVII ISSUANCE OF TASK ORDERS

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XVIII SCHEDULING OF WORK ON ISSUED TASK ORDERS

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

END OF SPECIAL CONDITIONS FOR THE GENERAL CONDITIONS

EXHIBIT D CERTIFICATE OF INTERESTED PARTIES
(Form 1295)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	OFFICE USE ONLY
1 Name of business entity filing form, and the city, state and country of the business entity's place of business. Poznecki-Camarillo, Inc. San Antonio, TX United States	CERTIFICATION OF FILING Certificate Number: 2017-210063 Date Filed: 05/18/2017 Date Acknowledged:
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed. City of San Antonio Transportation & Capital Improvements	

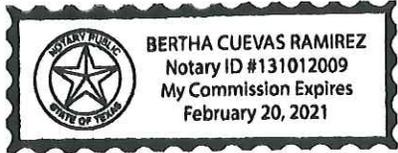
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

KY050917A
 Engineering, Surveying, and Environmental Services

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Fernando Camarillo

 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Fernando Camarillo, this the 22ND day of May, 2017, to certify which, witness my hand and seal of office.

B Ramirez Signature of officer administering oath
 Bertha Cuevas Ramirez Printed name of officer administering oath
 Notary Public Title of officer administering oath