



## **ADDENDUM NO. I**

**SUBJECT**: Request for Competitive Sealed Proposals - Aviation Job Order Contracting (JOC) Program at San Antonio Airport System (DBE)

**RFCSP#**: 2024-101

**FROM**: Jonathan Miranda, Procurement Administrator

**DATE**: May 30, 2024

### **THIS NOTICE SHALL SERVE AS ADDENDUM NO. I – TO THE ABOVE REFERENCED REQUEST FOR COMPETITIVE SEALED PROPOSALS**

This addendum is separated into sections for convenience; however, all Respondents, and other parties shall be responsible for reading the entire addendum. The failure to list an item or items in all affected sections of this addendum does not relieve any party affected from performing as per instructions, providing that the information is set forth one time any place in this addendum. These documents shall be attached to and become part of the Contract Documents for this project. The Respondent shall be required to acknowledge the receipt of this addendum.

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1. The following changes and/or additions to the Contract Documents, via this addendum, shall apply to submittals made for and to the execution of the various parts of the work affected thereby.
2. Careful note of the addendum shall be taken by all interested parties and all trades affected shall be fully advised in their performance of the work involved.

#### **GENERAL INFORMATION:**

1. Addendum I is responding to majority of the questions asked during the pre-submittal, workshop and via Civcast. Remaining questions will be addressed on a forthcoming addendum.
2. The bid opening date is hereby extended to **Friday, June 14, 2024, at 2:00 pm** Central Standard Time.
3. Pre-Submittal Conference Presentation is attached.
4. Pre-Submittal Conference Sign-In Sheet is attached.
5. Workshop Conference Presentation is attached.
6. Workshop Conference Sign-In Sheet is attached.
7. Revised Form 5 – Coefficient Proposal Form is attached.
8. Add: Exhibit A – Aviation General Conditions
9. Add: Exhibit C – Job Order Contracting (JOC) Contract Template
10. Delete/Remove from RFCSP Page 2: Exhibit M – Aviation Additional Supplemental General Conditions
11. Delete/Remove from RFCSP Page 2: Exhibit N – Aviation Special Conditions for Construction in the AOA

**QUESTIONS SUBMITTED IN ACCORDANCE WITH SECTION IV,  
PRE-SUBMITTAL CONFERENCE:**

On Wednesday, April 17, 2024, the City of San Antonio hosted a Pre-Submittal Conference to provide information and clarification for the Job Order Contracting (JOC) Program at the San Antonio Airport System (DBE) Request for Competitive Sealed Proposals.

Below is a list of questions that were asked at the pre-submittal conference. The City's official response to questions asked is as follows:

Question 1: Does the City have a historical volume per vendor per JOC contract base on the City's past experience with JOC contracts?

Response: There is no contract capacity per year nor per JOC contract as a requirement, but historically most JOC vendors who perform well are issued task orders totaling about in the \$3,000,000.00 per year/per contract.

**QUESTIONS SUBMITTED IN ACCORDANCE WITH SECTION V, WORKSHOP:**

On Wednesday, April 24, 2024, the City of San Antonio hosted a Workshop Conference to answer any questions bidders had regarding 4Click Cost Data software, Job Order Contracting (JOC) Coefficients, Small Business Economic Development Advocacy (SBEDA), and Civcast reminders on submission deadlines for the Job Order Contracting (JOC) Program at San Antonio Airport System (DBE) Request for Competitive Sealed Proposals. Below is a list of questions asked at the workshop conference. The City's official response to questions asked is as follows:

Question 1: Will the workshop presentation be recorded?

Response: Workshop presentation was not recorded.

Question 2: On past performance, experience, references, are we able to use project managers from current city programs we are in?

Response: Yes, project managers from current city programs can be used as references if they will also be associated with this JOC.

**QUESTIONS SUBMITTED ON CIVCAST IN ACCORDANCE WITH SECTION IX,  
RESTRICTION OF COMMUNICATIONS:**

Question 1: Form #1 and Official RFCSP document for this RFCSP is missing, is this going to be posted soon?

Response: Documents have been uploaded to Civcast.

Question 2: Will a letter from the bidder's bonding company be required to confirm bonding capacity to support the volume of work in this job order contract?

Response: No bonding letters are required with this solicitation.

Question 3: We have been quoted 6-8 months while our DBE application is pending. Are we still able to apply for this JOC contract with a pending DBE application?

Response: Business must be certified at bid submittal due date for DBE credit and participation to count towards meeting the DBE goal.

Question 4: The drawings for the sample project show 1" = 20' but are not accurate when the drawings are scaled. Please advise whether we should use the dimensions provided or provide estimated figures?

Response: The differences observed in the drawings might stem from variances during copying and digitization, thus it's advisable to employ scales closely aligned with the provided measurements. Nevertheless, given the project's emphasis on leveraging RS Means and adhering to contract coefficients rather than precise pricing, estimated values can be entertained as needed. Alternatively, it's worth noting that due to the accurate dimensions in the drawings, completing this exercise without resorting to a scale is feasible.

Question 5: Exhibit F Page 2, Division 2-Site Construction States: 2) Site grading including bldg. pad is balanced.  
b) Avg cut/fill =1.0. Is this specification implying we should expect to cut 1.0' of soil and remove from entire site? Then replace with 1.0' new fill?

Response: The value of "1.0" indicates a balance where the volume of material removed is equal to the volume of material added, hence maintaining the original ground level. This balance is often desired in construction projects to minimize costs and environmental impact. If the value deviates significantly from 1.0, it may indicate either excess material that needs to be removed (cut) or additional material required to be added (fill) to achieve the desired grade or slope. This lack of a delta is to avoid any haul off or added material to the site.

Question 6: It has been highly recommended that the Offeror purchase the Professional Tier e4Clicks subscription to prepare the Sample Project for the City of San Antonio Public Works Job Order Contracting Program? Please confirm.

Response: The software presented is an essential component throughout the duration of the contract for successful awardees. While the city initially recommended utilizing a trial version for respondents without current access, it's important to note that this option is no longer available from the software developer. Respondents are encouraged to use the Construction Cost Estimating Software of their choice (i.e., 4Clicks Professional Project Estimator Software, RS Means Construction Cost Estimating Software, etc.) to respond to the Sample Project.

Question 7: Can RSMeans Online be used instead of 4Clicks as the estimating tool?

Response: During the pre-solicitation meeting and workshop, it was communicated that a free version of RS Means data was accessible online. However, subsequent communication from the software developer has clarified that this free version does not meet the necessary requirements for our purposes. Respondents are encouraged to use the Construction Cost Estimating Software of their choice (i.e., 4Clicks Professional Project Estimator Software, RS Means Construction Cost Estimating Software, etc.) to respond to the Sample Project.

### **CHANGES TO RFCSP: REVISIONS**

1. V. Proposal Document Requirements and Evaluation Criteria, Statement of Qualifications, B. Understanding of the JOC Program and Proposed Management Plan (25 Points), 1.B Provide Scope of work definition, proposal, and UPB breakdown for the Sample Project (See Exhibit D, E & F and include with "Tab 10B"):

**DELETE:** Language "Respondents can have access to a trial version of 4Clicks Professional Project Estimator (e4Clicks) software, for the duration of the solicitation period."

**REPLACE:** Language "Respondents are encouraged to use the Construction Cost Estimating Software of their choice (i.e., 4Clicks Professional Project Estimator Software, RS Means Construction Cost Estimating Software, etc.) to respond to the Sample Project."

**REVISED:** Language "It is expected that the sample project will be created by Respondent with the Construction Cost Estimating Software of their choice and using all other parameters outlined with regard, but not limited, to (See Form #5& Exhibit D & E):

- Respondents are to use the coefficient submitted in response to this RFCSP. (Form #5)
- Line-item definitions and explanations.
- Coefficient restrictions and allowances
- Respondents are to submit sample project as close as possible to the Preliminary Estimate format included on pages 18-20 on Exhibit F – Sample Project Package.

2. V. Proposal Document Requirements and Evaluation Criteria, Statement of Qualifications, C. Coefficient Proposal (20 Points):

**REVISED:** Language "Respondents must submit a Coefficient to cover overhead, profit, and any other costs that are not included in the UPB, which for the purposes of this contract would be the Construction Cost Estimating Software of their choice.

**REVISED:** Language “The coefficient amounts are a maximum of what can be proposed. Respondent may reduce the amounts if applicable and within the capabilities of the Construction Cost Estimating Software of their choice if desired.”

3. V. Proposal Document Requirements and Evaluation Criteria, Required Forms (to be uploaded individually in Civcast), 6. Coefficient Proposal Form (Form #5):

**REVISED:** Language “Respondent must submit the completed form, uploaded to Civcast. The Coefficient Factor for Standard/Normal Working Hours and for Non-Standard/Normal Working Hours must also be entered in the Bid Form section of the Civcast website at <https://www.civcastusa.com/bids>. Respondents must submit a Coefficient to cover overhead, profit, and any other costs that are not included in the UPB, which for the purposes of this contract would be the Construction Cost Estimating Software of their choice. The Respondent’s Coefficient is a numerical value, to three (3) decimal places, that the Respondent proposes as a multiplier to the UPB. If there is a discrepancy between the Evaluation Coefficient on Form #5 - Coefficient Price Proposal Form, and the Bid Form section of the Civcast website, the Bid Form section of the Civcast website shall govern”.


#### **REVISIONS TO DOCUMENTS:**

1. Form 5 – Coefficient Proposal Form.

**REVISED LANGUAGE:** “Respondents must submit a Coefficient to cover overhead, profit, and any other costs that are not included in the UPB, which for the purposes of this contract would be the Construction Cost Estimating Software of their choice.”

**REVISED LANGUAGE:** “The coefficient amounts are a maximum of what can be proposed. Respondent may reduce the amounts if applicable and within the capabilities of the Construction Cost Estimating Software of their choice.”

END OF ADDENDUM No. I

  
\_\_\_\_\_  
Jonathan Miranda, MSJP  
Procurement Administrator  
Finance Department – Procurement Division

Pre-Submittal Meeting  
Request For Competitive Sealed Proposals (RFCSP)  
Job Order Contracting (JOC) Programs



Public Works Job Order Contracting (JOC) Program  
RFCSP: 2024-043

Job Order Contracting (JOC) Program at San Antonio Airport System  
RFCSP: 2024-101

Wednesday, April 17, 2024

# Sign-In Instructions

Everyone attending today's Pre-Submittal must scan the QR Code with your phone/tablet or type the URL on your laptop/desktop computer and complete the Sign-In Form.

This will confirm your attendance for today's meeting. If you do not complete the form, your name will not be added to the sign in sheet. The sign-in form will not be available after the meeting.



*Sign-In Form:* <https://forms.office.com/g/1XJ5ssy4XC?origin=lprLink>

# Introductions



*City Staff Only:*

*We will begin with the introductions of city staff attending today's pre-submittal meeting.*

*Please hold all questions until the end of the Pre-submittal conference*

# High Profile Solicitation

**This solicitation has been identified as High-Profile.**

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

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

*\*For both solicitations, the first-day contributions are prohibited is **Friday, April 19, 2024.**  
The first day contributions may be made is the 31st day after the contract is approved at a City Council “A” Session.*

***Please refer to the Cover Page of solicitation for additional details.***

# Restriction of Communications

- No communication with 1) City Officials from the release of the solicitation until the contract is posted for consideration as an “A Session” agenda item and 2) City Staff from the release of the solicitation until Contract Award except:
  - Questions at today’s pre-submittal conference;
  - Small Business Office (SBO) and Business Opportunity & Diversity Development (BODD) can be reached until the submittal deadline;
  - Submit written questions by 4:00 p.m. CT, May 8, 2024.
- Failure to adhere to the restrictions on communications policy may lead to disqualification of Respondent’s submittal from consideration.
- City staff can reach out to Respondents to clarify documents submitted and to begin negotiations once evaluation is completed, if applicable.

# Solicitation Background

The Public Works Department and the San Antonio Airport System are seeking to contract with qualified firms interested in providing job order contracting services for various projects for the City of San Antonio. Services include but are not limited to incidental demolition, construction, repair, rehabilitation, alteration, and deferred maintenance on City owned and leased buildings, or other facilities of interest to the City. The City intends to award up to 8 JOC contracts for the Public Works Department and up to 3 JOC contracts for the San Antonio Airport System, as a result of both RFCSPs; however, the number of awarded contracts will depend on the number of proposals received and the evaluation results.

Contract term: Two (2) year initial term, with the City's discretion to extend the contracts for three (3), one (1) year terms.

# Scope of Work and General Requirements

- With the exception of emergencies, any work required by City shall be ordered through the issuance of a formal written job order, containing the approved Job Order Proposal, along with a City issued Task Order (TO).
- Request for Job Order Proposals shall be submitted to City at no additional cost. In the event Job Order Contracts are awarded to multiple Respondents, City may elect, at its own discretion, to solicit proposals from one or more of the awarded JOCCs, depending upon the estimated value and/or complexity of the proposed project. Determination to solicit multiple proposals from the JOCCs or from only one JOCC shall be on a case-by-case, as deemed in the best interest of City. The City at its discretion, may procure estimating services to assist the city with a benchmark for scope of work and budget determination

# Job Orders

- With the exception of emergencies, any work required by City shall be ordered through the issuance of a formal written job order containing the approved Job Order Proposal, along with a City issued Task Order (TO).
- Request for Job Order Proposals shall be submitted to City at no additional cost. In the event Job Order Contracts are awarded to multiple Respondents, City may elect, at its own discretion, to solicit TO Proposals from one or more of the awarded JOCC, depending upon the estimated value and/or complexity of the proposed project. Determination to solicit multiple proposals from the JOCCs or from only one JOCC shall be on a case-by-case, as deemed in the best interest of City. The City at its discretion, may procure estimating services to assist the city with a benchmark for scope of work and budget determination.

# Job Orders cont.

- Upon review of Job Order Proposals, City shall have the right to reject all proposals, cancel the proposed project, rebid the work under any permissible procedure or perform the work utilizing City personnel. City shall not be responsible for payment or costs incurred by the JOCC for the preparation and submission of a Job Order Proposal, regardless of project outcome. Should proposal be accepted submittal of a schedule is due within one week of the Notice To Proceed (NTP).
- The current R.S. Means Facilities Construction Cost Data © shall serve as a basis for establishing the maximum price and the value of work to be performed. Each JOCC's Job Order Proposal shall be submitted to City and negotiated under the contract agreement.

# Solicitation Background

## Aviation Job Order Contract

- San Antonio Airport System currently owns approximately 207 building of which 74 are under lease agreement
- Intend to award up to three (3) contracts for a two (2) year base agreement with up to three (3) one-year extensions
- Job order contractor must be able to obtain proper Transportation Security Administration (TSA) security badging clearances to include required background checks
- Job order contractor will be responsible for having subcontractors properly badged or for providing escorts as needed



# Solicitation Background

## Aviation Experience Requirement

- Job order contractor must maintain a critical path schedule on all its projects while working in an environment that operates in secure areas in a 24 hour a day/7 day a week environment
- Job order contractor will be required to adapt to changing site conditions and projects
- Must meet the Disadvantaged Business Enterprise (DBE) goals



SBEDA Eligibility & SAePS Registration

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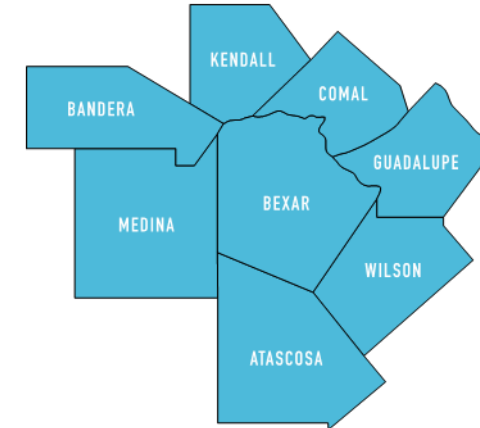
# Doing Business with the City

# SBEDA Eligibility



## Certified by the SCTRCA as a Small Business Enterprise (SBE)

Note: Other certifications such as MBE, WBE or AABE may be needed to fulfill other SBEDA requirements or obtain certain SBEDA incentives



## HQ or a Significant Business Presence in SAMSA

Significant business presence requires a firm to have an office in the SAMSA for 1 year and 20% of the firm's employees must work out of that SAMSA office



## Register Your Business with the City

- To register, please follow the link:  
[www.sanantonio.gov/purchasing/saeps.aspx](http://www.sanantonio.gov/purchasing/saeps.aspx)
  - Once registered, the SAePS System will state online if your firm is SBEDA eligible or not
  - Prime awardees must be registered in the Central Vendor Registry; however, the City encourages all vendors to register in SAePS
  - SAePS is a great way to market your business and learn about upcoming solicitation opportunities
-

## Prime Contract & Subcontracting Programs

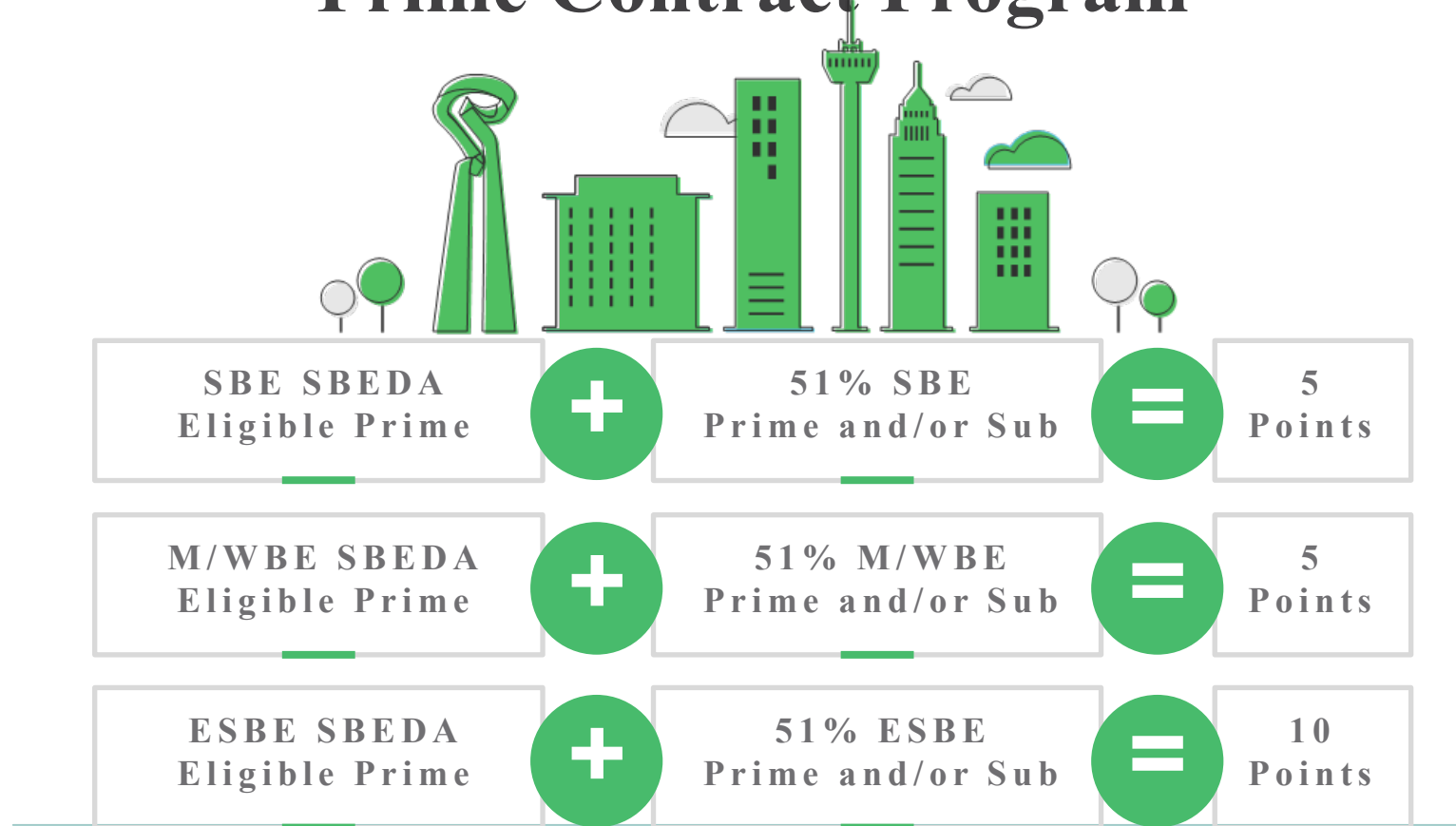
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# SBEDA Tools

# SBEDA Tools



## Prime Contract Program



# SBEDA Tools



## Subcontracting Program

For a Prime Contractor or Subcontractor to count toward a City required subcontracting goal(s), the Prime Contractor or Subcontractor must be SBEDA eligible and have the same certification(s) as the City required goal(s)

Note that self performance by the Prime Contractor is allowed

| Goal Type | Percentage |
|-----------|------------|
| M/WBE     | 24%        |
| AABE      | 3%         |



## **Subcontracting Program Important Notes**



- Self-Performance of subcontracting goals by the Prime respondent **IS ALLOWED** for this solicitation
- Not meeting the subcontracting goals at the time bids are due will deem a bid non-responsive
- The City of San Antonio has a vendor search function to find SBEDA eligible S/M/WBEs. Please visit the COSA vendor Listing to view or to download a listing of SBEDA eligible vendors registered with the City  
[www.sanantonio.gov/purchasing/vendorinformation/cosavendorlisting.aspx](http://www.sanantonio.gov/purchasing/vendorinformation/cosavendorlisting.aspx)
- ASSISTANCE IS AVAILABLE FOR COMPLETING THE UTILIZATION PLAN

Commitment Form and Waiver Request

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# SBEDA Forms

# Commitment Form



City of San Antonio  
Subcontractor/Supplier Utilization Commitment Form

Solicitation Name: *Job Order Contracting (JOC) Program 2025-2030*

Respondent Name:

Please acknowledge the statements below by initialing the box:

- In responding to this solicitation, I hereby affirm my firm's commitment to meet the subcontracting requirement(s) indicated in the solicitation.
- I understand that Emerging Small Business Enterprise (ESBE) prime respondents proposing at least 51% ESBE utilization (prime and/or subcontractor) will receive ten (10) evaluation preference points.
- I understand that Small Business Enterprise (SBE) prime respondents proposing at least 51% SBE utilization (prime and/or subcontractor) will receive five (5) evaluation preference points.
- I understand that Minority and/or Women-Owned Business Enterprise (M/WBE) prime respondents proposing at least 51% M/WBE utilization (prime and/or subcontractor) will receive five (5) evaluation preference points.
- I understand that a Minority and/or Women-Owned Business Enterprise (M/WBE) subcontracting goal of **twenty-four percent (24%)** applies to this solicitation.
- I understand that an African American Business Enterprise (AABE) subcontracting goal of **three percent (3%)** applies to this solicitation.
- I understand that if the Prime or Subcontractor subcontracting goal(s) is/are less than the required subcontracting goal(s), the subcontracting goal(s) as the City required.
- I understand that if the Prime or Subcontractor is certified as a Small Business Enterprise (SBE) AND they must be certified by the State of Texas Small Business Enterprise Agency ([www.sctrca.org](http://www.sctrca.org)) AND they must have a physical presence in the San Antonio Metropolitan Statistical Area.
- I understand that by submitting this Commitment Form to acknowledge the requirements of this form, I agree to be **NON-RESPONSIVE**.
- I understand that my firm is required to submit a Change of Utilization Plan to the CITY on a quarterly basis based on the SBO's job order, on-call, and/or indefinite delivery contracts reporting schedule resulting from this solicitation (except for the last quarter of this contract term, during which my firm shall submit for each accepted task order).
- I understand that in the absence of a Post-Award Vendor Subcontracting Waiver granted by the SBO, the failure of firm to attain these subcontracting goals for S/M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and subject to penalties and/or sanctions available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Prime Contractor's Authorized Agent:

Name:

Sign and Date:

Version 5/30/2018

Please acknowledge the statements by initialing each box

- See subcontracting requirements of M/WBE 24% and AABE 3%
- A Commitment Form should be completed and submitted at the time bids are due
- Prime Contractor will identify Subcontractors/Suppliers after the contract has been awarded
- Evaluation preference points (if applied) will be awarded based on SBEDA-eligibility and certifications

# Post-Award Waiver Request



## Post-Award Vendor Subcontracting Wavier Request Form

|                   |                      |                |                      |
|-------------------|----------------------|----------------|----------------------|
| Contract Title:   | <input type="text"/> |                |                      |
| Contract #:       | <input type="text"/> | Contact #:     | <input type="text"/> |
| Prime Contractor: | <input type="text"/> | Contact Email: | <input type="text"/> |
| Contact Person:   | <input type="text"/> | Date:          | <input type="text"/> |

*The purpose of this wavier is to address the good faith efforts made in meeting the required subcontracting goal(s) for this project. The Prime contractor should submit or has submitted a change to Utilization Plan with this waiver request.*

### 1. Describe the rational for your waiver request for not meeting the subcontracting goal(s) applied to this project.

Check the box(s) that best explain why the subcontracting goal(s) applied were not met.

- The city issued a change order that limited subcontracting opportunities or required expedited completion of the scope of work causing the subcontracting goal(s) to not be met.
- A S/M/WBE to be utilized lost certification and could not be replaced with another S/M/WBE who could perform the scope of work.
- There were other issue(s) that resulted in the subcontracting goal(s) not being met.

Please provide further detail for the checked box(s) above.

- Once awarded, if a Prime Contractor can not meet a committed goal, a Waiver Request should be submitted for consideration and approval by the Small Business Office
- For more details see this link:  
<https://www.sanantonio.gov/SBO/Form>

CCMS Reporting, Mentor Protégé Program, Bonding Assistance Program

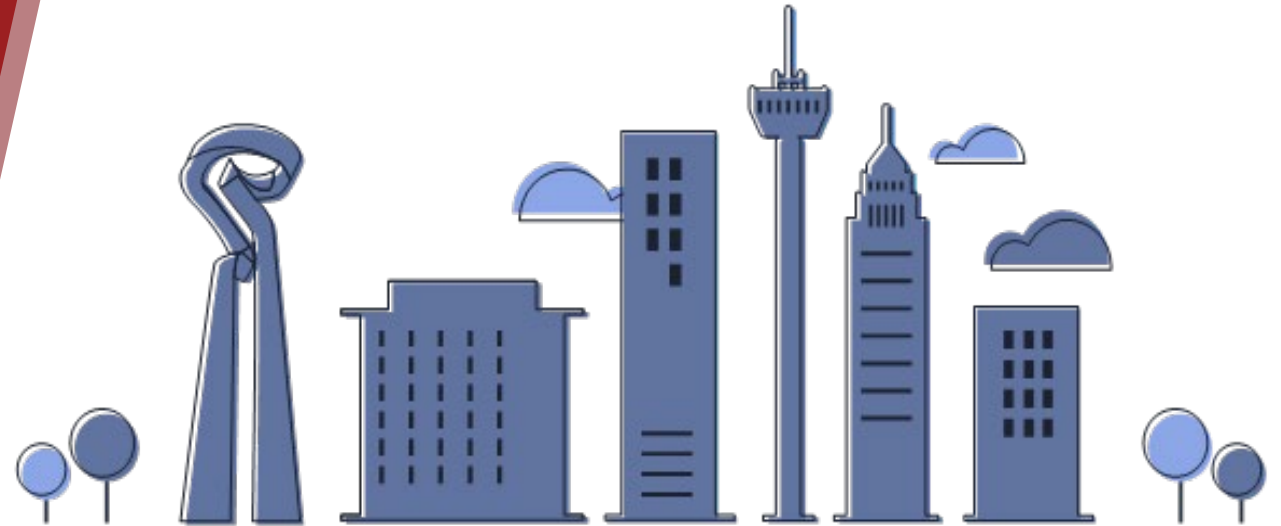
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# Post-Award Information

# Post-Award Requirements

## City Contract Management System

- Report payments to subcontractors and monitor attainment of the SBEDA goals on a monthly basis
- Submit Change of Utilization Plans if the value of the contract changes or if subcontractors are added, removed, or reduced in value with proper documentation



# Capacity Building & Bonding Assistance Program



## CAPACITY BUILDING & BONDING ASSISTANCE PROGRAM

### Small Business Contractors in San Antonio

- **Maximize** your bonding capacity
- **Bid** on more City of San Antonio Contracts
- **Grow** your own business to the next level



### CAPACITY BUILDING

- Education & training
- One-on-one technical assistance & guidance



### BONDING ASSISTANCE

- Access to specialty bond markets
- Access to funds for city bond requirements

**GET IN THE GAME!  
GET BONDED TODAY!**

For more information visit  
[www.sanantonio.gov/edd](http://www.sanantonio.gov/edd)

City of San Antonio Capacity Building & Bonding Assistance Program  
Jim Swindle, AFSB - Program Administrator | Alamo Surety Bonds

(210) 930-5550 [jim@alamobonds.com](mailto:jim@alamobonds.com)



**SAEDC**

SAN ANTONIO ECONOMIC  
DEVELOPMENT CORPORATION

CITY OF SAN ANTONIO  
ECONOMIC DEVELOPMENT  
DEPARTMENT

## Mentor Protégé Program

- The City of San Antonio has partnered with Alamo Colleges to establish a Mentor Protégé Program.
- The Program starts with a series of classes to help S/M/WBEs write a business plan, understand financials, learn how to market, etc.
- S/M/WBEs are then partnered with mentors for a 2-year period to learn best business practices.



ALAMO  
COLLEGES



# Contact Us



## SBEDA Program

- Email: [SBEDAdocs@sanantonio.gov](mailto:SBEDAdocs@sanantonio.gov)
- Phone: 210-207-3922
- Website: [www.sanantonio.gov/sbo](http://www.sanantonio.gov/sbo)



## Central Vendor Registry Contact

- Phone: 210-207-0118
- Website: [www.sanantonio.gov/purchasing/saeps](http://www.sanantonio.gov/purchasing/saeps)



## SCTRCA

- Phone: 210-458-3225
- Website: [www.sctrca.org](http://www.sctrca.org)



## Mentor Protégé Program

### Mario Hernandez, Program Manager

- Email: [mhernandez1665@alamo.edu](mailto:mhernandez1665@alamo.edu)
- Phone: 210-486-0821
- Website: [www.besanantonio.com](http://www.besanantonio.com)



## DBE Presentation

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# Business Opportunity & Diversity Development (BODD)

# Business Opportunity & Diversity Development (BODD)

## DBE Program Overview & Requirements



- Disadvantaged Business Enterprise (DBE) Program Requirements of U.S. Department of Transportation (DOT), 49 CFR Part 26



The City of San Antonio (COSA) has received federal financial assistance from DOT and therefore must comply with DBE Program requirements of 49 CFR Part 26. San Antonio International Airport (SAIA) is prohibited from race, color, national origin, gender or disability discrimination in the award and performance of DOT-assisted contracts.

- Objectives
- To facilitate DBE participation for contractual opportunities at SAIA and create a level playing field on which DBEs can compete fairly.
- To ensure Aviation Department's DBE program is narrowly tailored in accordance with applicable law.
- DBE statute does not preempt state or local law
- State or local law, policy, or regulation must be administered separately from DBE program.
- If conflict exists, the requirements of 49 CFR Part 26 will prevail.

# DBE Program Requirements

- To participate in the DBE program, a small business owned and controlled by socially and economically disadvantaged individuals must receive **DBE certification from Texas Uniform Certification Program (TUCP)**.
- **Texas Unified Certification Program's (TUCP) certifying agencies:** Texas Department of Transportation (TxDOT), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, and Corpus Christi or Regional Transportation Authority, **at time of proposal submission** in order to count their participation. **State DBE Directory TUCP website:** <http://www.dot.sate.tx.us>
- **DBE firms must complete certification** before bid submittal to be credited toward the DBE goal.
- DBE vendors that are certified in another state and not in Texas must obtain **DBE Interstate Certification** through their home state, SCTRCA, or a TUCP certifying agency.
- SCTRCA serves businesses in San Antonio Metropolitan Statistical Area (SAMSA) & can assist vendors with DBE Certification. **SCTRCA Website:** <http://www.sctra.org>
- **A DBE Prime can self-perform** in order to meet the DBE goal. **DBE credit is awarded only for work actually being performed by DBEs themselves and meets the scope of work identified by the solicitation.** Work subcontracted to Non-DBEs does not count towards the goal.
- **M/WBE certifications are NOT accepted for DBE credit.**
- BODD staff can assist with information on where to find certified firms if needed.

# DBE Program Requirements



The DBE goal is based upon the relative availability of DBE certified firms located within the San Antonio Metropolitan Statistical Area (SAMSA) relative to all firms for trades identified within the solicitation's scope of work. Participation for DBE credit is open for all DBE certified firms from anywhere in Texas or nationwide through the reciprocity process.

|  |
|--|
| <b>SAMSA</b>   |
| Texas counties of Atascosa, Bandera, Bexar, Comal,<br>Guadalupe, Kendall, Medina, Wilson |

# DBE Program Requirements

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- Due With/At Time of Proposal
- DBE Forms
- Signed & completed “*Good Faith Effort Plan*” (**DBE Form 1**) detailing efforts to include DBEs as part of respondent’s team
- Letter(s) of Intent (**DBE Form 2**) for each firm listed on DBE Form 1
- DBE Certification Affidavit(s) to DBE Form 1
- Bidder’s List Collection DBE Form

# Good Faith Effort Plan (DBE Form 1)

## Good Faith Efforts & DBE Commitments Page 1 & 2



**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)  
DBE GOOD FAITH EFFORT PLAN FOR  
FEDERALLY ASSISTED CONSTRUCTION CONTRACTS  
(DBE Form 1)**

### SECTION B - DBE COMMITMENTS

**NAME OF PROJECT:** \_\_\_\_\_

#### SECTION A - BIDDER INFORMATION:

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Age of Firm (Number of Years in Business): \_\_\_\_\_ Years

Annual Gross Receipts of the Firm: \_\_\_\_\_ Less than \$500,000  
 \_\_\_\_\_ \$1 million to \$2 million  
 \_\_\_\_\_ Over \$5 million  
 \_\_\_\_\_ \$500,000 to \$1 million  
 \_\_\_\_\_ \$2 million to \$5 million

Is your firm Certified: Yes \_\_\_\_\_ No: \_\_\_\_\_ If certified, Certification Number: \_\_\_\_\_

Type of Certification \_\_\_\_\_ DBE \_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_ AABE \_\_\_\_\_ SBE

1. List ALL SUBCONTRACTORS/SUPPLIERS that will be utilized on this contract. A Letter of Intent (DBE Form 2) must be submitted for all subcontractors/suppliers listed below at the time the bid is submitted. If the Aviation Department does not receive completed LOIs, then the Respondent's Good Faith Effort Plan will not be approved. An approved Good Faith Effort Plan is required prior to award of any contract.

| Name & Address of Company | Scope of Work/Supplies to be Performed/Provided by Firm | Estimated Contract Amount Or % Level of Participation | If Firm is DBE Certified, Provide Certification Number | Date Written Notice Was Sent & Method (Letter, Fax, E-mail) |
|---------------------------|---|---|--|---|
| 1.                        |   |   |  |   |
| 2.                        |   |   |  |   |
| 3.                        |   |   |  |   |
| 4.                        |   |   |  |   |
| 5.                        |   |   |  |   |

(Use Additional Sheets if Necessary)

The DBE goal on this project is: \_\_\_\_\_ %

1. The undersigned bidder has satisfied the requirements of the bid specification in the following manner (please check the appropriate box):

Bidder/offeree has met the DBE contract goal

The bidder/offeree is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

Bidder/offeree has not met the DBE contract goal

The bidder/offeree is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract and has submitted documentation demonstrating good faith efforts. (If contractor is unable to meet the goal, please fill out Section C and submit documentation demonstrating good faith efforts).

Legal name of bidder/offeree's firm: \_\_\_\_\_

2. Name and phone number of person appointed to coordinate and administer the Federal DBE requirements on this project.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

IF DBE GOAL WAS MET, PROCEED TO PAGE 4 AND SIGN THE GFEP. IF GOAL WAS NOT MET, PROCEED TO SECTION C.

- Sign & Complete Good Faith Effort Plan (GFEP) (DBE Form 1) detailing efforts to include DBEs as part of your team
- BODD staff can assist with information on where to find DBE certified Firms if needed
- If DBE Goal was met proceed to Affirmation and sign the GFEP
- If DBE Goal was NOT MET Proceed to Section C

# Good Faith Effort Plan (DBE Form 1) Section C and Affirmation

## Page 3 and 4



**SECTION C – GOOD FAITH EFFORTS (Fill out only, if the DBE goal was not achieved).**

List all firms you contacted with subcontracting/supply opportunities for this project that will not be utilized for this contact by choice of the bidder, subcontractor, or supplier. *Written notices to firms contacted by the bidder for specific scopes of work identified for subcontracting/supply opportunities must be provided to subcontractor/supplier not less than five (5) business days prior to bid/proposal due date.* The following information is required for all firms that were contacted of subcontracting/supply opportunities:

| Name & Address of Company | Scope of Work/Supplies to be Performed/ Provided by Firm | If Firm is DBE Certified, Provide Certification Number | Date Written Notice Was Sent and Method (Letter, Fax, E-mail) | Reason Agreement Was Not Reached |
|---------------------------|--|--|---|----------------------------------|
| 1.                        |  |  |   |                                  |
| 2.                        |  |  |   |                                  |
| 3.                        |  |  |   |                                  |
| 4.                        |  |  |   |                                  |
| 5.                        |  |  |   |                                  |
| 6.                        |  |  |   |                                  |
| 7.                        |  |  |   |                                  |
| 8.                        |  |  |   |                                  |
| 9.                        |  |  |   |                                  |
| 10.                       |  |  |   |                                  |

(Use additional sheets as needed)

In order to verify a bidder's good faith efforts, please provide to the City with copies of the written notices to all firms contacted by the bidder for specific scopes of work identified in relation to the subcontracting/supply opportunities in the above named project. Copies of said notices must be provided to the DBE Liaison within five (5) business days after the bid is due. Such notices shall include information on the plans, specifications and scope of work.

