



**PORT AUTHORITY OF SAN ANTONIO  
CONSTRUCTION MANAGER @ RISK AGREEMENT**

**PROJECT NAME  
CONTRACTOR – CONTRACT NUMBER**

**ARTICLE 1. AGREEMENT AND TERM**

1.1 This Construction Manager @ Risk, (CM@R), Agreement ("Agreement") is entered into this DATE, between the Port Authority of San Antonio ("the Authority" and "Owner") a Texas Defense Base Development Authority, of the State of Texas with its principal place of business located at 907 Billy Mitchell, San Antonio, Texas 78226, and CONTRACTOR, a for profit company with its principal place of business located at ADDRESS, for the scope of services outlined in Article 3 herein, for the amounts described herein for each phase accordingly, (collectively the "Parties").

**ARTICLE 2. DEFINITIONS**

- 2.1 Owner: *Port Authority of San Antonio (the "Port")*
- 2.2 Owner's Representative: *Port's Project Manager*
- 2.3 Owner's Architect/Engineer:
- 2.4 Contractor: *Port's CM@R Contractor;*

**ARTICLE 3. SCOPE OF SERVICES AND COMPENSATION**

3.1 Contractor shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Work described herein and complete all phases of the work described herein, including the preconstruction, cost estimating, bidding and construction services as specified or indicated in the Contract Documents as represented in Attachment "A" entitled "Scope and Compensation."

Phase I:

The Contractor will provide the following Preconstruction Services:

1. The initial project budget was established using the Fee, General Conditions and General Requirements Costs and schedule submitted in the Estimate dated DATE
2. The CM @ Risk will continue to provide preconstruction services (i.e., budget estimates, value engineering, constructability reviews, etc.) through the Design Development and Construction Document Phases to keep the project within the established budget.

Phase II:

1. Upon completion of the bid documents, the CM @ Risk will bid out, with the Port's oversight, the costs of the work to subcontractors in accordance with Government Code Section 2269.255:
  - A. A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.
  - B. A construction manager-at-risk may seek to perform portions of the work itself if:
    - i. the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and
    - ii. the government entity (i.e., Port San Antonio) determines that the construction manager-at-risk bid or proposal provides the best value for the government entity.
2. Contractor shall provide Owner with a set of all bids received from trade contractors or subcontractors for the Work. Each set of bids submitted by Contractor shall include the bidder's SMWVBE Certification, where applicable, and include the associated certificate(s) when submitted to the Owner for review

and approval. Contractor shall recommend to the Owner trade contractors or subcontractors for award and provide the dollar amount of the bid, and the applicable corresponding SMWVBE status of the recommended trade/subcontractor. Owner shall not withhold approval of Contractor's recommendations unless it is determined that the recommended Contractor or subcontractor was not solicited through a process consistent with that identified in Government Code Section 2269.255. (The Owner shall have an option to reject a recommended bid if the Owner is willing to pay the additional cost for the next highest bid). Contractor will make a good faith effort to meet the SMWVBE Goals of the Owner.

3. It is the policy of the Authority to encourage involvement of qualified Small, Minority, women-Owned Business Enterprises (SMWVBE) and Local Business Enterprises in soliciting and awarding competitive contracts in accordance with the aspirational goals adopted by the Authority's Board of Directors as shown in Table 1.0 below:

*Table 1.0 - Percentages represented below are percentages of **contract dollar values** for prime and sub-prime firms:*

<i>Category Description</i>	<i>Aspirational Goals – Construction Services</i>	<i>Aspirational Goals – Professional Services</i>	<i>Aspirational Goals – General Services &amp; Materials/Equipment</i>
<i>Small Business Enterprise (BE)</i>	<i>35%</i>	<i>35%</i>	<i>35%</i>
<i>African American (BE)</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>
<i>Asian (BE)</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>
<i>Minority/Woman (BE)</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>
<i>Woman (BE)</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>
<i>Hispanic (BE)</i>	<i>15%</i>	<i>15%</i>	<i>15%</i>

A) African American Business Enterprise (hereinafter referred to as AABE): a sole proprietorship, partnership or corporation owned, operated and controlled by an African American Group member(s) who has at least 51% ownership. The African American group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories.

B) Asian American Business Enterprise (hereinafter referred to as ABE): a business structure owned, operated and controlled by an Asian American minority group member(s) who has at least 51% ownership.

C) Disadvantaged Business Enterprise (hereinafter referred to as DBE): a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more disadvantaged individuals. Owned and controlled means a business,

which is at least 51% owned by one or more socially and economically disadvantaged individuals. In the case of any publicly owned business, at least 51% of the stock must be owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

D) Hispanic American Business Enterprise (hereinafter referred to as HABE): a business structure owned, operated and controlled by a Hispanic American minority group member(s) who has at least 51% ownership.

E) Historically Underutilized Enterprise (hereinafter referred to as HUE or HUB): a certified SBE which is a corporation, partnership, sole proprietorship, or other legal entity that also qualifies as an MBE, WBE, M/WBE, or AABE.

F) Local Business (hereinafter referred to as LB): a corporation, partnership, sole proprietorship, or other legal entity, which is headquartered within Atascosa, Bandera, Bexar, Comal, Frio, Gillespie, Guadalupe, Karnes, Kendall, Kerr, McMullen, Medina, or Wilson county for at least one year. For a branch office of a non-headquartered business to qualify as an LB, the branch office must be located in one of the above mentioned counties for at least one year and must employ a minimum of ten (10) FTE (full time equivalent) residents of the respective county for use at the local branch office.

G) Minority Business Enterprise (hereinafter referred to as MBE): a sole proprietorship, partnership or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories.

(G-1) Minority Group Member(s): African-Americans, Hispanic Americans, Asian Americans, American Indians and disabled individuals legally residing in or that are citizens of the United States or its territories.

H) Native American Business Enterprise (hereinafter referred to as NABE): a business structure owned, operated and controlled by a Native American minority group member(s) who has at least 50% ownership. The Native American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and legally residing in or are citizens of the United States or its territories; or (2) a business structure owned, operated and controlled by a Native American minority group member(s) who has at least 51% ownership and satisfies the Native American member status.

I) Small Business Enterprise (hereinafter referred to as SBE): a business structure that is formed with the purpose of making a profit, which is independently owned and operated and which meets the United States Small Business Administration (SBE) size standard for a small business (see <http://sba.gov/size> click "Table of small business size standards").

J) Veteran-Owned Business Enterprise (hereinafter referred to as VBE): a business structure that is at least 51% owned, operated and controlled by an individual who serviced in the United States Armed Forces, and who was discharged or released under conditions other than dishonorable. Note: This certification type should not be confused with the Service Disabled Veteran designation available through the Small Business Administration.

K) Woman Business Enterprise (hereinafter referred to as WBE): a sole proprietorship, partnership or corporation owned, operated and controlled by women who have at least 51% ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories.

4. Upon identification of the low bidder for each trade package, the CM@R will total up the costs of the work, add in the predetermined general conditions costs

and apply the CM@R's predetermined fee, as stated in the Attachment "A" (refer to Section 7.1.2).

### Phase III

1. If the total costs described in item 4 are within the established project budget and these costs are approved by the Board, then a task order for construction will be issued to the CM@R. The Standard General Conditions shown in (Exhibit "I") will apply. Any previous payments made to the CM@R will be credited against the Construction Services contract amount.
2. If the total costs described in item 4 exceed the established project budget, then the Port may make other arrangements regarding the selection of the General Contractor to perform the work.
3. If project is cancelled due to no fault of CM @ Risk, preconstruction services will be reimbursed based upon the total costs of \_\_\_\_\_ or a prorated costs based upon the percentage of services actually performed.

## **ARTICLE 4. CONTRACT TIME**

4.1 The period of performance will be negotiated and agreed upon by the Parties and executed in writing through an individual Task Order, signed by the Parties.

4.2 It is understood and acknowledged by Contractor that in the reasonable calculation of calendar days within which to perform this Contract, the Owner has included, as a minimum, the following tasks in the performance period: scheduling, material submittal process; ordering, manufacturing (if applicable) and receipt of materials; time to obtain necessary permits; mobilization; and other incidental items necessary for contractor to start on-site performance.

4.3 **Liquidated Damages.** Owner and Contractor recognize that the time of performance is of the essence in this Agreement and that Owner will suffer an economical loss if the Work is not substantially complete within the time specified in paragraph 4.1 above, plus any extensions thereof allowed in accordance with terms of this Agreement. Both parties hereto also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not substantially complete on time. Accordingly, instead of requiring such proof, Owner and Contractor will determine and agree

to an amount for liquidated damages for the delays by the Contractor for each calendar day that expires after the time specified in paragraph 4.1 for substantial completion, until the Work is substantially complete and an early completion bonus if the work is completed prior to the Contact Substantial Completion Date. The liquidated damages amount will be specified in the Task Order referred to in paragraph 4.1, above.

## **ARTICLE 5 PAYMENT PROCEDURES**

5.1 **Progress Payments.** Contractor shall submit a valid Applications for Payments to the Owner's Project Manager, (Attn: John Farrow, Project Manager, Port Authority of San Antonio, 907 Billy Mitchell Blvd., San Antonio, Texas 78226) within 15 days of completion of services. A valid invoice is one 1) which contains all applicable information (i.e.; contract numbers as provided in writing); and 2) where the Owner can verify the amount of itemized services / supplies provided. The Owner will make payment within 30-days of its Accounts Payable Office's receipt of a valid invoice. Owner shall make progress payments on account of the agreed upon Contract Price on the basis of Contractor's Accurate invoices. All progress payments shall be on the basis of the progress of the Work measured by applicable schedule of values in accordance with each executed task order for each phase of work.

5.1.1 In the event that the Authority is not the Developer for any specified Project, and Contractor provides preconstruction services for the Authority related to the acquisition effort of said Project, the Authority will pay Contractor a negotiated amount for the services provided upon receipt of a valid invoice, in accordance with the associated executed task order.

5.1.2 Contractor fees associated with Projects that renders the Authority as the Developer, will be paid in accordance with the amounts as stated on Attachment "A.

5.1.2.1 Construction Progress Payments, Prior to Substantial Completion, progress payments shall be in an amount equal to that approved in the Application for Payment, less retainage as provided in the General Conditions, Section 14.2.2, to be released by Owner in accordance with paragraph 5.1.

5.1.2.2 Upon substantial completion of Construction, Owner shall pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price, less such amounts Owner shall determine in accordance with the applicable project specifications and those provisions described in the contract documents, attached hereto and made a part hereof.

5.2 **Final Payment.** Upon final completion and acceptance of the Work in accordance with terms described herein, Owner shall pay the remainder of the Contract Price.

## **ARTICLE 6. CONTRACTOR'S REPRESENTATIONS**

6.1 In order to induce Owner to enter into this Agreement, Contractor makes the following representations to Owner:

6.1.1 Contractor has familiarized himself with the nature and extent of the Contract Documents and Work, to the extent observable by visual walk through inspection of the project, and documents provide to Contractor by Port and with all Port Authority rules provided to Contractor, local conditions observable by visual walk through inspection of the project and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

6.1.2 Subject to 6.1.1, Contractor has made, or caused to be made, examinations and investigations of information as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations or similar data are, or will be required by Contractor for such purposes.

6.1.3 Contractor has given Owner advanced written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents prior to bidding and the written resolution thereof by Owner is acceptable to Contractor.

6.1.4 Contractor is skilled and experienced to responsibly perform the type of work described in the Contract Documents in a timely manner.

## **ARTICLE 7 CONTRACT DOCUMENTS**

7.1 The Contract Documents, which comprise the entire Agreement between Owner and Contractor, are attached to this Construction Manager @ Risk Agreement, made a part hereof and consist of the following:

7.1.1 Compass Rose Academy 50% Construction Documents Plans and Specifications

- Plan List
- Specifications Table of Contents

7.1.2 Contractor's 50% Construction Documents Estimate dated *May 23, 2019*

7.1.3 Executed Task Orders between the Parties (to be executed with each project assignment, including Contractor's corresponding proposals and related schedules)

7.1.4 Certification Regarding Debarment and Other Responsibility Matters

7.1.5 Standard & Supplementary General Conditions (Exhibit "1" - including Environmental & Safety Policies)

7.1.6 Performance Bond to be provided by Contractor as part of Phase III in Article 3.1.

7.1.7 Payment Bond to be provided by Contractor as part of Phase III in Article 3.1.

7.1.8 Documentation submitted by Contractor prior to the effective date of the Notice to Proceed Document with CM@R requirements as specified herein.

7.1.9 Any modification, including Change Orders or Amendments, duly delivered and executed by the Parties after execution of Agreement.

7.1.10 Davis Bacon Wage Rates (Construction)

7.2 There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be altered, amended or repealed by a Construction Change Order or Contract Amendment executed and agreed to by the Parties.

## **ARTICLE 8. Bonds & Insurance Requirements**

8.1 Contractor agrees to maintain the below listed Insurance to cover all of its own personnel engaged in performing services for the Owner under this Agreement in not less than the following amounts:

Worker's Compensation - Statutory Amount

Employer's Liability - \$500,000.00

Commercial General Liability

Personal injury and property damage:

\$1,000,000.00 combined single limit each occurrence and

\$2,000,000.00 aggregate

Business Automobile Liability for all vehicles (owned/leased vehicles; non-owned vehicles; hired vehicles)

Bodily injury and property damage:

\$500,000.00 combined single limit any one accident.

Umbrella Liability

\$2,000,000.00

8.2 Contractor shall add the Owner and its Board of Directors, together with their respective officers, elected officials, employees, and representatives, individually or collectively, as additional insureds on all required insurance policies, except workers' compensation, and any errors and omissions insurance that the Consultant might carry. The Commercial General Liability Policy and Excess Liability Policy (Umbrella Form) shall be of an "occurrence type" policy. Workers' compensation and employer's liability policies will provide a waiver of subrogation in favor of the Owner and the United States Government. Other appropriate coverages will also contain a similar waiver of subrogation clause. The Commercial General Liability Policy shall also include protection against claims insured by usual personal injury liability coverage, and a "protective liability" endorsement to ensure contractual liability assumed by Consultant under Article 11 entitled "...Indemnification."

8.3 This insurance shall be of the "all risks" type and shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to equipment and materials in transit to the job site and until the Owner receives the equipment and materials at the job site. The coverage amount shall be not less than one-half of the full amount of the total contract. Transportation insurance shall provide for losses to be payable to the Contractor and the Owner as their interests may appear.

8.3.1 Contractor shall not commence any work under this Contract until he has obtained all the insurance coverage required under this Article and such insurance has been approved by Owner, nor shall Contractor allow any Subcontractor to commence work on this Contract until the insurance required by the Subcontractor has been so obtained and approved.

8.3.2 Unless otherwise provided herein, Contractor shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to any deductible amounts as may be provided herein, or required by Laws and Regulations). This insurance shall include the interests of Owner, Contractor, Subcontractors, Project Manager and applicable Architect/Engineer's consultants in the Work, all of whom shall be listed as insured, or additional insured parties, shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and

damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided herein, and shall include damages, losses and expenses arising out of, or resulting from, any insured loss, or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of Project Manager, applicable Architect/Engineer's, Attorneys and other professionals). If not covered under the "all risk" insurance, or otherwise provided herein this Agreement, Contractor shall purchase and maintain similar property insurance on portions of the Work stored on and off the site, or in transit, when such portions of the Work are to be included in an Application for Payment. The policies of insurance required to be purchased and maintained by Contractor in accordance with this paragraph shall be of an "occurrence" type, and contain a provision that the coverage afforded will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to Owner.

8.4 Subsequent to the receipt of this Agreement, and within three (3) days after the prescribed forms are presented for signature, the Contractor shall execute and deliver to the Owner a Construction Agreement, Certificate of Insurance and applicable Performance and Payment Bonds, in the format provided by the Owner in such number of copies as the Owner may require in accordance with the following parameters:

- a. For a Contract in excess of \$100,000.00, a Performance Bond shall be executed in the full amount of the Contract conditioned upon the faithful performance of the Work in accordance with the plans, specifications, and Contract Documents. Said Bond shall be solely for the protection of the Owner.
- b. For a Contract in excess of \$25,000.00, a Payment Bond shall be executed in the full amount of the Contract, solely for the protection of all proper claimants supplying labor and material in the prosecution of the Work provided for in the Contract, for the use of each such claimant perfecting a proper claim.