- Did you attend the pre-bid conference scheduled by the City for this project? Yes \_\_\_\_\_ No \_\_\_\_\_
- List all DBE listings or directories, contractor associations, and/or any other associations utilized to solicit DBE subcontractors/suppliers:  
\_\_\_\_\_
- Discuss efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goal:  
\_\_\_\_\_

- Indicate advertisement mediums used for soliciting bids from DBEs. (Please attach a copy of the advertisement(s):  
\_\_\_\_\_
- Discuss efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance:  
\_\_\_\_\_
- Discuss efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services:  
\_\_\_\_\_

**AFFIRMATION**

*I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

NAME AND TITLE OF AUTHORIZED OFFICIAL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**NOTE:**  
1. If the DBE goal was not met, the Aviation's DBE Liaison Officer will evaluate the "good faith efforts" of a firm. The Good Faith Effort Plan for Federally Funded Contracts must be approved by the Aviation Department's DBE Liaison Officer prior to award of contract.

2. If the DBE Liaison determines that the bidder has not made good faith efforts, then the bidder shall have the opportunity to appeal this decision to the Aviation Director. The Aviation Director shall review the written documentation presented by bidder and has final approval in determining whether Good Faith Efforts have been made.

**FOR SAN ANTONIO INTERNATIONAL AIRPORT USE ONLY:**

Plan Reviewed by \_\_\_\_\_ Signature of DBE Liaison Officer Date: \_\_\_\_\_

Recommendation: Approval: \_\_\_\_\_ Denial: \_\_\_\_\_

Action Taken: Approved: \_\_\_\_\_ Denied: \_\_\_\_\_

- Complete Section C if DBE Goal was **NOT met**
- Document your detailed efforts that you made to meet the DBE goal
- The DBE Liaison Officer will evaluate your "good faith efforts" for not meeting the DBE goal.
- If the DBE Liaison Officer determines you failed to do so, you will be deemed **NON-RESPONSIVE**

- Sign and Complete **Affirmation Section**



# Letter of Intent (DBE Form 2) Page 1 & 2



**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)  
LETTER OF INTENT  
FOR FEDERALLY FUNDED CONTRACTS  
(DBE Form 2)**

The requirements of 49 CFR Part 26 (Section 26.53), of the U.S. Department of Transportation, requires that all bidders/offers comply with good faith efforts requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidders/proposers to submit the following information from each Subcontractor/Supplier for this contract (as listed on Item 1 of DBE Good Faith Effort Plan for [DBE Form 1] and/or Change or addition of sub contractors/suppliers (DBE Form 3)

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

NAME OF PROJECT: \_\_\_\_\_

Name of bidder/offers firm: \_\_\_\_\_

Name & Title of firm's AR \_\_\_\_\_ Phone \_\_\_\_\_

Email: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of Sub consultant/Supplier: \_\_\_\_\_

Name & Title of firm's AR \_\_\_\_\_ Phone \_\_\_\_\_

Email: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Is the above firm DBE Certified: Yes \_\_\_\_\_ No \_\_\_\_\_ If certified, Certification No: \_\_\_\_\_

If firm is certified, please attach a copy of the Certification Affidavit with this form.

Age of Firm (Number of Years in Business): \_\_\_\_\_ Years

Annual Gross Receipts of the Firm: \_\_\_\_\_ Less than \$500,000 \_\_\_\_\_ \$500,000 to \$1 million  
\_\_\_\_\_ \$1 million to \$2 million \_\_\_\_\_ \$2 million to \$5 million  
\_\_\_\_\_ Over \$5 million

NAICS Code and/or Description of work to be performed by firm: \_\_\_\_\_

The bidder/offers is committed to utilizing the above-named firm for the work described above. The estimated dollar value or percentage of this work is \$ \_\_\_\_\_

**Affirmation**

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Firm's Representative

Title: \_\_\_\_\_

**NAME OF PROJECT:**

**DECLARATION OF PRIME CONSULTANT:**

I hereby declare and affirm that I am the \_\_\_\_\_  
(Title of Declarant)

and a duly authorized representative of \_\_\_\_\_  
(Name of Prime Consultant)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the firm signed this form in the place indicated, and no material facts have been omitted.

The undersigned intends to enter into a formal agreement with the listed firm for work as indicated by this form and will, if requested, provide the Airport's DBE Liaison with a copy of that agreement within three (3) business days of execution.

\_\_\_\_\_  
(Name of Declarant)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**SUBMIT THIS PAGE FOR EACH SUBCONSULTANT/SUPPLIER FOR THIS CONTRACT, AS LISTED ON ITEM 1 OF DBE GOOD FAITH EFFORT PLAN FOR FEDERALLY FUNDED CONTRACTS (DBE FORM 1) AND/OR CHANGE OR ADDITION OF SUBCONTRACTORS/SUPPLIERS ON FEDERALLY FUNDED CONTRACTS (DBE FORM 3)**

*IF THE BIDDER/OFFEROR DOES NOT RECEIVE AWARD OF THE PRIME CONTRACT, ANY AND ALL REPRESENTATIONS IN THIS LETTER OF INTENT AND AFFIRMATION SHALL BE NULL AND VOID.*

- Sign & complete Letter(s) of Intent (DBE Form 2) for each subcontractor listed on DBE Form 1
- "Estimated Percentage value of work" **must** be the same amount listed on "% Level of participation" column on DBE Form 1
- Submit copy of DBE Certification Affidavit for all DBE firms utilized or proposed to be utilized as subcontractors or suppliers on DBE Form 2
- Sign and Complete Declaration, Page 2 on DBE Form 2

# DBE Program Requirements

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## DBE Compliance

- The Respondent will be required to obtain the DBE Liaison's prior approval for any changes to subcontractors and/or suppliers as reflected on contractors approved *Good Faith Effort Plan* (DBE Form 1) and/or Letter of Intent (DBE Form 2).
- The respondent will be required to obtain the approval through the submittal of *Change or Addition of Subcontractors/Suppliers* (DBE Form 3)
- The respondent must provide copies of new or amended subcontracts, or documentation of good faith efforts.

# IMPORTANT NOTES

- BODD will only credit DBE participation that is certified by an approved certification entity (member of TUCP) at the time of bid/proposal submission. M/WBE certificates are not accepted for DBE credit.
- Respondents must make good faith efforts to meet the goal. Respondent may do so either by obtaining enough DBE participation to meet the goal or by documentation that it made sufficient good faith efforts to do so.
- An approved Good Faith Effort Plan is required prior to award of any contract

## Exception to Communications:

- Respondent and/or their agents may contact the Aviation's DBE Liaison Officer Barbara Patton or her Business Opportunity & Diversity Development (BODD) staff for assistance or clarification with issues specifically related to the DBE policy and/or completion of the *Good Faith Effort Plan*. Respondents and/or their agents may contact the Aviation's DBE Liaison Officer or her BODD staff at any time prior to the due date for submission of proposals. Contacting the BODD office regarding this RFP after the proposal due date is not permitted.
- San Antonio Electronic Procurement System (SAePS)
- All vendors wishing to do business with the City are encouraged to register in SAePs which serves as the City's Central Vendor Registry (CVR).
- To begin the registration process, please go to: <http://www.sanantonio.gov/purchasing/SAePS.aspx>
- For technical assistance please call (210) 207-0118

# Aviation DBE Program Contacts



## Business Opportunity and Diversity Development (BODD) Staff:

- Marisol Amador, Special Projects Manager at (210) 207-3406 or [marisol.amador@sanantonio.gov](mailto:marisol.amador@sanantonio.gov)
- Barbara Patton, DBELO at (210) 207-3592 or [barbara.patton@sanantonio.gov](mailto:barbara.patton@sanantonio.gov)
- Joseph Gonzales, Diversity Development Program Coordinator at (210) 207-3526 or [joseph.gonzales2@sanantonio.gov](mailto:joseph.gonzales2@sanantonio.gov)
- Brenda Rodriguez, Diversity Development Program Coordinator at (210) 207-3808 or [brenda.rodriguez2@sanantonio.gov](mailto:brenda.rodriguez2@sanantonio.gov)
- Business Opportunity & Diversity Development staff email: [BODD@sanantonio.gov](mailto:BODD@sanantonio.gov)

# Prevailing Wage Requirements

# Prevailing Wage Requirements

- Prevailing wage requirements will only be applied to construction activities, as per guidelines through the Wage and Hour Labor Standard Provisions Ordinance #2008-11-20-1045
- City of San Antonio – Labor Compliance Office - enforces compliance
- LCP Tracker - web-based application – utilized to monitor certified payrolls
- Underpayments will result in penalties = \$60 per day per occurrence per employee
- Employee interviews will be conducted on a routine basis
- The City assigned Wage Decision (Building TX20240231 Mod#2 Published 4/5/2024) at bid opening will be locked in for one year post contract award date i.e., Ordinance date.
- The City will update the Wage Decision annually on each anniversary date of contract award i.e., Ordinance date.

# Schedule of Events

## SOLICITATION



April/May 2024

- April 5, 2024 - RFCSP Released
- April 17, 2024 - Pre-Submittal Meeting at 9:30AM
- April 24, 2024 - Workshop at 9:00AM
- May 8, 2024 - Deadline for Submission of Written Questions at 4:00PM

## POST SOLICITATION



June/July 2024

- June 4, 2024 – Submittals Due at 2:00PM
- June/July 2024 - Evaluation of Submittals

## FINALIZATION



October 2024

- October 2024 - Anticipated City Council Consideration

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# Public Works RFCSP Proposal Document Requirements and Evaluation Criteria



# PW Proposal Document Requirements

| TAB | TITLE  | DESCRIPTION  |
|-----|--|--|
| 1   | Submittal Checklist and Table of Contents (Form 1) | Ensure all required information is in correct order.   |
| 2   | Executive Summary                                  | One page summary stating relevant information of your team.  |
| 3   | Contract Template and General Conditions Review    | Must provide written acknowledgment that Respondent accepts the terms, conditions and requirements of the City's General Conditions. |
| 4   | Letter of References                               | Maximum of 5 letters within 5 years.   |

# Evaluation Criteria



## **Criteria A:** Experience, Background and Qualifications of Respondent, Subcontractors, and Key Personnel, with Job Order Contracting Projects

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 5   | Experience  | Respondent’s qualifications relating to scope.   |
| 6   | Project Sheets  | Maximum of 5 project sheets.   |
| 7   | Proposed Key Personnel/Organizational Chart                 | Org. Chart of proposed team.   |
| 8   | Resumes   | One-page Resumes of key team members.  |
| 9   | Experience with Green Building and Sustainability Practices | Describe experience with green building practices and any green certifications/ specialist training. |

# Evaluation Criteria

## **Criteria B:** Understanding of the JOC Program Project and Proposed Management Plan

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 10  | Understanding of the JOC Program  | Understanding the primary objectives of the JOC Program, constraints and technical challenges. |
| 11  | Provide Scope of work definition, proposal, and UPB breakdown for the Sample Project      | Respondents must provide the scope of work and UPB breakdown for the sample project.           |
| 12  | Proposed Management Plan  | Project management approach. Approach to Quality Control/Assurance.                            |
| 13  | Commitment to Green Building and Sustainability Initiatives, Practices and Implementation | Commitment to Green Building and Sustainability Initiatives, Practices and Implementation.     |

# Evaluation Criteria

## **Criteria C:** Construction Experience with the San Antonio Region & Past Performance

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 14  | Experience with the San Antonio Region & Past Performance | Narrative form. Work in San Antonio or surrounding area in past 5 years. Reference projects listed in the project sheets. Describe the teams experience in the areas listed in the RFCSP. A portion of the scoring for this section may be based on the City's Consultants' Scorecard. |

# Evaluation Criteria

## Criteria D: Coefficient Proposal

| Form | TITLE                        | DESCRIPTION   |
|------|------------------------------|---|
| 8    | Coefficient Performance Form | <p>Respondents must submit a Coefficient to cover overhead, profit, and any other costs that are not included in the Unit Price Book (UPB). The Respondent’s Coefficient is a numerical value, to three (3) decimal places, that the Respondent proposes as a multiplier to the UPB. Items to be included and excluded from the coefficient are defined on RFCSP.</p> |

# Evaluation Criteria

Coefficient Proposal - Enter your Proposal in <https://www.civcastusa.com/bids> by first clicking on the “Bidding” button, then click on “Bid Form”.

| <b>COEFFICIENT WORKSHEET</b>    |                             |                    |   |
|---------------------------------|-----------------------------|--------------------|---|
| <b>Example</b>                  |                             |                    |   |
| <b>Standard/ Non-standard</b>   | <b>Proposed Coefficient</b> | <b>Calculation</b> | <b>Weighted Totals</b>                        |
| Standard                        | 1.02                        | x .85              | .867  |
| Non-standard                    | 1.13                        | x .15              | 0.169   |
|                                 |                             |                    | Sum these two numbers, rounded to 3 decimals. |
| <b>Evaluation Coefficient</b>   |                             |                    | <b>1.036</b>                                  |
| <b>Respondents Calculations</b> |                             |                    |   |
| <b>Standard/ Non-standard</b>   | <b>Proposed Coefficient</b> | <b>Calculation</b> | <b>Weighted Totals</b>                        |
| <u>Standard</u>                 |                             | <u>x .85</u>       |   |
| <u>Non-standard</u>             |                             | <u>x .15</u>       |   |
|                                 |                             |                    | Sum these two numbers, rounded to 3 decimals. |
| <b>Evaluation Coefficient</b>   |                             |                    |   |

# Public Works Evaluation Criteria Summary



| <b>Evaluation Criteria Summary</b>  | <b>Maximum Points</b> |
|---|-----------------------|
| <b>A. Experience, Background and Qualifications of Respondent, Subcontractors, and Key Personnel, with Job Order Contracting Projects</b> | <b>25</b>             |
| <b>B. Understanding of the JOC Program Project and Proposed Management Plan</b>   | <b>20</b>             |
| <b>C. Construction Experience with the San Antonio Region &amp; Past Performance</b>  | <b>15</b>             |
| <b>D. Coefficient Proposal</b>  | <b>20</b>             |
| <b>E. SBEDA</b>   | <b>20</b>             |

# Required Uploads for Public Works JOC



## Upload each document individually

Submittal Checklist and Table of Contents (Form 1)

Submittal Cover/Signature Page (Form 2)

Contracts Disclosure Form (Form 3)

<https://www.sanantonio.gov/eforms/att/ContractsDisclosureForm.pdf>

Litigation Disclosure Form (Form 4)

SBEDA Utilization Plan (Form 5)

Veteran-Owned Small Business (VOSB) Program Tracking (Form 6)

Local Preference Program (LPP) Identification (Form 7)

Coefficient Proposal (Form 8)

Heat Illness Prevention Acknowledgment (Form 9)

Proof of Insurability

Certificate of Interested Parties TEC Form 1295

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

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# Aviation RFCSP Proposal Document Requirements and Evaluation Criteria



# Aviation Proposal Document Requirements

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 1   | Submittal Checklist and Table of Contents (Form 1)  | Ensure all required information is in correct order.   |
| 2   | Executive Summary   | One page summary stating relevant information of your team.  |
| 3   | Job Order Contract and Aviation General Conditions for City of San Antonio Construction Contracts | Must provide written acknowledgment that Respondent accepts the terms, conditions and requirements of Aviation's Job Order Contract Template |
| 4   | Letter of References  | Maximum of 5 letters within 7 years.   |

# Evaluation Criteria

## **Criteria A:** Experience of Respondent, Subcontractors and Key Personnel with Job Order Contracting Projects

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 5   | Experience  | Respondent’s qualifications relating to scope within two pages.                                      |
| 6   | Project Sheets  | Maximum of 5 project sheets.   |
| 7   | Proposed Key Personnel/Organizational Chart                 | Org. Chart of proposed team.   |
| 8   | Resumes   | One-page Resumes of key team members.  |
| 9   | Experience with Green Building and Sustainability Practices | Describe experience with green building practices and any green certifications/ specialist training. |

# Evaluation Criteria

## Criteria B: Understanding of the JOC Program and Proposed Management Plan

| TAB | TITLE  | DESCRIPTION  |
|-----|--|--|
| 10A | Understanding of the JOC Program   | Understanding the primary objectives of the project. Constraints and technical challenges.                                 |
| 10B | Provide Scope of work definition, proposal, and UPB breakdown for the Sample Project       | Show understanding of the e4Clicks software and use with the Sample Project. Showing use of coefficients and explanations. |
| 11  | Proposed Management Plan   | Project management approach. Approach to Quality Control/Assurance.  |
| 12  | Commitment to Green Building and Sustainability Initiatives, Practices, and Implementation | Commitment to Green Building and Sustainability Initiatives, Practices and Implementation.                                 |

# Evaluation Criteria

## Criteria C: Coefficient Proposal

| Form | TITLE                        | DESCRIPTION   |
|------|------------------------------|---|
| 5    | Coefficient Performance Form | <p>Respondents must submit a Coefficient to cover overhead, profit, and any other costs that are not included in the Unit Price Book (UPB). The Respondent’s Coefficient is a numerical value, to three (3) decimal places, that the Respondent proposes as a multiplier to the UPB. Items to be included and excluded from the coefficient are defined on RFCSP.</p> |



# Evaluation Criteria Summary

| <b>Evaluation Criteria Summary</b>  | <b>Maximum Points</b> |
|---|-----------------------|
| <b>A. Experience, Background and Qualifications of Respondent, Subcontractors, and Key Personnel, with Job Order Contracting Projects</b> | 35                    |
| <b>B. Understanding of the JOC Program Project and Proposed Management Plan</b>   | 25                    |
| <b>C. Coefficient Proposal</b>  | 20                    |
| <b>D. Disadvantaged Business Enterprise (DBE)</b>   | 20                    |

## Required Uploads for Aviation JOC

### Upload each document individually

*Submittal Checklist and Table of Contents (Form 1)*

Submittal Cover/Signature Page (Form 2)

*SOS Filing Number and SAMS DUNS and/or CAGE number*

Contracts Disclosure Form (Form 3)

<https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>

Litigation Disclosure Form (Form 4)

Disadvantaged Business Enterprise (DBE) Program Requirements

Coefficient Proposal (Form 5)

Heat Illness Prevention Acknowledgment (Form 6)

Proof of Insurability

Certificate of Interested Parties TEC Form 1295

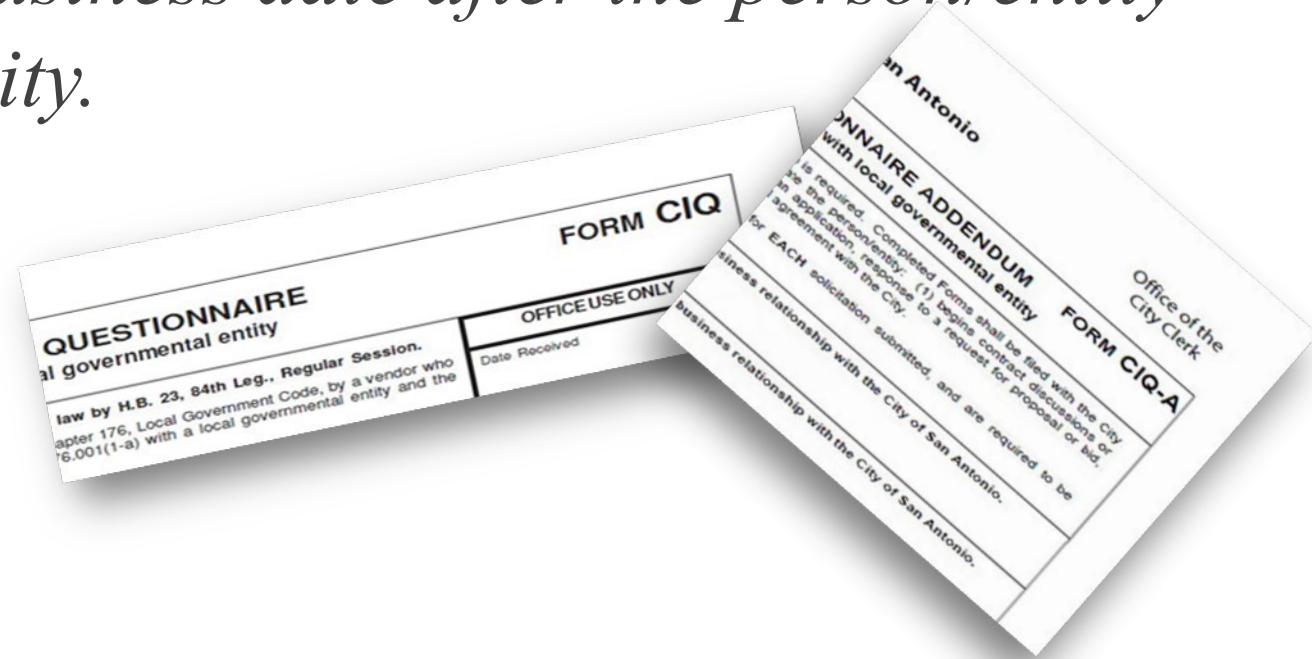
[www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)



# Conflict of Interest Questionnaire

*Completed CIQ and CIQ-A Forms shall be filed with the Office of the City Clerk no later than the 7th business date after the person/entity submits to City a proposal with City.*

**City only requires Prime Firms to submit the CIQ and CIQ-A forms**



Conflict of Interest CIQ: <https://www.ethics.state.tx.us/forms/conflict/>

Conflict of Interest CIQ-A: <https://www.sanantonio.gov/Portals/0/Files/Ethics/OCC-CIQ-Addendum.pdf?ver=20240105>

Completed forms must be mailed to:

Office of the City Clerk, P.O. Box 839966, San Antonio, TX, 78283-3966

# Submission Instructions

Online bidding will be utilized via Civcast at:

[www.civcastusa.com/bids](http://www.civcastusa.com/bids)

- Online bid services opened for bidding on Friday, April 5, 2024; and will close on Tuesday, June 4, 2024; at 2:00 P.M. CT.
- Hard copies will not be accepted for this solicitation
- Utilize the Submittal Checklist & Table of Contents to ensure tabs and forms are in the identified order listed in RFCSP
- Keep submittal relevant to project
- Company/Firm legal name must match the Texas Secretary of State website listing

# Award of Contract

- A contract or contracts, if awarded, shall be awarded to the selected Respondent(s) whose submittal(s) is/are deemed most advantageous to City, as determined by the selection committee and upon approval by City Council.
- No work shall commence until City signs the executed agreement and Respondent provides the necessary evidence of insurance as required and is approved by Finance.
- In the event the parties cannot negotiate and execute a contract within the time specified by City, City reserves the right to terminate negotiations with that selected Respondent and commence negotiations with another Respondent.
- Final approval of the selected firm is subject to the action of the San Antonio City Council.

# QUESTIONS?



# Reminders

- Today's Pre-Submittal Presentation and Sign-In-Sheet will be posted on the Public Works and Aviation's Civcast website after the meeting.
- Failure to adhere to the restrictions on communication may deem your submittal non-responsive.
- Workshop meeting is scheduled for Wednesday, April 24, 2024, at 9:00 AM CT.
- Submit written questions through Civcast: <https://www.civcastusa.com/>. Deadline for written questions is 4:00 PM, May 8, 2024. Responses will be addressed via addendum
- Bids must be uploaded by 2:00 PM, June 4, 2024.

***Please remember to click the “Submit Bid” button. If not, your bid will not be received by the City. LATE PROPOSALS WILL NOT BE ACCEPTED. Failure to properly click SUBMIT will not be grounds for acceptance of late proposal.***



Thank You for Attending

Reminder to sign-in

*Sign-In Form:* <https://forms.office.com/g/1XJ5ssy4XC?origin=lprLink>





| Full name          | Company Name                        | E-mail                           | Phone #        | Please state if you are here for either PW or Aviation or both? |
|--------------------|-------------------------------------|----------------------------------|----------------|---|
| Adrian Pena        | CoSA                                | adrian.pena@sanantonio.gov       | (210) 207-0634 | CoSA  |
| Alexis Sendejo     | COSA                                | Alexis.sendejo@sanantonio.gov    | N/A            | CoSA  |
| Amy Bricker        | Amstar, Inc                         | Amy@amstarincgc.com              | (210) 449-5735 | Both  |
| Angelica Mata      | COSA- Finance Procurement           | Angelica.Mata@sanantonio.gov     | (210) 207-4050 | CoSA  |
| Atanacio Carrisal  | Amstar, Inc.                        | Atanacio@amstarincgc.com         | (210) 557-7228 | Both  |
| Ayten Cibildak     | City of San Antonio PWD             | Ayten.cibildak@sanantonio.gov    | (210) 207-3920 | CoSA  |
| Betsy Campbell     | Brown & Root                        | betsy.campbell@brownandroot.com  | (913) 908-3102 | Both  |
| Bill Rocha         | FH Paschen SN Nielsen & Assoc. LLC  | wrocha@FHPaschen.com             | (850) 375-0672 | Both  |
| Bobby Moxley       | ConCor Inc.                         | RobertMoxley@con-corinc.com      | (210) 304-0051 | PW  |
| Cade Deines        | HJD Capital                         | cdeines@hjdcapital.com           | (210) 303-2400 | Both  |
| Caleb Urban        |                                     | caleburban@yahoo.com             | (361) 652-4960 | PW  |
| Carlos Abelar      | TCL construction Enterpriss LLC     | Carlosabelar@aol.com             | (210) 825-3034 | PW  |
| Cuauhtemoc Torres  | Noble Texas Builders                | cuauhtemoc.torres@nobletx.com    | (956) 640-1617 | Both  |
| Derek Gerloff      | Gerloff Company Inc.                | Derekgerloff@gerloffinc.com      | (210) 875-7773 | Both  |
| Ed Belmares        | HJD Capital                         | ebelmares@hjdcapital.com         | (210) 860-7556 | Both  |
| Gamble Monney      | COSA Aviation, C&D                  | gamble.monney@sanantonio.gov     | (915) 240-3034 | CoSA  |
| Greg Smith         | Jamail and smith construction       | Gsmith@jamailsmith.com           | (512) 410-3902 | Both  |
| Haley Payne        | MARC3 General Contractors, LLC      | Haley@marc3llc.com               | (830) 481-3442 | N/A   |
| Hannah Haifa       | Cosa - Finance                      | hannah.haifa@sanantonio.gov      | (210) 207-0621 | CoSA  |
| Hannah May         | Henock Construction, LLC            | Hannah@henockconstruction.com    | (210) 661-2737 | Both  |
| Hector Mateo       | Marc III General Contractors LLC    | hector@marc3llc.com              | (787) 974-2226 | None  |
| Jaime E. Contreras | Finance                             | jaime.contreras@sanantonio.gov   | (210) 207-5872 | CoSA  |
| Japan Shah         | City of San Antonio                 | Japan.Shah@sanantonio.gov        | (210) 207-2680 | CoSA  |
| Jawaan Roberson    | Makeover plus                       | Jawaanroberson@yahoo.com         | (253) 600-6482 | Pw  |
| Jenna Walker       | Triton Design and Construction, LLC | info@tritontx.com                | (210) 651-2681 | Yes   |
| Jennifer Lenhart   | F.H. Paschen                        | Jlenhart@fhpaschen.com           | (773) 444-3474 | Both  |
| Jonathan Miranda   | City of San Antonio                 | Jonathan.Miranda@SanAntonio.gov  | (210) 207-2856 | CoSA  |
| Jorge D Figueroa   | COSA                                | Jorge.figueroa@sanantonio.gov    | (210) 207-1085 | CoSA  |
| Joseph Gonzales    | San Antonio International Airport   | joseph.gonzales2@sanantonio.gov  | (210) 859-2247 | CoSA  |
| Joseph Ramon       | COSA Finance                        | joseph.ramon@sanantonio.gov      | (210) 207-8310 | CoSA  |
| Leo J. Wright      | F.H. Paschen                        | lwright@fhpaschen.com            | (773) 444-3474 | Both  |
| Mack McKenzie      | COSA                                | Mack.mckenzie@sanantonio.gov     | (210) 488-2033 | CoSA  |
| Manuel Garcia      | Public Works                        | Manuel.g.garcia@sanantonio.gov   | (210) 207-7872 | CoSA  |
| Marisol Amador     | COSA Aviation Department            | Marisol.amador@sanantonio.gov    | (210) 207-3424 | CoSA  |
| Michael Sindon     | City of San Antonio                 | michael.sindon@sanantonio.gov    | (210) 207-3957 | CoSA  |
| Miguel Aguilar     | AGL Painting                        | Miguel@aglpainting.com           | (210) 978-2310 | PW  |
| Molly Mulcrone     | FH Paschen                          | mmulcrone@fhpaschen.com          | (312) 237-0909 | Both  |
| Nadine Dickinson   | Sterling Commercial                 | nadine@sterlingcommercialllc.com | (210) 818-5031 | Both  |
| Rodney W. Dziuk    | City of San Antonio                 | Rodney.dziuk@sanantonio.gov      | (210) 415-3149 | CoSA  |
| Samantha Lara      | CoSA                                | samantha.lara@sanantonio.gov     | (210) 207-1635 | CoSA  |
| Samantha Martinez  | AZTECA Designs and Construction     | Admin@aztecadesigns.com          | (210) 375-1900 | Both  |
| Sandra Rios        | COSA                                | Sandra.rios@sanantonio.gov       | (210) 207-5438 | CoSA  |
| Santos Aguilar     | AGL Painting                        | Santos@aglpainting.com           | (210) 689-3086 | PW  |
| Sean Woods         | F.H. Paschen                        | swoods@fhpaschen.com             | (214) 970-1627 | Both  |
| Spencer Wilkins    | Makeover plus                       | Mymakeoverplus@gmail.com         | (210) 279-5160 | Pw  |
| Steban Tijerina    | Tijerina Construction               | Steban@tjeringc.com              | (210) 269-2679 | Both  |

# Workshop

## Request For Competitive Sealed Proposals

### Job Order Contracting (JOC) Programs



Public Works Job Order Contracting (JOC) Program  
RFCSP: 2024-043

Job Order Contracting (JOC) Program at San Antonio Airport System  
RFCSP: 2024-101

Wednesday, April 24, 2024

# Sign-In Instructions



Everyone attending today's Workshop must scan the QR Code with your phone/tablet or type the URL on your laptop/desktop computer and complete the Sign-In Form.

This will confirm your attendance for today's meeting. If you do not complete the form, your name will not be added to the sign in sheet. The sign-in form will not be available after the meeting.



Sign-In Form: <https://forms.office.com/g/mrrfgCRsRZ?origin=lprLink>

# Introductions



*City Staff Only:  
We will begin with the introductions of city staff attending  
today's workshop meeting.*

*Please hold all questions until the end of the  
workshop conference*

# Agenda

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- ❖ Understanding the Job Order Contracting (JOC) Program
- ❖ 4Clicks Professional Project Estimator Software
- ❖ Coefficient Form
- ❖ Small Business Economic Development Advocacy (SBEDA) Program
- ❖ Business Opportunity & Diversity Development (BODD) Program
- ❖ Solicitation reminders

# Understanding the Job Order Contracting (JOC) Program

# Job Order Contracting (JOC)

- A Fixed Price, Competitive Proposal, Indefinite Quantity Type Contract
- Designed to accomplish small-to-medium, multi-traded, maintenance, repair, renovation and minor new construction projects
- Decreases construction performance schedules - Faster Response Time(s)
- Controls negotiated construction costs through use of a standardized Unit Price Book (UPB)
- Offers an alternative method of contracting indefinite quantities of projects:
  - *From commencement to completion*
  - *Inclusive of multiple trades and disciplines*
  - *Issued by Job Order(s) under one (1) Contract*
  - *Contract period defined either by calendar and/or budget dollars*

# Job Order Contracting (JOC) cont.



- Work quantity & type(s) are undefined
- Contractor submits a Proposal of Services and an Adjustment Factor(s) (Coefficient) to the Catalog of Work Items (Unit Price Book)
- Work limited to facility improvements only (no street, bridge, utility, airport runway, drainage, etc.)
- JOC cannot do the following projects:
  - a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
  - a building or structure that is incidental to a project that is primarily a civil engineering construction project.
  - Cannot hire design professionals as part of the program.

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# Sample Project Estimating Options

1. 4Clicks
2. RSMeans Online

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# Option 1: 4Clicks Professional Project Estimator Software

# 4Clicks Professional Project Estimator Software:



- Support for 4Clicks is available on the website:  
<https://www.4clicks.com>.
- To become more familiar with the software, training videos are available online: <https://www.youtube.com/watch?v=xLSe7-AxXtQ&list=PLCiY9-bygonf6o63Uxg86trx-fMQLZUTP>

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# Option 2: RSMMeans Online Software

# RSMMeans Online Software:

- Construction Cost Estimating Software available on the website with a free trial: <https://www.rsmeans.com/estimating-software-free-trial>.
- To become more familiar with the software, the site has tutorials and video helps.
- Because access to the data is free there are limitations as to what and how the information can be used. It will NOT be possible to export reports to .pdf, .xlsx, or .doc.
  - The city will accept screen shots or clips of the generated reports.
    - These are to be attached to a document and uploaded in Civcast as Word or PDF document.
    - All the information is to be presented in as similar a format as possible to the following slide.

# 4Clicks Example #1

- **4Clicks Report “Estimate Details” to be used for sample project.**

| Estimator: Mack McKenzie   |                | JOC Testing                                       |                     |
|--|----------------|---|---------------------|
| <b>Division Summary (MF04)</b>   |                |   |                     |
| 01 - General Requirements  |                | 26 - Electrical                                   |                     |
| 02 - Existing Conditions   | \$7,632.80     | 27 - Communications                               |                     |
| 03 - Concrete  |                | 28 - Electronic Safety and Security               |                     |
| 04 - Masonry   |                | 31 - Earthwork                                    |                     |
| 05 - Metals  | \$16,028.28    | 32 - Exterior Improvements                        | \$1,687.22          |
| 06 - Wood, Plastics, and Composites                                    |                | 33 - Utilities                                    |                     |
| 07 - Thermal and Moisture Protection                                   |                | 34 - Transportation                               |                     |
| 08 - Openings  | \$57,321.50    | 35 - Waterway and Marine Transportation           |                     |
| 09 - Finishes  | \$69,243.50    | 41 - Material Processing and Handling Equipment   |                     |
| 10 - Specialties   |                | 44 - Pollution Control Equipment                  |                     |
| 11 - Equipment   |                | 46 - Water and Wastewater Equipment               |                     |
| 12 - Furnishings   | \$59,412.00    | 48 - Electric Power Generation                    |                     |
| 13 - Special Construction  |                | Alternate   | \$62,065.54         |
| 14 - Conveying Equipment   |                | Trades  | \$31,960.00         |
| 21 - Fire Suppression  |                | Assemblies  |                     |
| 22 - Plumbing  | \$10,300.00    | FMR   |                     |
| 23 - Heating, Ventilating, and Air-Conditioning (HVAC)                 | \$354,815.00   | <b>MF04 Total (Without totalling components)</b>  | <b>\$670,465.84</b> |
| 25 - Integrated Automation   |                |   |                     |
| <b>Totaling Components</b>   |                |   |                     |
| Priced Line Items  | \$670,465.84   | 2022 City of San Antonio JOC Nonpriced (12.0000%) |                     |
| RSMeans SAN ANTONIO, TX CCI 2024Q1, 84.70%                             | \$(102,581.27) | 2022 City of San Antonio JOC Bond ( )             |                     |
| 2022 City of San Antonio JOC Other (2.0000%)                           | \$11,357.69    | 2022 City of San Antonio JOC Permitting           |                     |
| Nonpriced Line Items   |                | 2022 City of San Antonio JOC Utility Impact Fees  |                     |
| <b>Material, Labor, and Equipment Totals (No Totalling Components)</b> |                |   |                     |
| Material:  | \$531,536.42   | <b>Priced/Non-Priced</b>                          |                     |
| Labor:   | \$75,331.18    | Total Priced Items:                               | 21 \$670,465.84     |
| Equipment:   | \$1,532.70     | Total Non-Priced Items:                           | 0 \$0.00 0.00%      |
| Other:   | \$62,065.54    |   |                     |
| Laborhours:  | 1,604.61       |   |                     |
| Green Line Items:  | \$16,028.28    |   |                     |
|  |                | <b>Grand Total</b>                                | <b>\$579,242.26</b> |

Represents Coefficient of 1.02.

Bonds and other totalling components

- Standard Working Hours Coefficient 1.020
- Other items Bonds, Permitting, Impact fees, Etc..

# 4Clicks Example #2



- 4Clicks Report “Estimate Details” to be used for sample project.**

|  |                  |  |        |        |         |        |          |        |                   |            |
|--|------------------|--|--------|--------|---------|--------|----------|--------|-------------------|------------|
| <b>01 - General Requirements Total</b> |                  |  |        |        | 0.00    | 0.00   | 3,565.10 |        | <b>\$3,565.10</b> |            |
| <b>02 - Existing Conditions</b>        |                  |  |        |        |         |        |          |        |                   |            |
| 2                                      | 02-41-13-16-0130 | Selective site demolition, hydroexcavation<br>(100*1*2)/27 = 7.41  | B.C.Y. | B-06D  | 7.4074  | 0.00   | 23.50    | 30.50  | \$54.00           | \$400.00   |
| 3                                      | 02-41-13-16-0160 | New item, minimum labor/equipment charge   | Ea.    | B-06D  | 1.0000  | 0.00   | 279.00   | 365.00 | \$644.00          | \$644.00   |
| <b>02 - Existing Conditions Total</b>  |                  |  |        |        | 0.00    | 453.07 | 590.93   |        | <b>\$1,044.00</b> |            |
| <b>26 - Electrical</b>                 |                  |  |        |        |         |        |          |        |                   |            |
| 4                                      | 26-05-05-15-0150 | Ground rod, 8' to 10', electrical demolition, remove   | Ea.    | 1 ELEC | 1.0000  | 0.00   | 44.00    | 0.00   | \$44.00           | \$44.00    |
| 5                                      | 26-05-19-90-5160 | Wire, aluminum, stranded, 600 volt, 4/0, type XHHW, normal installation conditions in wireway, conduit, cable tray | C.L.F. | 2 ELEC | 0.6000  | 218.00 | 185.00   | 0.00   | \$403.00          | \$241.80   |
| 6                                      | 26-05-26-80-0250 | Ground clamp, bronze, 3/4" diameter  | Ea.    | 1 ELEC | 1.0000  | 4.74   | 17.95    | 0.00   | \$22.69           | \$22.69    |
| 7                                      | 26-05-26-80-0450 | Ground wire, copper wire, bare stranded, #4  | C.L.F. | 2 ELEC | 0.2000  | 112.00 | 71.50    | 0.00   | \$183.50          | \$36.70    |
| 8                                      | 26-05-26-80-5120 | Copper electrolytic ground rod system, straight vertical type, 2" diameter, 8.5' long, incl clamp connection       | Ea.    | 1 ELEC | 1.0000  | 945.00 | 215.00   | 0.00   | \$1,160.00        | \$1,160.00 |
| 9                                      | 26-05-29-20-4400 | Spring nuts, steel channel, short, 3/8"  | Ea.    | 1 ELEC | 50.0000 | 2.21   | 5.75     | 0.00   | \$7.96            | \$398.00   |
| 10                                     | 26-05-33-13-9100 | PVC conduit, schedule 40, 1/2" diameter, to 10' H, incl terminations, fittings, & support                          | L.F.   | 1 ELEC | 10.0000 | 2.24   | 3.02     | 0.00   | \$5.26            | \$52.60    |
| 11                                     | 26-05-33-13-9460 | PVC adapters, 1/2" diameter, to 15' H  | Ea.    | 1 ELEC | 5.0000  | 0.32   | 11.45    | 0.00   | \$11.77           | \$58.85    |
| 12                                     | 26-05-33-14-1050 | Intermediate metal conduit, 2" diameter, to 10' high, L.F. includes 11 couplings per 100'                          | L.F.   | 1 ELEC | 40.0000 | 10.65  | 8.20     | 0.00   | \$18.85           | \$754.00   |
| 13                                     | 26-05-33-25-2760 | Conduit fittings for rigid galvanized steel, nipples offset, insulated, 1-1/2" diameter                            | Ea.    | 1 ELEC | 1.0000  | 11.45  | 32.00    | 0.00   | \$43.45           | \$43.45    |

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# **JOC Program requirements: 4Clicks Professional Project Estimator Software**

# 4Clicks Professional Project Estimator Software:



- The maximum price for any work performed pursuant to the JOC, coefficients or multipliers shall be applied by utilizing 4Click software (<https://www.4clicks.com>) and R.S. Means Facilities Construction Cost Data<sup>©</sup>.
- The awarded contractors shall participate in annual 4Clicks software training, with a minimum of one (1) preferably two-three (2-3) of their estimators.
- All training classes shall be completed within the first 45 calendar days of the award.
- Initial training shall consist of two full days of 4Clicks training.
- To become more familiar with the software, training videos are available online: <https://www.youtube.com/watch?v=xLSe7-AxXtQ&list=PLCiY9-bygonf6o63Uxg86trx-fMQLZUTP>

# 4Clicks Example #1

- **4Clicks Report “Estimate Details” to be used for sample project.**

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|--|----------------|---|---------------------|
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| 04 - Masonry   |                | 31 - Earthwork                                    |                     |
| 05 - Metals  | \$16,028.28    | 32 - Exterior Improvements                        | \$1,687.22          |
| 06 - Wood, Plastics, and Composites                                    |                | 33 - Utilities                                    |                     |
| 07 - Thermal and Moisture Protection                                   |                | 34 - Transportation                               |                     |
| 08 - Openings  | \$57,321.50    | 35 - Waterway and Marine Transportation           |                     |
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| 10 - Specialties   |                | 44 - Pollution Control Equipment                  |                     |
| 11 - Equipment   |                | 46 - Water and Wastewater Equipment               |                     |
| 12 - Furnishings   | \$59,412.00    | 48 - Electric Power Generation                    |                     |
| 13 - Special Construction  |                | Alternate   | \$62,065.54         |
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| 21 - Fire Suppression  |                | Assemblies  |                     |
| 22 - Plumbing  | \$10,300.00    | FMR   |                     |
| 23 - Heating, Ventilating, and Air-Conditioning (HVAC)                 | \$354,815.00   | <b>MF04 Total (Without totalling components)</b>  | <b>\$670,465.84</b> |
| 25 - Integrated Automation   |                |   |                     |
| <b>Totaling Components</b>   |                |   |                     |
| Priced Line Items  | \$670,465.84   | 2022 City of San Antonio JOC Nonpriced (12.0000%) |                     |
| RSMeans SAN ANTONIO, TX CCI 2024Q1, 84.70%                             | \$(102,581.27) | 2022 City of San Antonio JOC Bond ( )             |                     |
| 2022 City of San Antonio JOC Other (2.0000%)                           | \$11,357.69    | 2022 City of San Antonio JOC Permitting           |                     |
| Nonpriced Line Items   |                | 2022 City of San Antonio JOC Utility Impact Fees  |                     |
| <b>Material, Labor, and Equipment Totals (No Totalling Components)</b> |                |   |                     |
| Material:  | \$531,536.42   | <b>Priced/Non-Priced</b>                          |                     |
| Labor:   | \$75,331.18    | Total Priced Items:                               | 21 \$670,465.84     |
| Equipment:   | \$1,532.70     | Total Non-Priced Items:                           | 0 \$0.00 0.00%      |
| Other:   | \$62,065.54    |   |                     |
| Laborhours:  | 1,604.61       |   |                     |
| Green Line Items:  | \$16,028.28    |   |                     |
|  |                | <b>Grand Total</b>                                | <b>\$579,242.26</b> |

Represents Coefficient of 1.02.

Bonds and other totalling components

- Standard Working Hours Coefficient 1.020
- Other items Bonds, Permitting, Impact fees, Etc..

# 4Clicks Example #2



- 4Clicks Report “Estimate Details” to be used for sample project.**

|  |                  |  |        |        |         |        |          |        |                   |            |
|--|------------------|--|--------|--------|---------|--------|----------|--------|-------------------|------------|
| <b>01 - General Requirements Total</b> |                  |  |        |        | 0.00    | 0.00   | 3,565.10 |        | <b>\$3,565.10</b> |            |
| <b>02 - Existing Conditions</b>        |                  |  |        |        |         |        |          |        |                   |            |
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| 3                                      | 02-41-13-16-0160 | New item, minimum labor/equipment charge   | Ea.    | B-06D  | 1.0000  | 0.00   | 279.00   | 365.00 | \$644.00          | \$644.00   |
| <b>02 - Existing Conditions Total</b>  |                  |  |        |        | 0.00    | 453.07 | 590.93   |        | <b>\$1,044.00</b> |            |
| <b>26 - Electrical</b>                 |                  |  |        |        |         |        |          |        |                   |            |
| 4                                      | 26-05-05-15-0150 | Ground rod, 8' to 10', electrical demolition, remove   | Ea.    | 1 ELEC | 1.0000  | 0.00   | 44.00    | 0.00   | \$44.00           | \$44.00    |
| 5                                      | 26-05-19-90-5160 | Wire, aluminum, stranded, 600 volt, 4/0, type XHHW, normal installation conditions in wireway, conduit, cable tray | C.L.F. | 2 ELEC | 0.6000  | 218.00 | 185.00   | 0.00   | \$403.00          | \$241.80   |
| 6                                      | 26-05-26-80-0250 | Ground clamp, bronze, 3/4" diameter  | Ea.    | 1 ELEC | 1.0000  | 4.74   | 17.95    | 0.00   | \$22.69           | \$22.69    |
| 7                                      | 26-05-26-80-0450 | Ground wire, copper wire, bare stranded, #4  | C.L.F. | 2 ELEC | 0.2000  | 112.00 | 71.50    | 0.00   | \$183.50          | \$36.70    |
| 8                                      | 26-05-26-80-5120 | Copper electrolytic ground rod system, straight vertical type, 2" diameter, 8.5' long, incl clamp connection       | Ea.    | 1 ELEC | 1.0000  | 945.00 | 215.00   | 0.00   | \$1,160.00        | \$1,160.00 |
| 9                                      | 26-05-29-20-4400 | Spring nuts, steel channel, short, 3/8"  | Ea.    | 1 ELEC | 50.0000 | 2.21   | 5.75     | 0.00   | \$7.96            | \$398.00   |
| 10                                     | 26-05-33-13-9100 | PVC conduit, schedule 40, 1/2" diameter, to 10' H, incl terminations, fittings, & support                          | L.F.   | 1 ELEC | 10.0000 | 2.24   | 3.02     | 0.00   | \$5.26            | \$52.60    |
| 11                                     | 26-05-33-13-9460 | PVC adapters, 1/2" diameter, to 15' H  | Ea.    | 1 ELEC | 5.0000  | 0.32   | 11.45    | 0.00   | \$11.77           | \$58.85    |
| 12                                     | 26-05-33-14-1050 | Intermediate metal conduit, 2" diameter, to 10' high, L.F. includes 11 couplings per 100'                          | L.F.   | 1 ELEC | 40.0000 | 10.65  | 8.20     | 0.00   | \$18.85           | \$754.00   |
| 13                                     | 26-05-33-25-2760 | Conduit fittings for rigid galvanized steel, nipples offset, insulated, 1-1/2" diameter                            | Ea.    | 1 ELEC | 1.0000  | 11.45  | 32.00    | 0.00   | \$43.45           | \$43.45    |

---

# Coefficient Form

# Coefficient Form

- Before beginning work, City and the Job Order Contract Contractors (JOCC) shall agree to a coefficient or multiplier to be applied to any line item from the R.S. Means Facilities Construction Cost Data that will yield a maximum price inclusive of material, equipment and/or labor, performed during standard & non-standard working hours. (See Example #1 for sample project form)
- The Respondent's Coefficient is a numerical value, to three (3) decimal places, that the Respondent proposes as a multiplier to the UPB. For each Job Order, the cost of any payment and performance bonds shall be applied after application of the coefficient to the UPB sum. (See Example #1 for sample project form)
- The coefficient amounts are a maximum of what can be proposed. Respondents may reduce the amounts if applicable and within the capabilities of 4Clicks system if desired.

# Coefficient Form 8 (cont.):

- **An example of coefficient use:** If the labor unit price for painting 1 square foot of gypsum board from the 4Click Cost Data, is \$15.00 and the coefficient is 0.853, the unit labor price for the item would be \$12.79 ( $\$15.00 \times 0.853 = \$12.79$ ). The coefficient shall be the net decrease from or increase to the UPB Total column. Respondents are required to submit the Coefficients for Standard Working Hours (7:00 am-6:00 pm, Monday-Friday); Non-Standard Working Hours (6:00 pm-7:00 am, Monday-Friday and weekends, holidays not included); as required in the **Coefficient Proposal Form (Form #8)**.
- **A weighted single coefficient:** Known as **Evaluation Coefficient**, is used for scoring purposes. The weighting is 85% for Standard Working Hours, 15% for Non-Standard Working Hours. Non-Priced will not be factored in the weighted score. The percentage will be applied to each coefficient and then added together to create the **Evaluation Coefficient**.

# Coefficient Form 8 (cont.):



- **Formula: Lowest Weighted Coefficient/Respondent's Weighted Coefficient X 20 points = Score**

| <b>COEFFICIENT WORKSHEET</b>  |                             |                    |   |
|-------------------------------|-----------------------------|--------------------|---|
| <b>Example</b>                |                             |                    |   |
| <b>Standard/ Non-standard</b> | <b>Proposed Coefficient</b> | <b>Calculation</b> | <b>Weighted Totals</b>                        |
| Standard                      | 1.02                        | x .85              | .867  |
| Non-standard                  | 1.13                        | x .15              | 0.169   |
|                               |                             |                    | Sum these two numbers, rounded to 3 decimals. |
| <b>Evaluation Coefficient</b> |                             |                    | <b>1.036</b>                                  |

- Standard Working Hours Coefficient 1.020 (1.020 \* .85) Weighted .867
- Non-Standard Working Hours Coefficient 1.130 (1.130 \* .15) Weighted .169
- Coefficient for evaluation purposes (.867 + .169) = 1.036

# 4Clicks Example #1

- **4Clicks Report “Estimate Details” to be used for sample project.**

| Estimator: Mack McKenzie   |                | JOC Testing                                       |                     |
|--|----------------|---|---------------------|
| <b>Division Summary (MF04)</b>   |                |   |                     |
| 01 - General Requirements  |                | 26 - Electrical                                   |                     |
| 02 - Existing Conditions   | \$7,632.80     | 27 - Communications                               |                     |
| 03 - Concrete  |                | 28 - Electronic Safety and Security               |                     |
| 04 - Masonry   |                | 31 - Earthwork                                    |                     |
| 05 - Metals  | \$16,028.28    | 32 - Exterior Improvements                        | \$1,687.22          |
| 06 - Wood, Plastics, and Composites                                    |                | 33 - Utilities                                    |                     |
| 07 - Thermal and Moisture Protection                                   |                | 34 - Transportation                               |                     |
| 08 - Openings  | \$57,321.50    | 35 - Waterway and Marine Transportation           |                     |
| 09 - Finishes  | \$69,243.50    | 41 - Material Processing and Handling Equipment   |                     |
| 10 - Specialties   |                | 44 - Pollution Control Equipment                  |                     |
| 11 - Equipment   |                | 46 - Water and Wastewater Equipment               |                     |
| 12 - Furnishings   | \$59,412.00    | 48 - Electric Power Generation                    |                     |
| 13 - Special Construction  |                | Alternate   | \$62,065.54         |
| 14 - Conveying Equipment   |                | Trades  | \$31,960.00         |
| 21 - Fire Suppression  |                | Assemblies  |                     |
| 22 - Plumbing  | \$10,300.00    | FMR   |                     |
| 23 - Heating, Ventilating, and Air-Conditioning (HVAC)                 | \$354,815.00   | <b>MF04 Total (Without totalling components)</b>  | <b>\$670,465.84</b> |
| 25 - Integrated Automation   |                |   |                     |
| <b>Totaling Components</b>   |                |   |                     |
| Priced Line Items  | \$670,465.84   | 2022 City of San Antonio JOC Nonpriced (12.0000%) |                     |
| RSMeans SAN ANTONIO, TX CCI 2024 Q1, 84.70%                            | \$(102,581.27) | 2022 City of San Antonio JOC Bond ( )             |                     |
| 2022 City of San Antonio JOC Other (2.0000%)                           | \$11,357.69    | 2022 City of San Antonio JOC Permitting           |                     |
| Nonpriced Line Items   |                | 2022 City of San Antonio JOC Utility Impact Fees  |                     |
| <b>Material, Labor, and Equipment Totals (No Totalling Components)</b> |                |   |                     |
| Material:  | \$531,536.42   | <b>Priced/Non-Priced</b>                          |                     |
| Labor:   | \$75,331.18    | Total Priced Items:                               | 21 \$670,465.84     |
| Equipment:   | \$1,532.70     | Total Non-Priced Items:                           | 0 \$0.00 0.00%      |
| Other:   | \$62,065.54    |   |                     |
| Laborhours:  | 1,604.61       |   |                     |
| Green Line Items:1   | \$16,028.28    |   |                     |
|  |                | <b>Grand Total</b>                                | <b>\$579,242.26</b> |

Represents Coefficient of 1.02.

Bonds and other totalling components

- Standard Working Hours Coefficient 1.020
- Other items Bonds, Permitting, Impact fees, Etc..

SBEDA Eligibility & SAePS Registration

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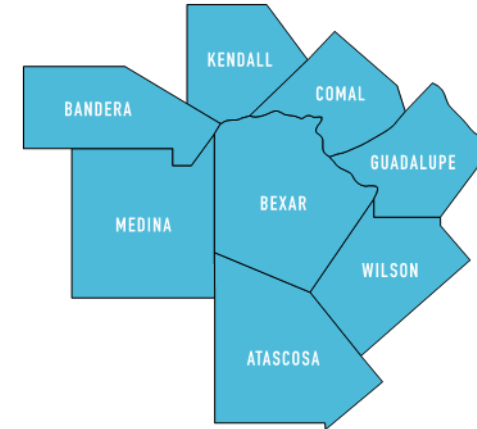
# Doing Business with the City

# SBEDA Eligibility



## Certified by the SCTRCA as a Small Business Enterprise (SBE)

Note: Other certifications such as MBE, WBE or AABE may be needed to fulfill other SBEDA requirements or obtain certain SBEDA incentives



## HQ or a Significant Business Presence in SAMSA

Significant business presence requires a firm to have an office in the SAMSA for 1 year and 20% of the firm's employees must work out of that SAMSA office



## Register Your Business with the City

- To register, please follow the link:  
[www.sanantonio.gov/purchasing/saeps.aspx](http://www.sanantonio.gov/purchasing/saeps.aspx)
  - Once registered, the SAePS System will state online if your firm is SBEDA eligible or not
  - Prime awardees must be registered in the Central Vendor Registry; however, the City encourages all vendors to register in SAePS
  - SAePS is a great way to market your business and learn about upcoming solicitation opportunities
-

Prime Contract & Subcontracting Programs

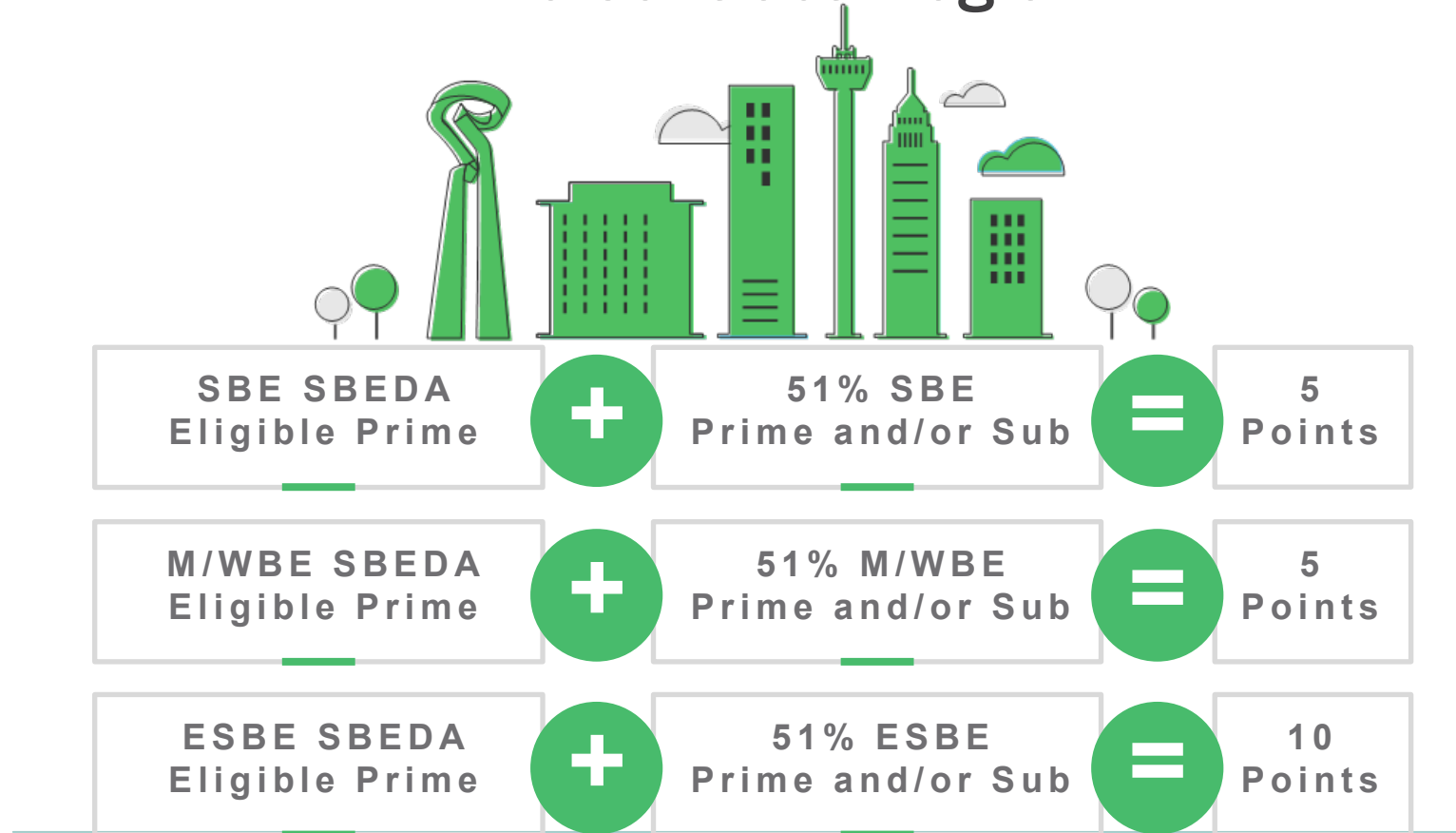
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# SBEDA Tools

# SBEDA Tools



## Prime Contract Program



# SBEDA Tools



## Subcontracting Program

For a Prime Contractor or Subcontractor to count toward a City required subcontracting goal(s), the Prime Contractor or Subcontractor must be SBEDA eligible and have the same certification(s) as the City required goal(s)

Note that self performance by the Prime Contractor is allowed

| Goal Type | Percentage |
|-----------|------------|
| M/WBE     | 24%        |
| AABE      | 3%         |



## **Subcontracting Program Important Notes**



- Self-Performance of subcontracting goals by the Prime respondent **IS ALLOWED** for this solicitation
- Not meeting the subcontracting goals at the time bids are due will deem a bid non-responsive
- The City of San Antonio has a vendor search function to find SBEDA eligible S/M/WBEs. Please visit the COSA vendor Listing to view or to download a listing of SBEDA eligible vendors registered with the City  
[www.sanantonio.gov/purchasing/vendorinformation/cosavendorlisting.aspx](http://www.sanantonio.gov/purchasing/vendorinformation/cosavendorlisting.aspx)
- ASSISTANCE IS AVAILABLE FOR COMPLETING THE UTILIZATION PLAN

## Commitment Form and Waiver Request

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# SBEDA Forms

# Commitment Form



City of San Antonio  
Subcontractor/Supplier Utilization Commitment Form

Solicitation Name: *Job Order Contracting (JOC) Program 2025-2030*

Respondent Name:

Please acknowledge the statements below by initialing the box:

- In responding to this solicitation, I hereby affirm my firm's commitment to meet the subcontracting requirement(s) indicated in the solicitation.
- I understand that Emerging Small Business Enterprise (ESBE) prime respondents proposing at least 51% ESBE utilization (prime and/or subcontractor) will receive ten (10) evaluation preference points.
- I understand that Small Business Enterprise (SBE) prime respondents proposing at least 51% SBE utilization (prime and/or subcontractor) will receive five (5) evaluation preference points.
- I understand that Minority and/or Women-Owned Business Enterprise (M/WBE) prime respondents proposing at least 51% M/WBE utilization (prime and/or subcontractor) will receive five (5) evaluation preference points.
- I understand that a Minority and/or Women-Owned Business Enterprise (M/WBE) subcontracting goal of twenty-four percent (24%) applies to this solicitation.
- I understand that an African American Business Enterprise (AABE) subcontracting goal of three percent (3%) applies to this solicitation.
- I understand that if I am a Prime or Subcontractor and I am not certified as a Small Business Enterprise (SBE) AND they must be present in the San Antonio Metropolitan Statistical Area.
- I understand that I am acknowledging the terms of this Commitment Form to be a NON-RESPONSIVE.
- I understand that my firm is required to submit a Change of Utilization Plan to the CITY on a quarterly basis based on the SBO's job order, on-call, and/or indefinite delivery contracts reporting schedule resulting from this solicitation (except for the last quarter of this contract term, during which my firm shall submit for each accepted task order).
- I understand that in the absence of a Post-Award Vendor Subcontracting Waiver granted by the SBO, the failure of firm to attain these subcontracting goals for S/M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and subject to penalties and/or sanctions available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Prime Contractor's Authorized Agent:

Name:

Sign and Date:

Version 5/30/2018

Please acknowledge the statements by initialing each box

- See subcontracting requirements of M/WBE 24% and AABE 3%
- A Commitment Form should be completed and submitted at the time bids are due
- Prime Contractor will identify Subcontractors/Suppliers after the contract has been awarded
- Evaluation preference points (if applied) will be awarded based on SBEDA-eligibility and certifications

# Post-Award Waiver Request



## Post-Award Vendor Subcontracting Wavier Request Form

|                   |                      |                |                      |
|-------------------|----------------------|----------------|----------------------|
| Contract Title:   | <input type="text"/> |                |                      |
| Contract #:       | <input type="text"/> | Contact #:     | <input type="text"/> |
| Prime Contractor: | <input type="text"/> | Contact Email: | <input type="text"/> |
| Contact Person:   | <input type="text"/> | Date:          | <input type="text"/> |

*The purpose of this wavier is to address the good faith efforts made in meeting the required subcontracting goal(s) for this project. The Prime contractor should submit or has submitted a change to Utilization Plan with this waiver request.*

### 1. Describe the rational for your waiver request for not meeting the subcontracting goal(s) applied to this project.

Check the box(s) that best explain why the subcontracting goal(s) applied were not met.

- The city issued a change order that limited subcontracting opportunities or required expedited completion of the scope of work causing the subcontracting goal(s) to not be met.
- A S/M/WBE to be utilized lost certification and could not be replaced with another S/M/WBE who could perform the scope of work.
- There were other issue(s) that resulted in the subcontracting goal(s) not being met.

Please provide further detail for the checked box(s) above.

- Once awarded, if a Prime Contractor can not meet a committed goal, a Waiver Request should be submitted for consideration and approval by the Small Business Office
- For more details see this link: <https://www.sanantonio.gov/SBO/Form>

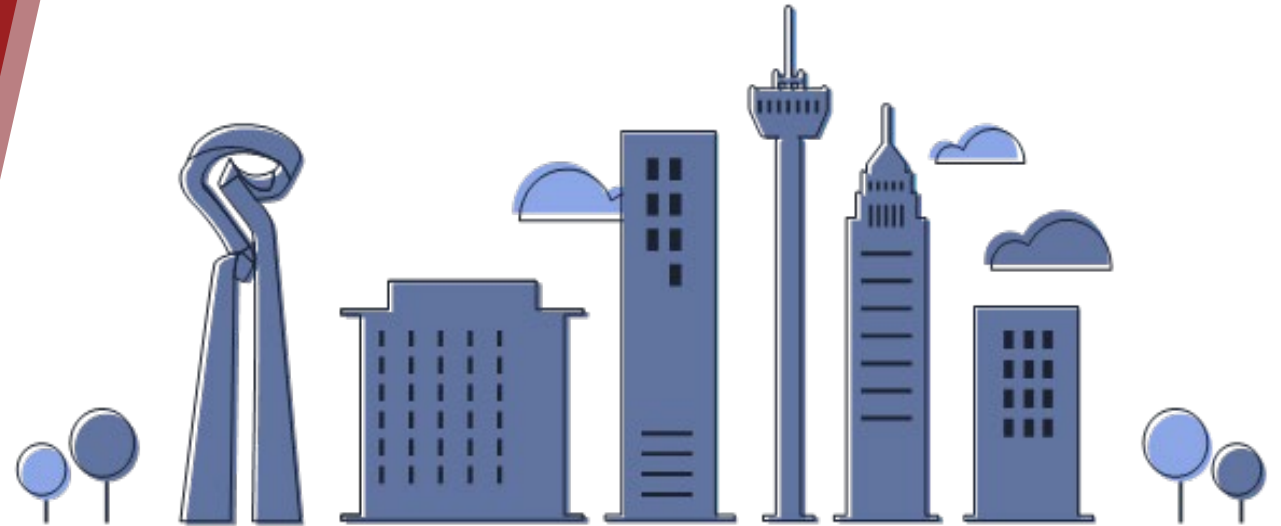
CCMS Reporting, Mentor Protégé Program, Bonding Assistance Program

# Post-Award Information

## Post-Award Requirements

### City Contract Management System

- Report payments to subcontractors and monitor attainment of the SBEDA goals on a monthly basis
- Submit Change of Utilization Plans if the value of the contract changes or if subcontractors are added, removed, or reduced in value with proper documentation



# Capacity Building & Bonding Assistance Program



## CAPACITY BUILDING & BONDING ASSISTANCE PROGRAM

### Small Business Contractors in San Antonio

- **Maximize** your bonding capacity
- **Bid** on more City of San Antonio Contracts
- **Grow** your own business to the next level



### CAPACITY BUILDING

- Education & training
- One-on-one technical assistance & guidance



### BONDING ASSISTANCE

- Access to specialty bond markets
- Access to funds for city bond requirements

**GET IN THE GAME!  
GET BONDED TODAY!**

For more information visit  
[www.sanantonio.gov/edd](http://www.sanantonio.gov/edd)

City of San Antonio Capacity Building & Bonding Assistance Program  
Jim Swindle, AFSB - Program Administrator | Alamo Surety Bonds

(210) 930-5550 [jim@alamobonds.com](mailto:jim@alamobonds.com)



**SAEDC**

SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION

CITY OF SAN ANTONIO  
ECONOMIC DEVELOPMENT DEPARTMENT

## Mentor Protégé Program

- The City of San Antonio has partnered with Alamo Colleges to establish a Mentor Protégé Program.
- The Program starts with a series of classes to help S/M/WBEs write a business plan, understand financials, learn how to market, etc.
- S/M/WBEs are then partnered with mentors for a 2-year period to learn best business practices.



ALAMO  
COLLEGES



# Contact Us



## SBEDA Program

- Email: [SBEDAdocs@sanantonio.gov](mailto:SBEDAdocs@sanantonio.gov)
- Phone: 210-207-3922
- Website: [www.sanantonio.gov/sbo](http://www.sanantonio.gov/sbo)



## Central Vendor Registry Contact

- Phone: 210-207-0118
- Website: [www.sanantonio.gov/purchasing/saeps](http://www.sanantonio.gov/purchasing/saeps)



## SCTRCA

- Phone: 210-458-3225
- Website: [www.sctrca.org](http://www.sctrca.org)



## Mentor Protégé Program

### Mario Hernandez, Program Manager

- Email: [mhernandez1665@alamo.edu](mailto:mhernandez1665@alamo.edu)
- Phone: 210-486-0821
- Website: [www.besanantonio.com](http://www.besanantonio.com)



ALAMO  
COLLEGES

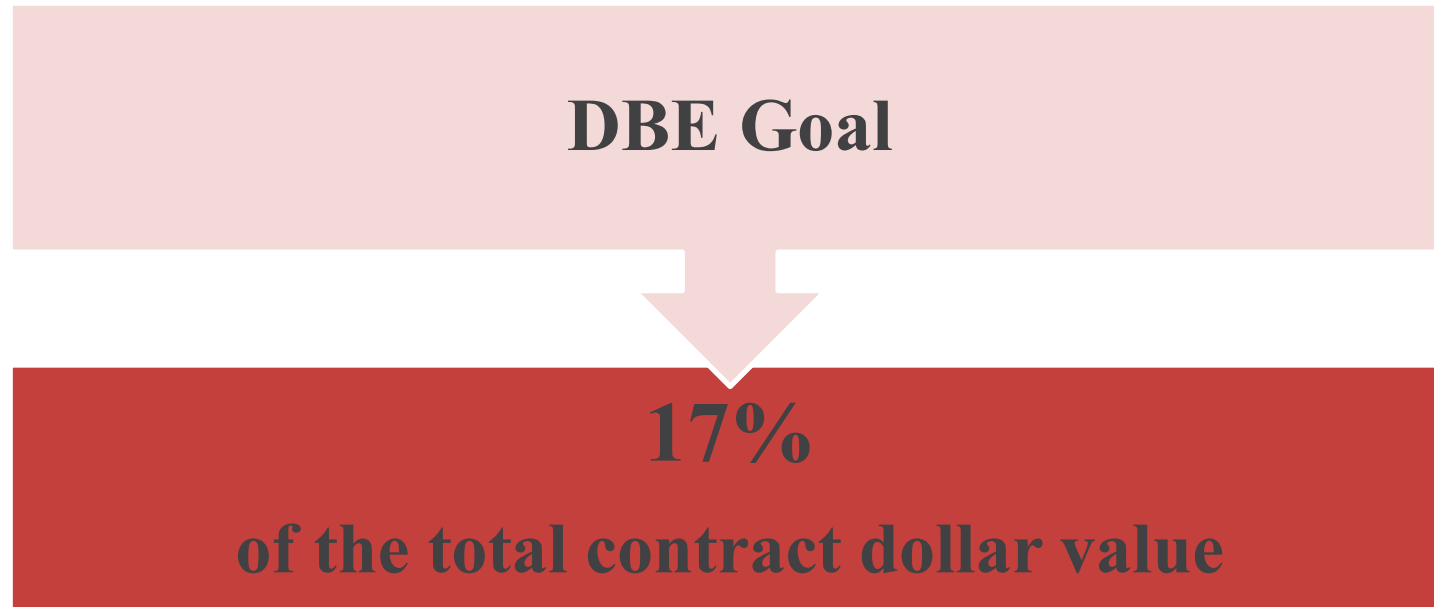
# **San Antonio International Airport Business Opportunity & Diversity Development (BODD)**

Disadvantage Business Enterprise (DBE) Program

# DBE Program Requirements

- Business must be **TUCP certified at time of proposal submission** in order to count their participation. State DBE Directory TUCP website: <http://www.dot.sate.tx.us>
- DBE vendors certified in a state other than Texas must obtain **DBE Interstate Certification** through their home state (reciprocity), the TUCP or certifying agency of the TUCP.
- The South Central Texas Regional Certification Agency (SCTRCA) serves businesses from the San Antonio Metropolitan Statistical Area (SAMSA) and is a certifying agency of the TUCP. SCTRCA Website: <http://www.scetra.org>
- **A certified DBE business can submit a proposal as a Prime and self-perform** in to meet the DBE goal. **DBE credit is awarded only for work actually being performed by the DBE and meets the scope of work identified by the solicitation.** Work subcontracted to Non-DBEs does not count towards the goal.
- Certifications **NOT** accepted for DBE credit are SBE, MBE, WBE, AABE.
- Contact Aviation BODD staff to assist with locating certified DBE firms to aid in meeting the goal.

# DBE Program Requirements



DBE goal is based upon the relative availability of DBE certified firms located within the San Antonio Metropolitan Statistical Area (SAMSA) relative to all firms for trades identified within the solicitation's scope of work. Participation for DBE credit is open for all DBE certified firms from anywhere in Texas or nationwide through the reciprocity process.

|  |
|--|
| <b>SAMSA</b>   |
| Texas counties of Atascosa, Bandera, Bexar, Comal,<br>Guadalupe, Kendall, Medina, Wilson |

# DBE Program Requirements

---

- Due With/At Time of Proposal
- DBE Forms (DBE Forms 1, 2)
  - Signed & completed Good Faith Effort Plan (GFEP) (**DBE Form 1**) detailing respondents team including NON-DBEs and DBEs.
  - Letter(s) of Intent (**DBE Form 2**) for each firm listed in DBE Form 1 with NAICS code and dollar value or percentage of work to be performed
  - DBE Certification Affidavit(s) to DBE Form 1
- Bidder's List Collection DBE Form

# Good Faith Effort Plan (DBE Form 1)



## Good Faith Effort Plan & DBE Commitments Pages 1 & 2



**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)  
DBE GOOD FAITH EFFORT PLAN FOR  
FEDERALLY ASSISTED CONSTRUCTION CONTRACTS  
(DBE Form 1)**

### SECTION B - DBE COMMITMENTS

**NAME OF PROJECT:** \_\_\_\_\_

#### SECTION A - BIDDER INFORMATION:

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Age of Firm (Number of Years in Business): \_\_\_\_\_ Years

Annual Gross Receipts of the Firm: \_\_\_\_\_ Less than \$500,000 \_\_\_\_\_ \$500,000 to \$1 million  
 \_\_\_\_\_ \$1 million to \$2 million \_\_\_\_\_ \$2 million to \$5 million  
 \_\_\_\_\_ Over \$5 million

Is your firm Certified: Yes \_\_\_\_\_ No: \_\_\_\_\_ If certified, Certification Number: \_\_\_\_\_

Type of Certification \_\_\_\_\_ DBE \_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_ AABE \_\_\_\_\_ SBE

1. List ALL SUBCONTRACTORS/SUPPLIERS that will be utilized on this contract. A Letter of Intent (DBE Form 2) must be submitted for all subcontractors/suppliers listed below at the time the bid is submitted. If the Aviation Department does not receive completed LOIs, then the Respondent's Good Faith Effort Plan will not be approved. An approved Good Faith Effort Plan is required prior to award of any contract.

| Name & Address of Company | Scope of Work/Supplies to be Performed/Provided by Firm | Estimated Contract Amount Or % Level of Participation | If Firm is DBE Certified, Provide Certification Number | Date Written Notice Was Sent & Method (Letter, Fax, E-mail) |
|---------------------------|---|---|--|---|
| 1.                        |   |   |  |   |
| 2.                        |   |   |  |   |
| 3.                        |   |   |  |   |
| 4.                        |   |   |  |   |
| 5.                        |   |   |  |   |

(Use Additional Sheets if Necessary)

The DBE goal on this project is: \_\_\_\_\_ %

1. The undersigned bidder has satisfied the requirements of the bid specification in the following manner (please check the appropriate box):

Bidder/offeree has met the DBE contract goal

The bidder/offeree is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

Bidder/offeree has not met the DBE contract goal

The bidder/offeree is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract and has submitted documentation demonstrating good faith efforts. (If contractor is unable to meet the goal, please fill out Section C and submit documentation demonstrating good faith efforts).