- c. Contractor shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. **These bonds shall remain in effect at least until twelve (12) months after the date when final payment becomes due**, except as otherwise provided by Law or Regulation, or by the Contract Documents. Contractor shall also furnish such other Bonds as may be required by Owner as specifically requested in the Task Order for the Project. All Bonds shall be in the forms prescribed by Law or Regulation, or the Contract Documents, and be executed by such sureties as are authorized to do business in the State of Texas. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.
- d. If the surety on any Bond furnished by Contractor is declared a bankrupt, or becomes insolvent, or its right to do business is terminated in any state where any part of the project is located, or it ceases to meet the requirements of paragraph 8.1, Contractor shall within five days thereafter, substitute another Bond or Surety, both of which must be acceptable to Owner.

## **ARTICLE 9. SAFETY PROTECTION**

9.1 Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. **CONTRACTOR SHALL REQUIRE THAT ALL EMPLOYEES AND SUBCONTRACTORS WEAR HARDHATS AT ALL TIMES THROUGHOUT THE DURATION OF THE CONTRACT.** Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

9.1.1 all employees performing the Work and other persons and organizations who may be affected thereby;

9.1.2 all the Work and materials and equipment to be incorporated therein, whether in storage on, or off the site; and

9.1.3 other property at the site, or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

9.1.4 Driveways, culverts, storm sewer inlets and laterals, and other public or private property that is destroyed or removed during the construction shall be replaced to its original condition by Contractor. Temporary drainage is to be provided as necessary.

9.1.5 Contractor is responsible for locating, working with and around underground obstacles in accordance with Articles 6.20.5 and 6.20.6 of the General Conditions.

9.1.6 Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property, or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property of Underground Facilities and utility owners, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.

9.1.7 In emergencies affecting the safety or protection of persons, or the Work, or property at the site or adjacent thereto, Contractor, without special oral instruction or authorization from Project Manager or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give **Project Manager** prompt written notice if Contractor believes that any significant changes in the Work, or variations from the applicable Contract Documents, have been caused thereby. If **Project Manager** determines that a change in the Contract Documents is required because of the responsible action taken by Contractor in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

## **ARTICLE 10. CORRECTIVE MEASURES**

10.1 If within one (1) year after the date of issuance of the Certificate of Acceptance, or such longer period of time as may be prescribed by Laws or Regulations, any Work is found to be defective, Contractor shall promptly, without cost to Owner, and in accordance with Owner's written instruction, either correct such defective Work, or, if it has been rejected by Owner, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected, or the rejected Work removed and replaced, and all costs of such removal and replacement (including but not limited to fees and charges of, Project Manager, Architect/Engineer (if applicable), attorneys and other professionals) will be paid by Contractor. In special circumstances where a particular item of equipment is placed in continuous service at Owner's direction before acceptance of all the Work, the correction period for that item may start to run from an earlier date, if so provided in the Specifications, or by Written Amendment.

#### **ARTICLE 11. FINAL INSPECTION**

11.1 Upon written notice from Contractor that the entire Work, or an agreed portion thereof is complete, Project Manager and Architect/Engineer, (if applicable), will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall promptly take such measures as are necessary to remedy such deficiencies.

11.2 A qualified person representing Contractor shall be present at this final inspection to demonstrate the systems and prove the performance of the equipment. Prior to this inspection, all work shall have been completed, tested, balanced and adjusted and in final operating condition, if required by the Project.

## **ARTICLE 12. TERMINATION**

12.1 Upon the occurrence of any one or more of the following events represented in Sections 12.1.1 through 12.1.10, Owner may, after giving Contractor and the surety, seven (7) days written notice, and to the extent permitted by Laws and Regulations, terminate the Work of Contractor, exclude Contractor from the site, and take possession of the Work, incorporate in the Work all materials and equipment stored at the site, or for which Owner has paid Contractor, but which are stored elsewhere, and finish the Work as Owner may deem reasonably necessary. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, Architect/Engineers, attorneys and other professionals and court costs) such excess will be paid to Contractor or his surety. If such costs exceed such unpaid balance, Contractor or surety shall pay the difference to Owner. Such costs incurred by Owner will be approved as to reasonableness by Project Manager and incorporated into a Change Order, but when exercising any rights or remedies under this paragraph, Owner shall be required to obtain the lowest price for the Work performed.

12.1.1 If Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition, or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency, Owner may terminate the Work of Contractor;

12.1.2 If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency, Owner may terminate the Work of Contractor;

12.1.3 If Contractor makes a general assignment for the benefit of creditors, Owner may terminate the Work of Contractor;

12.1.4 If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take

charge of property of Contractor is for the purpose of attempting to enforce a Lien against such Contractor property, or for the purpose of general administration of such Contractor property, for the benefit of Contractor's creditors, Owner may terminate the Work of Contractor;

12.1.5 If Contractor admits in writing an inability to pay its debts generally as they become due, Owner may terminate the Work of Contractor;

12.1.6 If Contractor persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Schedule established by the Parties, as revised from time to time), upon seven (7) days written notice, and Contractor's failure to commence and continue diligent, effective effort to cure such issue, Owner may terminate the Work of Contractor;

12.1.7 If Contractor disregards Laws or Regulations of any public body having jurisdiction, Owner may terminate the Work of Contractor;

12.1.8 If Contractor disregards the rights of Owner as provide in this Agreement, Owner may terminate the Work of Contractor; or

12.1.9 If Contractor otherwise violates in any material way any provisions of the Contract Documents, Owner may terminate the Work of Contractor.

12.1.10 If Contractor fails to perform to the satisfaction of Owner during Phase I (Preconstruction Services), prior to the commencement of any Phase II services, Owner upon seven (7) days written notice to Contractor may terminate the Work of Contractor.

12.2 Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor, then existing, or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

12.3 Upon seven (7) days written notice to Contractor and Project Manager, Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, Contractor shall be paid for all Work executed, and any expense sustained, plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including, but not limited to, fees and charges of engineers, Architect/Engineers, attorneys and other professionals and court costs).

## **ARTICLE 13. RESPONSIBILITY FOR WORK AND INDEMNIFICATION**

**13.1 CONTRACTOR AND SUBCONTRACTORS SHALL INDEMNIFY AND HOLD HARMLESS OWNER, OWNER'S OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT, MEDIATION ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RESULTING FROM THE NEGLIGENT PERFORMANCE OF THE WORK, AND THAT ANY SUCH CLAIM, COST, LOSS OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THE REFROM, CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH ANY OF THE WORK OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.**

**13.2 IN ANY AND ALL CLAIMS AGAINST OWNER OR ANY OF THEIR/ITS RESPECTIVE REPRESENTATIVES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES BY ANY EMPLOYEE (OR THE SURVIVOR OR PERSONAL REPRESENTATIVE OF SUCH EMPLOYEE) OF CONTRACTOR, ANY SUBCONTRACTOR, SUPPLIER, INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH ANY OF THE WORK OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE**

**LIABLE, THE INDEMNIFICATION OBLIGATION UNDER PARAGRAPH 13.1 SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR ANY SUCH SUBCONTRACTOR, ENGINEER, SUPPLIER OR OTHER INDIVIDUAL OR ENTITY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**

13.3 No assignment by a party hereto of any rights under, or interest in, the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due, and moneys that are due, may not be assigned without such prior consent (except to the extent that this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

13.4 Owner and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

13.5 The invalidity or unenforceability of any provision of the Contract Documents shall not affect the validity or enforceability of any other provision of the Contract Documents.

13.6 This Construction Agreement and the Contract Documents are subject to all applicable laws, statutes, codes, ordinances, rules and regulations.

13.7 In the event of default by Contractor under the Contract Documents, Owner shall have all rights and remedies afforded to it at law or in equity to enforce the terms of the Contract Documents. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

13.8 If any action at law or in equity is necessary by Owner or Contractor to enforce or interpret the terms of the Contract Documents, the prevailing party shall be entitled to

reasonable attorneys' fees and costs and any necessary disbursements in addition to any other relief to which such party is entitled.

13.9 These Contract Documents are governed by the laws of the State of Texas and the parties agree that venue for all lawsuits arising from these Contract Documents shall lie in Bexar County, Texas.

13.10 PARTIES represent and warrant that they are authorized and qualified to conduct business in the State of Texas and the execution delivery and performance of this Agreement has been duly authorized and this Agreement constitutes the legal, valid and binding obligations of the PARTIES, enforceable against the PARTIES in accordance with its terms.

SAMPLE

IN WITNESS WHEREOF, the parties hereto have signed this Construction Agreement. One counterpart each has been delivered to Owner and Contractor.

This Construction Agreement will be effective on the date of the Notice to Proceed Document.

**OWNER:**  
**Port Authority of San Antonio**

**CONTRACTOR:**  
**CONTRACTOR**

By: \_\_\_\_\_  
Jim Perschbach  
President & CEO

By: \_\_\_\_\_  
NAME  
TITLE

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

**907 Billy Mitchell Boulevard**  
**San Antonio, Texas 78226-1802**

**ADDRESS**  
**CITY, STATE, ZIP CODE**

**ATTACHMENT “A”**

**PROJECT NAME**  
**CONTRACTOR – CONTRACT NUMBER**

*(refer to the Contractor’s Proposal,  
attached hereto and made a part hereof this Agreement)*

SAMPLE

**EXHIBIT "1"**  
**STANDARD/SUPPLEMENTARY GENERAL CONDITIONS**

SAMPLE

**STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION  
CONTRACT**

Prepared by

The Port Authority of San Antonio.

as an Adaptation From the 1983 Base Document  
Prepared by Engineers Joint Contract Documents  
Committee

and originally

Issued and Published Jointly By:

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

A practice division of the

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

CONSTRUCTION SPECIFICATION INSTITUTE

The base document from which this adaptation  
was prepared (1983 edition) was approved and  
endorsed by:

The Associated General Contractors of America

## TABLE OF CONTENTS FOR STANDARD GENERAL CONDITIONS

Article  
Number  
Title

### DEFINITIONS

2	PRELIMINARY MATTERS
3	CONTRACT DOCUMENTS: INTENT, AMENDING AND REUSE
4	AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS
5	BONDS AND INSURANCE
6	CONTRACTOR'S RESPONSIBILITIES
7	OTHER WORK
8	OWNER'S RESPONSIBILITIES
9	OWNER'S STATUS DURING CONSTRUCTION
10	CHANGES IN THE WORK
11	CHANGE OF CONTRACT PRICE
12	CHANGE OF CONTRACT TIME
13	WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK
14	PAYMENTS TO CONTRACTOR AND COMPLETION
15	SUSPENSION OF WORK AND TERMINATION
16	TIME FOR COMPLETION AND LIQUIDATED DAMAGES
17	MISCELLANEOUS

## GENERAL CONDITIONS

**SCOPE.** The Standard General Conditions of the Construction Contract prepared by the National Society of Professional **Architect/Engineer's** (NSPE-1910-8, 1983 Edition) as amended and adapted for local conditions by the Port Authority of San Antonio to meet local requirements, shall form a part of this Contract, together with any following Supplementary General Conditions. Any following Supplements modify change, delete, or add to these General Conditions. Where any part of the General Conditions is modified or voided by any Supplementary General Conditions, the unaltered provisions of that part shall remain in effect.

### ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**Abbreviations** - Wherever reference is made to standard specifications, standards of quality or performance, as established by a recognized national authority, the reference may be by initials as generally recognized throughout the industry.

**Addendum** - Written or graphic instruments issued prior to the opening of Bids which clarify, correct, supplement or change the bidding documents or the Contract Documents. These Addendum(s) shall become a part of the Contract Documents and modify the drawings, specifications or other bid documents as indicated. No verbal changes in the Work as shown or described shall become binding.

**Agreement** - The written Construction Agreement between Owner and Contractor covering the Work to be performed; other Contract Documents are attached to the "Agreement" and made a part thereof as provided therein.

**Alternates** - Additions to, deletions from, or changes to requirements for the project, each of which shall be bid separately and shall be included in, or deleted from, the Contract at the discretion of OWNER.

**Application for Payment** - The form accepted by Architect/Engineer and Owner which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

**Architect/Engineer** -The design firm employed by the Owner is listed in Article 1 of the Contract. Also referred to as A/E.

**Bid** - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

**Bonds** - Bid, Performance and Payment Bonds and any other instruments of security as may be specified by Owner.

**Calendar Day** - A **calendar day** consists of twenty-four hours and is measured from midnight, to the next midnight, and shall constitute a single calendar day.

**Change Order** - A document recommended by ARCHITECT/ENGINEER to the Owner which is signed by Contractor and Owner and authorizes an addition, deletion, or revision, in the Work, or an adjustment in the Contract Price, or the Contract Time, issued on, or after, the Effective Date of the Agreement.

**Contract Documents** - The Construction Agreement, the Bid, Performance, and Payment Bonds, these Standard General Conditions, the Supplementary General Conditions, the Technical Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all amendments, modifications and supplements issued pursuant to paragraphs 3.4 and 3.5, on or after the Effective Date of the Construction Agreement.

**Contract Price** - The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).

**Contract Time** - The number of calendar days (computed as provided in paragraph 17.2, further described in the

**Construction Agreement** or the date stated in the Agreement for the completion of the Work.

**CONTRACTOR** - The person, firm or corporation with whom Owner has entered into the Agreement.

**Defective** - An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Architect/Engineer's recommendation of

final payment (unless responsibility for the protection thereof, has been assumed by Owner at Substantial Completion in accordance with paragraph 14.8 or 14.10).

**Dig Permit** - The process required to be initiated by the Contractor's submittal of the Excavation Clearance Form to Port San Antonio before any work involving penetration of the ground surface is commenced.

**Drawings** - The drawings which depict the character, design, and scope of the Work to be performed and which have been prepared by the Architect/Engineer and are referred to in the Contract Documents.

**Drawing/Plan Clarification** - An answer from the Architect/Engineer, in response to an inquiry from the Contractor, intended to make some requirement(s) of the drawings or plans clearly understood. Drawing/plan clarifications may be sketches, drawings, or in narrative form and will not change any requirements of the drawings or plans. Responses to Contractor inquiries shall be as outlined in the Article "Requests for Information" of these General Conditions.

**Effective Date of the Agreement** - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by Owner.

**Architect/Engineer** - The person, firm or corporation named as "Architect/Engineer" in the Agreement.

**Field Order** - A written order issued by **Owner's Representative** which orders minor changes in the Work in accordance with paragraph 9.5, but which does not involve a change in the Contract Price or the Contract Time.

**Furnish** - To supply at the jobsite the material, equipment, etc., referred to in the **technical specifications** and/or drawings.

Installation is not required of the supplier by the specifications, but shall be arranged for by the General Contractor.

**General Requirements** - Sections of Division 1 of the Specifications. In the case that a conflict exists between the Division 1 Specifications and these General Conditions, these General Conditions take precedent.

**Hazardous Condition** - The presence at the Site hazardous waste, including but not limited to PCB's, Petroleum products or radioactive materials in such quantities or circumstances that there is a danger to persons or property.

**Laws and Regulations; Laws or Regulations** - Laws, rules, regulations, ordinances, codes and/or orders.

**Non-Conformance Notice** - A notice issued by the Owner documenting that the work or some portion thereof has not been performed in accordance with the requirements of the contract documents. Payment shall not be made on any portion of the work for which a non-conformance notice has been issued and the work not corrected to the satisfaction of the Owner. Upon receipt of a non-conformance notice the Contractor shall provide a written response to non-conformance notice within five (5) working days after receipt of the notice. The Contractor's response shall detail either (a) why Contractor believes that the work was performed in accordance with the contract documents or (b) what corrective action it intends to take, at their sole expense, to correct the non-conforming work. If the Contractor disputes issuance of the notice, the Owner has five (5) working days in which to respond by either (a) withdrawing the notice on non-conformance or (b) directing the Contractor to correct the work. Such determination by the Owner shall be final and conclusive of the matter **if in accordance with the applicable contract documents**. If directed to correct the work, the Contractor shall do so within five (5) working days after receipt of such direction from the Owner, or such other time as may be agreed to with the Owner.

**Notice of Award** - The written notice by Owner to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.

**Notice to Proceed** - A written notice given by **Contracting Officer** to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents.

**OWNER** - as listed in the Contract

**OWNERS REPRESENTATIVE** - as described in Article 5 of the Contract

**Partial Utilization** - Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.

**Project** - The total construction of the Work to be provided under the Contract Documents, which may be a wholly integrated facility, or a part thereof, as indicated elsewhere in the Contract Documents.

**Project Communications** - Routine written communications between the Owner and the Contractor shall be in letter, field memo, or fax format. Such communications shall not be identified as Requests for Information not shall they substitute for any other written requirement pursuant to the provisions of these contract documents.