Legal name of bidder/offeree's firm: \_\_\_\_\_

2. Name and phone number of person appointed to coordinate and administer the Federal DBE requirements on this project.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

IF DBE GOAL WAS MET, PROCEED TO PAGE 4 AND SIGN THE GFEP. IF GOAL WAS NOT MET, PROCEED TO SECTION C.

- Sign & Complete Good Faith Effort Plan (GFEP) (DBE Form 1) detailing efforts to include DBEs and NON-DBEs as part of your team
- Contact Aviation BODD to assist with locating certified DBE firms, if needed
- If DBE Goal is met proceed to Affirmation and sign the GFEP
- If DBE Goal is NOT MET Proceed to Section C**

# Good Faith Effort Plan (DBE Form 1)

## Good Faith Effort Plan Section C and Affirmation Pages 3 and 4



**SECTION C – GOOD FAITH EFFORTS (Fill out only, if the DBE goal was not achieved).**

List all firms you contacted with subcontracting/supply opportunities for this project that will not be utilized for this contact by choice of the bidder, subcontractor, or supplier. *Written notices to firms contacted by the bidder for specific scopes of work identified for subcontracting/supply opportunities must be provided to subcontractor/supplier not less than five (5) business days prior to bid/proposal due date.* The following information is required for all firms that were contacted of subcontracting/supply opportunities:

| Name & Address of Company | Scope of Work/Supplies to be Performed/ Provided by Firm | If Firm is DBE Certified, Provide Certification Number | Date Written Notice Was Sent and Method (Letter, Fax, E-mail) | Reason Agreement Was Not Reached |
|---------------------------|--|--|---|----------------------------------|
| 1.                        |  |  |   |                                  |
| 2.                        |  |  |   |                                  |
| 3.                        |  |  |   |                                  |
| 4.                        |  |  |   |                                  |
| 5.                        |  |  |   |                                  |
| 6.                        |  |  |   |                                  |
| 7.                        |  |  |   |                                  |
| 8.                        |  |  |   |                                  |
| 9.                        |  |  |   |                                  |
| 10.                       |  |  |   |                                  |

(Use additional sheets as needed)

In order to verify a bidder's good faith efforts, please provide to the City with copies of the written notices to all firms contacted by the bidder for specific scopes of work identified in relation to the subcontracting/supply opportunities in the above named project. Copies of said notices must be provided to the DBE Liaison within five (5) business days after the bid is due. Such notices shall include information on the plans, specifications and scope of work.

- Did you attend the pre-bid conference scheduled by the City for this project? \_\_\_\_\_ Yes \_\_\_\_\_ No
- List all DBE listings or directories, contractor associations, and/or any other associations utilized to solicit DBE subcontractors/suppliers:  
\_\_\_\_\_
- Discuss efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goal:  
\_\_\_\_\_

- Indicate advertisement mediums used for soliciting bids from DBEs. (Please attach a copy of the advertisement(s):  
\_\_\_\_\_
- Discuss efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance:  
\_\_\_\_\_
- Discuss efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services:  
\_\_\_\_\_

**AFFIRMATION**

*I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

NAME AND TITLE OF AUTHORIZED OFFICIAL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**NOTE:**

- If the DBE goal was not met, the Aviation's DBE Liaison Officer will evaluate the "good faith efforts" of a firm. The Good Faith Effort Plan for Federally Funded Contracts must be approved by the Aviation Department's DBE Liaison Officer prior to award of contract.
- If the DBE Liaison determines that the bidder has not made good faith efforts, then the bidder shall have the opportunity to appeal this decision to the Aviation Director. The Aviation Director shall review the written documentation presented by bidder and has final approval in determining whether Good Faith Efforts have been made.

**FOR SAN ANTONIO INTERNATIONAL AIRPORT USE ONLY:**

Plan Reviewed by \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of DBE Liaison Officer

Recommendation: Approval: \_\_\_\_\_ Denial: \_\_\_\_\_

Action Taken: Approved: \_\_\_\_\_ Denied: \_\_\_\_\_

- Complete Section C if DBE Goal was NOT met**
- Document your detailed efforts that you made to meet the DBE goal
- The DBE Liaison Officer will evaluate your "good faith efforts" for not meeting the DBE goal.
- If the DBE Liaison Officer determines you failed to do so, you will be deemed NON-RESPONSIVE**

- Sign and Complete Affirmation Section**

# Letter of Intent (DBE Form 2) Page 1 & 2



**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)  
LETTER OF INTENT  
FOR FEDERALLY FUNDED CONTRACTS  
(DBE Form 2)**

The requirements of 49 CFR Part 26 (Section 26.53), of the U.S. Department of Transportation, requires that all bidders/offers comply with good faith efforts requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidders/proposers to submit the following information from each Subcontractor/Supplier for this contract (as listed on Item 1 of DBE Good Faith Effort Plan for (DBE Form 1) and/or Change or addition of sub contractors/suppliers (DBE Form 3)

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

NAME OF PROJECT: \_\_\_\_\_

Name of bidder/offers firm: \_\_\_\_\_

Name & Title of firm's AR \_\_\_\_\_ Phone \_\_\_\_\_

Email: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of Sub consultant/Supplier: \_\_\_\_\_

Name & Title of firm's AR \_\_\_\_\_ Phone \_\_\_\_\_

Email: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Is the above firm DBE Certified: Yes \_\_\_\_\_ No \_\_\_\_\_ If certified, Certification No: \_\_\_\_\_

If firm is certified, please attach a copy of the Certification Affidavit with this form.

Age of Firm (Number of Years in Business): \_\_\_\_\_ Years

Annual Gross Receipts of the Firm: \_\_\_\_\_ Less than \$500,000 \_\_\_\_\_ \$500,000 to \$1 million  
 \_\_\_\_\_ \$1 million to \$2 million \_\_\_\_\_ \$2 million to \$5 million  
 \_\_\_\_\_ Over \$5 million

NAICS Code and/or Description of work to be performed by firm: \_\_\_\_\_

The bidder/offers is committed to utilizing the above-named firm for the work described above. The estimated dollar value or percentage of this work is \$ \_\_\_\_\_

**Affirmation**

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_  
 Signature of Firm's Representative Date

Title: \_\_\_\_\_

**NAME OF PROJECT:**

**DECLARATION OF PRIME CONSULTANT:**

I hereby declare and affirm that I am the \_\_\_\_\_  
 (Title of Declarant)

and a duly authorized representative of \_\_\_\_\_  
 (Name of Prime Consultant)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the firm signed this form in the place indicated, and no material facts have been omitted.

The undersigned intends to enter into a formal agreement with the listed firm for work as indicated by this form and will, if requested, provide the Airport's DBE Liaison with a copy of that agreement within three (3) business days of execution.

\_\_\_\_\_  
 (Name of Declarant)

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Date)

**SUBMIT THIS PAGE FOR EACH SUBCONSULTANT/SUPPLIER FOR THIS CONTRACT, AS LISTED ON ITEM 1 OF DBE GOOD FAITH EFFORT PLAN FOR FEDERALLY FUNDED CONTRACTS (DBE FORM 1) AND/OR CHANGE OR ADDITION OF SUBCONTRACTORS/SUPPLIERS ON FEDERALLY FUNDED CONTRACTS (DBE FORM 3)**

*IF THE BIDDER/OFFEROR DOES NOT RECEIVE AWARD OF THE PRIME CONTRACT, ANY AND ALL REPRESENTATIONS IN THIS LETTER OF INTENT AND AFFIRMATION SHALL BE NULL AND VOID.*

- Sign & complete Letter(s) of Intent (DBE Form 2) for each subcontractor listed on DBE Form 1
- "Estimated Percentage value of work" **must** be the same amount listed on "% Level of participation" column on DBE Form 1
- Submit copy of DBE Certification Affidavit for all DBE firms utilized or proposed to be utilized as subcontractors or suppliers on DBE Form 2
- Sign and Complete Declaration, Page 2 on DBE Form 2

# IMPORTANT NOTES



- DBE credit will be given for those vendors that are DBE certified through the TUCP or an approved certification entity (member of TUCP) at the time of bid/proposal submission. SBE, MBE, WBE, AABE certifications are NOT accepted for DBE credit.
- Respondents MUST make and document Good Faith Effort to meet the DBE goal. Respondent do so either by obtaining enough DBE participation to meet the goal (DBE Form 1 pages 1 & 2) or by documentation that it made sufficient Good Faith Efforts to do so (DBE Form 1 pages 3 & 4).
- An approved Good Faith Effort Plan detailing meeting the goal or attempt to meet the goal is required prior to award of any contract

## Exception to Communications:

- Respondent may contact the Aviation's Business Opportunity & Diversity Development (BODD) staff for assistance or clarification with issues specifically related to the DBE policy and/or completion of the Good Faith Effort Plan. Respondents may contract the Aviation's BODD staff at any time prior to the submission due date of proposals. Contacting BODD office regarding this Proposal after the due date is not permitted.

## City Registration:

- All Respondents not previously registered in SAePS and wishing to do business with the City are encouraged to register in SAePs which serves as the City's Central Vendor Registry (CVR).
- To begin the registration process, please go to: <http://www.sanantonio.gov/purchasing/SAePS.aspx>
- For technical assistance please call (210) 207-0118



# Aviation Business Opportunity and Diversity Development (BODD) Staff:

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- Marisol Amador, Special Projects Manager at (210) 207-3406 or [marisol.amador@sanantonio.gov](mailto:marisol.amador@sanantonio.gov)
- Barbara Patton, DBELO at (210) 207-3592 or [barbara.patton@sanantonio.gov](mailto:barbara.patton@sanantonio.gov)
- Joseph Gonzales, Diversity Development Program Coordinator at (210) 207-3526 or [joseph.gonzales2@sanantonio.gov](mailto:joseph.gonzales2@sanantonio.gov)
- Brenda Rodriguez, Diversity Development Program Coordinator at (210) 207-3808 or [brenda.rodriguez2@sanantonio.gov](mailto:brenda.rodriguez2@sanantonio.gov)
- Business Opportunity & Diversity Development staff email: [BODD@sanantonio.gov](mailto:BODD@sanantonio.gov)

# Schedule of Events



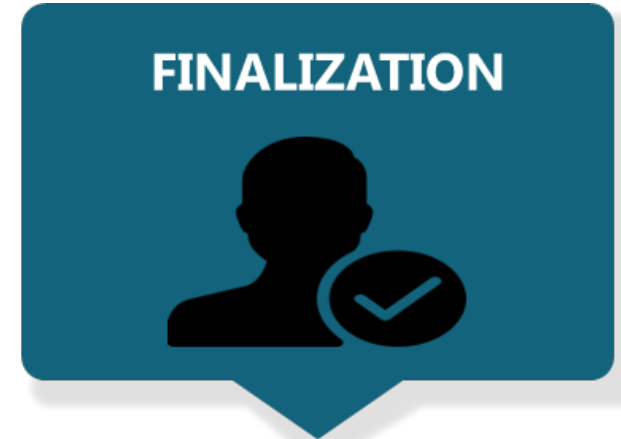
## April/May 2024

- April 5, 2024 - RFCSP Released
- April 17, 2024 - Pre-Submittal Meeting at 9:30AM
- April 24, 2024 - Workshop at 9:00AM
- May 8, 2024 - Deadline for Submission of Written Questions at 4:00PM



## June/July 2024

- June 4, 2024 – Submittals Due at 2:00PM
- June/July 2024 - Evaluation of Submittals



## October 2024

- October 2024 - Anticipated City Council Consideration

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# Public Works RFCSP Proposal Document Requirements and Evaluation Criteria



# PW Proposal Document Requirements

| TAB | TITLE  | DESCRIPTION  |
|-----|--|--|
| 1   | Submittal Checklist and Table of Contents (Form 1) | Ensure all required information is in correct order.   |
| 2   | Executive Summary                                  | One page summary stating relevant information of your team.  |
| 3   | Contract Template and General Conditions Review    | Must provide written acknowledgment that Respondent accepts the terms, conditions and requirements of the City's General Conditions. |
| 4   | Letter of References                               | Maximum of 5 letters within 5 years.   |

# Evaluation Criteria



## **Criteria A:** Experience, Background and Qualifications of Respondent, Subcontractors, and Key Personnel, with Job Order Contracting Projects

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 5   | Experience  | Respondent’s qualifications relating to scope.   |
| 6   | Project Sheets  | Maximum of 5 project sheets.   |
| 7   | Proposed Key Personnel/Organizational Chart                 | Org. Chart of proposed team.   |
| 8   | Resumes   | One-page Resumes of key team members.  |
| 9   | Experience with Green Building and Sustainability Practices | Describe experience with green building practices and any green certifications/ specialist training. |

# Evaluation Criteria

## Criteria B: Understanding of the JOC Program Project and Proposed Management Plan

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 10  | Understanding of the JOC Program  | Understanding the primary objectives of the JOC Program, constraints and technical challenges. |
| 11  | Provide Scope of work definition, proposal, and UPB breakdown for the Sample Project      | Respondents must provide the scope of work and UPB breakdown for the sample project.           |
| 12  | Proposed Management Plan  | Project management approach. Approach to Quality Control/Assurance.                            |
| 13  | Commitment to Green Building and Sustainability Initiatives, Practices and Implementation | Commitment to Green Building and Sustainability Initiatives, Practices and Implementation.     |



# Evaluation Criteria

## **Criteria C:** Construction Experience with the San Antonio Region & Past Performance

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 14  | Experience with the San Antonio Region & Past Performance | Narrative form. Work in San Antonio or surrounding area in past 5 years. Reference projects listed in the project sheets. Describe the teams experience in the areas listed in the RFCSP. A portion of the scoring for this section may be based on the City's Consultants' Scorecard. |

# Evaluation Criteria

## Criteria D: Coefficient Proposal

| Form | TITLE                        | DESCRIPTION   |
|------|------------------------------|---|
| 8    | Coefficient Performance Form | <p>Respondents must submit a Coefficient to cover overhead, profit, and any other costs that are not included in the Unit Price Book (UPB). The Respondent’s Coefficient is a numerical value, to three (3) decimal places, that the Respondent proposes as a multiplier to the UPB. Items to be included and excluded from the coefficient are defined on RFCSP.</p> |

# Evaluation Criteria

Coefficient Proposal - Enter your Proposal in <https://www.civcastusa.com/bids> by first clicking on the “Bidding” button, then click on “Bid Form”.

| <b>COEFFICIENT WORKSHEET</b>    |                             |                    |   |
|---------------------------------|-----------------------------|--------------------|---|
| <b>Example</b>                  |                             |                    |   |
| <b>Standard/ Non-standard</b>   | <b>Proposed Coefficient</b> | <b>Calculation</b> | <b>Weighted Totals</b>                        |
| Standard                        | 1.02                        | x .85              | .867  |
| Non-standard                    | 1.13                        | x .15              | 0.169   |
|                                 |                             |                    | Sum these two numbers, rounded to 3 decimals. |
| <b>Evaluation Coefficient</b>   |                             |                    | <b>1.036</b>                                  |
| <b>Respondents Calculations</b> |                             |                    |   |
| <b>Standard/ Non-standard</b>   | <b>Proposed Coefficient</b> | <b>Calculation</b> | <b>Weighted Totals</b>                        |
| <u>Standard</u>                 |                             | <u>x .85</u>       |   |
| <u>Non-standard</u>             |                             | <u>x .15</u>       |   |
|                                 |                             |                    | Sum these two numbers, rounded to 3 decimals. |
| <b>Evaluation Coefficient</b>   |                             |                    |   |

# Public Works Evaluation Criteria Summary



| <b>Evaluation Criteria Summary</b>  | <b>Maximum Points</b> |
|---|-----------------------|
| <b>A. Experience, Background and Qualifications of Respondent, Subcontractors, and Key Personnel, with Job Order Contracting Projects</b> | <b>25</b>             |
| <b>B. Understanding of the JOC Program Project and Proposed Management Plan</b>   | <b>20</b>             |
| <b>C. Construction Experience with the San Antonio Region &amp; Past Performance</b>  | <b>15</b>             |
| <b>D. Coefficient Proposal</b>  | <b>20</b>             |
| <b>E. SBEDA</b>   | <b>20</b>             |

# Required Uploads for Public Works JOC



## Upload each document individually

Submittal Checklist and Table of Contents (Form 1)

Submittal Cover/Signature Page (Form 2)

Contracts Disclosure Form (Form 3)

<https://www.sanantonio.gov/eforms/att/ContractsDisclosureForm.pdf>

Litigation Disclosure Form (Form 4)

SBEDA Utilization Plan (Form 5)

Veteran-Owned Small Business (VOSB) Program Tracking (Form 6)

Local Preference Program (LPP) Identification (Form 7)

Coefficient Proposal (Form 8)

Heat Illness Prevention Acknowledgment (Form 9)

Proof of Insurability

Certificate of Interested Parties TEC Form 1295

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

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# Aviation RFCSP Proposal Document Requirements and Evaluation Criteria



# Aviation Proposal Document Requirements

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 1   | Submittal Checklist and Table of Contents (Form 1)  | Ensure all required information is in correct order.   |
| 2   | Executive Summary   | One page summary stating relevant information of your team.  |
| 3   | Job Order Contract and Aviation General Conditions for City of San Antonio Construction Contracts | Must provide written acknowledgment that Respondent accepts the terms, conditions and requirements of Aviation's Job Order Contract Template |
| 4   | Letter of References  | Maximum of 5 letters within 7 years.   |

# Evaluation Criteria

## **Criteria A:** Experience of Respondent, Subcontractors and Key Personnel with Job Order Contracting Projects

| TAB | TITLE   | DESCRIPTION  |
|-----|---|--|
| 5   | Experience  | Respondent’s qualifications relating to scope within two pages.                                      |
| 6   | Project Sheets  | Maximum of 5 project sheets.   |
| 7   | Proposed Key Personnel/Organizational Chart                 | Org. Chart of proposed team.   |
| 8   | Resumes   | One-page Resumes of key team members.  |
| 9   | Experience with Green Building and Sustainability Practices | Describe experience with green building practices and any green certifications/ specialist training. |

# Evaluation Criteria

## Criteria B: Understanding of the JOC Program and Proposed Management Plan

| TAB | TITLE  | DESCRIPTION  |
|-----|--|--|
| 10A | Understanding of the JOC Program   | Understanding the primary objectives of the project. Constraints and technical challenges.                                 |
| 10B | Provide Scope of work definition, proposal, and UPB breakdown for the Sample Project       | Show understanding of the e4Clicks software and use with the Sample Project. Showing use of coefficients and explanations. |
| 11  | Proposed Management Plan   | Project management approach. Approach to Quality Control/Assurance.  |
| 12  | Commitment to Green Building and Sustainability Initiatives, Practices, and Implementation | Commitment to Green Building and Sustainability Initiatives, Practices and Implementation.                                 |

# Evaluation Criteria

## Criteria C: Coefficient Proposal

| Form | TITLE                        | DESCRIPTION   |
|------|------------------------------|---|
| 5    | Coefficient Performance Form | <p>Respondents must submit a Coefficient to cover overhead, profit, and any other costs that are not included in the Unit Price Book (UPB). The Respondent’s Coefficient is a numerical value, to three (3) decimal places, that the Respondent proposes as a multiplier to the UPB. Items to be included and excluded from the coefficient are defined on RFCSP.</p> |



# Evaluation Criteria Summary

| <b>Evaluation Criteria Summary</b>  | <b>Maximum Points</b> |
|---|-----------------------|
| <b>A. Experience, Background and Qualifications of Respondent, Subcontractors, and Key Personnel, with Job Order Contracting Projects</b> | 35                    |
| <b>B. Understanding of the JOC Program Project and Proposed Management Plan</b>   | 25                    |
| <b>C. Coefficient Proposal</b>  | 20                    |
| <b>D. Disadvantaged Business Enterprise (DBE)</b>   | 20                    |

## Required Uploads for Aviation JOC

### Upload each document individually

*Submittal Checklist and Table of Contents (Form 1)*

Submittal Cover/Signature Page (Form 2)

*SOS Filing Number and SAMS DUNS and/or CAGE number*

Contracts Disclosure Form (Form 3)

<https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>

Litigation Disclosure Form (Form 4)

Disadvantaged Business Enterprise (DBE) Program Requirements

Coefficient Proposal (Form 5)

Heat Illness Prevention Acknowledgment (Form 6)

Proof of Insurability

Certificate of Interested Parties TEC Form 1295

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

# QUESTIONS?



# Reminders

- Submit written questions through Civcast: <https://www.civcastusa.com/>. Deadline for written questions is 4:00 PM, May 8, 2024. Responses will be addressed via addendum
- Bids must be uploaded by 2:00 PM, CT, June 4, 2024.

***Please remember to click the “Submit Bid” button. If not, your bid will not be received by the City. LATE PROPOSALS WILL NOT BE ACCEPTED. Failure to properly click SUBMIT will not be grounds for acceptance of late proposal.***



# Thank You for Attending

Reminder to sign-in

Sign-In Form: <https://forms.office.com/g/mrrfgCRsRZ?origin=lprLink>





| Full name          | Company Name                     | E-mail   | Phone #        |
|--------------------|----------------------------------|--|----------------|
| Joseph Gonzales    | COSA                             | <a href="mailto:joseph.gonzales2@sanantonio.gov">joseph.gonzales2@sanantonio.gov</a>         | (210) 207-3826 |
| Jorge D Figueroa   | COSA                             | <a href="mailto:Jorge.figueroa@sanantonio.gov">Jorge.figueroa@sanantonio.gov</a>             | (210) 207-1085 |
| Jaime Contreras    | COSA                             | <a href="mailto:jaime.contreras@sanantonio.gov">jaime.contreras@sanantonio.gov</a>           | (210) 537-8383 |
| Hannah Haifa       | COSA                             | <a href="mailto:hannah.haifa@sanantonio.gov">hannah.haifa@sanantonio.gov</a>                 | (210) 207-0621 |
| Adrian Pena        | COSA                             | <a href="mailto:adrian.pena@sanantonio.gov">adrian.pena@sanantonio.gov</a>                   | (210) 207-0634 |
| Joseph Ramon       | COSA                             | <a href="mailto:Joseph.Ramon@sanantonio.gov">Joseph.Ramon@sanantonio.gov</a>                 | (210) 207-8310 |
| Matthew Moncada    | LMC Corporation                  | <a href="mailto:Matthew.moncada@lmc-corporation.com">Matthew.moncada@lmc-corporation.com</a> | (210) 291-4800 |
| Mack McKenzie      | COSA                             | <a href="mailto:Mack.mckenzie@sanantonio.gov">Mack.mckenzie@sanantonio.gov</a>               | (210) 488-2033 |
| Craig Coons        | Lmc Corporation                  | <a href="mailto:Craig.coons@lmc-corporation.com">Craig.coons@lmc-corporation.com</a>         | (940) 389-1085 |
| Leanna Aguilar     | AGL Painting                     | <a href="mailto:leanna@aglpainting.com">leanna@aglpainting.com</a>                           | (830) 783-7625 |
| Hannah May         | Henock Construction, LLC         | <a href="mailto:Hannah@henockconstruction.com">Hannah@henockconstruction.com</a>             | (210) 661-2737 |
| Amy Bricker        | Amstar inc                       | <a href="mailto:Amy@amstarincgc.com">Amy@amstarincgc.com</a>                                 | (210) 449-5735 |
| Michelle Vela      | Jamail & Smith Construction, LP  | <a href="mailto:mvela@jamailsmith.com">mvela@jamailsmith.com</a>                             | (281) 216-4820 |
| Rashad Johnson     | Straightline Management          | <a href="mailto:Rashad@straightlinem.com">Rashad@straightlinem.com</a>                       | (281) 386-9545 |
| Steban Tijerina    | Tijerina Construction            | <a href="mailto:Steban@tijerinagc.com">Steban@tijerinagc.com</a>                             | (210) 269-2679 |
| Hector Mateo       | MARA CONSTRUCTION, LLC           | <a href="mailto:hector@marallc.net">hector@marallc.net</a>                                   | (787) 974-2226 |
| Jonathan Miranda   | COSA                             | <a href="mailto:Jonathan.Miranda@SanAntonio.gov">Jonathan.Miranda@SanAntonio.gov</a>         | (210) 207-2856 |
| Haley Payne        | MARC3 General Contractors, LLC   | <a href="mailto:Haley@marc3llc.com">Haley@marc3llc.com</a>                                   | (830) 481-3442 |
| Martin Gomez Jr    | Henock Construction              | <a href="mailto:Proposal@henockconstruction.com">Proposal@henockconstruction.com</a>         | (210) 661-2737 |
| Travis Gaspar      | Straightline Management          | <a href="mailto:Travis@straightlinem.com">Travis@straightlinem.com</a>                       | (806) 215-8224 |
| Japan Shah         | COSA                             | <a href="mailto:Japan.Shah@sanantonio.gov">Japan.Shah@sanantonio.gov</a>                     | (210) 207-2680 |
| Melissa Peña-Perez | AGL Painting, LLC.               | <a href="mailto:melissa@aglpainting.com">melissa@aglpainting.com</a>                         | (210) 227-4200 |
| Alexis Sendejo     | COSA                             | <a href="mailto:Alexis.sendejo@sanantonio.gov">Alexis.sendejo@sanantonio.gov</a>             | N/A            |
| Larry M Alderete   | Amstar Inc                       | <a href="mailto:Larry@amstarincgc.com">Larry@amstarincgc.com</a>                             | (210) 440-4323 |
| Samantha Lara      | COSA                             | <a href="mailto:samantha.lara@sanantonio.gov">samantha.lara@sanantonio.gov</a>               | (210) 207-1635 |
| Christopher Nash   | Nash Industries, Inc.            | <a href="mailto:cnash@nashindustriesinc.com">cnash@nashindustriesinc.com</a>                 | (281) 829-4815 |
| Emma Wiltshire     | Jamail & Smith                   | <a href="mailto:ewiltshire@jamailsmith.com">ewiltshire@jamailsmith.com</a>                   | (201) 669-0879 |
| Caleb Urban        |                                  | <a href="mailto:caleburban@yahoo.com">caleburban@yahoo.com</a>                               | (361) 652-4960 |
| Victoria Hinojosa  | TCL Construction Enterprices LlC | <a href="mailto:Victoria@tclconstructionllc.com">Victoria@tclconstructionllc.com</a>         | (210) 404-5847 |
| Shuchi Nagpal      | COSA                             | <a href="mailto:shuchi.nagpal@sanantonio.gov">shuchi.nagpal@sanantonio.gov</a>               | (210) 207-1001 |
| Ron Gonzales       | The Sabinal Group                | <a href="mailto:Ron@sabinal-group.com">Ron@sabinal-group.com</a>                             | (210) 226-3400 |
| Rhonda Peters      | Jamail & Smith                   | <a href="mailto:rpeters@jamailsmith.com">rpeters@jamailsmith.com</a>                         | (713) 705-2982 |

# Form 5

## Coefficient Price Proposal Form Aviation Job Order Contracting Program

RFCSP - 2024-101

### 1. City of San Antonio Interpretation of select line items used in UPB:

**General Pricing Information and Requirements:** Line items covered in the pre-priced UPB, within the scope and general intent of the contract and necessary to complete the requirements of a specific task order may be negotiated and incorporated into the task order by the Contracting Officer. The line items stated in the Unit Price Book (UPB) include labor, materials and equipment for a complete and in place installation associated to a specific construction project. The contractor shall assume all risk for labor, material and equipment rate increases after award of a contract. These line items and associated definitions shall take precedent over line item definitions in the UPB. For the purpose of generating coefficients; any errors and omissions, alternate definitions, and interpretations found in other exhibits of this solicitation or its originating document are superseded by the following:

1. All prices in the UPB are for completed and in-place construction unless explicitly described otherwise. Incidental fasteners, such as, nails, screws, bolts, weldments, connectors, and adhesives are included in the bare material cost. Unless specifically omitted in the UPB line item description, testing, adjusting, balancing, and start-up of installed equipment is included in the unit price line number cost found in the UPB. Line items are for end finishes. For example, the line item price for concrete broom finish included all finishes necessary to result in the broom finish.
2. While the Contractor may find differences with the UPB, in comparison to local market equipment and material costs, it is the sole responsibility of the Contractor to verify ALL items within the UPB and make the appropriate adjustment per the Contractor's coefficient. At no time during the base period and/or option periods(s) will increases or adjustments be allowed to line items and/or the Contractor's Coefficient.
3. Variances in Davis-Bacon/prevailing wages and market labor rates are included in coefficients.
4. The UPB prices include line items with a "Minimum labor/equipment charge." This minimum charge is often the price a tradesman would charge to make a special visit to perform that work. If the contractor is already on-site then the minimum is met, and this line item shall not be used as an adjustment to the firm fixed price.
5. All line item prices assume the installation of the material under normal working conditions. This includes working from scaffolding or similar line items (for example) when appropriate. In other words, the productivity for brick veneer is based upon working not only from the ground, but also working from scaffolding. Therefore, unless the division has specific height exceptions, no allowance or change to the unit price is required for working at different heights. The cost to rent and erect the scaffolding is required. All scaffolding line items are based upon a one-month rental of the scaffolding. Scaffolding is measured by the square foot of face area where the work is being performed (working height in feet multiplied by the length of the wall in feet) or, in the case of when scaffolding must be erected inside a structure in order to access the ceiling, by the cubic feet (volume) of the actual scaffolding components. Scaffolding is priced separately. There are line items for the material costs and line items for erection/dismantling. It is not appropriate to use the scaffolding line items separately for each subcontractor. Scaffolding should be applied to the job cost once, and the subcontractors are "allowed" to use it.

## Form 5

6. Ladder, scaffolding, and other similar equipment will be considered as a cost of the Contractor and included within consideration of the Contractor's Coefficient for work below the height of fifteen (15) above any particular work surface, and temporary fencing up to five hundred (1000) feet.
7. Working distances are standardized and considered as included with the Contractor's Coefficient: Up to fifteen (15) feet above finished floor, material handling for three hundred (300) feet in distance, inclusive of demolition debris, and within three (3) stories of a building.
8. Square, level and plumb, are the sole responsibility of the Contractor, measuring, layout and/or staking out in conjunction with drawing specifications and joint scope will be considered include within the Contractor's coefficient.
9. Line items for mobilization and demobilization are for one or the other unless noted otherwise. Normally, a piece of equipment will need to be mobilized and demobilized. Therefore, the line item would normally be included twice per piece of equipment used. Small equipment placed in rear of truck or towed by a pickup truck is limited to those items included in the RSMMeans crews.
10. Crew line items in RS Means: The UPB has many line items that include labor or crews. These line items include composites of labor types and levels as well as equipment and tools. Crew specific line items are not to be used unless approved by the city in specific instances.
11. Trades line items in RS Means: The UPB has many line items that are designated as trades and are used as priced items. These are for hrs. to complete particular tasks. Much like crews they should be used sparingly, and these items are not to be used unless approved by the city in specific instances. (e.g. Contractor can use a % of labor hours totaled for per trade, with a max of 60%).
12. Activities associated to labor, within the line items: manual loading, unloading, and storing of materials to vehicle and job site, tools of the trade, moving and storage of tools, material and equipment handling up to three (3) stories of a building, and to fifteen (15) feet above finished floor height and up to three hundred (300) feet off the project site, material delivery, layout, assembly, temporary fencing up to five hundred (1000) feet, and measuring are considered in the Contractor's coefficient.
13. Items associated to materials, within the line items: All materials will be sales tax exempt, or rather delivered to the city tax free. Inclusive of all related/associated accessories necessary for proper manufacturer or specification installation, submittals, sample and shop drawings, and delivery of material within three hundred (300) feet of the project site.
14. Items associated to equipment, within the line items: loading, unloading, storage, handling up to three (3) stories of a building, and to fifteen (15) feet above finished floor height and up to three hundred (300) feet of the project site and installation into its final location. Rental equipment up to and including single unit rates of \$5000.
15. Demolition lines items do exist for each section of the UPB, albeit limited. Since the installation line items are more prevalent, they may be turned into demolition line items, if there is no line item for selective demolition. The Contractor will create an alternate pre-priced line item removing the cost for the material and equipment, and the remaining labor amount will be multiplied by 50%. This will be used as the line item to demolish that item. This line item will be pre-priced. If the line item cannot be found in the UPB, the demolition will be an NPI. Unless a line item description states differently, demolition is the complete

# Form 5

removal of a selected item, clean-up of the area, loading and handling of demolished material into a dumpster, truck or trailer within three hundred (300) feet off the project site. Smaller item(s) requiring removal during demolition that are attached to larger item(s) (i.e., toilet accessories to a toilet partition, insulation on ductwork, etc.) will be included in the larger items' removal line item.

16. Owner requested salvaged material, (defined as material, items, products, or etc. that has intrinsic value to the city and will either be returned/replaced on this or other projects. These items will be priced using an R&R calculation and will not cost any more than a demolition line item. Contractor will be held responsible for a salvaged items disposition, until it is turned over to the Owner.

## 2. COEFFICIENT REQUIREMENTS AND EXCLUSIONS

**Coefficient Allowances:** Contractor shall define and calculate the coefficient for this submittal based on general requirements, general conditions, costs of doing business and the following:

1. The elements that **shall be included** in respondents' coefficient for this submittal:

- |   |   |
|---|---|
| <input type="checkbox"/> Overhead   | <input type="checkbox"/> Quality Control  |
| <input type="checkbox"/> Profit (prime and subcontractors)  | <input type="checkbox"/> Safety Program and Personal Protective Equipment                           |
| <input type="checkbox"/> Insurance  | <input type="checkbox"/> Office supplies, equipment, hardware, software and staffing                |
| <input type="checkbox"/> Compliance with all laws   | <input type="checkbox"/> General-purpose vehicles and tools of the trade                            |
| <input type="checkbox"/> Protection or moving of City property (common to trade, e.g. floor protection, plastic sheeting, temp walls)   | <input type="checkbox"/> Interest associated with funding of equipment and payroll                  |
| <input type="checkbox"/> Administrative work  | <input type="checkbox"/> Depreciation of mobile offices, if applicable                              |
| <input type="checkbox"/> Submittals: Costs for preparation of reports, correspondence and documentation required by law or the Contract shall be included as well as costs to provide submittals, interface with the City, and coordinate with facility occupants | <input type="checkbox"/> Employee wages, payroll taxes, insurance and fringe benefits               |
| <input type="checkbox"/> Price quotations   | <input type="checkbox"/> Risk of lower than expected contract dollar volume                         |
| <input type="checkbox"/> Clean-up (Daily and Final)   | <input type="checkbox"/> Risk of high inflation costs   |
| <input type="checkbox"/> All waste and excess materials   | <input type="checkbox"/> Risk of poor subcontractor performance                                     |
| <input type="checkbox"/> Sustainable Construction Practices   | <input type="checkbox"/> Other risks of doing business  |
| <input type="checkbox"/> Permits, licenses, and fees (except for building permit costs which will be added to each Job Assignment as appropriate and paid at actual cost plus Non-Priced Coefficient)   | <input type="checkbox"/> Risk of lower than expected contract dollar volume                         |
| <input type="checkbox"/> Costs for survey and layout (other than legal property boundaries)   | <input type="checkbox"/> Risk of high inflation costs   |
| <input type="checkbox"/> Close-out for total contract and each Task Order Assignment  | <input type="checkbox"/> Risk of poor subcontractor performance                                     |
| <input type="checkbox"/> Signs and barriers-(including barricades and police presence)  | <input type="checkbox"/> Other risks of doing business  |
| <input type="checkbox"/> Project management and supervision   | <input type="checkbox"/> Business taxes, contributions, memberships, corporate headquarters support |
|   | <input type="checkbox"/> Any and all subcontractor costs  |
|   | <input type="checkbox"/> Other incidental costs   |

# Form 5

- The following sections are excluded from estimates unless expressly requested by the city or negotiated during scope definition with the city as to the need to use items from these sections.

These costs shall be covered in the contractor's coefficients:

- Division 01 Subdivisions 11-91.

Only the following Subdivisions or Subsections of Division 1 are acceptable under the named conditions, and are subject to the same negotiations as other line items:

- i. Subdivision 1.21.53.60 (Security) and Subdivision 1.56.32.50 (Watchman)– If project requires based on location such as Airport, police HQ, or similar.
- ii. Subdivision 1.45.23.xx (QC-Testing)– If expressly requested by the city.
- iii. Subdivision 1.54.23.70 (Scaffolding)– If project requires, beyond standardized 15’.
- iv. Subdivision 1.54.33.xx (Equipment)- If 1 unit price is \$5,000 or more.
- v. Subdivision 1.54.36.50 (Mobilization)– In lieu of the majority of equipment items under \$5,000.
- vi. Subdivision 1.56.26.50 (Temporary Fencing)– If project requires, beyond standardized 1,000’.

2. The elements that **shall be excluded** from respondents' coefficient for this submittal:

- Legal and administrative costs to review and negotiate the Contract Documents.
- Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Job Order Contractor.
- Costs incurred by Job Order Contractor resulting from the failure of Contractor or its Subcontractors to coordinate their work with that of Owner and Owner's Third-Party Contractors.
- Costs resulting from the failure of Job Order Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- Costs related to Job Order Contractor's indemnification obligations pursuant to the master contract general conditions.
- The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- Liquidated or actual damages imposed by Owner for failure of Job Order Contractor to complete the Work on or before each Task Order Assignment Final Completion Date.
- Costs of payment and performance bond

Respondents must submit a Coefficient to cover overhead, profit, and any other costs that are not included in the UPB, which for the purposes of this contract would be the Construction Cost Estimating Software of their choice. The Respondent's Coefficient is a numerical value, to three (3) decimal places, that the Respondent proposes as a multiplier to the UPB. For each Job Order, the cost of any payment and performance bonds shall be applied after application of the coefficient to the UPB sum. **The coefficient amounts are a maximum of what can be proposed. Respondent may reduce the amounts if applicable and within the capabilities of 4Clicks system if desired.**

**No variable Coefficient shall be applied to NPI items, and all respondents will have the same standard maximum 15% coefficient, applied to NPI items. Non-priced items shall not exceed ten percent (10%) of the total cost for any Job Order Contract.**

# Form 5

**An example of coefficient use:** If the labor unit price for painting 1 square foot of gypsum board from the 4Clicks™ Cost Data, is \$15.00 and the coefficient is 0.853, the unit labor price for the item would be \$12.79 (\$15.00 x .853 = \$12.79). The coefficient shall be the net decrease from or increase to the UPB Total column. Respondents are required to submit the Coefficients for Standard Working Hours (7:00 am-6:00 pm, Monday-Friday); Non-Standard Working Hours (6:00 pm-7:00 am, Monday-Friday and weekends, holidays not included); as required in the **Coefficient Proposal Form (Form #8)**.

**A weighted single coefficient:** Known as **Evaluation Coefficient**, is used for scoring purposes. The weighting is 85% for Standard Working Hours, 15% for Non-Standard Working Hours. Non-Priced will not be factored in the weighted score. The percentage will be applied to each coefficient and then added together to create the **Evaluation Coefficient**.

**As an example:**

**Formula:** Lowest Weighted Coefficient/Respondent's Weighted Coefficient X 20 points = Score  
 Standard Working Hours Coefficient 1.020 (1.020 \* .85) Weighted .867  
 Non-Standard Working Hours Coefficient 1.130 (1.130 \* .15) Weighted .169  
 Coefficient for evaluation purposes (.867 + .169) = 1.036

| RESPONDENT: | WEIGHTED COEFFICIENT: | CALCULATION:     | POINTS AWARDED: |
|-------------|-----------------------|------------------|-----------------|
| A           | 1.036                 | 1.036/1.036x 20  | 20              |
| B           | 1.132                 | 1.036/1.132 x 20 | 18.30           |
| C           | 1.216                 | 1.036/1.216 x 20 | 17.04           |
| D           | 1.289                 | 1.036/1.289 x 20 | 16.07           |
| E           | 1.332                 | 1.036/1.332 x 20 | 15.56           |

**Evaluation Coefficient**, also known also as the respondent's total weighted coefficient must be entered in the Bid Form section of the Civcast website at <https://www.civcastusa.com/bids>. This number is calculated as follows.

| COEFFICIENT WORKSHEET         |                      |             |   |
|-------------------------------|----------------------|-------------|---|
| Example                       |                      |             |   |
| Standard/ Non-standard        | Proposed Coefficient | Calculation | Weighted Totals                               |
| Standard                      | 1.02                 | x .85       | .867  |
| Non-standard                  | 1.13                 | x .15       | 0.169   |
|                               |                      |             | Sum these two numbers, rounded to 3 decimals. |
| <b>Evaluation Coefficient</b> |                      |             | 1.036   |

# Coefficient Proposal Form

Respondents must submit a Coefficient to cover overhead, profit, and any other costs that are not included in the UPB, which for the purposes of this contract would be the Construction Cost Estimating Software of their choice. The Respondent's Coefficient is a numerical value, to three (3) decimal places, that the Respondent proposes as a multiplier to the UPB. For each Job Order, the cost of any payment and performance bonds shall be applied after application of the coefficient to the UPB sum.

City shall record for use on the contract's duration respondent's coefficient standard working hours and non-standard working hours as indicated on the following **"Coefficient Price Proposal Form" (grey fields)**. The coefficient amounts are a maximum of what can be proposed. Respondents may reduce the amounts if applicable and within the capabilities of 4Clicks system and/or the RS Means Construction Cost Estimating Software if desired.

If there is a discrepancy on Form #8 - Coefficient Worksheet between the Respondent's Price / Coefficient Factor and the extended Weighted Totals for a Pre-Priced Item (Standard or Non-Standard), the Respondent's Price / Coefficient Factor shall govern.

Evaluation Coefficient, also known also as the respondent's total weighted coefficient must be entered in the Bid Form section of the Civcast website at <https://www.civcastusa.com/bids>. If there is a discrepancy between the Evaluation Coefficient on Form #8 - Coefficient Price Proposal Form, and the Bid Form section of the Civcast website, the Bid Form section of the Civcast website shall govern.

Respondents are to calculate the evaluation coefficient as defined with the following **"Coefficient Worksheet" (grey fields)**.

| <b>Coefficient Price Proposal Form 2025</b>               |                           |
|---|---------------------------|
| <b>A. Pre-Priced Items</b>                                | <b>Respondent's Price</b> |
| 1. Coefficient Factor: Standard/Normal Working Hours      |                           |
| 2. Coefficient Factor: Non-Standard/Normal Working Hours  |                           |
| <b>B. Non-Priced Items</b>                                | <b>Respondent's Price</b> |
| 1. Coefficient Factor: Standard/Normal Working Hours*     | 1.15                      |
| 2. Coefficient Factor: Non-Standard/Normal Working Hours* | 1.15                      |

\* No variable Coefficient shall be applied to NPI items, and all respondents will have the same standard maximum 15% coefficient, applied to NPI items. Non-priced items shall not exceed ten percent (10%) of the total cost for any Job Order Contract.

| <b>COEFFICIENT WORKSHEET</b>    |                      |             |   |
|---------------------------------|----------------------|-------------|---|
| <b>Respondents Calculations</b> |                      |             |   |
| Standard/ Non-standard          | Proposed Coefficient | Calculation | Weighted Totals                               |
| Standard                        |                      | x .85       |   |
| Non-standard                    |                      | x .15       |   |
|                                 |                      |             | Sum these two numbers, rounded to 3 decimals. |
| <b>Evaluation Coefficient</b>   |                      |             |   |

\_\_\_\_\_  
Respondent/Contractor Company Name

\_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

**TABLE OF CONTENTS**

|   |           |
|---|-----------|
| <b>ARTICLE I. GENERAL PROVISIONS.....</b>                                     | <b>5</b>  |
| <b>I.1 CONTRACT DEFINITIONS</b>   | <b>5</b>  |
| <b>I.2 PRELIMINARY MATTERS .....</b>  | <b>12</b> |
| <b>I.3 CONTRACT DOCUMENTS .....</b>   | <b>13</b> |
| <b>ARTICLE II. CITY.....</b>  | <b>17</b> |
| <b>II.1 GENERAL.</b>  | <b>17</b> |
| <b>II.2 INFORMATION AND SERVICES TO BE PROVIDED BY CITY.</b>                  | <b>17</b> |
| <b>ARTICLE III. CONTRACTOR .....</b>  | <b>19</b> |
| <b>III.1 GENERAL.</b>   | <b>19</b> |
| <b>III.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.</b> | <b>19</b> |
| <b>III.3 SUPERVISION AND CONSTRUCTION PROCEDURES</b>                          | <b>20</b> |
| <b>III.4 LABOR AND MATERIALS.</b>   | <b>22</b> |
| <b>III.5 WARRANTY.</b>  | <b>25</b> |
| <b>III.6 TAXES.</b>   | <b>27</b> |
| <b>III.7 PERMITS, FEES AND NOTICES.</b>                                       | <b>27</b> |
| <b>III.8 ALLOWANCES.</b>  | <b>28</b> |
| <b>III.9. SUPERINTENDENT/KEY PERSONNEL.</b>                                   | <b>29</b> |
| <b>III.10 CONTRACTOR’S PROJECT SCHEDULES.</b>                                 | <b>30</b> |
| <b>III.11 DOCUMENTS AND SAMPLES AT THE SITE.</b>                              | <b>40</b> |
| <b>III.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.</b>                        | <b>40</b> |
| <b>III.13 USE OF SITE.</b>  | <b>42</b> |
| <b>III.14 CUTTING AND PATCHING.</b>   | <b>43</b> |
| <b>III.15 CLEANING UP.</b>  | <b>43</b> |
| <b>III.16 ACCESS TO WORK.</b>   | <b>44</b> |
| <b>III.17 PATENT FEES AND ROYALTIES.</b>                                      | <b>44</b> |
| <b>III.18 INDEMNITY PROVISIONS.</b>   | <b>44</b> |
| <b>III.19 REPRESENTATIONS AND WARRANTIES.</b>                                 | <b>47</b> |
| <b>III.20 BUSINESS STANDARDS.</b>   | <b>47</b> |

|  |           |
|--|-----------|
| <b>ARTICLE IV. ADMINISTRATION OF THE CONTRACT.....</b>                     | <b>48</b> |
| IV.1 ROLES IN ADMINISTRATION OF THE CONTRACT.                              | 48        |
| IV.2 CLAIMS AND DISPUTES.  | 49        |
| IV.3 RESOLUTION OF CLAIMS AND DISPUTES.                                    | 55        |
| IV.4 ALTERNATIVE DISPUTE RESOLUTION.                                       | 56        |
| <b>ARTICLE V. SUBCONTRACTORS .....</b>                                     | <b>58</b> |
| V.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.    | 58        |
| V.2 SUB-CONTRACTUAL RELATIONS.   | 59        |
| V.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.                                 | 59        |
| <b>ARTICLE VI. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTS .....</b>     | <b>60</b> |
| VI.1 CITY’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS. | 60        |
| VI.2 MUTUAL RESPONSIBILITY   | 60        |
| VI.3 CITY’S RIGHT TO CLEAN UP.   | 61        |
| <b>ARTICLE VII. CHANGES IN THE WORK .....</b>                              | <b>62</b> |
| VII.1 GENERAL  | 62        |
| VII.2 CHANGE ORDERS  | 62        |
| VII.3 FIELD WORK DIRECTIVES  | 63        |
| VII.4 MINOR CHANGES TO THE WORK.   | 65        |
| VII.5 TIME REQUIRED TO PROCESS CHANGE ORDERS.                              | 65        |
| <b>ARTICLE VIII. TIME.....</b>   | <b>66</b> |
| VIII.1 PROGRESS AND COMPLETION.  | 66        |
| VIII.2 DELAYS AND EXTENSIONS OF TIME.                                      | 66        |
| <b>ARTICLE IX. PAYMENTS AND COMPLETION .....</b>                           | <b>68</b> |
| IX.1 CONTRACT SUM.   | 68        |
| IX.2 SCHEDULE OF VALUES.   | 68        |
| IX.3 APPLICATIONS FOR PAYMENT.   | 68        |
| IX.4 PAY APPLICATION APPROVAL.   | 69        |
| IX.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT.                          | 70        |
| IX.6 PROGRESS PAYMENTS.  | 71        |
| IX.7 SUBSTANTIAL COMPLETION.   | 72        |
| IX.8 PARTIAL OCCUPANCY OR USE  | 73        |
| IX.9 FINAL COMPLETION AND FINAL PAYMENT                                    | 74        |
| IX.10 ADDITIONAL INSPECTIONS.  | 75        |
| <b>ARTICLE X. PROTECTION OF PERSONS AND PROPERTY .....</b>                 | <b>76</b> |

|   |  |           |
|---|--|-----------|
| X.1   | SAFETY PRECAUTIONS AND PROGRAMS.                     | 76        |
| X.2   | SAFETY OF PERSONS AND PROPERTY.                      | 77        |
| X.3   | EMERGENCIES.   | 78        |
| X.4   | PUBLIC CONVENIENCE AND SAFETY                        | 79        |
| X.5   | BARRICADES, LIGHTS AND WATCHMEN.                     | 80        |
| X.6   | PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED. | 80        |
| X.7   | TEMPORARY STORM SEWER AND DRAIN CONNECTIONS.         | 80        |
| X.8   | ADDITIONAL UTILITY ARRANGEMENTS AND CHARGES          | 81        |
| X.9   | USE OF FIRE HYDRANTS.                                | 81        |
| X.10  | ENVIRONMENTAL COMPLIANCE                             | 81        |
| <b>ARTICLE XI. INSURANCE AND BONDS.....</b>   |  | <b>84</b> |
| XI.1  | INSURANCE REQUIREMENTS                               | 84        |
| XI.3  | PERFORMANCE BONDS AND PAYMENT BONDS.                 | 84        |
| XI.4  | 'UMBRELLA' LIABILITY INSURANCE.                      | 86        |
| XI.5  | POLICY ENDORSEMENTS AND SPECIAL CONDITIONS.          | 86        |
| <b>ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK .....</b>                     |  | <b>89</b> |
| XII.1   | INSPECTING WORK.                                     | 89        |
| XII.2   | UNCOVERING WORK.                                     | 89        |
| XII.3   | CORRECTING WORK.                                     | 89        |
| XII.4   | ACCEPTANCE OF NONCONFORMING WORK.                    | 91        |
| <b>ARTICLE XIII. COMPLETION OF THE CONTRACT; TERMINATION;<br/>TEMPORARY SUSPENSION.....</b> |  | <b>92</b> |
| XIII.1  | FINAL COMPLETION OF CONTRACT.                        | 92        |
| XIII.2  | WARRANTY FULFILLMENT.                                | 92        |
| XIII.3  | TERMINATION BY CITY FOR CAUSE.                       | 92        |
| XIII.4  | TEMPORARY SUSPENSION OF THE WORK.                    | 95        |
| <b>ARTICLE XIV. MISCELLANEOUS PROVISIONS.....</b>   |  | <b>97</b> |
| XIV.1   | SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY.        | 97        |
| XIV.2   | GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS. | 97        |
| XIV.3   | SUCCESSORS AND ASSIGNS.                              | 97        |
| XIV.4   | RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY CITY.    | 97        |
| XIV.5   | INTEREST.  | 98        |
| XIV.6   | INDEPENDENT MATERIALS TESTING AND INSPECTION.        | 98        |
| XIV.7   | FINANCIAL INTEREST.                                  | 98        |
| XIV.8   | VENUE.   | 99        |

**XIV.9 INDEPENDENT CONTRACTOR. 99**  
**XIV.10 NON-DISCRIMINATION. 99**  
**XIV.11 BENEFITS TO PUBLIC SERVANTS. 99**  
**ARTICLE XV. AUDIT .....101**  
**XV.1 RIGHT TO AUDIT CONTRACTOR’S RECORDS. 101**  
**ARTICLE XVI. ATTORNEY FEES .....102**  
**SPECIAL CONDITIONS FOR AVIATION DEPARTMENT PROJECTS.....103**

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

**ARTICLE I. GENERAL PROVISIONS**

**I.1 CONTRACT DEFINITIONS**

Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below shall have the meanings indicated, which are applicable to both the singular and plural thereof.

- I.1.1** “**ALTERNATE**” means a variation in the Work in which City requires a price separate from the Base Bid. If an Alternate is accepted by City, the variation shall become a part of the Contract through award of the Contract and the Base Bid shall be adjusted to include the amount quoted as stated in the Notice of Award to Contractor. If an Alternate is accepted by CITY, and later deleted, City shall be entitled to a credit in the full value of the Alternate as priced in Contractor’s Bid Proposal.
- I.1.2** “**AMENDMENT**” is a written modification of the Contract prepared by City or Design Consultant and signed by City and Contractor, (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Work (specifically the services) or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Contract.
- I.1.3** “**ACT OF GOD**” is an accident or event resulting from natural causes, without human intervention or agency, and one that could not have been prevented by reasonable foresight or care—for example, fires, lightning, earthquakes.
- I.1.4** “**BUILD AMERICA, BUY AMERICA ACT (BABA)**” means requirements instituted by the Bipartisan Infrastructure Law of 2021 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.
- I.1.5** “**BASE BID**” is the price quoted for the Work before Alternates are considered.
- I.1.6** “**CHANGE ORDER**” is a written modification of the Contract signed by both City and Contractor (and approved by City Council, if required) that authorizes an addition, deletion or revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Contract.
- I.1.7** “**CITY**” is defined as The City of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County and identified as “**CITY**” or as “**OWNER**” in the Contract and these General Conditions, is referred to throughout the Contract Documents as if singular in number.

- I.1.8** “**CITY COUNCIL**” means the duly elected members of the City Council of the City of San Antonio, Texas.
- I.1.9** “**CITY HOLIDAY**” –an observed holiday by the City of San Antonio that is counted as a Day for contract time purposes but wherein work is not permissible unless approved at least 48 hours in advance by the City. City Holidays shall be accounted for in Contractor Schedules.
- I.1.10** “**CLAIM**” is a demand or assertion by one of the Parties seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief, with respect to the terms of the Contract. The term “**CLAIM**” also includes other disputes and matters in question between City and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice.
- I.1.1** “**CONSTRUCTION MATERIALS**” means those articles, materials, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives – that are or consist primarily of: non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall.
- I.1.2** “**CONSTRUCTION OBSERVER/INSPECTOR** (hereafter referred to as “**COI**”) is the authorized representative of the Director of Aviation (hereafter referred to as “**AVI**”), or its designee department, assigned by City to observe and inspect any or all parts of the Project and the materials to be used therein. Also referred to herein as “**RESIDENT INSPECTOR**”.
- I.1.3** “**CONTRACT**” means the Contract Documents which represent the entire and integrated agreement between City and Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only in writing by a Field Work Directive, Change Order or Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind between:
- a. Design Consultant and Contractor;
  - b. Or City and a Subcontractor or Sub-Subcontractor;
  - c. Any persons or entities other than City and Contractor.
- I.1.4** “**CONTRACT DOCUMENTS**” means the Construction Contract between City and Contractor, which consists of, but is not limited to, the following: the solicitation documents, the Notice of Award, an enabling City of San Antonio Ordinance and all other contract-related documents, which include:
- a. General Conditions;

- b. Special Conditions included by Special Provisions or addenda;
- c. Drawings;
- d. Specifications;
- e. Addenda issued prior to the close of the solicitation period;
- f. Other documents listed in the Contract, including Field Work Directives, Change Orders and/or Amendments; and
- g. A written order for a minor change in the Work issued by Design Consultant and/or City, as described in **ARTICLE VII**.

The geotechnical and subsurface reports, which City may have provided to Contractor, specifically are excluded from the Contract Documents.

- I.1.5** “**CONTRACT TIME**” means, unless otherwise provided, the period of time, including any authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. When the plural (“Contract Times”) is used, it refers to milestones designated in the Work Progress Schedule.
- I.1.6** “**CONTRACTOR**” means the entity entering into a Contract with City to complete the Work’ or the Contractor’s authorized representative Contractor, as used herein, includes Construction Manager at Risk or other applicable entities performing work under a Contract with City.
- I.1.7** “**DAY**” as used in the Contract Documents shall mean Calendar Day, unless otherwise specifically defined. A Calendar Day is a day of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated.
- I.1.8** “**DESIGN CONSULTANT**” is a person registered as an Architect pursuant to Tex. Occupations Code Ann., Chapter 1051, a Landscape Architect pursuant to Texas Occupations Code, Chapter 1052, and/or a person licensed as a professional Engineer pursuant to Texas Occupations Code, Chapter 1001, or a firm employed by City to provide professional architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in its Contract and these General Conditions. If the employment of a Design Consultant is terminated, City shall employ a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant.
- I.1.9** “**DEPARTMENT**” means the Department of Aviation (hereafter referred to as“AVI”), City of San Antonio, Texas or Director of AVI.
- I.1.10** “**DESIGN CONSULTANT**” means, unless the context clearly indicates otherwise, an Engineer, Architect or other Design Consultant in private practice, licensed to do work

in Texas and retained for a specific project under a contractual agreement with City.

- I.1.11** “**DRAWINGS**” (also referred to herein as “Plans”) are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of Work, generally including elevations, sections, details, schedules and diagrams.
- I.1.12** “**FIELD WORK DIRECTIVES**” OR “**FORCE ACCOUNT**” is a written order signed by City directing a change in the Work prior to agreement and adjustment, if any, in the Contract Sum and/or Contract, as further defined in **ARTICLE XII.3**.
- I.1.13** “**FLOOD**” an overflowing of a large amount of water beyond its normal confines, especially over what is normally dry land
- I.1.14** “**INDEFINITE DELIVERY INDEFINITE QUANTITY (IDIQ) CONTRACT**” or “**TASK ORDER CONTRACT**” means the contractual agreement entered into between City and Contractor for, at the time of contracting, an unspecified and undefined scope of work, with regard to the quantities to be provided by Contractor, with Work to be assigned on an “as needed” basis by City. Through an IDIQ/Task Order Contract, Contractor agrees to perform defined and assigned Work for negotiated and agreed upon pricing reflected in Contractor’s Unit Price Sheet, said Price Sheet submitted by Contractor and negotiated by City prior to Contractor’s selection by City for an IDIQ/Task Order Contract.
- I.1.15** “**HAZARDOUS SUBSTANCE**” is defined to include the following:
- a. Any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;
  - b. Any polychlorinated biphenyls (“PCBs”), or PCB-containing materials, or fluids;
  - c. Radon;
  - d. Any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
  - e. Any substance, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;
  - f. Any underground storage tanks, as defined in 42 U.S.C. Section 6991 (1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid

Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C Section 6901 et seq.;

- g. The Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and
- h. Any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

**I.1.16** “**LIQUIDATED DAMAGES**” reflect the daily monetary compensation, as designated in the Project’s solicitation documents, to be paid to City by Contractor for losses/damages incurred by City as a result of Contractor’s failure to achieve the contractual dates for Substantial Completion and/or Final Completion of the Project.

**I.1.17** “**MANUFACTURED PRODUCT**” means items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the project.

**I.1.18** “**MANUFACTURER’S CERTIFICATION**” – means documentation provided by a manufacturer, certifying that the items provided by manufacturer meet the domestic preference requirements of BABAA.

**I.1.19** “**NOTICE TO PROCEED (HEREIN ALSO REFERRED TO AS “WORK PROJECT AUTHORIZATION” OR “NTP”)**” is a written notice given by City to Contractor establishing the date on which the Contract Time shall commence to run and the date on which Contractor may begin performance of its contractual obligations.

**I.1.20** “**OWNER’S DESIGNATED REPRESENTATIVE (ODR)**” means the person(s) designated by City to act for City.

**I.1.21** “**PARTY**” shall refer to City or Contractor individually herein.

**I.1.22** “**PARTIES**” shall refer to City and Contractor collectively herein.

**I.1.23** “**PRODUCT DATA**” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

**I.1.24** “**PROJECT**” means the total design and construction of Work performed under the Contract Documents and may be the whole or a part of the Project and which may include construction by City or by separate contractors. All references in these General Conditions to or concerning the Work or the Site of the Work shall use the term “Project,” notwithstanding the Work referenced only may be a part of the Project.

- I.1.25** “**PROJECT MANAGEMENT TEAM**” is comprised of city, its representatives, Design Consultant and Program Manager (if any) for this work.
- I.1.26** “**QUALITY ASSURANCE**” those actions taken by the CITY to determine the requirements of the contract have been meet to include: inspection, sampling, testing, and other activities.
- I.1.27** “**QUALITY CONTROL**” is the sampling, testing and other process control activities conducted by Contractor to ensure that the services are performed according to the terms and conditions of the contract.
- I.1.28** “**SAMPLES**” are physical samples of materials, equipment or workmanship representative of some portion of the Work, furnished by the Contractor to City, to assist City and Design Consultant in the establishment of workmanship and quality standards by which the Work shall be judged.
- I.1.29** “**SITE**” means the land(s) or area(s) (as indicated in the Contract Documents) furnished by City, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
- I.1.30** “**SHOP DRAWINGS**” are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared and furnished by Contractor or its agents, manufacturers, suppliers or distributors and which illustrate and detail some portion of the Work.
- I.1.31** “**SPECIAL CONDITIONS**” are terms and conditions to a contractual agreement which supplement and are superior to these General Conditions and grant greater authority or impose greater restrictions upon Contractor, beyond those granted or imposed in these General Conditions. City’s Aviation Special Conditions are attached hereto, made a part of these General Conditions and shall be used as applicable.
- I.1.32** “**SPECIFICATIONS**” are those elements of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.
- I.1.33** “**SUBCONTRACTOR**” is defined and used herein as a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor, Sub-Consultant or an authorized representative of Subcontractor or Sub-Consultant.
- I.1.34** “**SUBSTANTIAL COMPLETION**” is the stage in the progress of the Work when the Work – or a designated portion thereof, which City agrees to accept separately – sufficiently

is complete, in accordance with the Contract Documents, so City may occupy or utilize the Work or a designated portion thereof for its intended use with no inconvenience to City. In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s), City may withhold payment of sums necessary to pay the estimated Liquidated Damages due City. City shall be entitled, at any time, to deduct out of any sums due to Contractor any or all Liquidated Damages due City in accordance with the Contract between City and Contractor.

- I.1.35** “**TASK ORDER**” means the agreement issued by City to Contractor reflecting City’s acceptance of Contractor’s submitted and negotiated proposal to perform assigned Work. In issuing a Task Order, City has accepted Contractor’s Task Order Proposal and, through an issued Task Order, is authorizing the performance of said Work through an issued Task Order in *PrimeLink*.
- I.1.36** “**TASK ORDER PROPOSAL**” means the formal proposal submittal by Contractor listing Contractor’s proposed price – subject to negotiation – for performing a scope of work assigned to Contractor by City through an issued Task Order Request. Contractor shall include its cost estimate and schedule of Work to be accomplished in its proposal to City. By submitting a Task Order Proposal, Contractor agrees to perform the requested scope of work within the time stated in the proposed Task Order Request. In the event Contractor fails to achieve Substantial Completion and/or Final Completion of the Work by the dates established in the resulting issued Task Order, Liquidated Damages shall be assessed.
- I.1.37** “**TASK ORDER REQUEST**” means, as Work is identified by City, a request submitted by City to Contractor to review City’s proposed scope of work to be performed and to submit a Task Order Proposal to City to perform the defined scope of work.
- I.1.38** “**TEMPORARY BENCH MARKS (TBM)**” are temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.
- I.1.39** “**THE 3D MODEL**” is the Building Information Model prepared by Design Consultant in the format designated, approved and acceptable to City with databases of materials, products and systems available for use by Contractor to prepare schedules for cost estimating, product and materials placement schedules and evaluations of crash incidences. The 3D Model, if available, may be used as a tool, however all information taken from the Model is the responsibility of Contractor and not City or Design Consultant.
- I.1.40** “**WEATHER**” means the adverse or destructive atmospheric conditions, such as heavy rain, rising water, wind-driven water, ice, hail, snow, drought, lightning, or high winds.
- I.1.41** “**WORK**” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Contractor, or any Subcontractors, Sub-Subcontractors, material suppliers or any other entities for which Contractor is responsible, to fulfill the Contractor’s obligations. The Work may constitute the whole

or a part of the Project.

**I.1.42** “**WRITTEN NOTICE**” is any notice, payment, statement or demand required or permitted to be given under this Contract by either Party to the other may be effected by personal delivery in writing or by facsimile transmission, email or by mail, postage prepaid, or by overnight delivery to an officer, management level employee or other designated representative of either Party. Mailed or email notices shall be addressed to the Parties at an address designated by each Party, but each Party may change its address by written notice in accordance with this section. Mailed notices shall be deemed received as of three (3) calendar days after mailing.

**I.1.43 OTHER DEFINITIONS.**

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

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

**I.2 PRELIMINARY MATTERS.**

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

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

Not later than the Pre-Construction meeting and prior to the commencement of any Work on the Project, Contractor shall deliver a fully executed Contract to City, along with such bonds as Contractor may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in the Contract Documents and these General Conditions and a required performance bond in the form and amount specified in the Contract Documents and these General Conditions.

### **I.2.3 DELIVERY OF EVIDENCE OF INSURANCE.**

Not later than the Pre-Construction meeting, and prior to the commencement of any Work under this Contract, Contractor shall deliver evidence of insurance to City. Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the AVI Contract Services Division, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Contractor shall be prohibited from commencing the Work and City shall have no duty to pay or perform under this Contract until such evidence of insurance is delivered to City. No officer or employee, other than City's Risk Management Department, shall have authority to waive this requirement.

### **I.2.4 NOTICE TO PROCEED AND COMMENCEMENT OF CONTRACT TIMES.**

Unless otherwise stated on the Notice to Proceed, the Contract Time shall commence to run on the date stated on the Notice to Proceed. No Work shall commence any earlier than the date stated on Notice to Proceed and no Work shall be performed by Contractor or any Subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Contractor receiving a Notice to Proceed is performed at Contractor's risk.

### **I.2.5 SUBMISSION OF PROJECT SCHEDULE(S).**

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

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

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

**I.2.7** Payments for services, goods, work, equipment and materials are contingent upon and subject to the availability and appropriation of funds and the sale of future City of San Antonio Certificates of Obligation and/or General Obligation Bonds in accordance with adopted budgets. In the event funds are not available, appropriated or encumbered to

fund a Project, then, at City's discretion, this Contract may be terminated immediately with no additional liability to City.

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

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

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

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

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

- a. All of Contractor's non-proprietary, documentary Work product, including reports and correspondence to City, prepared pursuant to this Contract, shall be the property of City and, upon completion of this Contract and upon written request by City, promptly shall be delivered to City in a reasonably organized form, without restriction on its future use by City. For the avoidance of doubt, documentary Work product does not include privileged communications, proprietary information and documents used to prepare Contractor's Bid Proposal.
- b. Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially-significant Work product lost or destroyed by Contractor shall be replaced or reproduced at Contractor's non-reimbursable sole cost. In addition, City shall have access during normal business hours, during the duration this Contract is in effect and for four (4) years after the final completion of the Work, unless there is an ongoing dispute under the Contract, then such access period shall extend longer until final resolution of the dispute, to all of Contractor's records and documents covering reimbursable expenses, actual base hourly rates, time cards and annual salary escalation records maintained in connection with this Contract for purposes of auditing same at the sole cost of City. The purpose of any such audit shall be for the verification of such costs. Contractor shall not be required to keep records of, or provide access to, the makeup of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers. Nothing herein shall deny Contractor the right to retain duplicates. Refusal by Contractor to comply with the provisions hereof shall entitle City to withhold any payment(s) to Contractor until compliance is obtained.
- c. All of Contractor's documentary Work product shall be maintained within Contractor's San Antonio offices, unless otherwise authorized by City. After expiration of this Contract, Contractor's documents may be archived in the Contractor's central record storage facility but shall remain accessible to City for the four (4) year period.

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

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

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

**I.3.5** Unless otherwise stated in the Contract Documents, words having well-known technical

or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Where the phrases "directed by", "ordered by" or "to the satisfaction of" City, Design Consultant or City's Resident Inspector or other specified designation occur, it is understood the directions, orders or instructions to which they relate are those within the scope of and authorized by the Contract Documents.

- I.3.6** Reference to manufacturer's instructions, standard specifications, manuals or codes of any technical society, organization or association, laws or regulations of any governmental authority, or to any other documents, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Contractor's Bid Proposal, except as otherwise may be specifically stated or where a particular issue is indicated. Municipal and utility standards shall govern except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent shall govern.
- I.3.7** The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows, with the highest authority listed herein as "1" and in descending order:
- a. Modifications to the Project Contract signed by Contractor, City and Design Consultant;
  - b. Addenda, with those of later date(s) having precedence over those with earlier date(s);
  - c. Special Conditions;
  - d. Supplemental Conditions;
  - e. General Conditions;
  - f. Special Provisions;
  - g. Specifications;
  - h. Detailed Drawings;
  - i. Drawings;
- I.3.8** Should the Drawings and Specifications be inconsistent, contract pricing shall be based on the better quality and greater quantity of work indicated. In the event of the above-mentioned inconsistency, City shall determine the resolution of the inconsistency.
- I.3.9** In the Drawings and Specifications, where certain products, manufacturer's trade names or catalog numbers are given, such information is given for the sole and express purpose of establishing a standard of function, dimension, appearance and quality of design in harmony with the Work and is not intended for the purpose of limiting

competition. Materials or equipment shall not be substituted unless such a substitution has been specifically accepted for use on this Project by City and Design Consultant.

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

**I.3.11 INTERPRETATION.**

In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an”, but the fact a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**END OF ARTICLE I**

## ARTICLE II. CITY

### II.1 GENERAL.

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

**II.1.2** Contractor acknowledges no lien rights exist, with respect to public property.

### II.2 INFORMATION AND SERVICES TO BE PROVIDED BY CITY.

**II.2.1** City shall provide and maintain the Preliminary Budget and general schedule, if any, for the Project. The Preliminary Budget shall include the anticipated construction cost, contingencies for changes in the Work during construction and other costs that are the responsibility of City. The general schedule shall set forth City’s plan for milestone dates and Substantial Completion and Final Completion of the Project.

**II.2.2** City shall furnish surveys, if in existence and in City’s possession, describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Contractor of any of its duties under the Contract Documents or these General Conditions. Information or services required of City by the Contract Documents shall be furnished by City with reasonable promptness following actual receipt of a written request from Contractor. It is incumbent upon Contractor to identify, establish and maintain a current schedule of latest dates for submittal and approval by City, as required in **ARTICLE III.10**, including when such information or services must be delivered. If City delivers the information or services to Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse City for all extra costs incurred by holding, storage, retention or performance, including redeliveries by City in order to comply with the current schedule.

**II.2.3** Unless otherwise provided in the Contract Documents, Contractor shall be furnished, free of charge, up to three (3) complete sets of the Plans and Specifications by Design Consultant. Additional complete sets of Plans and Specifications, if requested by Contractor, shall be furnished at reproduction cost to Contractor.

**II.2.4** City's personnel may, but are not required to, be present at the construction site during progress of the Work, along with Design Consultant in the performance of its duties, to verify Contractor's record of the number of workers employed on the Work site, the workers’ occupational classification, the time each worker is engaged in the Work and

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

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

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

If Contractor fails to correct Work deemed by City not in accordance with the requirements of the Contract Documents, as required by **ARTICLE XII.3**, fails to carry out Work in accordance with the Contract Documents or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, City may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of City to stop the Work shall not give rise to any duty on the part of City to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction of City's rights pursuant to **ARTICLE XII.3**. City's issuance of an order to Contractor to stop the Work shall not give rise to any claim by Contractor for additional time, cost or general conditions costs.

**II.2.7 CITY'S RIGHT TO CARRY OUT THE WORK.**

If Contractor defaults, neglects or fails to carry out the Work in accordance with the Contract Documents and fails, within a three (3) work-day period after receipt of written notice from City, to commence and continue correction of such default, neglect or failure with diligence and promptness, City may, without prejudice to other remedies City may have, correct such deficiencies, neglect or failure. In such case, an appropriate Change Order may be issued deducting from payments then or thereafter due Contractor reflecting the reasonable cost of correcting such deficiencies, neglect or failure of Contractor, including all of City's incurred expenses and compensation for Design Consultant's additional services made necessary by such default, neglect or failure of Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts for the Work performed, Contractor shall pay the difference to City.

**END OF ARTICLE II**

## **ARTICLE III. CONTRACTOR**

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

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

**III.1.2** Contractor shall not be relieved of its obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents, either by any activities or duties of Design Consultant in Design Consultant's administration of the Contract or by tests, inspections or approvals required or performed by City or any person other than the Contractor.

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

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

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

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

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

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

Specifications and the Drawings. In particular, but without prejudice to the generality of the foregoing, Contractor shall review the Contract Documents to establish:

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

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

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

### **III.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**III.3.1** Contractor shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a reasonably prudent Contractor, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor solely shall be responsible for the means, methods, techniques, sequences, procedures and coordination of all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract

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

- III.3.2** Contractor shall be responsible to City for the acts and omissions of Contractor's agents and employees, Subcontractors and their agents and employees and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors.
- III.3.3** Contractor shall be responsible for inspection of portions of Work already performed, to determine which such portion are in proper condition to receive subsequent Work.
- III.3.4** Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq.
- III.3.5** It is understood and agreed the relationship of Contractor to City shall be of an independent contractor. Nothing contained or inferable in the Contract documents shall be read, deemed or construed to make Contractor the agent, servant or employee of City or create any partnership, joint venture or other association between City and Contractor. Any direction or instruction by City, in respect of the Work, shall relate to the results City desires to obtain from the Work and shall in no way affect Contractor's independent contractor status.
- III.3.6** Contractor shall review Subcontractor(s) written safety programs, procedures and precautions in connection with performance of the Work. However, Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations and ordinances, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing are not intended to impose upon Contractor any additional obligations Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations or statutes pertaining to the Occupational Safety and Health Administration.

### **III.4 LABOR AND MATERIALS.**

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

### **III.4.2 PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.**

The Provisions of Chapter 2258 of the Texas Government Code, and the “Wage and Labor Standard Provisions” amended in City of San Antonio Ordinance 2008-11-20-1045, expressly are made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this Contract shall be obtained by Contractor from the City of San Antonio’s Labor Compliance Office and included in Contractor’s Project bid package, prior to Contractor bidding of the Project and such schedule shall become a part hereof. Contractor shall forfeit, as a penalty to City, sixty dollars (\$60.00) for each laborer, worker or mechanic employed **for each calendar day**, or portion thereof, in which such laborer, worker or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Contractor or any Subcontractor employed on the project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Contractor from its obligation under any federal or state law, regarding the wages to be paid to or hours worked by laborers, workers or mechanics, insofar as applicable to the work to be performed hereunder. Contractor, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Contractor agrees it shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This Contract provision shall be included in its entirety in all Subcontractor agreements entered into by the Contractor or any Subcontractor employed on the project.