**Provide** - To furnish and install the material, equipment, etc., referred to in the Contract Documents in the location shown or approved at the job.

**Requests for Information** -A request from the Contractor or one of its Subcontractors, to the Architect/Engineer, seeking an interpretation or a clarification of some requirement of the contract documents.

**SCHEDULE** - A software driven program in a time-scale format with a detailed breakdown showing the proposed dates of commencement and completion of the work components required under the contract documents. The program shall indicate the relationships of the work items using the critical path method of scheduling. Also referred to as Overall Project Schedule or OPS.

**Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by, or for Contractor, to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by Contractor to illustrate material or equipment for some portion of the Work.

**Specifications** - Those portions of the Contract Documents prepared by the ARCHITECT/ENGINEER consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work, and certain administrative details applicable thereto.

**Subcontractor** - An individual, firm or corporation having a direct contract with Contractor, or with any other Subcontractor, for the performance of a part of the Work at the site. **Nothing in the Construction Contract between the Owner and Contractor relieves the Subcontractor's responsibility to the Contractor identified in their subcontract agreement.**

**Substantial Completion** - The Work (or a specified part thereof) has progressed to the point where, in the opinion of **Owner's Representative and Architect/Engineer-it** is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended **AND THE CERTIFICATE OF OCCUPANCY (C OF 0) IS ISSUED BY THE PORT;** The terms

"substantially complete" and "substantially completed" as applied to any Work, refer to the Substantial Completion thereof.

**Substitution/Or-Equal Submittals** - A request from the Contractor to substitute a material, article, device, product, fixture, form, type of construction, or process called for in the contract documents with another item that shall be substantially equal in all respects to that so indicated or supplied.

**Supplementary General Conditions** - The part of the Contract Documents which amends or supplements these General Conditions.

**Supplier** - A manufacturer, fabricator, provider, distributor, material man or vendor.

**SMWBE** (Small, Minority, Women Owned Business Enterprises) Participation -Policy established by the Owner's Board of Directors to involve qualified small business and local business enterprises to the fullest extent possible in the selection of professional, construction and other discretionary contracts.

**Task Order** – Change issued by the Owner to the Contractor that amends the contract scope, that may include an adjustment in the Contract Price or the Contract Time, issued on, or after, the Effective Date of the Agreement.

**Technical Specifications** – Division 1 through 16 Specifications produced by the Architect/Engineer that are part of the Contract Documents.

**Testing Laboratory** - agency hired by the Owner to perform Quality Assurance inspections.

**Underground Facilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

**Unit Price Work** - Work to be paid for on the basis of unit prices.

**Testing Agency** - The person, firm or corporation named as such in the Agreement.

**Work** - The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents. Work is the result of the Contractor performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

**Work Directive Change** - A written directive to CONTRACTOR, issued on, or after the Effective Date of the Agreement, and signed by Owner or designated representative ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed, as provided in paragraph 4.2 or 4.3, or to emergencies under paragraph 6.22. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price, or Contract Time, as provided in paragraph 10.2.

**Working Day** - A weekday (Monday through Friday, inclusive) in which weather conditions are such that Work can be performed in a normal manner. Owner designated holidays shall not be considered working days. **Normal working hours are considered to be between 7:00 AM and 5:00 PM. Contractor must obtain prior approval from the Owner's Representative for work outside those hours.**

**Written Amendment** - A written amendment of the Contract Documents, signed by **Owner's Representative** and Contractor on, or after, the Effective Date of the Agreement, and normally dealing with the non-engineering or non-technical, rather than strictly Work-related, aspects of the Contract Documents.

## **ARTICLE 2. PRELIMINARY MATTERS**

### **Delivery of Bonds:**

2.1 When Contractor delivers the executed Agreements to Owner, Contractor shall also deliver to Owner such Bonds as Contractor may be required to furnish in accordance with paragraph 5.1.

### **Copies of Documents:**

2.2 **OWNER'S REPRESENTATIVE** shall furnish to Contractor up to **three (3)** copies (unless otherwise specified in the Supplementary General Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request by Contractor, at the cost of reproduction to be paid by Contractor.

### **Commencement of Contract Time; Notice to Proceed:**

2.3 The Contract Time will commence to run on the date indicated in the Notice to Proceed. A Notice

to Proceed may be given (unilaterally by Owner) at any time after the Effective Date of the Construction Agreement.

### **Starting the Project:**

2.4 Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

### **Before Starting Construction:**

2.5 See Article 4. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to Owner's Representative and Architect/Engineer any conflict, error or discrepancy, which Contractor may discover or is made known to Contractor, and shall obtain a written interpretation or clarification from Architect/Engineer before proceeding with any Work affected thereby. Contractor shall be in default to Owner for failure to report any conflict, error or discrepancy in the Contract Documents, if Contractor had actual knowledge thereof, or should have reasonably known thereof. No Work shall be delayed or postponed pending resolution of any disputes or disagreements regarding the Architect/Engineer's written interpretation or clarification in accordance with the paragraph 6.29 of the General Terms and Conditions.

2.6 Within ten days after the Effective Date of the Construction Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to **Owner's Representative** for review:

2.6.1. Overall Project Schedule (described in Article 2.9.1 below)

2.6.2. a preliminary schedule of Shop Drawing submissions (see Article 6.24);

2.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work, which will be confirmed in writing by Contractor at the time of submission.

2.6.4. At least ten days before submission of the first Application for Payment, a conference attended by Contractor, Owner's Representative and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. The finalized Schedule will be acceptable to Owner's Representative as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on Owner's Representative responsibility for the progress or scheduling of the Work, nor relieve CONTRACTOR from full responsibility therefore. The finalized schedule of Shop Drawing submissions will be acceptable to Architect/Engineer through the Owner's Representative as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to Owner's Representative as to form and substance

2.7 On the date of execution of the Agreement, Contractor shall deliver to Owner's Representative, certificates (and other evidence) of insurance which Contractor is required to purchase and maintain in accordance with paragraphs 5.3, 5.4, and 5.6.

Pre-Construction Conference:

2.8 After the Effective Date of the Agreement, but before Contractor starts the Work at the site, a conference attended by Contractor, Owner's Representative, Architect/Engineer and its consultants, Testing Lab and others as appropriate will be held to discuss the schedules referred to in paragraph 2.6, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. The agenda for the Pre-Construction Conference is included in the Supplemental General Conditions. The Contractor will prepare minutes of the meeting and distribute to the participants.

2.9 Schedules Preparation and Updating:

2.9.1 An Overall Project Schedule (as defined in Article I - Definitions) shall be prepared in a time scale format that shows:

- 2.9.1.1 Milestone dates identified in the Contract (if any)
- 2.9.1.2 All pertinent construction activities and durations
- 2.9.1.3 Starting dates and completion dates for each activity
- 2.9.1.4 Successor and predecessor relationships
- 2.9.1.5 Identification of critical path activities
- 2.9.1.6 Float for non-critical activities

2.9.1 Upon acceptance of the schedule by the Owner's Representative as described in Article 2.6.4, the Contractor will utilize the Overall Project Schedule to develop two-week look ahead schedules that will be updated weekly and issued in the Weekly Coordination Meeting.

2.9.2 The Contractor will track the actual progress of the work against the schedule and update the OPS on a monthly basis, at a minimum, or as frequently as necessary to maintain the progress toward achieving the milestone dates and contract completion date.

2.9.3 As part of the OPS update, a Recovery Schedule must be prepared to bring any activities behind schedule back on schedule, including initiating overtime for the activities behind schedule and implementing more concurrent activities. It is unacceptable to compress the duration dates of the succeeding activities in the Recovery Schedule to regain the lost time.

2.9.4 An updated OPS is part of the Contractor's submittal of the monthly Application for Payment.

ARTICLE 3. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent:

3.1 The Contract Documents comprise the entire agreement between Owner and Contractor

concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project. Modifications to the: (i) Construction Agreement between the Owner and Contractor and (ii) Standard General Conditions are sometimes included in the Architect/Engineer's Drawings, Specifications, Addenda, and other documents. For the purpose of clarity and consistency, Owner and Contractor desire to have a logically organized and comprehensive final construction agreement that can be referred to and relied upon during the construction process without referring to other documents that sometimes inadvertently contain conflicting language. Therefore, Owner and Contractor agree that any reference in the Architect/Engineer's Drawings, Specifications, Addenda, or other documents that would modify the (x) Construction Agreement between the Owner and Contractor, or (y) these Standard General Conditions are void and of no effect.

3.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied, whether or not specifically called for. When words, which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, whether such reference is specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement, if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner, Contractor or Architect/Engineer, or any of their consultants, agents or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to Owner's Representative or Architect/Engineer, or any of Architect/Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16. Clarifications and interpretations of the Contract Documents shall be issued with assistance of Architect/Engineer as provided in paragraph 9.4.

3.3 If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents or a conflict, error or discrepancy is made known to Contractor, Contractor shall immediately report same to the Owner's Representative and Architect/Engineer in writing, and before proceeding with the Work affected thereby, shall obtain a written interpretation or clarification. Contractor shall be in default to Owner for failure to report any conflict, error or discrepancy in the Contract Documents if Contractor had actual knowledge thereof.

3.4 If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: The Owner-Contractor Agreement; any Supplementary Conditions; the General Conditions; the Specifications; the Drawings; as between figures given on drawings and the scaled measurements, the figures shall govern; as between large-scale drawings and small-scale drawings, the larger scale shall govern. In the event a conflict is discovered that is not covered by the above precedence, the most stringent requirement shall apply unless the Contractor shall have asked for and obtained a decision, in writing, from the Architect/Engineer before commencing work.

### **Amending and Supplementing Contract Documents:**

3.5 The Contract Documents may be amended to provide for additions, deletions and revisions in the

Work, or to modify the terms and conditions thereof, in one or more of the following ways:

- 3.5.1. a formal Written Amendment,
- 3.5.2. a Change Order (pursuant to paragraph 10.4), or
- 3.5.3. a Work Directive Change (pursuant to paragraph 10.1).

As indicated in paragraphs 11.2 and 12.1, Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

3.6 In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways. The Contractor is not to proceed with any of the below listed changes that involve changes to cost or time without prior authorization from the Owner:

- 3.6.1. a Field Order (pursuant to paragraph 9.5),
- 3.6.2. Architect/Engineer's approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27)
- 3.6.3. Architect/Engineer's issuance of Clarification Drawing or response to Request for Information, or
- 3.5.3. Owner's Representative's written interpretation or clarification (pursuant to paragraph 9.4).

**Reuse of Documents:**

3.7 Neither Contractor nor any Subcontractor or Supplier, or other person or organization performing or furnishing any of the Work shall have, or acquire, any title to, or Ownership rights in, any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by, or bearing the seal of Architect/Engineer; and they shall not reuse any of them on extensions of the Project, or any other project, without written consent of Owner and Architect/Engineer and specific written verification or adaptation by Architect/Engineer. Upon completion of the project, further use of all drawings, specifications, or other derivative documents (or copies of any thereof) without written consent of Owner is prohibited.

**ARTICLE 4. AVAILABILITY OF LANDS: PHYSICAL CONDITIONS: REFERENCE POINTS**

**Availa  
bility  
of  
Lands:**

4.1 Owner shall furnish the lands upon which the construction is to be performed, all necessary rights-of-way, easements and approaches for the Work and for the proper handling of materials and supplies, Owner shall also provide a property survey, applicable documentation of the existing facilities as required, applicable soils report, and such priority or other orders of public authorities as may be necessary to purchase materials and complete the Work described herein. Owner shall not require Contractor to incur any cost associated with the provisions of the items required and described in this paragraph. Contractor shall be entitled to rely upon the accuracy and adequacy of any reports and surveys furnished by the Owner, however, in the event that the Contractor determines a discrepancy exists in any report and/or survey provided in the description in this paragraph, Contractor shall immediately communicate this discrepancy and seek clarification prior to executing any associated Work. Owner shall be responsible for timely responding to Contractor, so as not to impact adversely the schedule of Work or the completion dates targeted. If Contractor believes that any delay in Owner's furnishing these lands, rights-of-way, or easements, entitles Contractor to an extension of the Contract Time, Contractor may make a claim therefore as provided in Article 12. Contractor shall provide at his own non-reimbursable cost for any and all additional lands, and access thereto, that may be required for temporary construction facilities or storage of materials and equipment

4.2 Contractor's Scope of Services excludes any Work relating to hazardous substances at the site when Contractor begins construction ("Existing Hazardous Conditions"). Owner shall be responsible for any Existing Hazardous Conditions at the site. Contractor shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to Existing Hazardous Conditions or asbestos in any form at the project site. In the event Contractor discovers or it is made known to Contractor that Existing Hazardous Conditions exist, then Contractor shall immediately (i) stop all Construction in connection with such Existing Hazardous Conditions in any area affected and (ii) notify OWNER (and thereafter confirm such notice in writing). OWNER shall promptly determine the necessity of retaining a qualified expert to evaluate such notice in writing. OWNER shall promptly determine the necessity of retaining a qualified expert to evaluate such Existing Hazardous Conditions or take corrective action, if any. CONTRACTOR shall not be required to resume construction with such Hazardous Conditions or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice (i) specifying that such Hazardous Conditions and any affected area is or has been rendered safe for the resumption of construction, or (ii) specifying any special condition under which such construction may be resumed safely. OWNER AGREES TO DEFEND, PROTECT, INDEMNIFY AND SAVE HARMLESS CONTRACTOR, ITS RELATED ENTITIES DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS AND INSURERS FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ATTORNEYS, PROFESSIONAL, AND ENGINEERS) FROM ALL CLAIMS ARISING FROM THE BREACH OF ITS WARRANTIES OR OBLIGATIONS SET FORTH IN THIS PARAGRAPH.

### **Physical Condition:**

4.2.1 The Contractor should examine all reports, investigations and drawings of physical conditions pertaining to subsurface conditions, existing surface or subsurface structures and underground facilities that are made available to the Contractor and that the Architect/Engineer used in the preparation of the Contract Documents. The Contractor should exercise diligence in uncovering this work (as described in 6.20.5).

4.2.2 **Report of Differing Conditions:** If Contractor believes that:

4.2.2.1 any technical data on which Contractor is entitled to rely is inaccurate, or

4.2.2.2 any physical condition uncovered or revealed at the Work site differs materially from that indicated, reflected, or referred to, in the Contract Documents,

then Contractor shall promptly, after becoming aware thereof, and before performing any Work in connection therewith notify Owner in writing about the inaccuracy or difference.

**4.2.3 Architect/Engineer's Review:** Architect/Engineer through Owner's Representative will promptly review the pertinent conditions, determine the necessity of obtaining any additional explorations or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Architect/Engineer's findings and conclusions.

**4.2.4 Possible Document Change:** If Architect/Engineer concludes that there is a material error in the Contract Documents, or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change, or a Change Order, will be issued as provided in Article 10 to reflect and document the consequences of any inaccuracy or difference.

**4.2.5 Possible Price and Time Adjustments:** In each such case, an increase or decrease in the Contract Price, or an extension or shortening of the Contract Time, or any combination thereof, may be allowable to the extent that they are attributable to any such inaccuracy or difference. If Owner and Contractor are unable to agree as to the amount or length thereof, a claim may be made therefore as provided in Articles 11 and 12. All increases or decreases in the Contract Price shall be governed by all state **law and Owner's Procurement Policy**.

### **Reference Points:**

4.4 From the survey points described in paragraph 4.1, the Contractor shall provide the additional engineering surveys to establish reference points for construction, which in Owner's Representative's and Architect/Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work (unless otherwise specified in the Technical Specifications), shall protect and preserve the established reference points, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Owner's Representative whenever any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

## **ARTICLE 5. BONDS AND INSURANCE**

### **Performance and Other Bonds:**

Subsequent to the award and within three (3) days after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the Owner a Construction Agreement in the form included in the contract documents in such number of copies as the Owner may require.

Having satisfied all conditions of award as set forth elsewhere in these documents, the successful Bidder shall, within the period specified in the preceding paragraph, furnish a Performance Bond and Payment Bond, in accordance with the parameters stated in the Contract.

5.1 Contractor shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. **These bonds shall remain in effect until one year after the date when final payment becomes due**, except as otherwise provided by Law or Regulation, or by the Contract Documents. Contractor shall also furnish such other Bonds as may be required by the Supplementary General Conditions and include extended warranty periods. All Bonds shall be in the forms prescribed by Law or Regulation, or the Contract Documents, and be executed by such sureties as are authorized to do business in the State of Texas. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act. Bond amount is to be updated with issuance of each Change Order.