### **III.4.3 SUBSTITUTIONS.**

- a.** Contractor’s proposed substitutions and alternates may be rejected by City without explanation and shall be considered by City only under one or more of the following conditions:
  - i.** The proposal is required for compliance with interpretation of code requirements or insurance regulations then existing;
  - ii.** Specified products are unavailable through no fault of Contractor; and



- III.4.4** Contractor shall, at all times, enforce strict discipline and good order among persons working on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the assigned work. Contractor shall be liable for and responsible to City for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone who Contractor may allow to perform any Work on the Project and their respective officers, agents, employees, and Consultants who Contractor may allow to come on the job site, with the exception of City or City's Designee. City, at any time, for any reason or for no reason, may direct Contractor to remove any employee; Subcontractor, material supplier or anyone else from the Project and Contractor promptly shall comply with City's direction. In addition, if Contractor receives written notice from City complaining about any Subcontractor, employee or anyone who is a hindrance to the proper or timely execution of the Work, Contractor shall remedy such complaint without delay to the Project and at no additional cost to City. This provision shall be included in all contracts between Contractor and all Subcontractors of all tiers.
- III.4.5** Contractor recognizes accepts and hereby acknowledges the Project Site is a public facility representing the City of San Antonio. As such, Contractor shall prohibit the possession or use of alcohol, controlled substances, tobacco and any prohibited weapons on the Project Site and shall require appropriate dress of Contractor's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Contractor or any Subcontractor, employees or Consultants of City or of any visitor to the Project site, by Contractor, employee(s) of Contractor, a Subcontractor or an employee of Subcontractor strictly is forbidden. Any person, Contractor, employee of Contractor, Subcontractor or employee of Subcontractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Contractor and/or City, including the removal and exclusion of the violating person(s) or employee(s) of Contractor or Subcontractor from the Project Site and, if City so elects, termination from the Project.
- III.4.6** All materials and installed equipment shall be as specified in the Contract Documents and, if not so specified, shall be new and of good quality, except as otherwise provided in the Contract Documents. If required by City or Design Consultant, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment installed. Contractor may make substitutions only with the consent of City.
- III.4.7** All materials shall be shipped, stored and handled in a manner which shall protect and ensure their condition at the time of incorporation in the Work. After installation, all materials shall be properly protected against damage to ensure they are in the condition as required by **ARTICLE III.5.1** when the Work is Substantially Completed or City takes over use and occupancy, whichever is earlier.
- III.4.8** Contractor shall procure and furnish to City all guarantees, warranties, spares and maintenance manuals called for by the Specifications or which normally are provided

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

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

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

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

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

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

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

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

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

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

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

**III.5.12** When Contractor is constructing a building, the building shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building by external forces beyond Contractor's control. Contractor, immediately upon notification by City of water penetration, shall determine the source of water penetration and perform any work necessary to make the building watertight. Contractor also shall repair or replace any damaged material, finishes and/or fixtures damaged as a result of any water penetration, returning the building to original condition. The costs of such determination and repair shall be borne by Contractor only to the extent the leak(s) is/are attributable to faulty workmanship or unauthorized or defective materials.

### **III.6 TAXES.**

Contractor shall not include in the Contract Sum or any modification thereto any amount for sales, use or similar taxes for which City is exempt. Upon request by Contractor, City shall provide Contractor with a tax exemption certificate or other documentation necessary to establish City's exemption from such taxes.

### **III.7 PERMITS, FEES AND NOTICES.**

### **III.7.1 PERMITS.**

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

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

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

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

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

### **III.8 ALLOWANCES.**

**III.8.1** Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as City may direct, but Contractor shall not be required to employ persons or entities to whom Contractor has reasonable objection.

**III.8.2** Unless otherwise provided in the Contract Documents:

- a. Allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- b. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses, contemplated for stated allowance, shall be included in the allowances;
- c. Whenever actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect both the difference between actual costs and the allowances under **ARTICLE III.8.2.a** and all changes in Contractor's costs under **ARTICLE III.8.2.b**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **III.10.4 PROJECT SCHEDULE SEQUENCING.**

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

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

#### **III.10.5 PROJECT SCHEDULE ACTIVITIES.**

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

- a. An activity number utilizing an alphanumeric designation system agreeable to City;
- b. A concise description of the Work represented by the activity; and
- c. Activity durations in whole work days, with a maximum of twenty four (24) work days. Durations greater than twenty four (24) work days may be used for non-construction activities (mobilization, submittal preparation, curing, etc.), and other activities mutually agreeable between City and Contractor.

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

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

**Table III.10.6.e**

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

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

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

The Project Schedule shall:

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

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

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

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

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

- g.** Contractor's scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract time.
- h.** Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to City, as of the date of the submittal, of the accurate depiction of all progress to date and Contractor shall follow the schedule as submitted in performing the Work.

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

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

  - i.** Activity ID

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

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

#### **III.10.10 COMPLETION OF WORK.**

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

- vi. Taking some other action as Contractor may proposes, if acceptable to City
- c. Within ten (10) calendar days after such notice from City, Contractor shall notify City in writing of the specific measures taken and/or planned to be taken to increase the rate of progress of Work on the Project. Contractor shall include an estimate as to the date of scheduled full progress recovery and an updated Project Schedule, illustrating Contractor's plan for achieving timely completion of the Project Milestone's and the Project's Substantial Completion.
- d. Should City deem Contractor's plan of action inadequate to achieve the desired acceleration to bring the Work back on the Project Schedule and achieve Substantial Completion on time, City shall have the right to order Contractor, at Contractor's sole expense, to take any corrective measures City deems necessary to expedite the progress of Work including, without limitations:
  - i. Increasing work forces and hours, to include Contractor working additional shifts of overtime;
  - ii. Supplying additional manpower, equipment and facilities;
  - iii. Re-sequencing the Work;
  - iv. Expediting the fabrication and supply of materials; and/or
  - v. Other similar measures City may direct (hereafter **(1) – (5)** above collectively referred to as "Extraordinary Measures").

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

- e. City's right to require Extraordinary Measures solely is for the purpose of ensuring Project Milestones and Substantial Completion of the Work is achieved within the Contract Time. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by City under or pursuant to this **ARTICLE III.10**, except as may be provided under the provisions of **ARTICLE IV.2.11**.
- f. City may exercise the rights furnished pursuant to **ARTICLE III.10** as frequently as City deems necessary to ensure Contractor's performance of the Work is in compliance with any milestone date or completion date(s) set forth in the Contract Documents.
- g. If reasonably required by City, Contractor also shall prepare and furnish Project cash flow projections, manning data for critical activities and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

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

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

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

The Time Impact Analysis shall:

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

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

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

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

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

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

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

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

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

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

**III.12.4** Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal and review has been approved by Design Consultant. Design Consultant shall review and return such submittals within ten (10) calendar days or within a reasonable period so as to not delay the project.

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

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

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

**III.12.7** Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services specifically are required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment specifically are required of Contractor by the Contract Documents, City and Design Consultant shall specify all performance and design criteria such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly Texas-licensed design professional, whose signature and seal shall appear on all drawings, calculations, Specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such

professional's written approval when submitted to Design Consultant. City and Design Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided City and Design Consultant have specified to Contractor all performance and design criteria such identified services must satisfy. Design Consultant shall review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Documents. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

### **III.13 USE OF SITE.**

**III.13.1** Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

**III.13.2** Contractor shall not load nor permit any part of any structure to be loaded in any manner that shall endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that shall endanger it.

**III.13.3** Contractor shall abide by all applicable rules and regulations of City with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by City.

**III.13.4** Contractor shall provide access to residents and businesses affected by the construction of this Project to the greatest extent possible, including providing temporary base and asphalt as needed.

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

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

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

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

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

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

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

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

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

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

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

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

### **III.16 ACCESS TO WORK.**

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

### **III.17 PATENT FEES AND ROYALTIES.**

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

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

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

officers or its employees in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

**III.18.3 INTELLECTUAL PROPERTY INDEMNIFICATION.**

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

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

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

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

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

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

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

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

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

### **III.19 REPRESENTATIONS AND WARRANTIES.**

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

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

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

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

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

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

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

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

### **III.21 BABAA**

**III.21.1** All products must meet BABAA requirements.

**III.21.2** Contractor shall include Manufacturer's Certification for BABAA requirements with all applicable submittals. If a specific manufacture is used in the bidding, a statement that

manufacturer will comply with BABAA must be included with the bid submission. Contractor shall comply with BABAA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA documentation.

**III.21.3** Engineer/Architect approval of shop drawings or samples shall include review of BABAA documentation.

**III.21.4** Contractor shall certify upon completion that all work and materials have complied with BABAA requirements.

**III.21.5** For any change orders, Contractor shall provide BABAA documentation for any new products or materials required by the change.

**III.21.6** Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work. Contractor should ensure that Engineer/Architect has an approved Manufacturer's Certification or waiver prior to items being delivered to the project site.

**III.21.7** By submitting an application for payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials, to contractor's knowledge, are compliant with BABAA requirements.

**END OF ARTICLE III**

## **ARTICLE IV. ADMINISTRATION OF THE CONTRACT**

### **IV.1 ROLES IN ADMINISTRATION OF THE CONTRACT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **IV.2.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS.**

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

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

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

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

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

#### **IV.2.6 CLAIMS FOR ADDITIONAL TIME.**

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

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

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

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

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

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

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

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

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

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

#### **IV.2.10 SUBCONTRACTOR PASS-THROUGH CLAIMS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**IV.3.8 WAIVER OF LIEN.**

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

**IV.4 ALTERNATIVE DISPUTE RESOLUTION.**

**IV.4.1 CONTINUATION OF WORK PENDING DISPUTE RESOLUTION.**

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

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

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

#### **IV.4.3 MEDIATION.**

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

- a. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both Parties.
- b. In the event City and Contractor are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **ARTICLE IV.4** shall be deemed to have occurred.
- c. The Parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

#### **IV.4.4 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS.**

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

**END OF ARTICLE IV**

## **ARTICLE V. SUBCONTRACTORS**

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

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

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

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

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

#### **V.1.5 DBE REPORTING AND AUDITING.**

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

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

**V.2 SUB-CONTRACTUAL RELATIONS.**

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

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

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

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

**END OF ARTICLE V**

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

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

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

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

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

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

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

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

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

**VI.3 CITY'S RIGHT TO CLEAN UP.**

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

**END OF ARTICLE VI**

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

### **VII.1 GENERAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**END OF ARTICLE VII**

## **ARTICLE VIII. TIME**

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

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

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

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

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

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

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

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

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

**VIII.2.4** This Contract does not permit the recovery of damages by Contractor for delay, disruption or acceleration, other than those described in **ARTICLE VIII.8.2**, as provided under **ARTICLE IV.2.11(c)** and those justified by a Time Impact Analysis. Contractor agrees that it fully shall be compensated for all delays solely by an extension of non-compensatory time or as contemplated in **ARTICLE VIII.8.2**.

**END OF ARTICLE VIII**

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

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

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

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

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

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

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

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

**IX.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by City. If approved in advance in

writing by City, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by City. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to City to establish City's title to such materials and equipment or otherwise protect City's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

**IX.3.3** Contractor warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from City shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY CITY TO CONTRACTOR.**

**IX.3.4** By submission of an Application for Payment, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's material men have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by City to Contractor; provided if any of the foregoing is not true and cannot be certified, Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

#### **IX.4 PAY APPLICATION APPROVAL.**

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

**IX.4.2** The certification of an Application for Payment shall constitute a representation by Design Consultant to City, based on Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Design Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance

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

- a. Made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
- b. Reviewed construction means, methods, techniques, sequences or procedures;
- c. Reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by City to substantiate Contractor's right to payment; or
- d. Made an examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

## **IX.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT.**

**IX.5.1** The Application for Payment may be rejected to protect City for any of the following reasons:

- a. Work not performed or defective ;
- b. Third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder unless security acceptable to City is provided by Contractor;
- c. Failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- d. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum and Contractor has failed to provide City adequate assurance of its continued performance within a reasonable time after demand;
- e. Damage to City or another contractor;
- f. Reasonable evidence that the Work shall not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or Liquidated Damages for the anticipated delay;
- g. Persistent failure by Contractor to carry out the Work in accordance with the Contract Documents;

- h.** The applicable Liquidated Damages were not included in the Application for Payment;
- i.** Billing for unapproved/unverified materials stored off Site; or
- j.** A current schedule update has not been submitted by Contractor.

**IX.5.2** City shall not be deemed in default by reason of rejecting Application for Payment as provided for in **ARTICLE XI.5.1**.

## **IX.6 PROGRESS PAYMENTS.**

**IX.6.1** After the final approval of the Application for Payment, City may make payment in the manner and within the time provided in the Contract Documents.

**IX.6.2** During the latter part of each month, as the Work progresses on all City Contracts regardless of Contract Sum, City and Contractor shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Contractor-acquired materials stored on the Project Site, and/or within off-site storage facilities either owned or leased by Contractor. Upon receipt of a complete and mathematically accurate Application for Payment from Contractor, City shall make payments, in accordance with **ARTICLE IX**, to Contractor within thirty (30) calendar days on Contracts totaling four hundred thousand dollars (\$400,000.00) or less, based upon such cost determination and at the Contract prices in a sum equivalent to ninety percent (90%) of each such invoice. The remaining ten percent (10%) retainage shall be held by City until the Final Completion. However, where the Contract amount exceeds four hundred thousand dollars (\$400,000.00), installments shall be paid to Contractor at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of City receipt of a complete and mathematically accurate Application for Payment from the Contractor, and the retainage held until Final Completion shall be five percent (5%).

**IX.6.3** City's payment of installments shall not, in any way, be deemed to be a final acceptance by City of any part of the Work, shall not prejudice City in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work provided.

**IX.6.4** Contractor shall, within ten (10) calendar days following receipt of payment from City, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide City with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to City bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if City so requests, shall provide copies of such Subcontractor payments to City. If

Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which City has made payment to the Contractor, City shall be entitled to withhold payment to Contractor to the extent necessary to protect City.

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

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

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

- a. Establish the date of Substantial Completion (which shall be the date on which the Work met the requirements under the Contract Documents for Substantial Completion);
- b. Establish responsibilities of City and Contractor, as agreed to by City and Contractor, for security, maintenance, heat, utilities, damage to the Work and insurance; and
- c. Confirm the time limit by which Contractor shall complete all items on the list accompanying the Certificate.

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

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

- IX.8.1** City may occupy or use any completed or partially completed portion of the Work at any stage of the Work when such partially completed portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer, as required and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided City and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion of the Work to be Substantially Complete, Contractor shall prepare and submit a list of items to be completed or corrected prior to Final Completion and final payment and submit such list to City and Design Consultant, as provided under **ARTICLE IX.8.2**. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between City and Contractor or, if no agreement is reached, by the decision of Design Consultant.
- IX.8.2** Immediately prior to such partial occupancy or use, City, Contractor and Design Consultant collectively shall inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- IX.8.3** Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
- IX.8.4** Upon such partial occupancy or use, and upon Substantial Completion, City may assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.

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

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

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

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

**IX.9.3** If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Design Consultant so confirms, City shall, upon application by Contractor and certification by Design Consultant and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Design Consultant, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**IX.9.4** Request for final payment by Contractor shall constitute a waiver of all claims against City, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

**IX.10 ADDITIONAL INSPECTIONS.**

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

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

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

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

**END OF ARTICLE IX**

## **ARTICLE X. PROTECTION OF PERSONS AND PROPERTY**

### **X.1 SAFETY PRECAUTIONS AND PROGRAMS.**

- X.1.1** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall develop a safety program applicable to each job site and to the Work to be done, review such program with City in advance of beginning the Work, and enforce such program at all times. Further, Contractor shall comply with all applicable laws and regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Contractor employees. City shall have the right, but not the obligation, to inspect and verify Contractor's compliance with Contractor's responsibility for protecting the safety and health of its employees and Subcontractor.
- X.1.2** Contractor shall notify City immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities including, but not limited to, copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.
- X.1.3** Contractor has adopted or shall adopt its own policy to assure a drug and alcohol free work place while performing the Work. Contractor's employees, agents, and Subcontractors shall not perform any service for City while under the influence of alcohol or any controlled substance. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell illegal, illicit and/or prescribed controlled drugs or drug paraphernalia or misuse legitimate prescription drugs while on Site or performing the Work. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell alcoholic beverages while performing the Work or while on Site or performing the Work. Contractor shall remove any of its employees or Subcontractor employees from performing the Work or from the Site any time there is suspicion of alcohol and/or drug use, possession or impairment involving such employee and at any time an incident occurs where drug or alcohol use could have been a contributing factor. City has the right to require Contractor to remove employees or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Contractor's or Subcontractor's employees only may be considered for return to work after Contractor certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Contractor shall not employ any individual, or shall not accept any Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.
- X.1.4** Contractor shall comply with all applicable federal, state and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace

Act of 1988). The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether there exists a valid permit for carrying a weapon.

**X.1.5** When the heat index for the San Antonio, Texas equals or exceeds 95 degrees Fahrenheit, Contractor is required to take all of the following actions for all on-Site workers working in outdoor or unconditioned spaces:

- a. Mandate at least a fifteen (15) minute rest break for every four (4) hours worked. No employee may be required to work more than 3.75 continuous hours without a rest break. These rest breaks are in addition to and shall not take the place of other required or otherwise provided rest breaks.
- b. Provide a heat relief station at the Site with a shaded area and water.
- c. Train supervisors and workers to recognize heat hazards and take appropriate actions.
- d. Post a sign with City requirements in English and Spanish within the Site where notices to employees are customarily posted. City will prescribe the size, content, and location of signs within applicable design guidance manuals.

**X.1.6** Both City and Contractor agree that these safety and health terms are of the highest importance and that a breach or violation of any of the terms of this **ARTICLE X** by Contractor or a Subcontractor shall be a material and substantial breach of this Contract. In the event that City shall determine that Contractor has breached or violated the terms of this Section, then City shall determine, immediately upon written notice to Contractor, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until City is satisfied that the safety provisions hereof shall not be breached or violated thereafter. If City terminates the Contract as a result of such breach or violation, City and Contractor shall complete their obligations hereunder to one another in accordance with **ARTICLE XIV.2**.

**X.1.7** Nothing contained in this **ARTICLE X** shall be interpreted as creating or altering the legal duty of City to Contractor or to Contractor's agents, employees, Subcontractors or third parties, or altering the status of Contractor as an independent contractor.

**X.1.8** Notwithstanding either of the above provisions, or whether City exercises its rights, City neither warrants nor represents to Contractor, Contractor's employees or agents, any Subcontractors or any other third party that Contractor's safety policy meets the requirements of any applicable law, code, rule or regulation, nor does City warrant that the proper enforcement of Contractor's policy shall insure that no accidents or injuries shall occur. In addition, any action by City under these provisions in no way diminishes any of Contractor's obligations under applicable law or the contract documents.

## **X.2 SAFETY OF PERSONS AND PROPERTY.**

- X.2.1** Contractor shall take reasonable precautions for the safety and training and shall provide reasonable protection, to to prevent damage, injury or loss to:
- a.** Employees performing the Work and other persons who may be affected thereby;
  - b.** The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or Contractor's Subcontractors or Sub-Subcontractors;
  - c.** Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction; and
  - d.** The contents of a building or structure, when Contractor is working in, on or around an existing/operating City facility.
- X.2.2** Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- X.2.3** Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying City and users of adjacent sites and utilities.
- a.** Contractor shall submit a health and safety plan that includes heat illness measures as required by Ordinance No. 2023-08-31-0585.
- X.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, Contractor shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel. Prior to the use of any explosives, Contractor shall submit a written blasting plan, shall obtain City's approval and shall comply with City's requirements for such use.
- X.2.5** Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the coordination of safety. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to City and Design Consultant.
- X.2.6** Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- X.2.7** Notwithstanding the delivery of a survey or other documents by City, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging

any utility lines, cables, pipes or pipelines on the property. Contractor acknowledges and accepts that the location of underground utilities (both public and private) reflected on any City-provided Plans are not guaranteed and may not be completely accurate. Contractor shall locate and verify any and all utilities and associated service lines prior to beginning any Work. Contractor shall be responsible for and shall repair, at Contractor's own expense, any damage done to lines, cables, pipes and pipelines identified or not identified to Contractor.

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

**X.3.1** In an emergency affecting safety of persons or property, Contractor shall exercise its best efforts to act to prevent or minimize threatened damage, injury or loss. Additional compensation or extension of time claimed by Contractor on account of an emergency shall be determined, as provided in **ARTICLE IV.2.6** and **ARTICLE VII**.

**X.3.2** If Contractor causes damage resulting in an issue of safety and/or security to a property City, Contractor immediately shall repair any damage caused. If Contractor does not or shall not act immediately to repair the damage caused by Contractor to eliminate the resulting safety and/or security issue(s), City shall act to repair the damage caused and deduct all costs associated with the repair from any money due Contractor.

### **X.4 PUBLIC CONVENIENCE AND SAFETY**

**X.4.1** Contractor shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by City. Sidewalks or streets shall not be obstructed, except by special permission of City. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances and fire alarm or police call boxes in the vicinity.

**X.4.2** City reserves the right to remedy any neglect on the part of Contractor, in regard to public convenience and safety, which may come to City's attention after twenty-four (24) hour notice in writing to Contractor. In case of an emergency, City shall have the right immediately to remedy any neglect without notice. In either case, the cost of any work done by or for City to remedy Contractor's neglect shall be deducted by City from Contractor's Contract Sum. Contractor shall notify City, City's Traffic Control Department and Design Consultant when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be given at least forty-eight (48) hours in advance. City reserves the right to postpone and/or prohibit any closure or obstruction of any streets or thoroughfares, to the extent necessary for the safety and benefit of the traveling public. Contractor shall, when directed by City or Design Consultant, keep any street or streets in condition for unobstructed use by City departments. When Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, Contractor's responsibility for accidents shall include the roadway

approaches as well as the crossing structures.

**X.4.3** Contractor shall limit airborne dust and debris throughout the Project site and its duration. Contractor shall apply the necessary amounts of water or other appropriate substance required to maintain sufficient moisture content for dust control. For City horizontal projects, Contractor shall apply appropriate amounts of water or other appropriate substance to the base on streets under construction and on detours required to maintain sufficient moisture control in the surface layer for dust control.

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

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

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

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

## **X.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.**

In case it is necessary for Contractor to change or move the property of City or of any telecommunications or public utility, such property shall not be touched, removed or interfered with until ordered to do so by City. City reserves the right to grant any public or private utility personnel the authority to enter upon the Project site for the purpose of making such changes or repairs to their property that may become necessary during the performance of the Work. City reserves the right of entry upon the Project site at any time and for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures and for making other repairs, changes, or extensions to any of City's property. City's actions shall conform to Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to City by Contractor.

## **X.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS.**

When existing storm sewers or drains have to be taken up or removed, Contractor shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Contractor also shall provide for all storm sewage and drainage which shall be received from these storm drains and sewers. For this purpose, Contractor shall provide and maintain, at Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. Contractor shall, at Contractor's own expense, construct such troughs, pipes or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by Design Consultant. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction shall be adequately protected.

## **X.8 ADDITIONAL UTILITY ARRANGEMENTS AND CHARGES**

**X.8.1** When Contractor desires to use City's water in connection with the Work, Contractor shall make complete and satisfactory arrangements with the San Antonio Water System and shall be responsible for the cost of the water Contractor uses. Where meters are required and used, the charge shall be at the regular established rate; where no meters are required and used, the charge shall be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the representatives of the San Antonio Water System.

**X.8.2** Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with City or with any retail electric provider, in the event that separately metered electrical connections are required for the Project. Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by Contractor through a retail electric provider.

**X.8.3** If Contractor elects or is required by City to place and operate out of a construction

trailer or office on the Project site, for which all related costs shall be borne by Contractor, Contractor shall provide for an electronic device to exchange data wirelessly via a local area computer network, to include high-speed internet connections (commonly known as “Wi Fi access”), for City personnel’s use while on the Project site for the duration of the Project.

## **X.9 USE OF FIRE HYDRANTS.**

Contractor, Subcontractors and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to or connect anything with any fire hydrant, stop valve or stop cock, or tap any water main belonging to City, unless duly authorized in writing to do so by City.

## **X.10 ENVIRONMENTAL COMPLIANCE**

**X.10.1** Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances or rules of common law including, but not limited to, any judicial or administrative order, consent decree or judgment affecting the Project.

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

Substance. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of **ARTICLE IV.2.6** and **ARTICLE VIII**.

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

**X.10.4** Contractor shall be responsible for complying with PW's Capital Project Soil Relocation Policy and Communication Plan for all capital improvements projects as set forth in Contract Documents. Contractor shall provide no more than three (3) soil disposal sites to the City fourteen (14) days prior to commencement of hauling any excess soil or fill material. Contractor shall provide required documentation regarding disposal or reuse sites, flood plain verification, storm water pollution measures information, and compliance with applicable federal, state and local regulations. Contractor shall not proceed with hauling activities of excess soils until they receive approval from City. Projects performed on Aviation grounds shall comply with Aviation's Soil Management Policy.

**END OF ARTICLE X**

## **ARTICLE XI. INSURANCE AND BONDS**

### **XI.1 INSURANCE REQUIREMENTS**

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

### **X.1.2 INSURANCE BEFORE COMMENCEMENT OF WORK**

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

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

**XI.3.1** Subject to the provisions of **ARTICLE XI.3.2**, Contractor shall, with the execution and delivery of the Contract, furnish and file with City, in the amounts required in this **ARTICLE XI**, the Surety Bonds described in **ARTICLE XI.3.1.a** and **ARTICLE XI.3.1.b**, with said Surety Bonds in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each Surety Bond shall be signed by Contractor, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of **ARTICLE XI.3.3** and approved by City. The Surety Bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

**a. PERFORMANCE BOND.**

A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of City. This Performance Bond also shall provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by City, or lesser or longer periods as otherwise may be designated in the Contract Documents.

**b. PAYMENT BOND.**

A good and sufficient Payment Bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and prompt payment of all claimants

supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.

- XI.3.2** If the Contract Sum, including City-accepted Alternates and allowances, if any, is greater than \$100,000.00, a Payment Bond and a Performance Bond equaling one hundred percent (100%) of the Contract Sum are mandatory and shall be provided by Contractor. If the Contract Sum is greater than \$50,000.00 but less than or equal to \$100,000.00 only a Payment Bond equaling one hundred percent (100%) of the Contract amount is mandatory; provided, however, Contractor also may elect to furnish a Performance Bond in the same amount if Contractor so chooses. If the Contract Sum is less than or equal to \$25,000.00, Contractor may elect not to provide Performance and Payment Bonds; provided, in such event, no money shall be paid by City to Contractor until Final Completion of all Work. If Contractor elects to provide the required Performance Bond and Payment Bond, the Contract Sum shall be payable to Contractor through progress payments in accordance with these General Conditions.
- XI.3.3** No surety shall be accepted by City that is in default, delinquent on any bonds or that is a party to any litigation against City. All bonds shall be made and executed on City's standard forms, shall be approved by City and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to City. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Bexar County, Texas. Each surety shall designate an agent resident in Bexar County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the surety ship.
- XI.3.4** The person or persons, partnership, company, firm, Limited Liability Company, association, corporation or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with City and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on City until:
- a. It has been approved as to form by City's City Attorney;
  - b. It has been executed by City's City Manager (if required);
  - c. The Payment Bond and Performance Bond and evidence of the required insurance have been furnished to City by Contractor, as required by the Contract Documents; and
  - d. A fully executed Contract has been delivered to Contractor (if required).
- XI.3.5** The failure of Contractor to execute the Contract (if required) and deliver the required Bonds and evidence of insurance within ten (10) days after the Contract is awarded, or as soon thereafter as City can assemble and deliver the Contract and by the time the

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

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

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

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

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

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

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

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

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

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

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

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

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

**END OF ARTICLE XI**

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

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

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

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

**XI.2.1** If a portion of the Work is covered, concealed and/or obstructed, contrary to City's or Design Consultant's requirements specifically expressed in the Contract Documents, it must be uncovered for City's or Design Consultant's inspection and properly be replaced at Contractor's expense without any change in the Contract Time or Sum.

**XI.2.2** If a portion of the Work has been covered, concealed and/or obstructed and Design Consultant or City has not inspected the Work prior to its being covered, concealed and/or obstructed, City and Design Consultant retain the right to inspect such Work and, when directed by City, Contractor shall uncover it. If said Work is found to be in accordance with the Contract Documents, the costs for uncovering and replacement shall, by appropriate Change Order, be paid by City. If such Work uncovered is found to not be in accordance with the Contract Documents, Contractor shall pay all costs associated with the uncovering, correction and replacement of the Work, unless the condition found was caused by City or City's separate contractor, in which event City shall be responsible for payment of actual costs incurred by Contractor.

### **XII.3 CORRECTING WORK.**

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

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

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

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

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

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

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

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

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

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

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

#### **XII.4 ACCEPTANCE OF NONCONFORMING WORK.**

City may, in City's sole discretion, accept Work that is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction. Upon that occurrence, the Contract Sum shall be reduced as appropriate and equitable, as solely determined by City. Any adjustment shall be accomplished whether or not final payment has been made.

**END OF ARTICLE XII**

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

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

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

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

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

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

**XIII.3.1** Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by City for any good cause after giving seven (7) calendar days advance written notice and an opportunity to cure to Contractor, including but not limited to the following causes:

- a. Failure or refusal of Contractor to start the Work within ten (10) calendar days after the date of the written Notice to Proceed is issued by City to Contractor commence Work.
- b. A reasonable belief of City or Design Consultant that the progress of the Work being made by Contractor is insufficient to complete the Work within the specified Contract time.
- c. Failure or refusal of Contractor to provide sufficient and proper equipment or construction forces properly to execute the Work in a timely manner.
- d. A reasonable belief Contractor has abandoned the Work.
- e. A reasonable belief Contractor has become insolvent, bankrupt, or otherwise is financially unable to carry on the Work.

- f. Failure or refusal on the part of Contractor to observe any material requirements of the Contract Documents or to comply with any written orders given by City or Design Consultant, as provided for in the Contract Documents.
- g. Failure or refusal of Contractor promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Contractor in writing by City or Design Consultant.
- h. A reasonable belief by City collusion exists or has occurred for the purpose of illegally procuring the contract or a Subcontractor, or that a fraud is being perpetrated on City in connection with the construction of Work under the Contract.
- i. Repeated and flagrant violation of safe working procedures.

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

- a. Perform the Work with forces employed by the surety;
- b. With the written consent of City, tender a replacement Contractor to take over and perform the Work, in which event the Surety shall be responsible for and pay the amount of any costs required to be incurred or the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or
- c. With the written consent of City, tender and pay to City in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work and compensate City for any other loss sustained as a result of Contractor's default.

In the event of Termination by City For Cause involving **ARTICLE XIII.3.1** and/or **ARTICLE XIII.3.2**, the Surety shall assume Contractor's place in all respects and the amount of funds remaining and unpaid under the Contract shall be paid by City for all Work performed by the Surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of City to deduct any and all costs, damages (liquidated or actual) City incurred including, but not limited to, any and all additional fees and expenses of Design Consultant and any attorneys' fees City incurs as a result of Contractor's default and subsequent termination.

**XIII.3.3** The balance of the Contract Sum remaining at the time of Contractor's default and subsequent termination shall become due and payable to the Surety as the Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If the Surety does not, within the time specified in **ARTICLE XIII.3.2**, exercise its obligation to assume the obligations of the Contract, or that portion of the Work which City has ordered Contractor to discontinue, then City shall have the power to complete the Work by contract or otherwise, as City may deem necessary and elect. Contractor agrees that City shall have the right to:

- a. Take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of every kind, to be provided by Contractor for the purpose of the Work; and
- b. Procure other tools, equipment, labor and materials for the completion of the Work at Contractor's expense; and
- c. Charge to the account of Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses.

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

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

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

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

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

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

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

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

- f.** An equitable adjustment to the Contract Sum for the actual, necessary and reasonable costs of properly protecting any Work finished or partially finished during the period of the temporary suspension; provided, however, that no payment of profit and/or overhead shall be allowed on top of these costs; and
- g.** If it becomes necessary to move equipment from the Project Site and then return it to the Project Site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary and reasonable cost of these moves; provided, however, that no adjustment to the Contract Sum shall be due if said equipment is moved to another Project site of City.

**END OF ARTICLE XIII**

## **ARTICLE XIV. MISCELLANEOUS PROVISIONS**

### **XIV.1 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY.**

Contractor shall comply with the requirements of City's Small Business Economic Development Advocacy Office as posted in the Project's solicitation documents and the Contract Documents.

### **XIV.2 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS.**

**XIV.2.1** This Contract shall be governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

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

### **XIV.3 SUCCESSORS AND ASSIGNS.**

City and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the promises, covenants, terms, conditions and obligations contained in the Contract Documents. Contractor shall not assign, transfer or convey its interest or rights in the Contract, in part or as a whole, without the written consent of City. If Contractor attempts to make an assignment, transfer or conveyance without City's written consent, Contractor nevertheless shall remain legally responsible for all obligations under the Contract Documents. City shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of Contractor, except where assignment is compelled by court order, other operation of law or the terms of these General Conditions.

### **XIV.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY CITY.**

**XIV.4.1** The duties and obligations imposed on Contractor by the Contract Documents and the rights and remedies available to City under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or made available by law.

**XIV.4.2** No action or failure to act by City shall constitute a waiver of a right afforded City under the Contract Documents, nor shall any action or failure to act by City constitute approval of or acquiescence in a breach of the Contract by Contractor, except as may be specifically agreed in writing by Change Order, Amendment or Supplemental Agreement.

#### **XIV.5 INTEREST.**

City shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to **ARTICLE IX** of these General Conditions.

#### **XIV.6 INDEPENDENT MATERIALS TESTING AND INSPECTION.**

In some circumstances, City shall retain, independent of Contractor, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Project by City. Such Consultants shall be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of any independent Consultants shall be described in the agreements between City and those Consultants. The provision of inspection services by City shall be for Quality Assurance and shall not reduce or lessen Contractor's responsibility for the Work or its duty to establish and implement a thorough Quality Control Program to monitor the quality of construction and guard City against defects and deficiencies in the Work, as required. Contractor fully and solely is responsible for constructing the Project in strict accordance with the Construction Documents.

#### **XIV.7 FINANCIAL INTEREST.**

Officers or employees of the City shall not have financial interest in any contract of the City. Contractor acknowledges the Charter of the City of San Antonio and its Ethics Code prohibits a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale:

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

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

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

Pursuant to this **ARTICLE XIV**, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and/or agents are neither officers nor employees of City. Except with City's low-bid contract awards, Contractor warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code. Any violation of this article shall constitute malfeasance in office and any officer or employee of City guilty thereof shall forfeit his/her office or position. Any violation of this **ARTICLE XIV.8**, with the knowledge, express or implied, of the person, persons, partnership,

company, firm, association or corporation contracting with City shall render a Contract voidable by City's City Manager or City Council.

#### **XIV.8 VENUE.**

This Contract is performed in Bexar County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Bexar County, Texas.

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

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

#### **XIV.10 NON-DISCRIMINATION.**

As a Party to this Contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless Contractor is exempted by state or federal law, or as otherwise established. Contractor covenants that it shall take all necessary actions to insure that, in connection with any Work under this Contract, Contractor and its Subcontractor(s) shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, either directly, indirectly or through contractual or other arrangements. Contractor also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended.

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

**XIV.11.1** City may terminate this Contract immediately if Contractor has offered, conferred or agreed to confer any benefit on a City of San Antonio employee or official that the employee or official is prohibited by law from accepting.

**XIV.11.2** For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

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

the Project who has violated the restrictions of this **ARTICLE XIV** or any similar State or Federal law and City may obtain reimbursement for any expenditures made to Contractor as a result of an improper offer, an agreement to confer or the conferring of a benefit to a City of San Antonio employee or official.