5.2 If the surety on any Bond furnished by Contractor is declared a bankrupt, or becomes insolvent, or its right to do business is terminated in any state where any part of the project is located, or it ceases to meet the requirements of paragraph 5.1, Contractor shall within fifteen (15) days thereafter, substitute another Bond or Surety, both of which must be acceptable to Owner.

#### Contractor's Liability Insurance:

5.3 Contractor shall purchase and maintain such commercial general liability and other insurance as is appropriate for the Work being performed and furnished, and as will provide protection from claims set forth below, which may arise out of, or result from, Contractor's performance and furnishing of the Work, and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, to perform or furnish any of the Work, or by anyone for whose acts and/or omissions any of them may be liable:

5.3.1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;

5.3.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

5.3.3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

5.3.4. Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason;

5.3.5. Claims for damages, other than to the Work itself, because of injury to, or destruction of, tangible property wherever located, including loss of use resulting therefrom; and

5.3.6. Claims for damages because of bodily injury or death of any person, or property damage arising out of the Ownership, maintenance or use of any motor vehicle.

The insurance required by these paragraphs 5.3 and 5.5 shall include the specific coverage's and be written for not less than the limits of liability and coverage's specified by Owner herein or as may be modified by the Supplementary General Conditions on a project by project basis, or required by law, whichever is greater. The commercial general liability insurance shall include completed operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall be of an "occurrence" type, and shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused, until at least thirty (30) days prior written notice has been given to: Owner, Owner's Representative by certified mail c/o Authority, Contracting Department, 907 Billy Mitchell Blvd., San Antonio 78226-1802. All such insurance shall remain in effect until final payment, and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with paragraph 13.12. All insurance coverage's furnished under the Contract Documents shall include the Owner, , City of San Antonio, and any of their respective officials, officers, partners, board members, lender, agents and employees, as additional insureds and hereinafter be referred to as "additional insureds."

### **Contractual Liability Insurance:**

5.4. The commercial general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to Contractor's obligations under paragraphs 6.30 and 6.31 addressing "indemnification."

5.5. **Specific Coverages of Insurance Required by Owner.**

5.5.1. **Workmen's Compensation and Employer's Liability.** This insurance shall protect the laborer and insure the Contractor, and insulate the additional insured, against all claims under applicable state workmen's compensation laws, pursuant to Section 5.3.1. The additional insured shall also be protected under an Employer's Liability policy against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workmen's compensation law. This Employer Liability policy shall include an "all states" endorsement.

The liability limits shall not be less than that stated in the Contract

5.5.2. **Mandatory TWCC Rule 28 TAC Sect. 110.110(c)(7) Language**

(A) **Definitions:**

**Certificate of coverage ("certificate")** - A copy of a certificate of insurance showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

**"Duration of the project"** - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the Owner.

**"Persons providing services on the project"** ("**subcontractor**" in § 406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, Owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project.

**"Services"** - include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (B) The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts for all employees of the Contractor providing services on the project, for the duration of the project.
- (C) The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
- (D) If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- (E) The Contractor shall obtain from each person providing services on a project, and provide to the Owner.
  - (1) a certificate of coverage, prior to that person beginning work on the project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (F) The Contractor shall retain all required certificates of coverage for the duration of the project and for three years thereafter.
- (G) The Contractor shall notify the Owner in writing by certified mail or personal delivery within 10 days after the Contractor knew, or should have reasonably known, of any change that materially affects the provision of coverage of any person providing services on the project.
- (H) The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and

report lack of coverage. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the text provided by the Commission on the sample notice, without any additional words or changes.

- (I) The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for three years thereafter;
  - (6) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) contractually require each person with whom it contracts, to perform as required by clauses (1)-(1-7) of this subparagraph, with the certificates of coverage to be provided to the person for whom they are providing services.
- (J) By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (K) The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

5.5.3. Comprehensive Automobile Liability. This insurance shall be written in comprehensive form and shall protect the Contractor and the additional insured against all claims described under Section 5.3.7. of the General Conditions of the Contract Documents and arising from the use of motor vehicles, and shall cover, on or off the site, all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

The liability limits shall not be less than that stated in the Contract.

5.5.4. Commercial General Liability. This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Contractor and the additional insured against all claims

described in Sections 5.3.2., 5.3.3., 5.3.4., and 5.3.5. of the General Conditions of the Contract Documents arising out of any intentional or negligent act and/or omissions of the Contractor or his agents, employees, or subcontractors. This policy shall also include protection against claims insured by usual personal injury liability coverage.

**The liability limits shall not be less than that state in the Contract.**

If the Contractor's work, or work under his direction, requires blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, exploding, collapse of structures, or damage to underground property.

5.5.5. **Umbrella Liability Policy.** This insurance shall protect the Contractor and the additional insured against all claims in excess of the limits provided under the employer's liability, comprehensive automobile liability, and commercial general liability policies. **The liability limits of the umbrella policy shall not be less than that stated in the Contract.** The policy shall be an "occurrence" type policy.

5.5.6 **Transportation Insurance.** This insurance shall be of the "all risks" type and shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to equipment and materials in transit to the job site and until the Owner receives the equipment and materials at the job site. The coverage amount shall be not less than one-half of the full amount of the total contract, but not to exceed \$250,000.00. Transportation insurance shall provide for losses to be payable to the Contractor and the Owner as their interests may appear.

5.5.7. All policies required under Section 5.5 herein shall contain a "cross liability" or "severability of interest" clause or endorsement. Notwithstanding any other provision of these policies, the insurance afforded shall apply separately to each insured, named insured, or additional insured with respect to any claim, suit, or judgment made or brought by or for any other insured, named insured, or additional insured as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount or amounts for which the insurer would have been liable had only one insured been named.

5.5.8. Contractor shall require each of his Subcontractors to procure and maintain during the life of his subcontract, Subcontractor's Commercial General Liability and Property Damage Insurance of the type specified in subparagraphs 5.5.1., 5.5.3., 5.5.4., 5.5.5. and paragraph 5.6 hereof, in amounts approved by Owner.

5.5.9. The insurance required under subparagraphs 5.5.3., 5.5.4., 5.5.5. and paragraph 5.6 hereof shall provide adequate protection for Contractor and his Subcontractors respectively against damage claims which may arise from operations under this Contract, whether such operation be by the insured or by anyone directly or indirectly employed by him, and also, against any special hazards which may be encountered in the performance of this Contract.

5.5.10. Contractor shall not commence any work under this Contract until he has obtained all the insurance coverage required under this Article and such insurance has been approved by Owner, nor shall Contractor allow any Subcontractor to commence work on this Contract until the insurance required by the Subcontractor has been so obtained and approved.

### **Property Insurance:**

5.6. Unless otherwise provided in the Supplementary General Conditions, Contractor shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to any deductible amounts as may be provided in the Supplementary General Conditions, or required by Laws and Regulations). This insurance shall include the interests of Owner, Contractor, and Subcontractors, all of whom shall be listed as additional insured parties, shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplementary General Conditions, and shall include damages, losses and expenses arising out of, or resulting from, any insured loss, or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of Owner's personnel, Architect/Engineers, attorneys and other professionals). If not covered under the "all risk" insurance, or otherwise provided in the Supplementary General Conditions, Contractor shall purchase and maintain similar property insurance on portions of the Work stored on and off the site, or in transit, when such portions of the Work are to be included in an Application for Payment. The policies of insurance required to be purchased and maintained by Contractor in accordance with this paragraph shall be of an "occurrence" type, and contain a provision that the coverage afforded will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to Owner.

(Sections 5.7  
- 5.10 **Reserved**)

### **Waiver of Rights:**

5.11. Waiver:

5.11.1. Contractor waives all rights against Owner for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to paragraph 5.6, and any other property insurance applicable to the Work, and also waives all such rights against the Subcontractors, and all other parties named as insured in such policies for losses and damages so caused. As required by paragraph 6.11, each subcontract between Contractor and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of Owner and Contractor, and all other parties named as insured.

5.11.2. Contractor intends that any policies provided in response to paragraph 5.6 shall protect all of the parties insured, and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions that in the event of payment of any loss or damage, the insurer will have no rights of recovery against any of the parties named as insured or additional insured, and if the insurers require separate waiver forms to be signed by any Subcontractor, Contractor will obtain the same.

(Section 5.12-5.13 **Reserved**)

### **Acceptance of Insurance:**

5.14. If Owner discovers any obvious defect, or has objection to the coverage afforded by the insurance required to be purchased and maintained by Contractor in accordance with paragraphs 5.3, 5.4, 5.5 and 5.6, on the basis of it not complying with the Contract Documents, Owner will attempt to notify Contractor in writing thereof within ten (10) days of the date of delivery of such certificates to Owner in accordance with paragraph 2.7. Contractor shall provide to the Owner such additional information in respect of insurance provided by Contractor as the Owner may reasonably request. Failure on the part of the Owner or its agents to detect an insurance deficiency as compared to the insurance requirements of the Contract shall not constitute a waiver by the Owner of the insurance requirements which Contractor and/or Subcontractors must meet to be in compliance herewith.

### **Partial Utilization - Property Insurance:**

5.15. If Owner finds it necessary to occupy or use a portion, or portions, of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10. The insurers of Contractor providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled, or lapse, on account of any such partial use or occupancy. Owner will be responsible for all costs of insurance associated with such change of use.

## **ARTICLE 6. CONTRACTOR'S RESPONSIBILITIES: MISCELLANEOUS:**

### **6.01 DAILY LOGS**

Contractor shall submit to the Owner's Representative on a monthly basis logs (completed daily by the Contractor) containing but not limited to; summary of work accomplished, number of employees and subcontractors employees, number of equipment pieces employed, any known issues impacting the work, accidents or safety issues, weather, etc. A form will be agreed upon at the pre-contraction meeting. The Owner's Representative may review the daily logs on an interim basis to verify that they are being properly maintained by the Contractor.

### **6.02 CONTRACTOR INTERACTION WITH MEDIA**

Contractor and all Subcontractors shall direct all media visits or questions to Owner through Owner's Representative.

### **6.03 CLEAN-UP**

Contractor to provide daily cleanup of the construction site, including but not limited to; providing appropriate dumpster, site dust control, etc.

### **6.04 RECORD DOCUMENTS**

Contractor shall maintain in a safe place at the job site, one record copy of all Drawings, Specifications, Addendums, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. The updated Record Drawings (or As-Builts) will show all changes for the Contractor's work and all Subcontractors' work. These Record Documents, together with all approved samples, and a counterpart of all approved Shop Drawings, will be available to Owner's Representative and Architect/Engineer for reference. The Owner's Representative or Architect/Engineer may review the Record Drawings on an interim basis to verify that they are being properly maintained by the Contractor. Failure to properly maintain the Record Drawings will be grounds for the Owner to delay monthly payment to the Contractor until these drawings are brought up to compliance. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to Owner's Representative for the Architect/Engineer review prior to acceptance by the Owner as necessary requirements for Final Payment.

#### 6.05 CONSTRUCTION COORDINATION MEETINGS

6.05.1 **Initial Pre-Construction Conference** - see Article 2.8

6.05.2 **Continuing Pre-Construction Conferences** -Prior to the start of any new area of Work, the Contractor will conduct a meeting with the primary Subcontractor, and any other Subcontractors that require coordination, the Owner's Representative (and Architect/Engineer, its consultants and Testing Lab, and anyone the Owner's Representative feels necessary) to review:

6.05.1 Contractor's Safety Program

6.05.2 Status of required Submittal Approvals

6.05.3 Contractor's and Subcontractor's Quality Control Program and required testing

The Contractor will prepare minutes of the meeting and distribute to the participants.

6.05.3 **Weekly Construction Coordination Meeting** - Contractor shall have a representative with decision making authority for an on-site weekly meeting. Contractor shall have a representative from all active Subcontractors available at the meeting or be able to represent them with accurate information. The status of the two-week look ahead schedule will be discussed, in addition to job safety and other coordination matters. The Owner's Representative may attend these meetings and include his discretion. The Contractor will prepare minutes of the meeting and distribute to the participants.

6.05.4 **Monthly Owner/Contractor Meeting** - Owner and Contractor will meet on a monthly basis to review the following:

6.05.4.1 Status of Overall Project Schedule

6.05.4.2 Pending issues and Action Items

6.05.4.3 Pending Change Order requests

- 6.05.4.4 Status of required logs and Record Documents maintenance
- 6.05.4.5 Monthly Application for Payment

Contractor will prepare minutes of the meeting and distribute to the participants. Prior to the next Monthly Meeting, Contractor will update items from prior meeting for use as agenda for new meeting.

## 6.06 CONTRACTOR'S QUALITY CONTROL PROGRAM

### **Supervision and Superintendence:**

6.1. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

6.2. Contractor shall maintain on the Work at all times during its progress, a competent resident superintendent, who shall not be replaced without written notice to Owner, except under extraordinary circumstances. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. It is expressly understood by Contractor that all communications given to the Contractor's Project Manager shall be as binding as if given to Contractor. **Prior to the start of construction, the Contractor will provide telephone numbers for contacting their representatives in the case of an emergency on a 24 hr./day and 7 days/week basis.**

- 6.2.1. If in the Owner's opinion, the superintendent does not perform per the expectations outlined in paragraphs 6.1 and 6.2 above, the Contractor shall replace, at no cost to the Owner or disruption to the project, the superintendent at the request of the Owner.

### **Labor, Materials and Equipment:**

6.3. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and Contractor will not permit overtime work, or the performance of Work on Saturday, Sunday, or any legal holiday, without Owner's written consent given after prior written notice by Contractor to Owner's Representative or after hours approved by Owner.

Preference employment shall be given to resident citizens of the area where such persons are available and fully qualified to perform the Work to which the employment relates.

6.3.1. Contractor shall acquaint himself with all matters and conditions concerning the site and existing construction observable by visual walk through inspection of the site and existing conditions. After a Construction Agreement to perform the Work has been signed by Contractor, it shall then be his responsibility to provide satisfactory Work that will meet the full intent of the Contract Documents. Contractor shall then pursue this Work with the other trades so that all phases of the Work may be properly coordinated without delays or damage to any parts of the Work. Contractor may rely on the site information supplied by the Owner and Architect/Engineer.

6.4. Unless otherwise specified in the General Requirements, Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.4.1. Contractor shall provide and maintain suitable weathertight, washable, sanitary toilet facilities for all workmen for the entire construction period. Contractor shall comply with all requirements of applicable health authorities. When toilet facilities are no longer required, promptly remove from the site, disinfect and clean the area as required. Contractor shall keep toilet facility swept and supplied with toilet tissue at all times.

6.5. All materials and equipment to be incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Owner's Representative or Architect/Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier, except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to Owner's Representative, Architect/Engineer or its consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 9.14 or 9.15.

Contractor shall notify Owner in writing of any discovered conflict between the manufacturer's directions and the Contract Documents and shall not perform any work on any item until such conflict has been resolved. Upon award of the Contract, Owner will furnish to Contractor a certificate of exemption from the State Comptroller to preserve the Authority's exemption from Limited Sales, Excise and Use Tax in an amount representing that part of the total contract price representative of the value of tangible personal property to be physically incorporated into the project realty. The certificate of exemption must contain a statement to the effect that such materials or property have been, or will be utilized in the performance of the Contract to the full extent of the amount for which a certificate of exemption is requested.

6.5.1. Except where otherwise specified, Contractor shall, at all times, provide protection against weather, so as to maintain all Work, materials, and fixtures free from injury or damages. All new work likely to be damaged shall be covered or otherwise protected as required.

6.5.2. While it is appreciated that Contractor has to maintain continuous construction operations and sequences, it should be understood that the **electric, water, wastewater, HVAC, etc., system(s) to adjacent facilities must function during the construction period with a minimum of inconvenience** on a 24 hour daily basis throughout the year. It is therefore incumbent on Contractor to plan ahead on the basis of integrating his program as far as possible into the normal operating sequence of the system(s). No departure from the normal operating sequence of the system(s) will be allowed except with the specific written agreement of both Owner and Owner's Representative, which will not be

unreasonably withheld.

6.5.3. Contractor shall notify Owner 48 hours in advance of any Work which will be tied into the existing system(s). Method of tie-in shall be submitted to Architect/Engineer through Owner's Representative for his approval prior to any Work being performed. At no time shall contaminated water that has not been disinfected be allowed to seep into the existing waterlines, and at no time shall sewage be allowed to flow into surrounding areas. Connection will be made during times of minimum sewage flows, if required by Project.

6.5.4. Contractor shall coordinate his Work with that of other Contractors whose work may occur at a conflicting time and location. The coordination shall be such that Work will be maintained at a normal rate.