**END OF ARTICLE XIV**

## **ARTICLE XV. AUDIT**

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

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

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

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

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

**END OF ARTICLE XV**

## **ARTICLE XVI. ATTORNEY FEES**

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

**END OF ARTICLE XVI**

**END OF THE GENERAL CONDITIONS**

## SPECIAL CONDITIONS FOR TASK ORDER CONTRACTS

1. When applying these General Conditions for City of San Antonio Construction Contracts to Task Order contracts:
  - 1.1 **ARTICLE IX.3 APPLICATION FOR PAYMENT** of the City’s General Conditions for City of San Antonio Construction Contracts hereby are “**DELETED**” in its entirety and is “**REPLACED**” with:

### **IX.3 APPLICATION FOR PAYMENT/CONTRACTOR BILLING.**

- IX.3.1** Under an issued Task Order contract with City, Contractor shall not be required to submit an application for payment to City for materials and work performed. Instead, City, shall calculate the accrual of materials utilized for the subject payment period and submit a request for payment from City on Contractor’s behalf.
- IX.3.2** City, through its on-site Project Inspector, shall calculate the daily total of materials utilized by Contractor performing *horizontal* work through an issued Task Order contract. Inspector’s daily total of utilized materials shall be confirmed daily by Contractor. Inspector also shall keep a monthly running total of work performed and materials utilized as agreed upon, for each day of Work, by Contractor.
- IX.3.3** Inspector, at minimum every thirty (30) days throughout the Project’s duration, then shall submit in writing, on Contractor’s behalf, the agreed upon total materials utilized by Contractor for the outstanding days, up to the date of Inspector’s submittal, to City’s AVI Fiscal Department for payment to Contractor.
- IX.3.4** City’s AVI Fiscal Department then shall issue payment to Contractor, within thirty (30) days of receipt of Inspector’s and Contractor’s agreed upon total materials utilized, calculated at the rate for the utilized materials reflected in Contractor’s Task Order contract with City.
- IX.3.5** Unless otherwise provided in the Task Order contract documents, payments by City shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by City. If approved in advance in writing by City, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by City. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures reasonably satisfactory to City to establish City’s title to such materials and equipment or otherwise protect City’s interest. Contractor solely shall

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

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

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

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

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

#### **IX.4 PAYMENT APPROVAL.**

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

- IX.4.1** Made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
- IX.4.2** Reviewed construction means, methods, techniques, sequences or procedures;
- IX.4.3** Reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by City to substantiate Contractor's right to payment; or
- IX.4.4** Made any examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

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

#### **IX.5 DECISIONS TO REJECT PAYMENT TO CONTRACTOR**

- IX.5.1** A request for payment by Contractor may be rejected at any time by City to protect City for any of the following reasons:
- IX.5.2** Work not performed or is defective;
- IX.5.3** Third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder, unless security acceptable to City is provided by Contractor;
- IX.5.4** Failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

- IX.5.5** Reasonable evidence the Work cannot be completed for the unpaid balance of the Contract Sum and Contractor has failed to provide City adequate assurance of its continued performance within a reasonable time after demand;
- IX.5.6** Damage to City or another contractor;
- IX.5.7** Reasonable evidence the Work shall not be completed within the time allotted on the issued Task Order and the unpaid balance on the issued Task Order would not be adequate to cover actual or Liquidated Damages for the anticipated delay;
- IX.5.8** Persistent failure by Contractor to carry out the Work in accordance with the issued Task Order and/or Contract Documents;
- IX.5.9** The applicable Liquidated Damages were not included in the City-submitted Application for Payment;
- IX.5.10** Billing for unapproved/unverified materials stored off Site; or
- IX.5.11** A current schedule update has not been submitted by Contractor to City.
- IX.5.12** City shall not be deemed in default by reason of rejecting Application for Payment as provided for in **ARTICLE IX.5.1**.

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

**IX.6 PROGRESS PAYMENTS.**

- IX.6.1** City's payment of installments shall not, in any way, be deemed to be a final acceptance by City of any part of the Work, shall not prejudice City in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work provided.
- IX.6.2** Contractor shall, within ten (10) calendar days following receipt of payment from City, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide City with written evidence of such payment. Contractor’s failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Contractor is able to demonstrate to City bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment

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

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

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

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

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

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

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

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

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

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

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

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

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

**XI.3 PERFORMANCE BONDS AND PAYMENT BONDS.**

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

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

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

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

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

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

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

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

**ARTICLE XVII**  
**ISSUANCE OF TASK ORDERS**

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

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

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

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

## **ARTICLE XVIII SCHEDULING OF WORK ON ISSUED TASK ORDERS**

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

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

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

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

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

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

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

# **JOB ORDER CONTRACTING AGREEMENT**

**STATE OF TEXAS**

**COUNTY OF BEXAR**

**CITY OF SAN ANTONIO**

This Job Order Contract Agreement (hereafter referred to as “the Agreement”, “the Contract”, “this Agreement” and/or “this Contract”) is made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a Municipal Corporation in the State of Texas (hereafter referred to as “City”) and

**Name**  
**Address**  
**City, State, Zip Code**

a Job Order Contractor (“hereafter referred to as “JOC”) (City and JOC hereafter individually referred to as “a Party” and collectively referred to as “the Parties”), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by JOC for Job Order Contracting, as set forth herein.

## Table Of Contents

|  |    |
|--|----|
| ARTICLE I. Definitions.....  | 4  |
| ARTICLE II. Initiation of Work .....                                       | 5  |
| ARTICLE III. Specification and Drawings.....                               | 6  |
| ARTICLE IV. Permits.....   | 8  |
| ARTICLE V. Operations, Materials and Workmanship.....                      | 9  |
| ARTICLE VI. Site Investigation and Conditions Affecting Work.....          | 10 |
| ARTICLE VII. Term.....   | 11 |
| ARTICLE VIII. Compensation, Invoicing, Payment and Liquidated Damages..... | 12 |
| ARTICLE IX. Inspection and Acceptance.....                                 | 16 |
| ARTICLE X. Additional Requirements.....                                    | 18 |
| ARTICLE XI. Warranty of Work .....   | 20 |
| ARTICLE XII. Changes in Work and Price .....                               | 21 |
| ARTICLE XIII. Suspension of Work .....                                     | 22 |
| ARTICLE XIV. Termination for Convenience of City .....                     | 22 |
| ARTICLE XV. Default .....  | 25 |
| ARTICLE XVI. Safety.....   | 25 |
| ARTICLE XVII. City’s Use and Possession Prior to Completion .....          | 27 |
| ARTICLE XVIII. Non-Exclusivity and Cooperation .....                       | 27 |
| ARTICLE XIX. Workers’ Compensation.....                                    | 28 |
| ARTICLE XX. Prevailing Wages.....  | 31 |
| ARTICLE XXI. Performance Bond.....   | 31 |
| ARTICLE XXII. Payment Bond.....  | 32 |
| ARTICLE XXIII. Insurance.....  | 33 |
| ARTICLE XXIV. Release of Claims/Subrogation .....                          | 38 |
| ARTICLE XXV. Disadvantaged Business Enterprise Requirements.....           | 38 |
| ARTICLE XXVI. Precedence in Case of Conflict .....                         | 43 |
| ARTICLE XXVII. Waivers .....   | 44 |
| ARTICLE XXVIII. Indemnification.....                                       | 44 |

ARTICLE XXIX. Audit of Records ..... 46

ARTICLE XXX. Third-Party Antitrust Violations..... 46

ARTICLE XXXI. Appropriations..... 46

ARTICLE XXXII. Claims and Disputes..... 46

ARTICLE XXXIII. Prohibited Interests in Contracts..... 49

ARTICLE XXXIV. Non-Discrimination..... 50

ARTICLE XXXV. Notice..... 51

ARTICLE XXXVI. Compliance with Law ..... 51

ARTICLE XXXVII. Public Information ..... 52

ARTICLE XXXVIII. Miscellaneous ..... 52

EXHIBIT A – AVIATION GENERAL CONDITIONS FOR CITY OF SAN ANTONIO  
CONSTRUCTION CONTRACTS ..... 56

EXHIBIT B –DBE COMPLIANCE AND ENFORCEMENT AND DBE CHANGE OR  
ADDITION OF SUBCONTRACTOR/SUPPLIER FORM..... 57

EXHIBIT C - APPLICABLE BUILDING WAGE DETERMINATION ..... 59

EXHIBIT D – INSURANCE REQUIREMENTS ..... 67

EXHIBIT E – FEDERAL CONTRACT PROVISIONS ..... 68

EXHIBIT F – FAA ADVISORY CIRCULARS-AIR OPERATIONS AREA (AOA) ..... 93

EXHIBIT G – FAA ADVISORY CIRCULARS-OPERATIONAL SAFETY ON  
AIRPORTS DURING CONSTRUCTION ..... 106

EXHIBIT H –FAA ADVISORY CIRCULARS REQUIRED FOR USE IN AIP FUNDED,  
BIL FUNDED, AND PFC APPROVED PROJECTS ..... 107

## ARTICLE I. Definitions

JOC acknowledges and accepts the definitions set forth in the City's General Conditions for City of San Antonio Construction Contracts, attached as **Exhibit A**, and additionally agrees to the following definitions of this **Article I**.

1.01. "Agreement" and/or "Contract" shall mean this Agreement and all documents and references incorporated herein. Agreement and Contract also shall include Job Orders issued to JOC, pursuant to this Agreement, and all elements incorporated into an issued Job Order.

1.02. "City" shall mean the City of San Antonio and its designated representative(s). Each issued Job Order shall state City's designated representative for the issued Job Order. Under this Agreement, when JOC is required to report or transmit information to City, JOC shall report or transmit the required information to City's designated representative for the issued Job Order.

1.03. "Effective Date" of this Agreement shall mean the effective date of the Authorizing Ordinance passed by the San Antonio City Council.

1.04. "Job Order" or "Task Order" shall mean the written agreement between City and JOC for Work to be performed under this Agreement signed by both parties.

1.05. "Liquidated Damages" shall mean the reimbursement by JOC to City to compensate City for the monetary damages suffered by City when JOC fails to meet its date for Substantial Completion, said date for Liquidated Damages defined in each issued Job Order.

1.06. "Non-Pre-Priced Items" shall mean Work items not listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.07. "Pre-Priced Items" shall mean the items listed in the then most current R.S. Means Facilities Construction Cost Data Book.

1.08. "Unifier" shall mean City's internet-based project management system. City shall administer the necessary software, provide training to JOC for JOC's use of Unifier and City shall make the Unifier software accessible via the Internet to JOC.

1.09. "Substantial Completion" shall mean the date on which the Work, or an agreed upon portion of it, sufficiently has been completed and City may occupy and use the Work (or a portion thereof) for its intended purposes.

1.10. "Work" shall mean all tasks required of JOC under an issued Job Order.

1.11. "Work Schedule" shall mean the scheduled number of calendar days afforded JOC to complete each task, pursuant to an issued Job Order. The Work Schedule for an assigned Job Order shall be submitted by JOC to City for City's approval, prior to beginning any Work by JOC.

## ARTICLE II. Initiation of Work

2.01. **City Initiation of Work.** Pursuant to this Agreement, City shall initiate Work by issuing a request for a quote to JOC through Unifier. To reject the responsibilities to perform, pursuant to an issued request for a quote, JOC, within two (2) working days of its receipt of the issued request for a quote, shall notify City through Unifier of its acceptance or rejection of the issued request for a quote. Requests for quotes not timely accepted (within two (2) days of issuance) through Unifier by JOC shall be deemed by City as rejected by JOC. Upon JOC's acceptance of the issued request for a quote in Unifier and notification to City, JOC shall begin pricing the Scope of Work of the request for a quote issued. JOC shall, except as this Agreement or the issued Job Order otherwise expressly provides, furnish all labor, materials, tools, instruments, supplies, equipment, transportation, mobilization, bonds, insurance, subcontracts, supervision, management, reports, incidentals and quality control necessary to complete all issued Job Orders. If City concludes JOC's pricing of an issued request for a quote and any subsequent negotiation are not progressing at a satisfactory rate, City may terminate the issued request for a quote to JOC and select another JOC for the subject Job Order.

2.02. **Multiple Solicitations.** City reserves the right and JOC hereby acknowledges City may solicit price proposals on prospective Job Orders from one or more JOCs, to determine the best value proposal, on behalf of City. JOC further acknowledges if JOC prepares a pricing proposal for an issued Job Order, JOC shall not be entitled to compensation for its efforts preparing a price proposal, whether or not a Job Order is awarded to JOC.

2.03. **Project Requirements.** Each Job Order solicitation shall define, to City's best knowledge, the specific project requirements. Job Orders may be used for any project authorized under Texas law.

2.04. **Conformance of Work.** Work performed by JOC shall conform to the Job Order's requirements. Job Orders shall set forth the following, in coordination with City's Aviation Department Task Order Form:

- 2.04.1. The Contract number, along with JOC's name;
- 2.04.2. The Job Order number and date;
- 2.04.3. The Scope of Work and the applicable technical specifications and drawings;
- 2.04.4. The period of time for performance, including the Job Order's start date, date of Substantial Completion, Liquidated Damages, and, if required and/or requested by City, a Work Schedule;
- 2.04.5. The location of the Work's performance;
- 2.04.6. The agreed total cost to be paid JOC for the Work to be performed;

- 2.04.7. Submittal requirements;
  - 2.04.8. The identity of City's authorized representative who will accept JOC's completed Work;
  - 2.04.9. Name of JOC's representative for the issued Job Order;
  - 2.04.10. Signatures, on behalf of the Parties, signifying the agreement reached, along with the specific terms of the Job Order; and
  - 2.04.11. Such other information as may be necessary for JOC to perform the Work.
- 2.05. **Beginning Work.** JOC shall begin Work on the effective date specified in the Job Order's Notice to Proceed, issued by City. Any costs incurred by JOC for preliminary Work or for materials ordered or purchased by JOC or its Sub-Consultants or Subcontractors, prior to receipt of City's Notice to Proceed for a Job Order, shall be at JOC's risk and expense.
- 2.06. **Amending Issued Job Orders.** Once issued, Job Orders only may be amended by the written agreement of both Parties through the Unifier system.
- 2.07. **Job Order Minimum Value.** The minimum value for an issued Job Order shall be One Thousand Dollars and no cents (\$1,000.00), unless the minimum value requirement is waived in writing by both City and JOC.
- 2.08. **Mutual Agreement on Job Orders.** Nothing in this Agreement requires City to issue a Job Order, or requires JOC to accept same. It is understood that both Parties mutually shall agree to any issued Job Order.
- 2.09. **Diligent Prosecution of Work.** JOC diligently shall prosecute all Work to completion within the time required by, listed on and agreed to on the accepted Job Order or JOC shall be subject to Liquidated Damages. The period of performance shall include allowances for mobilization, holidays, weekend days, usual inclement weather and cleanup. Claims for delay by JOC, based on such elements listed herein, shall not be accepted.

### **ARTICLE III. Specification and Drawings**

- 3.01. JOC acknowledges and accepts the requirements regarding Specifications and Drawings set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article III**.
- 3.02. **Preparation of Designs and Drawings.** When necessary, City or a Design Consultant selected by City shall prepare all designs and drawings to be used by JOC in performing the Work.

- 3.02.01. City shall be responsible for the cost of design work, apart from any money due JOC under an issued Job Order.
- 3.02.02. JOC shall keep a copy of the drawings and specifications at the Work site at all times and shall give City access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications is of like effect, as if shown or mentioned in both/either. JOC shall not alter or amend the drawings and/or the provided drawings or specifications. Any alteration by JOC to the drawings and/or specifications without City's written approval shall be at JOC's own risk and expense. If City provides drawings and specifications, City shall, from time to time, furnish such detail drawings and other information as reasonably is necessary.

3.03. **City Direction.** In the City-provided drawings or specifications, when the words "directed", "required", "ordered", "designated", "prescribed" or words of like importance are used, JOC acknowledges and understands that the "direction", "requirement", "order", "designation" or "prescription" of City is intended. Similarly, JOC acknowledges and understands when the words "approved", "acceptable", "satisfactory" or words of like importance are used, those words shall mean "approved by", "acceptable to" or "satisfactory to" City, unless otherwise expressly stated in writing by City to JOC.

3.04. **Drawings and Specification Direction.** Where "as shown", "as indicated", "as detailed" or words of similar importance are used, JOC acknowledges and understands that the reference is made to the drawings and specifications which accompany the Job Order, unless otherwise stated in writing. The word "provided", as used herein, shall mean "provide complete in place". The word "furnished", as used herein, shall mean "furnished and installed."

3.05. **Shop Drawings.** Shop Drawings shall mean the drawings submitted to City and/or the Design Consultant by JOC showing, in detail:

- 3.04.1. The proposed fabrication and assembly of structural elements; and
- 3.04.2. The installation (i.e., form, fit and attachment details) of materials or equipment; and
- 3.04.3. The construction and the detailing of elements of the Work.

3.06. **Detailed Shop Drawings.** Shop drawings shall include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data and similar materials furnished by JOC to explain – in detail – specific portions of the Work. City may duplicate, use and disclose, in any manner and for any purpose, shop drawings delivered under a Job Order and this Agreement.

3.07. **JOC Coordination of Shop Drawings.** JOC shall coordinate all shop drawings and review them for accuracy, completeness and compliance with the issued Job Order and all Contract requirements and JOC shall indicate its approval thereon. Shop drawings submitted to City without evidence of JOC's approval may be returned to JOC for resubmission. City shall indicate its written approval or disapproval of the JOC-submitted shop drawings and, if not approved as submitted, shall indicate to JOC City's reasons for its disapproval. Any Work conducted by JOC prior to receipt of City's approval of Shop Drawings shall be at JOC's sole risk. Receipt of City's written approval does not relieve JOC from responsibility for any errors or omissions in shop drawings, nor from responsibility for complying with the requirements of the Job Order and this Agreement, except as otherwise specifically provided in this Agreement.

3.08. **Shop Drawing Variations.** If shop drawings vary from the defined Job Order requirements, JOC shall describe the variations in writing to City promptly after the variation is realized. If City approves a variation, City and JOC shall modify the Job Order in writing, unless the variation is minor and does not involve a change in price or time of performance, in which case a modification is unnecessary.

3.09. **Submittal of Shop Drawings.** Upon City's request, JOC shall submit to City hard copies of shop drawings for City's written approval and one (1) digital copy of JOC's shop drawings for City's use.

3.10. **Omitted or Erroneous Drawings and Specifications.** Omissions from City-provided drawings or specifications or an erroneous description of details of the Work that manifestly are necessary for JOC to carry out the intent of the drawings and specifications or customarily are performed does not excuse JOC from performing the omitted or erroneously described details. JOC acknowledges and accepts it is JOC's responsibility to find omissions and inconsistencies in provided drawings and specifications and seek clarification from City.

3.10. **JOC Discovered Discrepancies.** JOC shall review and verify all City-furnished drawings immediately upon receipt and promptly shall notify City of any discrepancies found. JOC acknowledges that figures marked on drawings govern in preference to scale measurements. JOC further acknowledges large scale drawings govern small scale drawings.

3.11. **Property of City.** JOC acknowledges all drawings (including as-built drawings), sketches, designs, design data, specifications, notebooks and technical and scientific data provided to or developed by JOC under a Job Order, pursuant to this Agreement, as well as all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, are the property of City. All may be used by City without any claim by JOC for additional compensation, except for material developed by JOC prior to the issuance of or resulting from an issued Job Order.

## ARTICLE IV. Permits

In addition to the requirements set forth in the City's General Conditions for City of San Antonio Construction Contracts, City or, if City elects to use a Design Consultant, its Design Consultant

shall prepare the construction documents for any required licenses and/or permits for performance of the Work, pursuant to an issued Job Order. JOC shall submit the construction documents for licensing/permitting, if necessary and required. JOC acknowledges it shall obtain all required permits applicable to its Work performance under any issued Job Order. JOC further acknowledges it shall comply with all federal, state, and local laws, rules, and regulations applicable to performance of the Work. JOC shall include and incorporate the pass-through cost(s) of any necessary permits to perform the Work, with no percentage markup applied to said permit cost(s), in JOC's submitted price proposal for an issued Job Order.

## **ARTICLE V. Operations, Materials and Workmanship**

5.01. **New Materials.** All equipment, material and articles incorporated in the Work, pursuant to an issued Job Order and this Agreement, shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in writing by City in the issued Job Order. References in the specifications to equipment, materials, articles or patented process by trade name, make or catalog number generally establish a standard of quality and do not limit competition. If JOC intends to request a substitution of something designated by trade name, make, or catalog number, JOC shall prepare a written request to City and seek City's written approval for the requested substitution, fully describing the requested substitution and stating JOC's reason(s) for its request to City. City, at its sole discretion, shall approve or reject JOC's request for a substitution.

5.02. **City Approval of Machinery and Equipment.** JOC shall obtain City's written approval of the machinery, mechanical and other equipment to be incorporated into the Work. JOC shall furnish City the name of the manufacturer, the model number and other information concerning the performance, capacity, nature and rating of the machinery, mechanical and other equipment to be incorporated. When required by the Job Order or by City, JOC also shall obtain City's written approval of the material or articles that JOC contemplates incorporating into the Work. When requesting City's written approval, JOC shall provide full information concerning the material or articles to be utilized. When directed to do so by City, JOC shall submit samples of materials and/or articles for City's approval. Machinery, equipment, material and articles that do not have the required City approvals will be installed at JOC's sole risk of rejection.

5.03. **JOC General Manager.** JOC's General Manager assigned to this Agreement shall be knowledgeable in multiple construction disciplines, including structural framing, electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.

5.04. **Work Performance.** All Work, pursuant to an issued Job Order and under this Agreement, shall be performed in a skillful and workmanlike manner. JOC shall perform the Work in a timely manner and JOC's performance of the Work shall be subject to Liquidated Damages. Further, JOC shall ensure that its purchase, delivery and storage of materials and equipment do not interfere with City operations and personnel.

5.05. **Material Testing.** Unless otherwise specified in an issued Job Order, JOC accepts and acknowledges it shall be responsible for any and all required testing of materials and for all

inspections of JOC's Work, prior to materials being incorporated into the Work. Any Special Inspections, if required and as defined in IBC 2021 Section 1704 Special Inspections, shall be the responsibility of and conducted by City.

5.06. **Layout of Work.** JOC shall lay out its Work in accordance with the Job Order plans and specifications and JOC is responsible for all measurements in connection therewith. JOC shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout the Work. JOC also is responsible for maintaining and preserving all control points which may be established by City.

5.07. **Superintendent Work.** At all times during performance of an issued Job Order and until the Work is completed and accepted by City, JOC directly shall provide a competent superintendent satisfactory to City who will be on site at all times and who has authority to act on behalf of JOC. If, in City's sole opinion and upon request by JOC, an issued Job Order would not require JOC to have a competent superintendent on site at all time, City may waive this requirement and, if so determined, shall do so in writing to JOC.

5.08. **Removal and Replacement of Furniture and Equipment.** If applicable, JOC shall remove all furniture and movable office equipment from an immediate Work area that may be affected by JOC's Work. If sufficient space and/or conditions are not available at the work site, JOC shall store all furniture and movable office equipment in an off-site facility with conditions sufficient to reasonably assure it is not damaged. Upon completion of Work, JOC shall return the removed furniture and moveable office equipment to their original and proper place. If any of the removed items cannot be placed back in their original locations, City shall designate alternate location(s) for the items' placement.

5.09. **No Damage of Property.** JOC shall take all necessary precautions to ensure that no damage to private or public property results from its Work or its Work-related operations. JOC shall repair or replace all items it damages at no additional cost to City. JOC also shall provide all necessary traffic control, including street blockages, traffic cones, flagmen and the like, as required for each issued Job Order. JOC's proposed traffic control methods shall be submitted in writing to City for City's written approval, prior to JOC beginning Work.

## **ARTICLE VI. Site Investigation and Conditions Affecting Work**

6.01. **Nature and Location of Work.** JOC shall be responsible for ascertaining the nature and location of the Work, as well as the general and local conditions that might affect the Work, unless such different conditions could not, in the exercise of diligent search by JOC, have been discovered. Failure to properly ascertain discoverable items shall be at JOC's risk sole and expense. Items for which JOC is responsible to assess include, but are not limited to:

6.01.1. Conditions bearing upon transportation, disposal, handling, and storage of materials;

6.01.2. The availability of labor, water, electric power, and roads;

- 6.01.3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- 6.01.4. The conformation and conditions of the ground; and
- 6.01.5. The character of equipment and facilities needed both preliminary to and during Work performance.

6.02. **Surface/Subsurface Materials.** JOC further is responsible for ascertaining the character, quality and quantity of surface and subsurface materials and/or obstacles that might be encountered on the Work site, unless such surface and subsurface materials or obstacles could not, in the exercise of diligent search, have been discovered. Failure properly to ascertain discoverable conditions shall be at JOC's sole risk and expense.

6.03. JOC promptly shall, before the site conditions are disturbed, give written notice to City upon JOC's discovery of:

- 6.03.1. Subsurface or latent physical conditions at the site differing materially from those indicated (or the site's physical conditions not addressed) in the issued Job Order; or
- 6.03.2. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

6.04. **City Investigation.** City shall conduct an investigation, upon receiving written notice from JOC regarding differing or unknown physical conditions at the Work site. If City finds that the conditions materially do differ and cause an increase or decrease in JOC's cost of or the time required for performing any part of the Work, City shall make an equitable adjustment in the price to be paid to JOC and the issued Job Order shall be modified in writing to reflect said equitable adjustment.

6.05. **JOC Timely Notice.** JOC shall not be entitled to an equitable adjustment in the price of an issued Job Order unless JOC promptly has given the requisite written notice to City on the physical conditions found. JOC never shall be entitled to an equitable adjustment to its price paid for an issued Job Order after final payment under the Job Order has been paid by City.

## **ARTICLE VII. Term**

7.01. **Contract Term.** This Agreement shall be for two (2) years (hereafter referred to as the "Base Term"), with the Base Term beginning on the date of City's execution of this Agreement. City shall have the right to extend this Agreement through three (3), one-year options (hereafter referred to as an "Option Year"), each City-exercised option year to begin at the expiration of the Base Term or the expiration of an exercised Option Year.

7.02. **Exercise of Option Term.** If City elects to exercise its option(s) to extend this Agreement, City shall notify JOC in writing of City's intention to exercise its option, prior to the expiration of the then-current term. City may terminate this agreement at any time, pursuant to **Article XIV** and/or **Article XV** herein, and/or City may elect, at City's sole discretion, not to exercise any available Option Year renewal with a JOC.

7.03. **Extension of Term Period.** Following the Expiration of the Base Term or the expiration of any City-exercised Option Year, the terms and conditions of this Agreement shall remain in place during the performance of Job Orders issued prior to the expiration of the Base Term or the expiration of an Option Year.

## **ARTICLE VIII. Compensation, Invoicing, Payment and Liquidated Damages**

8.01. **Compensation:** The Compensation for all services included in this Agreement is the aggregate total of approved and executed Task Orders for amounts not to exceed the program spending authority approved by Ordinance No. \_\_\_\_\_. Subsequent projects will be subject to budget and task order proposal approvals.

The term of the contract is **two (2) years** for the initial term, with **three (3) 1-year options** for renewal.

Quantities included in the contract, as well as the contract amount are not guaranteed. The unit prices established shall remain valid throughout the duration of the contract.

As full consideration for JOC's satisfactory performance under an issued Job Order, City shall compensate JOC as follows:

8.01.1. **Pre-Priced Items.** To arrive at the maximum amount that shall be paid by City to JOC for Pre-Priced Items under an issued Job Order, JOC shall consult the amount shown in the then most current R.S. Means Facilities Construction Cost Data Book for the required Pre-Priced Items, multiply the amount shown by the applicable coefficient for Pre-Priced Items, with consideration as to whether the Work is required to be performed during or outside City's normal working hours. JOC accepts and agrees that the R.S. Means amount shall be the maximum amount paid by City for Pre-Priced Items and City may negotiate any and all pricing submitted by JOC for Work to be performed. JOC acknowledges its submitted pricing to City for Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time period may be extended by written mutual agreement between City and JOC.

8.01.2. **Non-Pre-Priced Items.** For JOC to secure Work, JOC shall reach an agreement with City with regard to the reasonable and necessary cost of labor and materials to perform the Work. The agreed upon combined cost of

labor and materials shall be increased by a maximum no greater than twelve percent (12%) to cover JOC's overhead and profit. Then, to arrive at the maximum amount to be paid by City to JOC for Non-Pre-Priced items under an issued Job Order, JOC shall price out the Non-Pre-Priced items of the Work and submit its pricing, along with all supporting documentation, reflecting JOC's truthful and anticipated costs for the Non-Pre-Priced Items of the Work. Upon receipt of JOC's pricing and supporting documentation, City shall review JOC's submitted pricing and, if City so elects, negotiate JOC's submitted pricing, request additional supporting documentation regarding JOC's pricing or accept JOC's pricing for the Non-Pre-Priced Items of the Work. JOC acknowledges its submitted pricing to City for Non-Pre-Priced Items shall remain valid for sixty (60) days from the date JOC submits its pricing to City. This sixty (60) day time may be extended by written mutual agreement between City and JOC.

**8.02. Submittal of Pay Application.** At minimum, JOC shall submit a request for pay application every thirty (30) days, throughout the duration of JOC's Work. JOC may submit a request for pay application more frequently than every thirty (30) days, with City's written approval.

**8.03. Monthly Progress Payments.** City shall make progress payments, at minimum, monthly, as the Work proceeds or at more frequent intervals as determined by City, upon receipt of mathematically correct certified pay applications submitted by JOC and approved by City and, if requested by City, approved by Design Consultant, if any. For submission of its mathematically correct pay application, JOC shall use a format deemed acceptable to City and said monthly pay application shall include supporting documents reflecting a breakdown showing how JOC's Work done to the date of the submitted pay application compares to the total project scope, broken out by category of Work. A submitted pay application shall contain as much detail as City so requests, so City may determine the progress payment due and owing to JOC. In addition to payment to JOC for Work completed, City, at City's option, may authorize payment to JOC for material(s) delivered to the site and any preparatory Work performed by JOC, if JOC furnishes satisfactory evidence that it has acquired title to the material, the material shall be used to perform the Work ordered and any preparatory Work performed was in furtherance of the Work ordered. Releases of liens from JOC and each of JOC's Subcontractors and suppliers utilized to perform the Work are required as back up for the pay application certificate.

**8.04. Liquidated Damages.** The City reserves the discretion to include liquidated damages (LDs) with each Job Order issued. In the event the JOC fails to achieve Substantial Completion and/or Final Completion of the Project by the dates established for Substantial Completion and/or Final Completion, JOC will be assessed LDs for each calendar day of unexcused delay in achieving Substantial Completion and/or Final Completion beyond the Scheduled Completion/Final Completion dates. The daily assessed LD rates for delay in Substantial Completion and/or Final Completion shall be determined for each Job Order at time of issuance. Any sums due and payable to the JOC by the City shall be payable, not as a penalty, but as LDs representing an estimate of delay damages sustained by City, estimated at the time of

executing the job order. Such LDs shall apply regardless of whether JOC has been terminated by the City prior to Substantial Completion, so long as Contractor's actions or inactions contributed to the delay. Such LDs shall be in addition to and not in preclusion of any recovery of actual damages resulting from other defects in JOC's performance hereunder, for matters other than delays in Substantial Completion/Final Completion. When the City reasonably believes that Substantial Completion/Final Completion will be inexcusably delayed, City shall be entitled, but not required, to withhold from any amounts otherwise due to JOC an amount then believed by the City to be adequate to recover LDs applicable to such delays. If and when JOC overcomes the delay in achieving Substantial Completion and/or Final Completion or any part thereof, for which the City has withheld payment, the City shall promptly release to Contractor those funds withheld but no longer applicable as LDs..

8.05. **Property of City.** All material and Work covered by a progress payment, at the time of payment by City to JOC, become the sole property of City. By accepting this condition, JOC acknowledges this provision does not:

- 8.05.1. relieve JOC from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work;  
or
- 8.05.2. waive City's right to require fulfillment of all Contract terms.

8.06. **Mathematically Correct Payment Requests.** Mathematically correct estimates of completion percentages shall be approved and certified for payment by City and shall be paid within thirty (30) days. If City finds JOC's submitted estimates to be incorrect, City shall notify JOC, through Unifier, as to the inconsistencies discovered and explain, with reasonable particularity, the reasons for the finding. Progress payments to JOC shall be paid after the estimate of the Work is accepted, certified and approved by City. JOC's estimates of completed Work shall be submitted electronically through Unifier.

8.07. **Substantial Completion Notification.** When JOC considers the Work to be complete and ready for its intended use (Substantially Complete), JOC shall notify City's Project Representative of JOC's conclusion. City then shall inspect the Work to determine the status of completion. If City finds that the Work has been reached Substantial Completion, City shall issue a Certificate of Substantial Completion. The Certificate shall itemize remaining items to be completed or corrected before final payment of the Job Order. Upon receipt of the itemized list of remaining work (hereafter referred to as the "Punch List") JOC shall promptly proceed to complete or correct items listed on the Punch List.

8.08. City shall pay JOC all unpaid amounts due under an issued and accepted Job Order, within sixty (60) days following:

- 8.08.1. City's issuance of a Certificate of Final Completion upon JOC's completion and/or correction of all remaining portions of the Work, inclusive of all Punch List items; and

- 8.08.2. JOC's presentation of a properly executed and mathematically correct final pay application; and
- 8.08.3. JOC's presentation of an executed Release of any and all claims JOC may have against City, arising by virtue of the issued Job Order and/or this Agreement. If JOC has assigned its right to a claim to any amount payable under an issued Job Order and/or this Agreement, a Release also may be required of JOC's assignee. JOC and/or JOC's assignee shall complete the required Release form(s) deemed acceptable to City; and
- 8.08.4. City's receipt of a consent from JOC's surety, if any.

8.09. **Requirement to Use Unifier.** All correspondences related to an issued Job Order shall be submitted by JOC to City and by City to JOC through Unifier, including, but not limited to, the Job Order schedule, Requests for Information, requests for Substantial Completion, requests for Final Completion, all pay applications and Release forms.

8.10. **Work Schedule.** JOC shall, upon JOC's submission of its signed Job Order, submit for approval from City a Work Schedule showing the sequence in which JOC proposes to perform the Work and the dates JOC plans on starting and finishing the stages of Work (including acquiring all required materials and equipment). JOC's submitted Work Schedule to City may be a formal computerized schedule or a progress chart in a format suitable to City, indicating the percentage of Work to be completed by specific dates. The submitted Work Schedule shall, at a minimum:

- 8.10.1. list the different types of Work activities or Work elements;
- 8.10.2. show the logical interconnections controlling what Work shall be accomplished before other Work shall begin;
- 8.10.3. show proposed start and finish dates or duration of each Work activity or Work Element; and
- 8.10.4. calculate the "weighting" or relative worth each Work activity or Work element to the total project, either as a percent or as a dollar amount.

8.11. **Failure to Submit Work Schedule.** If JOC fails to submit a Work Schedule with its acceptance of a Job Order, City may withhold its issuance of a Notice to Proceed with Work, as well as withholding the approval of any progress payments, until JOC submits the required Work Schedule. Further, City may issue a Notice to Proceed with Work, to begin the running of the calendar days allowed for completion of JOC's Work, and immediately issue JOC a Stop Work Order, which shall keep the Job Order clock running yet prevent JOC from working on the Job Order, said Stop Work Order remaining in place until JOC furnishes City with JOC's Work Schedule.

8.12. **Work Schedule Progress Report.** Throughout the progress of the Work, JOC shall submit a Work Schedule Progress Report every thirty (30) days or more frequently, if so directed by City. The Work Schedule Progress Report shall compare the progress of the realized Work to JOC's original Work Schedule, as required and submitted pursuant to **Section 8.11** herein. If JOC falls behind its submitted City-accepted Work Schedule, absent clear and accepted reasons for falling behind its Work Schedule (to include severe weather, unforeseen conditions, emergency Work, etc.), the burden to comply with its City-approved Work Schedule solely falls on JOC to accelerate its Work progress at JOC's time and sole cost. City may require specific steps to accelerate JOC's Work progress, with which JOC shall comply without any additional cost to City. Among the specific steps City may require of JOC include, but are not limited to, requiring JOC to increase the number of shifts, increase its overtime operations, increase the number of days of Work and/or increase the amount of equipment being employed.

8.13. **Emergency Work.** If City emergency work arises, JOC accepts and agrees it shall give top priority to issued Job Orders to perform City-designated emergency work and shall allocate resources reasonably necessary to accomplish City's emergency work, according to City's schedule requirements. If JOC incurs additional costs, expenses or schedule delays on another issued Job Order as a result of performing City emergency work, City equitably shall adjust the non-emergency issued Job Order(s) to compensate JOC for its efforts in performing said City-designated emergency work.

8.14. **Work Schedule Progress.** JOC acknowledges that its failure to comply with the requirements under this **Article VIII** shall be grounds for City's determination that JOC is not prosecuting the Work with sufficient diligence to ensure timely completion of the accepted issued Job Order. Upon making such a determination, City may terminate JOC's right to proceed with the accepted issued Job Order Work or any portion thereof, according to the terms of this Agreement.

## **ARTICLE IX. Inspection and Acceptance**

9.01. JOC acknowledges and accepts the requirements regarding Inspection and Acceptance set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article IX**.

9.02. **JOC Inspection of Work.** JOC shall maintain adequate inspection of the performed Work and utilize other quality control systems, to assure proper performance of the Work. JOC shall maintain complete inspection records and immediately make those records available to City upon City's request. JOC acknowledges all Work is conducted under the general direction of City and is subject to inspection and testing by City or its designee(s) at all places and at all reasonable times before acceptance.

9.03. **City Inspection of Work.** City's inspection and testing of JOC's Work solely are for the sole benefit of City, are conducted solely for quality assurance purposes and do not:

9.03.1. relieve JOC of responsibility for providing adequate quality control measures;

- 9.03.2. relieve JOC of responsibility for damage to or loss of the material, prior to City's acceptance of the Work performed;
- 9.03.3. constitute or imply acceptance; and
- 9.03.4. affect the continuing rights of City after acceptance of the completed Work through an accepted and/or completed Job Order or this Agreement.

9.04. **No Release.** The presence or absence of a City inspector on JOC's Work site does not relieve JOC from any duties imposed by an issued Job Order or this Agreement. JOC acknowledges that no City inspector may change a Job Order Work requirement, change a Contract requirement or waive City's rights without a formal, written Amendment to an issued Job Order or this Agreement signed by the Parties.

9.05. **City Incurred Costs for Inspection of JOC Work.** JOC promptly shall furnish, without additional charge to City, any and all facilities, labor and material reasonably necessary to accommodate City performing safe and convenient inspections on and tests of JOC's Work. City may charge JOC for additional costs – to be deducted from any of JOC's submitted monthly pay applications – incurred by City in City's inspection or testing of JOC's Work attributed to:

- 9.05.1. Work not completed in a timely manner, as indicated on JOC's approved Work schedule; or
- 9.05.2. the inspection, re-inspection, testing and/or retesting of JOC Work that failed previous inspection or test.

9.06. **City Inspection and Testing.** City shall make an effort to minimize disruption or delay of JOC's Work incident to City's inspection and testing. Special, full size and/or performance tests shall be the responsibility of and performed by JOC, as described in the issued Job Order.