6.5.5. Intentionally Deleted.

6.5.6. Satisfactory access or detour roads shall be provided where necessary due to construction.

6.5.7. Contractor and his own or retained Registered Professional Architect/Engineer shall develop and submit to Owner's Representative Trench Safety System Plan and shall provide any necessary shoring, bracing and/or sheeting to protect persons and property in and around trenches pursuant to Section 756.023 of the Texas Health and Safety Code and OSHA 29 C.F.R. 1926, Subpart P, Vol. 54, No. 209 of the Federal Register, October 31, 1989, pp. 45959-45991, and, as further provided in the Technical Specifications Section entitled "Trench Excavation and Shoring Safety Plan."

6.5.8 Contractor shall provide where necessary adequate barricades and warning devices in conformance with the guidelines for Traffic Control as established by the Texas Department of Transportation ("TDOT") in the Texas Manual on Uniform Traffic Control Devices (TMUTCD), and guidelines provided by Port San Antonio. This provision shall be subsidiary to and included within the rest of the Work in this Contract, and shall not constitute a separate pay item.

6.5.9 Contractor shall provide to Owner the services of a technical representative for Contractor furnished equipment, for a sufficient period after construction to assist in start-up, and initial adjustment of all equipment, and to initially train, advise and consult with Owner's operating personnel, if specifically required by the Project.

6.5.10 All items of equipment required for this Contract shall be bid to provide as part of the price, literature explaining "Operation and Maintenance" of those items of equipment, if required by Project. If a manufacturer does not routinely print such a standard O&M manual, Contractor shall devise and provide Owner with a manual approved in writing by the manufacturer.

### **Substitutes or "Or-Equal" Items:**

6.7.1. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item, or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by Architect/Engineer if sufficient information is submitted by Contractor to allow Architect/Engineer to determine that the material or equipment proposed is equivalent, or equal to, that named. The procedure for review by Architect/Engineer will include the following, as supplemented in the General Requirements

of the Technical Specifications. Requests for review of substitute items of material and equipment will not be accepted by Architect/Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Architect/Engineer through Owner's Representative for acceptance thereof, certifying that the proposed substitute will equivalently perform the functions, and achieve the results, called for by the general design, be substantially similar and of equal substance to that specified, and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute, from that specified, will be identified in the application, and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and any claims of other Contractors affected by the resulting change, all of which shall be considered Architect/Engineering evaluating the proposed substitute. Architect/Engineer may require Contractor to furnish at Contractor's expense, additional data about the proposed substitute.

6.7.2. If a specific means, method, technique, sequence, or procedure of construction is indicated in, or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to Architect/Engineer through Owner's Representative, if Contractor submits sufficient information to allow Architect/Engineer to determine that the substitute proposed is equivalent to that indicated, or required by , the Contract Documents. The procedure for review by Architect/Engineer will be similar to that provided in paragraph 6.7.1 as applied by Architect/Engineer and as may be supplemented in the General Requirements of the Technical Specifications.

6.7.3. Architect/Engineer will be allowed a reasonable time within which to evaluate each proposed substitute. Architect/Engineer will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without Architect/Engineer prior written acceptance, which will be evidenced by either a Change Order or an approved Shop Drawing. Owner may require Contractor to furnish at Contractor's expense, a special performance guaranty, or other surety, with respect to any substitute. Architect/Engineer will record time required by Architect/Engineer's consultants in evaluating substitutions proposed by Contractor, and in making changes in the Contract Documents occasioned thereby. Whether or not Architect/Engineer accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Architect/Engineer and Architect/Engineer's consultants for evaluating each proposed substitute.

### **Concerning Subcontractors, Suppliers and others:**

6.8.1. Contractor shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to Owner and Owner's Representative as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom Owner or Owner's Representative may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom Contractor has reasonable objection.

6.8.2. If any Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to Owner in advance of a specified date, prior to the Effective Date of the Agreement, for acceptance by Owner and if Contractor has submitted a list thereof in accordance with any Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier, or other person, or organization so

identified, may be revoked on the basis of reasonable objection after due investigation, in which case Contractor shall submit an acceptable substitute. The Contract Price may be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued, or Written Amendment signed. All increases or decreases in the Contract Price shall be governed by all state laws and Owner's Procurement Policy. No acceptance by Owner or Owner's Representative of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of Owner or Owner's Representative OR Architect/Engineer to reject defective Work.

6.9. Contractor shall be fully responsible to Owner and Owner's Representative or Architect/Engineer for all acts and/or omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor, just as Contractor is responsible for Contractor's own acts and/or omissions. **Nothing in the Contract Documents shall create any contractual relationship between Owner, City of San Antonio, United States Government or Owner's Representative or Architect/Engineer, and any such Subcontractor, Supplier or other person or organization**, nor shall it create any obligation on the part of Owner, **Owner's Representative or Architect/Engineer** to pay, or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization, except as may otherwise be required by Laws and Regulations.

6.10. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers, or delineating the Work to be performed by any specific trade.

6.11. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and contains waiver provisions as required by paragraph 5.11.

### **Patent Fees and Royalties:**

6.12. *CONTRACTOR SHALL PAY ALL LICENSE FEES AND ROYALTIES AND ASSUME ALL COSTS INCIDENT TO THE USE IN 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 OWNER 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 OWNER IN THE CONTRACT DOCUMENTS. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, AND EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT COSTS) ARISING OUT OF ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE Work, OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE NOT SPECIFIED IN THE CONTRACT DOCUMENTS, AND SHALL DEFEND ALL SUCH CLAIMS IN CONNECTION WITH ANY ALLEGED INFRINGEMENT OF SUCH RIGHTS.*

### **Permits:**

6.13. Unless otherwise provided in any Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the

Work, which are applicable at the time of opening of Bids. Contractor shall pay all charges of utility Owners for connections to the Work, and Owner shall pay all charges of such utility Owners for capital costs that facilitate the project.

Fires shall not be built on the jobsite except by the express consent of Owner and City Fire Marshall.

### **Laws and Regulations:**

6.14.1. Contractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Owner's Representative OR Architect/Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

6.14.2. If Contractor observes that the Specifications or Drawings are at variance with any Laws or Regulations. Contractor shall give Owner's Representative prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If Contractor performs any Work knowing, or having reason to know, that it is contrary to such Laws or Regulations, and without such notice to Owner's Representative, Contractor shall bear all construction related costs arising therefrom; however, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

### **Taxes:**

6.15 "Pursuant to 34 Texas Administrative Code 3.291, in order for the Owner to continue to benefit from its status as a State Sales and Use Tax Exempt Organization, construction contracts must be awarded on a "separated contract" basis. A "separated contract" is one that distinguishes the value of the tangible personal property (materials such as pipe, bricks, lumber, concrete, paint, etc.) to be physically incorporated into the Project realty, from the total contract price. Under the "separated contract" format, the Contractor in effect becomes a "seller" to the Owner of materials that are to be physically incorporated into the project realty. As a "seller", the Contractor will issue a "Texas Certificate of Resale" to the supplier in lieu of paying the sales tax on materials at the time of purchase. The Contractor will also issue a "Certificate of Exemption" to the supplier demonstrating that the personal property is being purchased for resale and that the resale is to the Authority, which is a sales tax exempt entity under Texas Tax Code Section 151.309(5). Contractor should be careful to consult the most recent guidelines of the State Comptroller of Public Accounts regarding the sales tax status of supplies and equipment that are used and/or consumed during Project Work (gas, oil, rental equipment), but that are not physically incorporated into the Project realty. Such items are generally not tax exempt. Contractors that have questions about the implementation of this policy are asked to inquire directly with the State Comptroller of Public Accounts, Tax Administration Division, State of Texas, Austin, Texas 78774 (tel. 512-463-4934). Bidders will not include any federal taxes in bid prices since the Authority is exempt from payment of such federal taxes. "Texas Certificates of Exemption", "Texas Certificates of Resale" and "Texas Sales Tax Permits" are forms available to the Contractor through the regional offices of the State Comptroller of Public Accounts.

6.15.1. On the last page of the Construction Agreement a blank is provided for the Contractor to fill in an amount in dollars and cents indicating the bid price of all materials and other tangible personal property included in the total bid that will be physically incorporated into the project realty. The amount to be filled in has reference to all of such materials and other tangible personal property as will actually be physically incorporated into the final result of the Work covered by the Contract. "Tangible personal

property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

6.15.2. Upon award of the Contract, Owner will furnish Contractor with a certificate of exemption from the Texas Limited Sales, Excise and Use Tax in only an amount not exceeding the above mentioned bid price for materials and other tangible personal property that will be physically incorporated into the Project realty. Such written request by Contractor must contain a statement to the effect that such materials or property have been, or will be utilized in the performance of the Contract, to the full extent of the amount for which a certificate of exemption is requested.

### **Use of Premises:**

6.16 Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers, to the Project site and areas within the contract limits, and shall not unreasonably encumber the premises with construction equipment, or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any of the land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against Owner by any such owner or occupant because of the performance of the Work, Contractor shall promptly attempt to settle with such other party by agreement, or otherwise resolve the claim by mediation, arbitration or at law.

6.17 During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the 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 site clean and ready for occupancy by Owner. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

Contractor shall be confined to all working easements provided. Storage of excavation material and all Contractor equipment and material shall remain within the limits of working easements.

6.18 Contractor shall not load, or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses, excessive vibrations, or pressures that will damage it.

### **Safety and Protection:**

6.20 Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. **CONTRACTOR SHALL REQUIRE THAT ALL EMPLOYEES AND SUBCONTRACTORS WEAR HARDHATS AT ALL TIMES THROUGHOUT THE DURATION OF THE CONTRACT.** Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1. all employees on the Work and other persons and organizations who may be affected thereby;

6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on, or off the site; and

6.20.3. other property at the site, or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

6.20.4. Driveways, culverts, storm sewer inlets and laterals, and other public or private property that is destroyed or removed during the construction shall be replaced to its original condition by Contractor. Temporary drainage is to be provided as necessary.

6.20.5. Contractor is responsible for locating underground obstacles shown in the Contract Documents, obtaining a Dig Permit prior to the start of any activities that affect underground utilities and facilities and exercise caution to prevent damage to existing facilities during the progress of the construction Work. It is not represented by Owner or Architect/Engineer that the plans show all sewers, water lines, electric lines, gas lines, telephone lines and other underground obstacles. Architect/Engineer and Owner's Representative will render reasonable assistance to Contractor for determining the location of existing utilities by making available supplemental information (i.e., maps, records, and other existing available information as may be accessible to Owner or Architect/Engineer), but the accuracy of such information will not be guaranteed by them. Subject to Contractor having been made aware of the existing utilities, Contractor shall make good all damage to existing utilities resulting from his operations. Underground utilities and facilities not shown on the Contract Documents, not shown in supplemental information provided by Owner or A/E, or not identified by the utility companies during the dig permit process will be considered to be unforeseen conditions and subject to compensation in accordance with Article 11. Where a pipe, duct or other structure of a utility is exposed, which, in the opinion of Architect/Engineer or Owner's Representative requires strengthening, altering, shielding or moving, Contractor shall only perform any such work on same as Architect/Engineer or Owner's Representative may order in writing after consultation with the affected utility owner, which Work, if any, will be paid for by Owner as extra Work. Should Contractor, in the layout of his Work, encounter any pipe, underground utility or structure, the location of which has not been furnished to him by Architect/Engineer or Owner's Representative, he shall bring such conditions to the attention of Architect/Engineer or Owner's Representative for a mutual determination of the method to be used to remove or bypass such obstructions.

6.20.6. It is essential that in the event of any damage being caused to existing utilities by Contractor, that immediate attention be given to their repair by the appropriate party and shall be to the complete satisfaction of Owner, who will acknowledge same in writing. Subject to Contractor having been made aware of the existing utilities, it is the obligation of Contractor, in advance of the actual work, to inspect and accurately record in writing to Owner and Architect/Engineer and Owner's Representative, the condition of any utility which he reasonably suspects or, knows to already be damaged, faulty, or defective. In addition, any such utilities so recorded, which in the opinion of Contractor may deteriorate further as a result of the proposed mode of new construction operations, should be protected and/or remedial

measures employed as may be agreed to by Architect/Engineer and Owner prior to the time of bidding so that appropriate Addendums, if any, can be issued to assign the cost to Owner or the utility Owner affected.

6.20.7. Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property, or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property of Underground Facilities and utility owners, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraphs 6.20.2 through 6.20.6. caused, directly or indirectly, in whole or in part by Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, shall be finally remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Architect/Engineer through Owner's Representative has issued a notice to Owner and Contractor in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.20.8 This Section 6.20 establishes the Contractor's responsibility for safety as between the Owner and Contractor, but it does not relieve the Subcontractors of their responsibility to Contractor for the safety of persons or property in the performance of their work, or for compliance with the provisions of applicable laws and regulations.

6.21 Contractor shall designate a responsible safety representative at the site whose duty shall be to provide training and observation to prevent accidents. This person shall be Contractor's superintendent, unless otherwise designated in writing by Contractor to Owner.

**6.21.1 CONTRACTOR SHALL SUBMIT WEEKLY A SAFETY SUMMARY REPORT INCLUDING ANY LOST TIME OR RECORDABLE ACCIDENTS AND THE ASSOCIATED TOTAL NUMBER OF HOURS THEIR EMPLOYEES WORKED AND ALL SUBCONTRACTOR EMPLOYEES WORKED.**

### **Emergencies:**

6.22 In emergencies affecting the safety or protection of persons, or the Work, or property at the site or adjacent thereto, Contractor, without special oral instruction or authorization from Owner or Owner's Representative, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Owner's Representative prompt written notice if Contractor believes that any significant changes in the Work, or variations from the Contract Documents, have been caused thereby. If Owner's Representative determines that a change in the Contract Documents is required because of the responsible action taken by Contractor in response to an

emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

### **Shop Drawings and Samples:**

6.23 After checking and verifying all field measurements, and after complying with applicable procedures specified in the General Requirements of the Technical Specifications, Contractor shall submit review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 6.25), or for other appropriate action if so indicated in any Supplementary Conditions or Technical Specifications, all Shop Drawings, which will bear a stamp, or specific written indication, that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as Architect/Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Architect/Engineer to review the information as required. **All Submittals, Requirements, Requests for Information (RFI's), Samples, Shop Drawings, etc. shall be submitted in accordance with the Technical Specifications.**

Before ordering any material, or doing any Work, Contractor will verify all measurements of any existing and new Work and shall be responsible for their correctness. Any differences, which may be found, shall be submitted to Architect/Engineer for consideration before proceeding with the Work. No extra compensation will be allowed because of differences between actual dimensions and measurements indicated on the working drawings.

6.24 Contractor shall also submit to Architect/Engineer for review and approval, within ten (10) days of notice to proceed a schedule of all samples and shop drawings required by the Contract Documents. This schedule of submittals, shop drawings, and samples shall be coordinated with the project schedule and updated monthly and submitted with the updated project schedule. All samples will have been checked by, and accompanied by, a specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission, and it will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended.

6.24.1. Before submission of each Shop Drawing or sample, Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto, and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples, and with the requirements of the Work and the Contract Documents.

6.24.2. At the time of each submission, Contractor shall give Architect/Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to Architect/Engineer review and approval of each such variation.

6.24.3 Architect/Engineer will review and approve with reasonable promptness, Shop Drawings and samples, but Architect/Engineer review and approval will be only for conformance with the design concept of the Project, and for compliance with the information given in the Contract Documents, and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in, or required by, the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item, as such, will not indicate approval of the assembly in which the item functions. Contractor shall make corrections required by

Architect/Engineer, and shall return the required number of corrected copies of Shop Drawings and submit as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Architect/Engineer on previous submittals.

6.25. Architect/Engineer review and approval of Shop Drawings or samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called Architect/Engineer attention to each such variation at the time of submission, as required by paragraph 6.25.2, and Architect/Engineer has given written approval of each such variation by a specific written notation thereof, incorporated in or accompanying, the Shop Drawing or sample approval; nor will any approval by Architect/Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings, or from responsibility for having complied with the provisions of paragraph 6.24.1. Failure to identify deviations from the contract documents may effectively void the Architect/Engineer's approval of the submittal, making the Contractor responsible for meeting the requirements of the Contract Documents.

6.26 If the Contractor considers a notation on the shop drawing or a selection of an option (i.e., color selection) by the Architect/Engineer to involve additional time and cost, the Contractor must obtain authorization from the Owner prior to proceeding. Failure to do so will result in the Contractor waiving the right to additional cost or time.

(Section 6.27 not used)

#### 6.28 REQUESTS FOR INFORMATION (RFI)

6.28.1 In the event that the Contractor or Subcontractor, at any tier, determines that some portion of the drawings, specifications, or other contract documents requires clarification or interpretation by the Owner, the Contractor shall submit a Request for Information in writing to the Architect/Engineer in accordance with the format and procedure discussed in the Pre-Construction conference, as **agreed to by the Owner**. The Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and why a response is needed from the ARCHITECT/ENGINEER or Owner. In the Request for Information, the Contractor shall set forth an interpretation or understanding of the requirement along with reasons why such an understanding was reached.

6.28.2 The Architect/Engineer will review promptly all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Architect/Engineer determines that the document is not a Request for Information, it will be returned to the Contractor, un-reviewed as to content, for resubmittal on the proper form and in the proper manner.

6.28.3 Responses to Requests for Information shall be issued within five (5) working days of receipt of the request from the Architect/Engineer unless the Architect/Engineer determines that a longer time is necessary to provide an adequate response. If a longer time is determined necessary by the Architect/Engineer, the Architect/Engineer will, within five (5) working days notify the Contractor of the time necessary to respond. Responses from the Architect/Engineer will not change any requirement of the Contract Documents. Should the Contractor feel that the RFI response will result in additional time or cost, the Contractor must obtain authorization from the Owner prior to proceeding. Failure to give such written notice within ten (10) days shall waive the Contractor's right to seek additional time or cost under

the Changes article of these General Conditions.

### **Continuing the Work:**

6.29. Contractor shall carry on the Work and adhere to the **Schedule** during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

6.30. Indemnification:

*IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT TO THE EXTENT ALLOWED BY TEXAS LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS AUTHORITY AND ITS BOARD OF DIRECTORS; THE UNITED STATES GOVERNMENT; AND THE CITY OF SAN ANTONIO; TOGETHER WITH THEIR RESPECTIVE AGENTS, ELECTED OFFICIALS, EMPLOYEES AND OFFICERS, INDIVIDUALLY OR COLLECTIVELY (REFERRED TO HEREIN AS THE "INDEMNITEES"), FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, DEMANDS, JUDGMENTS, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES. FOR INJURY OR DEATH TO ANY PERSON, OR LOSS OR DAMAGE TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON, OR PERSONS, OR PROPERTY (REFERRED TO HEREIN AS THE 'LOSSES'), TO THE EXTENT ARISING OUT OF, OR OCCASIONED BY, NEGLIGENT ACTIONS OR OMISSIONS OF THE CONTRACTOR, IN THE EXECUTION OF PERFORMANCE OF THIS CONTRACT.*

*TO THE EXTENT ALLOWED BY TEXAS LAW, CONTRACTOR AND SUBCONTRACTORS SHALL BE CONTRACTUALLY BOUND IN THE AGREEMENT BETWEEN THE CONTRACTOR AND ITS SUBCONTRACTORS TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES FROM THE LOSSES TO THE EXTENT ARISING OUT OF, OR OCCASIONED BY, THE NEGLIGENT ACTIONS OR OMISSIONS OF THE SUBCONTRACTOR, OR ITS SUET/ER SUBCONTRACTORS, SUBCONSULTANTS, AGENTS, EMPLOYEES OR INVITEES OF ANY OF THEM, IN THE EXECUTION OF THE PERFORMANCE OF THE SUBCONTRACT BETWEEN CONTRACTOR AND SUBCONTRACTOR.*

*THE FOREGOING OBLIGATIONS OF CONTRACTOR AND ITS SUBCONTRACTORS ARE CONDITIONED UPON (A) CONTRACTOR OR, IF, APPLICABLE, SUBCONTRACTOR BEING GIVEN CONTROL OF THE DEFENSE OF ANY CLAIM AND ALL NEGOTIATIONS RELATIVE TO THE SETTLEMENT THEREOF (EXCEPT THAT THE UNITED STATES GOVERNMENT RESERVES THE RIGHT, AT ITS SOLE EXPENSE, TO SELECT ITS OWN LEGAL COUNSEL TO PARTICIPATE IN ITS DEFENSE), AND (B) AUTHORITY, OR THE RELEVANT INDEMNITEE, PROMPTLY INFORMING THE CONTRACTOR OR SUBCONTRACTOR IN WRITING OF ANY CLAIM WITH RESPECT TO WHICH CONTRACTOR AND/OR ITS SUBCONTRACTOR(S) ASSUME(S) RESPONSIBILITY HEREUNDER, AND (C) TO THE EXTENT THAT CONTRACTOR AND/OR ITS*

*SUBCONTRACTOR(S) ARE OBLIGATED TO INDEMNIFY AN INDEMNITEE PURSUANT TO THIS PARAGRAPH. THE CONTRACTOR AND/OR ITS SUBCONTRACTOR(S) SHALL, UPON PROVISION OF SUCH INDEMNITY, BE SUBROGATED TO ALL RIGHTS OF INDEMNITEE(S) WITH RESPECT TO SUCH LOSS.*

*IT IS FURTHER EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT FOR ANY LOSSES ARISING OUT OF, OR OCCASIONED BY, ANY NEGLIGENT ACTIONS OR OMISSIONS OF CONTRACTOR AND/OR SUBCONTRACTOR(S) IN COMBINATION WITH ANY NEGLIGENT ACTIONS OR OMISSIONS OF ONE OR MORE OF THE INDEMNITEES, THEN TO THE EXTENT CONTRACTOR AND/OR SUBCONTRACTOR(S) WOULD OTHERWISE BE LIABLE UNDER TEXAS LAW, CONTRACTOR SHALL BE LIABLE FOR ONLY THAT PORTION OF THE LOSSES ATTRIBUTABLE TO THE NEGLIGENCE OF CONTRACTOR AND, SUBCONTRACTOR(S) SHALL BE LIABLE FOR ONLY THAT PORTION OF THE LOSSES ATTRIBUTABLE TO THE NEGLIGENCE OF SUBCONTRACTOR(S), AS AGREED TO BY THE PARTIES. HOWEVER, IT IS FURTHER MUTUALLY UNDERSTOOD AND ACKNOWLEDGED BY THE PARTIES THAT THE ABOVE INDEMNIFICATION PROVIDED BY THE CONTRACTOR AND ITS SUBCONTRACTORS, TO THE INDEMNITEES, SHALL NOT APPLY TO SITUATIONS ARISING SOLELY OUT OF THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNITEES.*

*ADDITIONALLY, THE INDEMNIFICATION PROVIDED BY CONTRACTOR AND ITS SUBCONTRACTORS HEREIN SHALL HAVE NO APPLICATION TO ANY LOSSES TO THE EXTENT ARISING OUT OF, OR OCCASIONED BY, NEGLIGENT ACTIONS OR OMISSIONS OF ANY REGISTERED PROFESSIONAL CONSTRUCTION MANAGERS OR ENGINEERS, EITHER INDEPENDENTLY ENGAGED, OR DIRECTLY EMPLOYED BY ANY OF THE INDEMNITEES (AND NOT PART OF CONTRACTOR TEAM OR SUBCONTRACTORS) FOR THE PREPARATION OF ANY DEFECTIVE PLANS, DESIGNS, OR SPECIFICATIONS PREPARED OR APPROVED BY SAID REGISTERED PROFESSIONAL CONSTRUCTION MANAGERS OR ENGINEERS FOR UTILIZATION IN THE PROJECT.*

*IT IS FURTHER MUTUALLY ACKNOWLEDGED THAT THE UNITED STATES GOVERNMENT HAS CERTAIN OBLIGATIONS PURSUANT TO SECTION 330 OF THE NATIONAL DEFENSE AUTHORIZATION ACT, 1993, PUB L. NO. 102-484, AS AMENDED, WHICH PROVIDES FOR INDEMNIFICATION OF CERTAIN TRANSFEREES OF CLOSING DEFENSE PROPERTY IN ACCORDANCE WITH THE FOLLOWING:*

*THE SECRETARY OF DEFENSE SHALL HOLD ELIGIBLE PARTIES HARMLESS, AND DEFEND AND INDEMNIFY THEM IN FULL, FROM AND AGAINST ANY SUIT, CLAIM, DEMAND OR ACTION, LIABILITY, JUDGMENT, COST OR OTHER FEE ARISING OUT OF ANY CLAIM FOR PERSONAL INJURY OR PROPERTY DAMAGE (INCLUDING DEATH, ILLNESS, OR LOSS OF, OR DAMAGE TO, PROPERTY OR ECONOMIC LOSS) THAT RESULTS FROM, OR IS IN ANY WAY PREDICATED UPON, THE RELEASE, OR THREATENED RELEASE, OF ANY HAZARDOUS*

*SUBSTANCE, POLLUTANT, OR CONTAMINANT, OR PETROLEUM OR PETROLEUM DERIVATIVE, AS A RESULT OF DEPARTMENT OF DEFENSE ACTIVITIES AT ANY MILITARY INSTALLATION (OR PORTION THEREOF) THAT IS CLOSED PURSUANT TO A BASE CLOSURE LAW.*

6.31. In any and all claims against Owner or any of its employees by any employee of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by, or for, Contractor or any such Subcontractor, or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.32. The obligations of Contractor under paragraph 6.30 shall not extend to any professional liability of Architect/Engineer, Architect/Engineer's consultants, supporting Engineers, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

6.33. Contractor shall perform all phases of Work other than general clean-up, within the time specified in the Contract Documents, as defined in these General Conditions. If Contractor desires to perform Work during weekends or holidays, proper arrangements must be made with Owner, or any other regulatory agency having jurisdiction regarding such Work.

6.34 **General.** This Contract shall be based upon payment by Contractor and his Subcontractors of wage rates not less than General Prevailing Wage Rate of per diem wages for work of a similar character in the locality in which the Work is performed, for each type of laborer, workman or mechanic needed to implement the Contract at the Project Site, and not less than the general prevailing rate of per diem wages for legal holiday and overtime Work. The schedule of General Prevailing Wage Rates and other important Wage and Labor Standard Provisions are included in these Contract Documents in the Supplementary General Conditions. Contractor shall comply with all requirements of the prevailing wage law of the State of Texas, Texas Revised Civil Statutes, Article 5159a, including the latest amendments thereto.

6.34.1. **Records.** Contractor and each Subcontractor shall keep an accurate record showing the names and occupations of all laborers, workmen, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by the representatives of the Owner. With each application for payment, Contractor shall provide a certified copy of such payroll records as necessary to substantiate compliance with this provision during the period of time for which the application for payment pertains. Owner shall take cognizance of any and all employee complaints regarding any alleged Contractor violations of the requirements of Article 5159a.

6.34.2. **Penalty.** In case Contractor and any Subcontractor fail to comply with the prevailing wage law, by statutory authority, Contractor shall forfeit to the Owner \$60.00 per calendar day, or portion thereof, for each laborer, workman, or mechanic who is paid less than the specified rate for any Work done under the Contract.

6.34.3. **Hours of Labor.** Contractor shall comply with all requirements of the hours of work on public works in accordance with the laws of the State of Texas, Vernon's Texas Codes Annotated, Government Code, Title 6, Sections 605.001 to 605.004, including the latest amendments thereto. No Contractor or Subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers, workmen or mechanics at the Project Site shall require or permit any laborer, workman or mechanic in any workweek in which he is employed on such Work to work in excess of forty hours in such workweek unless such laborer, workman or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours in excess of forty hours in such workweek.

6.34.4. **Veterans Preference.** Pursuant to Vernon's Texas Codes Annotated, Government Code, Title 6, Sections 657.001 to 657.003, Contractor shall give preference in employment to honorably discharged veterans who were engaged in the services of the United States in time of war or conflict and who are, and have been, citizens of Texas for not less than five years.

6.34.5. **Equal Employment Opportunities.** The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, gender, national origin, age, physically challenged condition, or a political belief or affiliation, and will comply with all state and federal statutes applicable to Contractor which relate to employment discrimination.

## **ARTICLE 7 - OTHER WORK**

### **Related Work at Site:**

7.1. Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility Owners or let other direct construction contracts therefore which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given by Owner to Contractor prior to starting any such other work; and, if Contractor believes that such performance will involve additional expense to Contractor, or requires additional time, and the parties are unable to agree as to the extent thereof, Contractor may make a claim therefor as provided in Articles 11 and 12. Any increases or decreases in the Contract Price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding and Change Orders.

7.2. Contractor shall afford each utility owner and other contractor who is a party to such other direct contract (or Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site, and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect aid in the coordination of the Work with their work. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work, and will only cut or alter their work with the written consent of Owner's Representative, and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners, and other contractors, to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors. Contractor will be entitled to an equitable adjustment to the Contract Amount and Time, in accordance with Articles 11 and 12, for coordination, cutting and patching work to accommodate the work of utility companies or other contractors unless specifically shown in the Contract Documents.

7.3. If any part of Contractor's Work depends, for proper execution or results, upon the work of any such other contractor or utility owner (or Owner), Contractor shall inspect and promptly report to Owner's Representative in writing any delays, defects or deficiencies in such work that renders it unavailable or unsuitable for such proper execution and results. Contractor's failure so to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work, except for latent or non-apparent defects and deficiencies in the other work.

### **Coordination:**

7.4. If Owner contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be

provided in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, neither Owner, Owner's Representative nor Architect/Engineer shall have any authority or responsibility in respect of such coordination and each contractor will mutually cooperate with the other as they deem reasonable.

## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

8.1. Owner shall issue all communications to Contractor, either directly or through Owner's Representative.

8.2. In case of termination of the employment of Architect/Engineer, Owner shall appoint a substitute Architect/Engineer whose status under the Contract Documents shall be that of the former Architect/Engineer.

8.3. Owner shall promptly furnish the data required of Owner under the Contract Documents and shall make payments to Contractor promptly when they are due as provided in paragraphs 14.4 and 14.13.

8.4. Owner's duties in respect of providing lands and easements and engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to Owner's identifying and making available to Contractor copies of existing available reports of explorations and tests of subsurface conditions at the site, and in existing structures, which have been utilized by Architect/Engineering preparing the Drawings and Specifications.

8.5. Owner is obligated to execute Change Orders as indicated in paragraph 10.4.

8.6. Owner's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.7. In connection with Owner's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with Owner's right to terminate services of Contractor under certain circumstances.

## **ARTICLE 9 - OWNER'S STATUS DURING CONSTRUCTION**

### **Owner's Representative:**

9.1. The Owner will designate the Owner's Representative in writing during the construction period and define the duties, responsibilities and the limitations of authority of Owner's Representative.

### **Visits to Site:**

9.2. Owner's Representative and Architect/Engineer will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Owner's Representative and Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Contractor is solely responsible to maintain his own quality control assurance and cannot rely upon Owner, Owner's Representative or Architect/Engineer to provide same. Owner's Representative's and Architect/Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Owner's Representative and Architect/Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against any Contractor defects and deficiencies in the Work.

### **Project Representation:**

9.3. At the Owner's discretion, the Owner will furnish a Resident Project Representative to assist **Owner's Representative** in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative will be provided to the Contractor in writing.

### **Clarifications and Interpretations:**

9.4. Architect/Engineer, after consultation with Owner, will issue with reasonable promptness, such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as may be necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If Contractor believes that a written clarification or interpretation justifies an increase in the Contract Price, or an extension of the Contract Time, the Contractor must obtain authorization from the Owner prior to proceeding with the change; otherwise, the Contractor waives the right to the additional costs or time. If the parties are unable to agree to the amount or extent thereof, Contractor may make a claim therefore as provided in Article 11 or Article 12. All increases or decreases in the Contract Price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding and Change Orders that have been provided by Owner to Contractor prior to any such increase or decrease.

### **Authorized Variations in Work:**

9.5. Architect/Engineer and Owner's Representative, after consultation with Owner, may authorize minor variations in the Work from the requirements of the Contract Documents, which do not involve an adjustment in the Contract Price or the Contract Time, and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner, and also on Contractor who shall promptly perform the Work involved. If Contractor believes that a Field Order justifies an increase in the Contract Price, or an extension of the Contract Time, the Contractor must obtain authorization from the Owner prior to proceeding with the change; otherwise, the Contractor waives the right to the additional costs or time. If the parties are unable to agree to the amount or extent thereof, Contractor may make a claim therefore as provided in Article 11 or Article 12.

### **Rejecting Defective Work:**

9.6. Architect/Engineer or Owner's Representative will have the authority to disapprove or reject Work which is defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed, or completed.

### **Determinations for Unit Prices:**

9.7. Owner's Representative with assistance of Architect/Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Owner's Representative will review with Contractor, Architect/Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Architect/Engineer's written decisions thereon will be final and binding upon Owner and Contractor, unless, within ten days after the date of any such decision, either Owner or Contractor delivers to the other party to the Agreement written notice of intention to appeal from such a decision.

### **Decisions on Disputes:**

9.8. The Architect/Engineer will be the interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder provided that such determinations are in accord with the Contract Documents. Claims, disputes and other matters relating to the acceptability of the Work, or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work, and claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Time, will be

referred initially to Owner's Representative, in writing, with a request for a formal decision in accordance with this paragraph, which Architect/Engineer shall render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be submitted in accordance with Article 11.2.

9.9. When functioning as interpreter and judge under paragraphs 9.10 and 9.11 Architect/Engineer will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by the Architect/Engineer pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents, or by Laws or Regulations, in respect of any such claim, dispute, or other matter.

### **Limitations on Architect/Engineer, Owner's Representative Responsibilities:**

9.10. Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Architect/Engineer and Owner's Representative as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to the Architect/Engineer or Owner's Representative any duty to supervise or direct the furnishing, or performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15.

9.11. Architect/Engineer nor Owner's Representative will not be responsible for Contractor's means, methods, techniques, sequences, procedures or quality controls of construction, or the safety precautions and programs incident thereto, for which Contractor shall be solely responsible. Architect/Engineer nor Owner's Representative will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

9.12. Architect/Engineer nor Owner's Representative will not be responsible for the acts and/or omissions of Contractor, or of any Subcontractor, any Supplier, or of any other person or organization performing, or furnishing, any of the Work.

## **ARTICLE 10 - CHANGES IN THE WORK**

10.1. Without invalidating the Agreement, and without notice to any surety, the Owner may, at any time, or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2. If Owner and Contractor are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefor as provided in Article 11 or Article 12. All increases or decreases in the Contract Price shall be governed by all state laws and Owner's Procurement Policy.

10.3. Contractor shall not be entitled to an increase in the Contract Price, or an extension of the Contract

Time, with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency, as provided in paragraph 6.22 and except in the case of uncovering Work, as provided in paragraph 13.9.

10.4. Owner and Contractor shall execute appropriate Change Orders (or Written Amendments) covering:

10.4.1. changes in the Work which are ordered by Owner with assistance of Architect/Engineer or Owner's Representative pursuant to paragraph 10.1, are required because of acceptance of defective Work under paragraph 13.13, or correcting defective Work under paragraph 13.14, or are agreed to by the parties;

10.4.2. changes in the Contract Price or Contract Time which are agreed to by the parties; and

10.4.3. changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by Architect/Engineer pursuant to paragraph 9.11; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Schedule as provided in paragraph 6.29.

10.5. If notice of any change affecting the general scope of the Work, or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required to be given to a surety by the provisions of any Bond, the giving of any such notice will be Contractor's sole responsibility, and the amount of each applicable Bond will be adjusted accordingly.

## **ARTICLE 11 - CHANGE OF CONTRACT PRICE**

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to, or undertaken by, Contractor shall be at his expense without change in the Contract Price.

11.2. The Contract price may only be changed by a Change Order, or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice promptly delivered by the party making the claim to the other party but in no event later than thirty (30) days after the occurrence of the event giving rise to the claim, and stating the general nature of the claim. Notice of the amount of the claim, with supporting data, shall be delivered within sixty (60) days after such occurrence (unless Owner allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by Architect/Engineer with assistance of Owner's Representative in accordance with paragraph 9.11, if Owner and Contractor cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid, and will be deemed waived, if not submitted in accordance with this paragraph 11.2 and approved by the Owner's governing body, if required.

11.3. The value of any Work covered by a Change Order, or of any claim for an increase or decrease in the Contract Price, shall be determined in one of the following ways:

11.3.1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1. through 11.9.3. inclusive).

11.3.2. By mutual acceptance of a unit (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2.1).

11.3.3. On the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a Contractor's Fee for overhead and profit (determined as provided in paragraphs 11.6 and 11.7).

## **Cost of the Work:**

11.4. The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, wages, plus the cost of any fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday as applicable thereto. Such employees shall include foremen at the site but not salaried superintendents, project managers or other administrative personnel unless these additional administrative personnel are required due to the scope of work increase of Change. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above, to the extent authorized by Owner.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

11.4.3. Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner, who will then determine which bid will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including but not limited to engineers, Architect/Engineers, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental costs, including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used, but not consumed, which remain the property of Contractor.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved by Owner, with the advice of Architect/Engineer nor Owner's Representative, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof (all in accordance with terms of said rental agreements). The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Any sales, consumer, use or similar taxes related to the Work that Owner is not exempt from paying and are imposed by Laws and Regulations governing the Work, and for which Contractor is liable.

11.4.5.5. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work, provided they have resulted from causes other than the intentional and/or negligent acts and/or omissions of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or whose acts and/or omissions any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If however, any such loss or damage requires reconstruction, and Contractor is placed in charge thereof, Contractor shall be paid a fee for services proportionate to that stated in paragraph 11.6.2.

11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

11.5. The term "Cost of the Work" shall not include any of the following:

11.5.1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, Architect/Engineers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor, whether at the site, or in Contractor's principal or a branch office, for general administration of the Work, and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1, or specifically covered by paragraph 11.4.4, all of which are to be considered administrative costs covered by the Contractor's Fee.

11.5.2. Expenses of Contractor's principal and branch offices, other than Contractor's office at the site.

11.5.3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5. Costs due to the intentional and/or negligent acts and/or omissions of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or for whose acts and/or omissions any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment improperly supplied and making good any damage to property.

11.5.6. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in paragraph 11.4.

## **CONTRACTOR's Fee:**

11.6. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:

11.6.1. a mutually acceptable fixed fee; or if none can be agreed upon,

11.6.2. a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, the Contractor's Fee shall be fifteen percent (15%);

11.6.2.2. for costs incurred under paragraph 11.4.3, the Contractor's Fee shall be five percent (5%); and if a subcontract is on the basis of Cost of the Work plus a Fee, the maximum allowable to Contractor on account of overhead and profit of all Subcontractors shall be fifteen percent (15%);

11.6.2.3. no fee shall be payable on the basis of costs itemized under paragraph 11.5;

11.6.2.4. the amount of credit to be allowed by Contractor, to Owner, for any such change which results in a net decrease in cost, will be the amount of the actual net decrease, plus a deduction in Contractor's Fee by an amount equal to ten percent (10%) of net decrease; and

11.6.2.5. when both additions and credits are involved in any one change, the adjustment in Contractor's Fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.4, inclusive.

11.7. Whenever the cost of any Work is to be determined pursuant to paragraph 11.4 or 11.5, Contractor will submit in a form acceptable to the Owner's Representative an itemized cost breakdown together with supporting data.

## **Cost-Reimbursable Line Items:**

11.8. It is understood that Contractor has included in the Contract Price, all cost-reimbursable line items so named in the Contract Documents (Bidding Schedule) and shall cause the Work so covered to be done by such Subcontractors or Suppliers, and for such sums within the limit of the not-to-exceed amount and for the explicit purpose stated in Contract Documents. The Contractor agrees that:

11.8.1. The cost reimbursable line items include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and any and all applicable taxes; and

11.8.2. Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the cost-reimbursable line items have been included in the Contract Price, and not in the cost-reimbursable line items. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued by Owner as recommended by Owner's Representative to reflect actual amounts due Contractor on account of Work covered by cost-reimbursable line items, and the Contract Price shall be correspondingly adjusted.

### **Unit Price Work:**

11.9.1. Where the Contract Documents provide that all, or part of the Work, is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work, times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed, and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Owner's Representative as recommended by Architect/Engineer in accordance with Paragraph 9.10.

11.9.2. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

11.9.3. Where the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement, and there is no corresponding adjustment with respect to any other item of Work, and if Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may make a claim for an increase in the Contract Price in accordance with Article 11.

## **ARTICLE 12 - CHANGE OF CONTRACT TIME**

12.1. The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on written notice in accordance with Article 11.2. All claims for adjustment in the Contract Time shall be determined by Architect/Engineer in accordance with paragraph 9.11, if Owner and Contractor cannot otherwise agree. No claim for an adjustment in the Contract Time will be valid, and will be deemed waived, if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Contractor, if a claim is made therefore as provided in paragraph 12.1. Such delays shall include, but not be limited to, acts or neglect by Owner, or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions, acts of God or any preference, priority or allocation order duly issued by the Federal Government. Abnormal weather delays are those that are beyond what is normal for the climate and time of year. The Contractor must consider the weather over the entire construction period and the days lost on a cumulative plus/minus basis when compared with the normal days lost. Only weather delays that impacted critical path activities should be considered.

12.3. All time limits stated in the Contract Documents are of the essence to the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, Architect/Engineers, attorneys and other professionals and court costs) for delay by either party.

**ARTICLE 13 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS;  
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE  
WORK**

**Warranty and Guarantee:**

13.1. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all discovered defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected, or accepted, as provided in this Article 13.

In case of dispute as to the cause of improper functioning of all, or any part of the Work, the burden of proof that he has complied with the Contract Documents rests with Contractor for this Work. He shall submit in writing his opinion of the cause, and his recommendation for proving the adequacy of his Work. Tests shall be made that Owner and Contractor deem advisable by an independent testing laboratory chosen by Owner and Contractor. If any test so made indicates a defect in material or workmanship, or that one or more manufactured components of the Work are performing below the standard set by the manufacturer's public data and specifications, the entire cost of all such tests shall be paid for by Contractor, and he shall also pay for retesting of the corrected Work, until it functions satisfactorily. The Work shall be guaranteed by Contractor to be free from defects due to faulty workmanship or materials for a period of one (1) year ( or as specified in Architect/Engineer's Specifications, whichever requirement is more restrictive apply) from the date of issuance of the Certificate of Acceptance. Work found to be improper, or imperfect, shall be replaced or redone without cost to Owner within the one year ( or as specified in Architect/Engineer's Specifications, whichever requirement is more restrictive) guarantee period. Neither the Certificate of Acceptance, final payment, nor any provision of the Contract Documents shall free Contractor from his guarantee. Failure by Contractor to repair or replace faulty Work after adequate written notice from Owner entitles Owner to repair or replace the same and recover the costs from Contractor and/or his Surety. Contractor shall be the sole guarantor of the Work installed under this Contract and no third party guarantees by Subcontractors or suppliers of various components or materials will be acceptable, nor shall agreements with Subcontractors or material or component suppliers by Contractor reduce Contractor's sole responsibility under this Agreement. All equipment is warranted or guaranteed to Owner for one (1) year from the date of acceptance of the entire completed Project. At the option of the Owner, all equipment is also warranted or guaranteed to Owner for one (1) year ( or as specified in Architect/Engineer's Specifications, whichever requirement is more restrictive) from the date of acceptance and beneficial use of a completed system component prior to full integration with the entire completed Project.

## **Access to Work:**

13.2. Architect/Engineer, Owner, and other representatives of Owner, testing agencies and governmental agencies, with jurisdictional interests, will have access to the Work at reasonable times for their observation, inspecting and testing. Contractor shall promptly provide proper and safe conditions for such access in accordance with any OSHA and insurance requirements.

It is agreed by Contractor that Owner shall be, and is hereby authorized to appoint from time to time supervisors, or inspectors, as the said Owner may deem proper, to inspect the material furnished and observe the Work done under this Agreement, and to see that the said material is furnished, and said Work is done in accordance with the specifications. Contractor shall furnish all reasonable aid and assistance required by supervisors, or inspectors for the proper supervision and inspection and examination of the Work, and all parts of the Work. Contractor shall regard and obey the directions and instructions of any supervisors, or inspector so appointed, when such directions are consistent with the obligations of this Contract and these accompanying specifications, provided, however, that should Contractor object to any supervisor or inspector, Contractor may within ten (10) days make written notice to Owner for his decision. Except as herein before provided, supervisors or inspectors shall be limited to the rejection of unsatisfactory Work and materials until the questions of acceptability can be referred to Owner.

## **Tests and Inspections:**

13.3. Contractor shall cooperate with the testing laboratory retained by the Owner to the end that the function and services of the laboratory may be properly performed, and shall give testing laboratory a minimum of twenty-four (24) hours' notice of readiness for all testing as required. Owner shall bear the cost of testing for tests required per code, law, or specifications. Coordination of testing of all items required by local or natural codes, laws or specifications shall be the responsibility of Contractor. If requested by Owner, Contractor shall notify Owner of the scheduled time for such tests so that the Owner's representative can have an opportunity to witness the test. If initial tests show failure, the Contractor shall absorb the costs of retesting the areas that failed after corrective action has been taken, as well as the personnel and equipment costs incurred by Owner in said retesting, on a per diem basis. The per diem costs shall be determined based on hourly wage plus overhead of Owner's personnel needed and present at the site during retesting, and by the locally prevailing rental rate for the vehicles and equipment utilized in retesting. These retesting time costs shall be paid by Contractor prior to Owner's acceptance of the improvements.

13.4. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, Contractor shall assume full responsibility to coordinate and furnish the Owner's Representative the required certificates of inspection, testing or approval.

13.5. All inspections, tests or approvals, other than those required by Laws or Regulations of any public body having jurisdiction, shall be performed by organizations acceptable to Owner.

13.6. The Contractor is responsible for having all inspection tests listed in the Technical Specification conducted and verifying that passing tests have been recorded by the Testing Laboratory. If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of

Architect/Engineer or Owner's Representative, it must, if requested by Architect/Engineer or Owner's Representative, be uncovered for observation. Such uncovering shall be at Contractor's expense, unless Contractor has given timely notice of Contractor's intention to cover the same, and Architect/Engineer nor Owner's Representative has not acted with reasonable promptness in response to such notice.

13.7. Neither observations by Architect/Engineer nor Owner's Representative, nor inspections, tests or approvals by others, shall relieve Contractor from Contractor's sole obligations to perform the Work in strict accordance with the Contract Documents.

### **Uncovering Work:**

13.8. If any Work is covered contrary to, and after receipt by Contractor of, the written request of Architect/Engineer or Owner's Representative, it must, if requested by Architect/Engineer or Owner's Representative, be uncovered for Architect/Engineer, Owner's Representative or Testing Laboratory's observation and potentially replaced at Contractor's expense.

13.9 If Architect/Engineer or Owner's Representative considers it necessary or advisable that covered Work be observed by Architect/Engineer or Owner's Representative, or inspected or tested by others, Contractor, at Architect/Engineer or Owner's Representative request, shall uncover, expose or otherwise make available for observation, inspection or testing. If it is found that such Work is defective, Contractor shall bear all costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, Architect/Engineers, and other professionals reasonably necessary to observe, investigate, or test), and Owner shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 11. If, however, such Work is not found to be defective, except as described in Article 13.6, Contractor may be allowed an increase in the Contract Price, or an extension of the Contract Time, or both, attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefore as provided in Articles 11 and 12. All increases or decreases in the Contract Price shall be governed by all state laws and Owner's Procurement Policy.

### **OWNER'S REPRESENTATIVE May Stop the Work:**

13.10. If the Work is defective, or Contractor fails to supply sufficient skilled workers, or suitable materials, or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner's Representative may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner's Representative to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, or any other party.

### **Correction or Removal of Defective Work:**

13.11. If required by Architect/Engineer or Owner's Representative, Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Architect/Engineer or Owner's Representative, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct costs of such correction or removal (including but not limited to fees and charges of Architect/Engineers and its consultants, and other professionals) reasonably necessary to investigate the defective Work and evaluate appropriate remedies for such defective Work.

### One Year Correction Period:

13.12. If within one (1) year after the date of issuance of the Certificate of Acceptance, or such longer period of time as may be prescribed by Laws, Regulations or the Technical Specifications, any Work is found to be defective, Contractor shall promptly, without cost to Owner, and in accordance with Owner's written instruction, either correct such defective Work, or, if it has been rejected by Owner, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected, or the rejected Work removed and replaced, and all direct costs of such removal and replacement (including but not limited to fees and charges of Architect/Engineers and its consultants, and other professionals reasonably necessary to investigate the Work and evaluate appropriate remedies for such defective or rejected Work) will be paid by Contractor. In special circumstances where a particular item of equipment is placed in continuous service at Owner's direction before acceptance of all the Work, the correction period for that item may start to run from an earlier date, if so provided in the Specifications, or by Written Amendment.

### Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Architect/Engineer's or Owner's Representative's recommendation of final payment), prefers to accept it, Owner may do so and take a credit for the amount mutually agreed upon. Contractor shall also bear all costs attributable to Owner's evaluation of and determination to accept such defective Work, to include but not be limited to fees and charges of Architect/Engineers and its consultants, attorneys and other professionals. If any such acceptance occurs prior to Architect/Engineer's or Owner's Representative's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a claim therefore as provided in Article 11. If the acceptance occurs after such final payment, an appropriate amount as determined by Owner and Contractor will be paid by Contractor to Owner.

### **OWNER May Correct Defective Work:**

13.14. If Contractor fails, within a reasonable time after receipt of written notice from Owner, to proceed to correct, and to correct defective Work, or to remove and replace rejected Work as required by Architect/Engineer or Owner's Representative in accordance with paragraph 13.11, or if Contractor fails to perform the Work in accordance with the Contract Documents, Owner may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph, Owner shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the site, or for which Owner has paid Contractor and are stored elsewhere. Contractor shall allow Owner, Owner's Representative, agents and employees such access to the site as may be necessary to enable Owner to exercise the rights and remedies under this paragraph. All costs of Owner in exercising such rights and remedies will be charged against Contractor in an amount approved as to reasonableness and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a claim therefore as provided in Article 11. Such costs will include, but not be limited to, fees and charges of Owner's personnel, Architect/Engineer and its consultants, and other professionals reasonably necessary to investigate the Work and evaluate appropriate remedies for such defective, rejected, or deficient Work, and all costs of repair and replacement of work performed by others that is destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work

attributable to the exercise by Owner of Owner's rights and remedies hereunder.

## **ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**

### **Schedule of Values:**

14.1. The schedule of values established as provided in Articles 2.6.3 and 2.6.4 will serve as the basis for progress payments, and will be incorporated into a form of Application for Payment acceptable to the Owner.. Progress payments on account of Unit Price Work will be based on the number of units completed. ·

### **Application for Progress Payment:**

14.2. At least THIRTY (30) days before each progress payment is scheduled (but not more often than once a month), Contractor shall submit to ARCHITECT/ENGINEER and Owner's Representative for review, an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application, and accompanied by such supporting documentation as may be required by the Contract Documents, INCLUDING BUT NOT LIMITED TO: CERTIFIED PAYROLLS, AN UPDATED SCHEDULE, DAILY LOGS, AND UPDATED SUBMITTAL SCHEDULE. If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the site (no offsite stored materials will should be included in the Application for Payment without prior approval from the Owner) the Application for Payment shall also be accompanied by a bill of sale, invoice, conditional release per Texas Statute or other documentation warranting that Owner has received the materials and equipment free and clear of any attempted liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens"), to the extent of payments received thereof, and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

14.2.1 Initial progress payment shall also include; List of subcontractors, List of principal suppliers and fabricators, Schedule of principal products, Copies of authorizations and licenses from governing authorities for performance of work

14.2.2 Progress payments shall be in an amount equal to 90% of the amount requested in the Application for Payment, with 10% remaining as OWNER's retainage for the project, to be released by OWNER in accordance with the terms and conditions of this Agreement. The Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. If the Owner has determined that Contractor's performance is satisfactorily in accordance with the terms of this Agreement, no additional retainage will be withheld after the project has reached 50% completion (i.e., retainage will be capped at 5% of the total contract amount ). For the Owner to consider a reduction in retainage, the Contractor must submit a list of all pending cost and time related issues. A change order will be issued to the Contractor that stipulates the reduction in retainage, lists those pending issues that are agreed to by the Owner and states that the Contractor waives the rights to any other claims that precede the date of the change order. Any exercise of this option, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Contractor or (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

### **CONTRACTOR's Warranty of Title:**

14.3. Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment, free and clear of all Liens.

#### Review of Applications for Progress Payment:

14.4. Architect/Engineer's will, within FIVE (5) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner's Representative, or return the Application to Contractor indicating in writing, Architect/Engineer's reasons for refusing to make payment. In the latter case, Contractor must make the necessary corrections and resubmit the Application. THIRTY (30) days after presentation of the Application for Payment to the Architect/Engineer for the Architect/Engineer's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due, and when due will be paid by Owner to Contractor.

14.5. Architect/Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation to Owner, based upon Architect/Engineer's on-site observations of the Work in progress as an experienced and qualified design professional, and on Architect/Engineer's review of the Application for Payment and the accompanying data and schedules, that the Work has progressed to the point indicated; that, to the best of Architect/Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to, or upon, Substantial Completion; subject to the results of any subsequent tests called for in the Contract Documents; subject to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10; and subject to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment, Architect/Engineer's will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, beyond the observation responsibilities specifically assigned to Architect/Engineer's the Contract Documents, or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner, or might entitle Owner to withhold payment to Contractor.

14.6. Architect/Engineer's recommendation of final payment will constitute an additional representation by Architect/Engineer's to Owner that the conditions precedent to Contractor's being entitled to final payment, as set forth in paragraph 14.13, have been fulfilled.

14.7. Architect/Engineer's may refuse to recommend the whole, or any part of any payment if, in Architect/Engineer's opinion, it would be incorrect to make such payment, or, because of subsequently discovered evidence, or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Architect/Engineer's opinion to protect Owner from loss because:

14.7.1. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order;

14.7.3. Owner has been required to correct defective Work or complete Work in accordance with paragraph 13.14;

or

14.7.4. of Architect/Engineer's actual knowledge of the occurrence of any of the events enumerated in paragraphs

15.2.1 through 15.2.9 inclusive.

Owner may refuse to make payment in whole or in part, of the amount recommended by Architect/Engineer's, because claims have been made against Owner on account of Contractor's performance or furnishing of the Work, or attempted Liens have been filed in connection with the Work, or there are other items entitling Owner to a set-off against the amount recommended, but Owner must give Contractor written notice stating the reasons for such action.

### **Substantial Completion:**

14.8. When Contractor considers the entire Work ready for its intended use, Contractor shall notify Owner and Architect/Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Architect/Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, Owner, **Architect/Engineer and Owner's Representative** shall make an inspection of the Work to determine the status of completion. If Architect/Engineer does not consider the Work substantially complete, Architect/Engineer will notify Contractor in writing giving the reasons therefore. If Architect/Engineer considers the Work substantially complete, Architect/Engineer will prepare and deliver to Owner a tentative certificate of Substantial Completion, which shall fix the date of Substantial Completion. There shall be attached to the certificate, a tentative list of items to be completed or corrected before final payment. Owner shall have ten (10) days after receipt of the tentative certificate during which to make written objection to Architect/Engineer through Owner's Representative as to any provisions of the certificate or attached list. If, after considering such objections, Architect/Engineer concludes that the Work is not substantially complete, Architect/Engineer will within twenty (20) days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefore. If, after consideration of Owner's objections, Architect/Engineer considers the Work substantially complete, Architect/Engineer will within said twenty (20) days execute and deliver to Owner and Contractor, a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Architect/Engineer believes justified after consideration of any objections from Owner. At the time of delivery of the tentative certificate of Substantial Completion, Architect/Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless Owner and Contractor agree otherwise in writing, and so inform Architect/Engineer prior to ARCHITECT/ENGINEER's issuing the definitive certificate of Substantial Completion, Architect/Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

14.9. Owner shall have the right to exclude Contractor from the Work after the date of Substantial Completion, but Owner shall allow Contractor reasonable access to complete or correct items on the tentative list.

### **Partial Utilization:**

14.10. Use by Owner of any finished part of the Work, which has specifically been identified in the Contract Documents, or which Owner and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner without significant interference with Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work, subject to the following:

14.10.1. Owner at any time may request Contractor in writing to permit Owner to use any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If Contractor agrees, Contractor will certify to Owner that said part of the Work is substantially complete and request Architect/Engineer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Owner, Architect/Engineer and **Owner's Representative** shall make an inspection of that part of the Work to determine its status of completion. If Architect/Engineer does not consider that part of the Work to be substantially complete, Architect/Engineer will notify Owner and Contractor in writing giving the reasons therefore. If Architect/Engineer considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work, and the division of responsibility in respect thereof, and access thereto.

14.10.2. Owner may at any time request Contractor in writing to permit Owner to take over operation of any such part of the Work, although it is not substantially complete. A copy of such request will be sent to Architect/Engineer and within a reasonable time thereafter Owner, Contractor, Architect/Engineer and Owner's Representative shall make an inspection of that part of the Work to determine its status of completion, and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If Contractor does not object in writing to Owner that such part of the Work is not ready for separate operation by Owner, Architect/Engineer will finalize the list of items to be completed or corrected, and will deliver such list to Owner and Contractor, together with a written statement as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, heat, utilities, insurance, warranties and guarantees for that part of the Work, which will become binding upon Owner and Contractor at the time when Owner takes over such operation (unless they shall have otherwise agreed in writing). During such operation and prior to Substantial Completion of such part of the Work, Owner shall allow Contractor reasonable access to complete or correct items on said list and to complete other related Work.

14.10.3. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

### **Final Inspection:**

14.11. Upon written notice from Contractor that the entire Work, or an agreed portion thereof is complete, Architect/Engineer and Owner's Representative will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

A qualified person representing Contractor shall be present at this final inspection to demonstrate the systems and prove the performance of the equipment. Prior to this inspection, all work shall have been completed, tested, balanced and adjusted and in final operating condition, if required by the Project.

### **Final Application for Payment:**

14.12. After Contractor has completed all such corrections to the satisfaction of Architect/Engineer and Owner's Representative, and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents--all as required by the Contract Documents, and after ARCHITECT/ENGINEER has indicated that the Work is acceptable (subject to the provisions of paragraph 14.16), Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all

documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to Owner) of any attempted Liens arising out of, or filed in connection with, the Work. In lieu thereof and as approved by Owner, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which an attempted Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner, or Owner's property, might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, Contractor may furnish a special indemnity Bond or post other collateral satisfactory to Owner, to indemnify Owner against any attempted Lien.

### **Final Payment and Acceptance:**

14.13. If, on the basis of Architect/Engineer's and Owner's Representative's observation of the Work during construction and final inspection, and Architect/Engineer's and Owner's Representative's review of the final Application for Payment and accompanying documentation (all as required by the Contract Documents), Architect/Engineer and Owner's Representative are satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Architect/Engineer will, within twenty (20) days after receipt of the final Application for Payment, indicate in writing Architect/Engineer recommendation of payment and present the Application to Owner for payment. Thereupon Architect/Engineer will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of paragraph 14.16. Otherwise, Architect/Engineer will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to Owner of the Application and accompanying documentation, in appropriate form and substance, and with Architect/Engineer's recommendation and notice of acceptability, the amount recommended by Architect/Engineer to the Owner will become due, and will be paid by Owner to Contractor. Contractor shall submit satisfactory evidence to the Owner that all payrolls, material bills, and other indebtedness connected with the Work have been paid, or will be paid from final payment to Contractor, before final certificate is issued.

14.14. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Architect/Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of Architect/Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted, shall be submitted by Contractor to Architect/Engineer with the Application for 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.

### **Contractor's Continuing Obligation:**

14.15. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Architect/Engineer nor the issuance of a certificate of Substantial Completion or Acceptance; nor any payment by Owner to Contractor under the Contract Documents; nor any use or occupancy of the Work, or any part thereof, by Owner; nor any act of acceptance by Owner; nor any failure to do so; nor any review and approval of a Shop Drawing or sample submission; nor the issuance of a notice of acceptability by Architect/Engineer pursuant to paragraph 14.13; nor any correction of defective Work by Owner, will constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 14.16).

## **Waiver of Claims:**

14.16. The making and acceptance of final payment will constitute:

14.16.1. a waiver of all claims by Owner against Contractor, except claims arising from attempted and unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11, or from failure to comply with the Contract Documents, or the terms of any special guarantees specified therein; however, it will not constitute a waiver by Owner of any rights in respect of Contractor's continuing obligations under the Contract Documents; and

14.16.2. a waiver of all claims by Contractor against Owner, other than those prior claims properly made in writing in a timely fashion and still unresolved.

## **ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

### **Owner May Suspend Work:**

15.1 Owner may, at any time and without cause, suspend the Work, or any portion thereof, for a period of not more than **five (5)** calendar days by notice in writing to Contractor which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor may be allowed an increase in the Contract Price or an extension of the Contract Time, or both; directly attributable to any suspension, if Contractor makes an approved claim therefore as provided in Articles 11 and 12.

### **Owner May Terminate:**

15.2 Upon the occurrence of any one or more of the following events:

15.2.1. if Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition, or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2. if a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3. if Contractor makes a general assignment for the benefit of creditors;

15.2.4. if a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of attempting to enforce a Lien against such Contractor property, or for the purpose of general administration of such Contractor property, for the benefit of Contractor's creditors;

15.2.5. if Contractor admits in writing an inability to pay its debts generally as they become due;

15.2.6. if Contractor persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the **Schedule** established under paragraph 2.9, as revised from time to time);

15.2.7. if Contractor knowingly disregards Laws or Regulations of any public body having jurisdiction;

15.2.8. if Contractor knowingly disregards the rights of Owner arising from the Agreement; or

15.2.9. if Contractor otherwise violates in any material way any provisions of the Contract Documents;

Owner may, after giving Contractor and the surety, seven (7) days written notice, and to the extent permitted by Laws and Regulations, and if such efforts to cure are not commenced as stated above, terminate the services of Contractor, exclude Contractor from the site, and take possession of the Work, incorporate in the Work all materials and equipment stored at the site, or for which Owner has paid Contractor, but which are stored elsewhere, and finish the Work as Owner may deem expedient provided it is reasonable and necessary. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the costs of completing the Work (including but not limited to fees and charges of engineers, Architect/Engineers, attorneys and other professionals and court costs) such excess will be paid to Contractor or his surety. If such costs exceed such unpaid balance, Contractor or surety shall pay the difference to Owner. Such costs incurred by Owner will be approved as to reasonableness by Architect/Engineer and incorporated into a Change Order, but when exercising any rights or remedies under this paragraph, Owner shall be required to attempt to obtain the lowest price for the Work performed, understanding that time is of the essence.

15.3. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor, then existing, or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

15.4. Upon seven-(7) day's written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, Contractor shall be paid for all Work executed, and any expense sustained, plus reasonable termination expenses, which will include, but not be limited to, direct costs (including, but not limited to, fees as a percentage of the work completed and charges of engineers, Architect/Engineers, attorneys and other professionals and court costs) but no loss of opportunity costs.

## **ARTICLE 16 - TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

16.1. It is hereby understood and mutually agreed, by and between the parties hereto, that time is of

the essence for the date of beginning, rate of progress and the time for completion of the Work to be done hereunder; and it is further mutually understood and agreed, by and between the parties hereto, that the Work embraced in this Contract shall be commenced on a date to be specified in the Notice to Proceed.

16.2. Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and mutually agreed, by and between the parties hereto, that the time for the completion of the Work described herein is a reasonable time for completion of same, taking into consideration the average climatic range and weather conditions that the Contractor must reasonably anticipate, and usual industrial conditions prevailing in the locality.

16.3. If Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, then Contractor does hereby agree, as a part of the consideration for awarding of this Contract, to pay the Owner the amount specified as Liquidated Damages in the Agreement. The Owner may deduct the damages from any unpaid amounts then or thereafter due the Contractor under this Agreement. Any damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to the Prime Rate.

## **ARTICLE 17 - MISCELLANEOUS**

### **Giving Notice:**

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual listed in the Contract as OWNER'S REPRESENTATIVE AND CONTRACTOR'S REPRESENTATIVE.

### **Computation of Time:**

17.2.

17.2.1. When any period of time is referred to in the Contract Documents by "days", it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday, or on a day made a legal holiday by federal or Texas law, such day will be omitted from the computation.

17.2.2. A **Calendar Day** consists of twenty-four (24) hours and is measured from midnight, to the next midnight, and shall constitute a single calendar day.

### **General:**

17.3. Should Owner suffer injury or damage to person or property because of any error, omission or act of the Contractor, or of any of the Contractor's employees or agents, or others for whose acts and/or omissions Contractor is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for, or a waiver of the provisions of any applicable statute of limitations or repose.

17.4. The duties and obligations imposed by these General Conditions, and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the conditions, warranties, guarantees and obligations imposed upon Contractor by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2, and all of the rights and remedies available to Owner thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to Owner which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, conditions, warranties and guarantees made in the Contract Documents will survive the execution, final payment, and termination or completion of, the Agreement. All statements contained in any document required by Owner, whether delivered at the time of the execution of the Contract Documents, or at a later date, shall constitute representations, warranties and guarantees herein.

17.5. Contractor shall comply with the Copeland “Anti-Kickback” Act, 48 Statute 948, and all amendments or modifications of the original act of June 13, 1934.