9.07. **JOC Non-Conforming Work.** JOC shall, without charge to City, replace or correct Work found by City or its representative(s) not to conform to the issued Job Order requirements, unless City consents in writing to accept the Work if accompanied by an appropriate reduction in the Job Order price to be paid by City to JOC. If City rejects JOC's Work and/or materials used by JOC in performance of the Work, JOC promptly shall segregate and remove all City-rejected material(s) from the Work premises and correct any rejected Work.

9.08. **JOC Correcting Non-Conforming Work.** If JOC fails to promptly replace or correct rejected Work by City, City may:

- 9.08.1. replace or correct the Work and charge all costs incurred by City to JOC; and/or
- 9.08.2. terminate for default JOC's right to proceed with Work under the issued Job Order.

9.09. **Expenses Incurred Examining Non-Conforming Work.** If, before final acceptance of any Work performed, City decides to examine JOC's already completed Work by removing it or tearing it out, JOC, upon request, hereby acknowledges and agrees it promptly shall furnish all necessary facilities, labor and material to perform City's request to examine. If the Work is found to be defective or nonconforming in any material respect, JOC shall bear the full expense of City's examination and JOC's satisfactory reconstruction of the Work to bring it in to conformity. Conversely, if the examination of JOC's Work is found to be in conformance with the issued Job Order, City shall make an equitable adjustment for the cost to JOC for the additional services involved in the examination and reconstruction including, if completion was thereby delayed, extending time for JOC's performance.

9.10. **Prompt Acceptance of Work.** Unless otherwise specified in the Job Order, City shall accept Work reasonably promptly after satisfactory completion and inspection. Acceptance by City is final and conclusive, with an exception for latent defects, fraud, gross mistakes amounting to fraud and City's rights under any warranty or guarantee.

## **ARTICLE X. Additional Requirements**

10.01. **Confinement of Operations.** JOC shall confine its operations (including storage of materials) to areas authorized or approved by City.

10.02. **Erection of Temporary Buildings.** Temporary buildings (e.g., storage sheds, shops, offices) and any associated utilities only may be erected by JOC with the written approval of City and shall be built only with labor and materials furnished by JOC without expense to City. Erected temporary buildings and utilities shall remain the property and responsibility of JOC and shall be removed by JOC at its own expense upon completion of the issued Job Order. If City consents and gives its prior written approval to JOC, said erected temporary buildings and associated utilities may be abandoned in place, not be removed by JOC and JOC shall transfer ownership of said temporary buildings to City.

10.03. **Work Site Egress/Ingress.** JOC shall use only established roadways for ingress and egress to the Work site, unless City authorizes specific temporary roadways to be built by JOC. JOC acknowledges it shall comply with all federal, state and local laws and regulations when transporting materials, in connection with an issued Job Order.

10.04. **Maintaining Clean Work Site.** JOC shall, at all times, keep the Work site (to include any utilized storage areas) free from accumulations of waste materials and of overgrown vegetation. Before completing its Work, JOC shall remove from the Work site all rubbish, tools, scaffolding, equipment, and materials that are not the property of City, and shall mow or cut back all overgrown vegetation. Upon completing its Work, JOC shall leave the site in a clean and orderly condition satisfactory to City. Final cleanup is included as part of the Work and JOC acknowledges it is responsible for all construction refuse disposal containers and their removal from the Work site.

10.05. **Hazardous Materials.** If hazardous materials are not addressed in the scope of a Job Order and subsequently are found on a Work site, JOC shall cease work and notify City's authorized

representative of JOC's findings. City then will assess the situation and determine whether the removal and disposal of the hazardous materials may be performed by JOC or performed by a specialty contractor. City shall coordinate the removal and disposal of said hazardous materials at City's expense. In the event JOC has the appropriate training and certifications to handle hazardous materials, City, at its sole discretion, may elect to have JOC remove and dispose of hazardous materials. If City, at its sole option, requires JOC to remove and/or dispose of discovered hazardous materials, City shall make an equitable adjustment in the agreed upon issued Job Order price, to reimburse JOC for its additional requirement to dispose of the discovered hazardous materials.

**10.06. Preservation and Protection of Structures, Equipment and Vegetation.** JOC shall preserve and protect all structures, equipment and landscape vegetation (such as trees, shrubs and/or grass) on or adjacent to the Work site that are not to be removed and that do not unreasonably interfere with JOC's Work. JOC only shall remove trees when specifically authorized in writing by City to do so. JOC acknowledges it financially shall be responsible to City to purchase and replace any and all trees – of a similar size – removed from a Work site that were not previously authorized in writing by City for removal. If tree limbs are broken by JOC during performance of the Work, JOC shall trim those broken limbs and branches with a clean cut and paint the cut with a tree pruning compound, as directed by City.

**10.07. Preservation and Protection of Improvements and Utilities.** JOC shall protect from damage all existing improvements and utilities at or near JOC's Work site and on adjacent property, the locations of existing improvements and utilities made known to or should be known by JOC. JOC promptly shall repair any and all damage to those existing improvements and utilities, including those that are or on the property of third parties, resulting from JOC's failure to comply with the requirements of the issued Job Order or JOC's failure to exercise reasonable care in performing JOC's Work. If JOC fails or refuses to repair damage it caused to existing improvements and/or utilities, JOC acknowledges City may perform the repair(s) for any and all damage caused and withhold payment to JOC – from any of JOC's submitted pay request – for reimbursement of any costs incurred by City in performing said repair(s).

**10.08. Training City Staff.** Upon award of a contract for Job Order Contracting, JOC, jointly with any other JOCs concurrently awarded similar contracts, shall conduct, at minimum, two training classes with City staff to address, but not be limited to, JOC's understanding of the Job Order Contracting process, JOC's understanding and intended use of the R.S. Means Facilities Construction Cost Data Catalog, the Cost Index and JOC's intended use of the Unit Price Book, to calculate the maximum pricing allowable by City for Work to be performed. JOC's conducting and participation in said two training classes shall be at no additional cost to City.

**10.09 Professional Appearance.** JOC and/or subcontractors' shall present a professional appearance and be readily identifiable to City staff when performing work under this contract. JOC shall provide the following:

- a. Contractor Vehicle(s) Logo
- b. Contractor Uniforms or Company Logo Apparel

## ARTICLE XI. Warranty of Work

11.01. JOC acknowledges and accepts the requirements regarding Warranties of Work set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article XI**.

11.02. **JOC Warranty.** In addition to any other warranty, JOC expressly shall warrant that all Work performed by JOC conforms to the issued Job Order requirements and shall be free of any defect in equipment, material and workmanship and shall be in compliance with City's specifications.

11.03. **Warranty Term.** This warranty from JOC shall run runs for one (1) year from the date of Final Acceptance of the Work on an issued Job Order. If City takes possession of any part of the Work before Final Acceptance of the whole of the Work, the warranty for the part taken prior to Final Acceptance of the whole shall run from the date of possession of the Work taken.

11.04. **Warranty Work.** JOC shall, without any additional charge to City, remedy any breach of the expressed warranty of JOC's Work. JOC further shall, also without additional charge to City, repair any damage to City's real or personal property, when that damage is the result of either JOC's failure to conform to the issued Job Order requirements or any defect of equipment, material, or workmanship furnished by or through JOC.

11.05. **Warranty Extension.** JOC shall, without any additional charge to City, restore Work damaged in fulfilling the terms and conditions of this **Article XI**. JOC's warranty, with respect to all Work repaired or replaced, shall run for one (1) year from the date of JOC's repair or replacement of Work.

11.06. **Notification of Warranty Breach.** City shall notify JOC, in writing, of any breach of JOC's warranty within a reasonable time after City's discovery of any breach of warranty.

11.07. **City's Remedy for JOC's Warranty Breach.** If JOC fails or refuses to remedy a breach of warranty within a reasonable time after receipt of written notice from City, JOC acknowledges City has the right to replace, repair or otherwise remedy the cited breach and JOC fully shall reimburse City and City shall deduct from any of JOC's submitted payment application any and all expenses incurred by City in replacing, repairing or otherwise remedying said warranty breach.

11.08. **Manufacturers/Suppliers Warranties.** With regard to warranties (both expressed and implied) from JOC's Subcontractors, manufacturers or suppliers for Work performed, pursuant to a Job Order, JOC shall:

- 11.08.1. Obtain all warranties required by a Job Order and supply City with copies of all warranties in place for Work performed;
- 11.08.2. Require all warranties for Work performed to be executed, in writing, to the benefit of City; and

11.08.3. Enforce all warranties for Work performed, to the benefit of City.

**11.08 City Enforcement of Warranties.** City may, but need not as a condition of enforcing JOC's warranty, seek to enforce warranties directly for its own benefit, with regard to any of the above warranties associated with JOC's Work.

**11.09. Pre-Existing Conditions.** City acknowledges JOC is not responsible for and does not warranty any pre-existing work, conditions or facilities that may be assigned to JOC, except as modified by the Job Order.

## **ARTICLE XII. Changes in Work and Price**

**12.01. Changes in Work.** JOC may, at any time and without notice to any sureties, in writing and signed by both City and JOC, agree to changes in the Work within the general scope of the issued Job Order, including changes:

12.01.1. in the specifications (including drawings and designs);

12.01.2. in City-furnished facilities, equipment, materials, services or site; and/or

12.01.3. in the schedule for performance of the Work.

**12.02. Change Order Processing.** A City-requested change, via an issued Task Order, for additional work falling outside the general scope of work of the originally issued Job Order, shall be treated as an additional Job Order. If JOC concludes a City-request change in scope shall result in an additional Job Order, it shall give City prompt written notice, through Unifier, stating the date, circumstances and full description for the requested additional Job Order scope. In no event may JOC's written notice to City of an additional Job Order come later than thirty (30) calendar days after JOC receives City's request for a change for additional work. If any City-requested change(s) in the original scope of work causes an increase or decrease in JOC's required overhead, materials, labor cost or time required for and allotted to the performance of Work, City shall make an equitable adjustment and modify the issued original Job Order through Unifier.

**12.03. Change Order Pricing.** Pricing for an additional Job Order shall be determined in the same way as pricing used for the originally issued Job Order.

**12.04. JOC Time Extension Proposal.** With an additionally issued Job Order, JOC shall furnish City a detailed written proposal for any requested extension in the time period given JOC for the performance of the Work. The detailed proposal shall be submitted through Unifier and shall, along with a price breakdown, furnish JOC's justification for an extension of time, if any.

12.05. **Disallowed Adjustment Requests.** No written proposal submitted by JOC for an equitable (price and/or time) adjustment shall be allowed if asserted after City issues final payment to JOC under an issued Job Order. JOC acknowledges this **Article XII** provides the exclusive mechanism by which JOC may claim an additionally issued Job Order under this Job Order Contract Agreement.

### **ARTICLE XIII. Suspension of Work**

City may, in writing, issue an order to JOC to suspend, delay or interrupt all or any part of the Work issued through a Job Order. If City does so issue such an order, or if City's fails to act timely on an issue, thereby directly resulting in a suspension, delay or interruption in JOC's scheduled Work, City equitably shall compensate JOC for increased costs due JOC for any directly-related increase in JOC's cost of performing the Work caused by City's issued order. If compensation is due from City, JOC only may recover costs under this **Article XIII** for costs incurred by JOC within the first thirty (30) calendar days following City's issued order to suspend, delay or interrupt all or a part of JOC's Work or for costs incurred by JOC within the first thirty (30) calendar days of City failing timely to act after JOC gives City written notice of the basis for the claim.

### **ARTICLE XIV. Termination for Convenience of City**

14.01. By delivering written notice of termination to JOC, City may terminate performance under a Job Order, in whole or in part, if City, in its sole determination, determines that terminating JOC's performance is in City's best interest. Upon receiving a notice of termination, JOC immediately shall:

- 14.01.1. stop all Work associated with the issued Job Order;
- 14.01.2. let no further subcontracts or orders for materials, services or facilities, except as necessary to complete any Work not terminated by City;
- 14.01.3. assign to City, as directed by City, all right, title and interest of JOC under the subcontracts, to the extent they relate to the Work terminated. City may settle JOC's Subcontractor claims and pay the amounts called for by said settlements. All settlements with JOC's Subcontractor's shall release JOC only from claims arising out of City's termination of JOC's performance, but not other claims;
- 14.01.4. transfer title to City of all Work performed and transfer title to all materials and supplies purchased by JOC and paid for by City; and

- 14.01.5 deliver to City, as directed by City:
  - 14.01.5.1. any and all fabricated or off-the-shelf parts, Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and
  - 14.01.5.2. completed or partially completed plans, drawings, information and other property that, if the Job Order had been completed by JOC, would be required to be furnished to City;
- 14.01.6. complete performance of the Work not terminated by City;
- 14.01.7. take any action necessary, or any action that City may direct, for the protection and preservation of the property related to this Agreement that is in the possession of JOC and which City has or may acquire an interest; and
- 14.01.8. use its best efforts to sell, if authorized by City, any property acquired for the Work but not yet incorporated into it, except JOC need not extend credit to any purchaser and JOC itself may purchase the property on terms agreed to by the City.

14.02. After the termination of a Job Order by City, JOC promptly shall submit a final termination settlement proposal to City in the form and with the certification prescribed by City. City need not consider and is not liable to JOC for payment for any such proposal submitted longer than ninety (90) calendar days after a Job Order termination.

14.03. If JOC and City fail to agree on the amount to be paid JOC, as a result of City's termination of a Job Order for convenience, City shall pay JOC an amount determined as follows:

- 14.03.1. For Work performed prior to the effective date of termination, the total (without duplication) of:
  - 14.03.1.1. JOC's cost of the Work;
  - 14.03.1.2. JOC's cost of settling and paying termination settlement proposals under terminated subcontracts that properly are chargeable to the terminated portion of the Contract if not included in subdivision (a) above and if not paid by City; and

14.03.1.3. A markup, including overhead and profit, pursuant to this **Article XIV**, as has been agreed upon by City and JOC for Change Orders.

14.03.2. A reasonable costs of settlement of the Work terminated, including:

14.03.2.1. accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

14.03.2.2. the termination and settlement of subcontracts (excluding the amounts of such settlements); and

14.03.2.3. Storage, transportation, and other costs actually incurred by JOC and reasonably necessary for the preservation, protection or disposition of the termination inventory.

14.04. **Spoilage.** Except for normal spoilage, except to the extent that City expressly assumed the risk of loss, JOC cannot recover from City the value, as determined by City, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to City or to a subsequent purchaser.

14.05. **Partial Termination of Job Order.** If a termination of a Job Order is partial, JOC may file a proposal with City requesting an equitable adjustment of the price(s) of the non-terminated portion of the Job Order. If granted by City, City shall issue a new Task Order reflecting the new scope of work for the non-terminated portion of the Job Order reflecting the new price to be paid for the newly defined scope of work. Any proposal filed with City by JOC for an equitable adjustment of the price(s) shall be requested by JOC within ninety (90) calendar days from the effective date of partial termination, unless extended in writing by City. City may, under the terms and conditions it prescribes and at City's sole option, make partial payments to JOC and may make payments against costs incurred by JOC of the terminated portion of the Job Order, if City believes the total of these partial payments will not exceed the amount to which JOC would have been entitled. If the total payments made by City to JOC exceed the amount finally determined to be due, JOC shall repay the excess payment made to JOC by City to City upon demand.

14.06. **Record Maintenance.** Unless otherwise provided in this Agreement or by statute, JOC shall retain and maintain all records and documents relating to both the completed and the terminated portion of a Job Order for a period of four (4) years after the settlement of an issued Job Order. This requirement on JOC includes retaining and maintaining all books and other evidence bearing on JOC's costs and expenses under an issued Job Order. JOC shall make these retained and maintained reports and documents available to City, at JOC's office, at all reasonable times and without cost to City. If approved in writing by City, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC instead of original records and documents.

## **ARTICLE XV. Default**

15.01. It shall be deemed an event of default under an issued Job Order if JOC:

15.01.1. fails or refuses to prosecute Work, or any separable part of it, with the diligence that will ensure the Work's timely completion, after ten (10) calendar days written notice and JOC has been afforded the opportunity to cure; or

15.01.2. fails or refuses to comply with any material term of the Contract, after thirty (30) calendar days written notice JOC has been afforded the opportunity to cure.

15.02. **Uncured Default.** On an uncured default by JOC, City may terminate an issued Job Order or, at City's discretion, may terminate this entire Agreement with JOC. City may complete the Work itself or procure its completion by a substitute Contractor and City shall retain all rights and remedies available to it arising from JOC's default, as may be afforded by law or by equity.

15.03. **Time Extension.** JOC's delay may be excused if said delay arises out of unforeseeable causes beyond JOC's control and without JOC's fault or negligence, such as acts of God or the public enemy, fires, flood, strikes or quarantine. To be excused for delay in such an event, JOC shall, within thirty (30) calendar days from the date of the beginning of delay, notify City in writing thereof. If, in the sole judgment of City, JOC's situation warrants an extension, City shall extend JOC's time for performance under an issued Job Order. City's findings are final and conclusive.

15.04. The rights and remedies of City in this **Article XV** are in addition to any other rights and remedies provided by law or under this Agreement.

## **ARTICLE XVI. Safety**

16.01. JOC acknowledges and accepts the requirements regarding Safety set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article XVI**.

16.02. **Safety Plan.** Within fifteen (15) calendar days after award of this Agreement and before beginning any Work, JOC shall submit a safety plan to City for its approval. The safety plan shall address all aspects of JOC's safety policies and procedures, including responsibility for OSHA compliance, drug testing, compliance with City's heat illness prevention ordinance requirements, trend analysis, corrective action and JOC's interface with City inspectors, establishing the safety rules and regulations to be utilized on the issued Job Order Work. This submitted safety plan by JOC shall remain in place for the duration of this Contract and any extension periods hereto and if

JOC make any modifications to its safety plan submitted to City, JOC promptly shall notify City of those modifications.

16.03. **OSHA Compliance.** JOC shall be responsible for complying with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (hereafter referred to as “OSHA”), as well as all applicable state and local laws, ordinances and regulations during the performance of JOC’s Work. JOC shall maintain a set of OSHA articles at the Job Order jobsite, as they apply to the Work being performed. Copies of said OSHA articles shall be provided by JOC to City upon request.

16.04. **Protective Equipment.** JOC shall furnish and enforce the use of individual protective equipment, as is needed to complete JOC’s Work, including hard hats, rain gear, protective foot wear, protective clothing, gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards and high visibility reflective safety vests.

16.05. **Safety Training.** JOC shall provide its employees, along with its Sub-Consultant and Subcontractor employees, safety training at minimum every six (6) months throughout the duration of Work, to include any necessary special training, prior to working with hazardous materials or operations, and provide proof of such employee safety training to City. JOC shall provide warning signs, barricades and verbal warnings on the Work site, as required. JOC shall inform its and its Sub-Consultant and Subcontractor employees of emergency procedures to be adhered to, in case of a fire, medical emergency or any other life-threatening situations.

16.06. **Accident Reporting.** JOC promptly shall notify City of any Work site accident involving any Job Order personnel and/or damage to any material and/or equipment. Copies of any injury reports or accident investigation reports generated by JOC or its Sub-Consultants and/or Subcontractors shall be provided to City.

16.07. **Safety Representative.** JOC shall assign, during performance of the Work, a designated safety representative to develop and monitor JOC’s project Work site safety program. The name, company address and telephone number of the designated assigned individual shall be submitted to City’s designated JOC Representative by JOC, along with JOC’s safety policies and program procedures, within fourteen (14) calendar days of JOC receiving an issued Job Order.

16.08. **First Aid Kit.** JOC shall provide and maintain on the jobsite, at all times, at minimum one (1) completely stocked first aid kit, which shall contain all standard emergency medical supplies. JOC shall make the first aid kit available to all of JOC’s employees and all employees of JOC’s Subcontractors, while they are performing Work on the site, as well as making available emergency medical treatment either at the Job Order Work site or at a nearby medical facility.

16.09. **City's Approval of JOC Safety Policies.** City reserves the right to approve and monitor JOC's safety policies and program procedures, as they are applied during performance of the Work. Failure to comply with the safety policies and program procedures, once submitted to and approved by City, shall be deemed a breach of this Agreement and shall be cause for the termination of an issued Job Order and/or this Agreement.

16.10. **City's Limited Safety Personnel.** JOC acknowledges that City has limited personnel assigned to administer this Agreement and be in a position to police all of the safety requirements of this **Article XVI**, as well as acknowledging that those assigned City personnel are not fully trained in safety matters. To that end, City's imposition of these safety requirements on JOC is not an assumption by City of a duty on City to assure safety. JOC shall indemnify City for all losses, costs, liabilities and/or expenses arising out of or relating to JOC's violations of this **Article XVI**.

### **ARTICLE XVII. City's Use and Possession Prior to Completion**

17.01. **Partial Possession.** City has the right to take possession of or to use any completed or partially completed part of the Work under an issued Job Order. Prior to taking possession of or using any part of JOC's Work, City shall furnish JOC a list of items of Work remaining to be performed or corrected on those portions of the Work which City intends to take immediate possession of or use. JOC acknowledges City's failure to list remaining Work does not relieve JOC from performing that Work. City's possession or use of any completed or partially completed part of the Work shall not be deemed City's acceptance of Work related to City's possession or use of the partially completed part of the Work.

17.02. **City's Assumption of Risk for Partial Possession.** If City takes such possession or use of any completed or partially completed part of the Work, JOC shall be relieved of the responsibility for the loss of or any damage to the Work resulting from City's possession or use. If early possession or use by City clearly delays JOC's progress or causes additional expenses to be incurred by JOC, City shall make an equitable adjustment in the issued Job Order price or JOC's time period for performance and the Job Order shall be modified in writing accordingly.

### **ARTICLE XVIII. Non-Exclusivity and Cooperation**

JOC acknowledges this Agreement is not exclusive. City may award multiple Job Order Contract Agreements and this Agreement is not a promise of receiving issued Job Orders or of an equal share of all Job Orders issued by City. JOC shall cooperate with other JOCs awarded contracts by City and with City employees and carefully shall adapt its scheduling and Work performance to accommodate the work of other awarded JOCs. JOC shall not commit or shall not permit any act to be committed that might interfere with the performance of work by any other JOC or JOC Sub-Consultants and/or Subcontractor(s) or by any City employees.

## **ARTICLE XIX. Workers' Compensation**

19.01. The following terms are defined as follows:

- 19.01.1. Certificate of Coverage (hereafter referred to as "Certificate") is defined as a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), 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.
- 19.01.2. Duration of the Work is defined as the time, from the beginning of Work on an issued Job Order through the time the Job Order has been completed and accepted by City, during which JOC and JOC's personnel are working on an issued Job Order.
- 19.01.3. Persons are defined as and shall include all persons or entities performing all or part of the Work JOC has undertaken to perform on an issued Job Order, regardless of whether that person contracted directly with JOC or whether that person has employees. Persons further shall include, without limitation, Independent Contractors, Subcontractors, leasing companies, motor carriers, owner-operators, as well as all employees of such entities or employees of any entities which furnishes persons to provide Services on an issued Job Order.
- 19.01.4. Services are defined as and shall include, without limitation, those Persons providing, hauling or delivering equipment or materials and/or providing labor, transportation or other Service related to and for the Duration of an issued Job Order. Services, as defined herein, shall not include activities unrelated to an issued Job Order, such as food/beverage vendors, office supply deliveries or delivery of portable toilets.

19.02. JOC shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Chapter 401 for all employees and Persons of JOC providing Services on an issued Job Order for the Duration of the Work. JOC shall comply with the statutory requirements and shall supply a Worker's Compensation Statutory, with a Waiver of subrogation in favor of City.

19.03. JOC shall provide the required Certificate of Workers' Compensation Coverage to City, prior to being awarded a Job Order.

19.04. If the coverage period shown on JOC's current Certificate of Coverage ends during the duration of an issued Job Order, JOC shall, prior to the end of its coverage period, file a new Certificate of Coverage with City showing that its Workers' Compensation coverage has been extended/renewed.

19.05. JOC shall obtain and provide to City, from and for each person providing Services on an issued Job Order:

- 19.05.1. a Certificate of Coverage, prior to that person beginning work on an issued Job Order, so City will have on file Certificates of Coverage showing coverage for all persons providing Services on the issued Job Order; and
- 19.05.2. no later than seven (7) calendar days after receipt by JOC, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage obtained by JOC ends during the duration of the issued Job Order.

19.06. JOC shall retain all required Certificates of Coverage for the duration of an issued Job Order and for one year thereafter City's acceptance of the Work.

19.07. JOC shall notify City in writing by certified mail or personal delivery, within ten (10) calendar days after JOC knew or should have known, of any change that materially may affect the provision of coverage of any person providing Services on an issued Job Order.

19.08. JOC shall post on each Work site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all Persons providing Services on an issued Job Order that the workers are required to be covered by Workers' Compensation, stating how a Person may verify said Workers' Compensation coverage and how a Person may report a lack of Workers' Compensation coverage.

19.09. JOC contractually shall require each Person with whom it contracts to provide Services on an issued Job Order to:

- 19.09.1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Chapter 401 for all of its employees and all Persons providing Services on an issued Job Order, for the Duration of the Work;

- 19.09.2. provide to JOC, prior to that Person beginning Work on an issued Job Order, a Certificate of Coverage showing that coverage is being provided for all employees of the Person providing Services on the issued Job Order, for the Duration of the Work;
- 19.09.3. provide JOC, prior to the end of the coverage period, a new Certificate of Coverage showing an extension or renewal of coverage, if the coverage period shown on the current Certificate of Coverage ends during the Duration of the Work;
- 19.09.4. obtain from every other Person with whom each Person contracts and provide to JOC:
  - 19.09.4.1. a Certificate of Coverage, prior to the other Person beginning work on the issued Job Order; and
  - 19.09.4.2. a new Certificate of Coverage showing an extension/renewal 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 issued Job Order;
- 19.09.5. retain all required Certificates of Coverage on file for the duration of the issued Job Order and Work for one (1) year thereafter;
- 19.09.6. notify City in writing by certified mail or personal delivery, within ten (10) calendar days after the Person knew or should have known of any change that materially may affect the provision of coverage of any person providing Services on the issued Job Order; and
- 19.09.7. contractually require each Person with whom JOC contracts to perform Work, as required by **Sections 19.09.1 through 19.09.6** herein, with the Certificates of Coverage to be provided to the Person for whom they are providing Services.

19.10. By signing this Agreement and/or providing or causing to be provided a Certificate of Coverage, JOC is representing to City that all employees of JOC who will provide Services on an issued Job Order shall be covered by Workers' Compensation Coverage for the Duration of the Work, the provided Workers' Compensation Coverage shall be based on proper reporting of classification codes and payroll amounts and all coverage agreements shall be filed with the appropriate insurance carrier or, in the case of a self-insured JOC, with the Commission's Division of Self-Insurance Regulation in Texas. JOC hereby acknowledges the providing false or

misleading insurance coverage information may subject JOC to administrative penalties, criminal penalties, civil penalties or other civil or criminal actions.

19.11. JOC acknowledges its failure to comply with any of these provisions in this **Article XIX** shall be deemed a Breach of Contract by JOC and shall entitle City to terminate any issued Job Orders to JOC and declare this Agreement void if JOC fails to remedy the Breach of Contract within ten (10) calendar days after receipt of notice of a Breach of Contract from City.

## **ARTICLE XX. Prevailing Wages**

JOC shall pay and shall require all of its Sub-Consultants and Subcontractors to pay prevailing wages, as defined and required by Chapter 2258 of the Texas Government Code, as well as required by the Wage and Labor Standard Provisions as amended in City Ordinance 2008-11-20-1045, said prevailing wages reflected on the then current Buildings Wage Determination in effect at the time this JOC Agreement is executed, for all Work performed under issued Job Orders, unless a particular issued Job Order provides, with City's written concurrence, that prevailing wages are not required to be paid under that particular issued Job Order. JOC acknowledges it shall utilize the Buildings Wage Determination when determining prevailing wages for all issued Job Orders. If JOC is required to pay the prevailing wage for a job classification not found on the cited Buildings Wage Determination, JOC shall utilize the Building Wage Determination in effect at the time this JOC Agreement is executed, with concurrence of that use of the Building Wage Determination job classification from City.

## **ARTICLE XXI. Performance Bond**

21.01. Subject to the Job Order value exceptions listed below, upon City Council approval of contract award, the JOC shall furnish City with a performance bond executed on a form or template approved by City, in accordance with the provisions of Chapter 2269 of the Texas Government Code, based on the amount of any task order.

21.02. **Job Order Less Than \$100,000.00.** For issued Job Orders less than \$100,000.00, JOC shall not be required to post a Performance Bond.

21.03. **Job Orders Greater Than \$100,000.00.** For issued Job Orders with a dollar value equal to or greater than \$100,000.00, JOC shall be required to post the City-required Performance Bond, which shall be written utilizing and submitted on City's Bond Form.

21.04. **Performance Bond Requirements.** City's Performance Bond requirements are as follows:

- 21.04.1. For all required Performance Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code to issue Performance Bonds in the full amount of the issued Job Order;
- 21.04.2. The Performance Bonds shall provide that the Surety indemnify the City (as the Bond's obligee) for all damages or losses resulting from JOC's (the Bond's principal) default. The Bond(s) shall guarantee JOC's performance of all performance terms and obligations under the issued Job Order;
- 21.04.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bond to bind the issuing surety; and
- 21.04.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253, and shall be executed and delivered to City before beginning any Work on an issued Job Order.
- 21.04.5. JOC acknowledges and understands that the Performance Bond must always be in the full amount of the contract.

21.05. **Performance Bond for Entire Agreement.** JOC hereby may elect to not have to post a Performance Bond for each Job Order when issued and instead provide to City, under the same requirements for Bonds outlined in this **Article XXI**, a Performance Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide both a Performance Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Performance Bond with City.

## **ARTICLE XXII. Payment Bond**

22.01. Subject to the Job Order value exceptions listed below, upon City Council approval of contract award, the JOC shall furnish City with a payment bond executed on a form or template approved by City, in accordance with the provisions of Chapter 2269 of the Texas Government Code, based on the amount of any task order.

22.02. **Job Orders Under \$50,000.00.** For all issued Job Orders of \$50,000.00 or less, JOC shall not be required to post a Payment Bond.

22.03. **Job Orders Over \$50,000.00.** For all issued Job Orders with a dollar value equal to or greater than \$50,000.00, JOC shall be required to post the City-required Payment Bonds, written utilizing and submitted on City's Bond Form.

22.04. City's Payment Bond requirements are as follows:

22.04.1. For all required Payment Bonds, JOC shall provide Bonds made payable to City, executed by a corporate surety acceptable to City that is licensed pursuant to the Texas Insurance Code in the full amount of the issued Job Order.

22.04.2. The Payment Bonds shall provide that the Surety indemnify the City (as the Bond's obligee) for all damages or losses resulting from JOC's (the Bond's principal) non-payment(s) for Work performed under the issued Job Order. The Bonds further shall guarantee JOC's payment to all entities performing for Work for JOC, pursuant to an issued Job Order.

22.04.3. The Bonds shall have attached thereto a Power of Attorney, as evidence of the authority of the entity executing the Bonds to bind the issuing surety.

22.04.4. The Bonds shall be furnished in compliance with the statutory requirements of the Texas Government Code Chapter 2253 and Texas Property Code, Chapter 53, Subchapter I and shall be executed and delivered to City before beginning any Work on an issued Job Order.

22.04.5. JOC acknowledges and understands that the Payment Bond must always be in the full amount of the contract.

22.05. **Payment Bond for Entire Agreement.** JOC hereby may elect to not have to post a Payment Bond for each Job Order when issued and instead provide to City, under the same requirements for Payment Bonds outlined in this **Article XXII**, a Payment Bond for the total dollar amount of the anticipated Work JOC might be issued under this Agreement. If JOC elects to provide a Payment Bond for the total dollar amount of anticipated work JOC might be issued under this Agreement, JOC shall coordinate the value of the provided Payment Bond with City.

## **ARTICLE XXIII. Insurance**

23.01. Prior to the commencement of any work under this Agreement, JOC shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled with the Project Name in the Description of Operations

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

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

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

23.03.1. JOC's Liability Insurance: Without limiting any of the other obligations or liabilities of JOC under the Contract Documents, JOC shall purchase and maintain, during the term of this Agreement and at JOC's own expense, the minimum liability insurance coverage described below with insurance companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to City. JOC also shall require each Subcontractor performing work under an issued Job Order, at Subcontractor's own expense, to maintain levels of insurance necessary and appropriate for the Work performed during the term of the issued Job Order, said levels of insurance comply with all applicable laws. Subcontractor's liability insurance shall name JOC, City and, if applicable, the Design Consultant as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in this **Article XXIII** shall show the existence of each policy, together with copies of all policy endorsements showing City and the Design Consultant as an additional insured, and shall be delivered to

City before any Work on an issued Job Order is started. JOC promptly shall furnish, upon the request of and without expense to City, a copy of each policy required, including all endorsements.

- 23.03.2. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of an issued Job Order and acceptance of Work by City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Agreement.
- 23.03.3. City shall be named as additional insured by using endorsement CG 20 26 or broader. The Commercial General Liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Products and Completed Operations coverage shall be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with City. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the issued Job Order in question.
- 23.03.4. Business Automobile Liability Insurance covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. (\$5,000,000 if access to Airfield Operations Area [AOA] is required. Such insurance shall include coverage for loading and unloading hazards.
- 23.03.5. Broad-Form Property Damage, to include Fire Legal Liability coverage for replacement cost of JOC's Work and improvements.
- 23.03.6. Five (5) calendar days prior to a suspension, cancellation or non-renewal of any required line of insurance coverage, JOC shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend JOC and its performance under an issued Job Order and this Agreement if JOC fails to provide said replacement certificate of insurance.
- 23.03.7. If any insurance company providing insurance coverage(s) required under the JOC Contract becomes insolvent or becomes the subject of any rehabilitation, conservatorship, liquidation or similar proceeding, JOC immediately shall procure, upon first notice to JOC or City of such occurrence and without cost to City, replacement insurance coverage before continuing the performance of

the Work on an issued Job Order. Any failure of JOC to provide such replacement insurance coverage shall constitute a material breach of this Agreement.

23.04. In addition to the insurance described in **Section 23.01.1** et seq. herein, JOC shall obtain, at its expense and maintained throughout the duration of this Agreement, All-Risk Builder's Risk Insurance, if an issued Task Order involves the complete construction of a new building, or an All-Risk Installation Floater policy, if an issued Job Order involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk and include, but not be limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the issued Job Order for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the issued Task Order for the Builder's Risk policy. If an Installation Floater policy is provided, City shall be shown as a Joint Named Insured with respect to the issued Task Order. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the issued Job Order. This policy shall be in the name of JOC and naming City, Design Consultant (if applicable) and JOC's Subcontractors, as well as any JOC Sub- Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

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

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

23.06. Loss of Use Insurance. City, at City's option, may purchase and maintain Loss of Use Insurance, insuring City against loss of use of City's property due to fire or other hazards, however caused.

23.07. JOC agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of JOC herein, and provide a certificate of insurance and endorsement that names the JOC and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of JOC. JOC shall provide the CITY with said certificate and endorsement prior to the

commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

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

**City of San Antonio  
Attn: Aviation Department  
Contract Services Division  
9800 Airport Blvd.  
Mezzanine Level  
San Antonio, Texas 78216**

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

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

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

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

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

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

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

23.15. JOC and any Subcontractors are responsible for all damage to their own equipment and/or property.

23.16. Partial occupancy or use in accordance with **Article XXIII** herein shall not commence until the insurance company/companies providing property insurance for both City and JOC have consented to such partial occupancy or use by endorsement or otherwise. City and JOC shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent, with respect to partial occupancy or use, that would cause cancellation, lapse or reduction of any insurance coverages.

#### **ARTICLE XXIV. Release of Claims/Subrogation**

The insurance requirements of this Agreement are a bargained-for allocation of risk of loss. City and JOC release each other from claims arising from injury or loss to either of them or to third parties to/for which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Agreement to maintain, whether or not the party actually has the insurance (hereafter referred to as "Covered Claims"). This Release is additional to and does not limit any other release contained in this Agreement. City and JOC, to the maximum extent allowable without causing cancellation of a required policy, waive Subrogation against each other for Covered Claims.

#### **ARTICLE XXV. Disadvantaged Business Enterprise Requirements**

25.01. It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs), as defined under 49 CFR Part 26, shall have “equality of opportunity” to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all Department of Transportation or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.

25.02. The Contractor agrees to employ good-faith efforts (as defined in the Aviation Department’s DBE Program) to carry out this policy through award of subcontractor contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Contract, and/or the utilization of DBE suppliers where feasible. Contractor is expected to solicit bids from available DBE’s on contracts which offer subcontracting opportunities.

25.03. Contractor specifically agrees to comply with all applicable provisions of the Aviation Department’s DBE Program. The DBE Program may be obtained through the airport’s DBE Liaison Officer at (210) 207-3592 or by contacting the City’s Aviation Department.

25.04. DBE contract specific goal has been established on this RFQ. The applicable DBE goal for Program Management/Construction Management for the Terminal Development Program is ??% of the total amount of the contract.

25.05. The Contractor shall appoint a high-level official to administer and coordinate the Contractor’s efforts to carry out the DBE/ Policy and Program requisites The Contractor’s official should coordinate and ensure approval of the required “Good-Faith Effort Plan” (DBE Form 1)

25.06. Contractor shall either achieve the specific DBE goals for this Project with certified DBEs or shall make good-faith efforts (as defined and approved by the City through the Aviation Department in its DBE Program) to achieve such goals. If Contractor fails to achieve the DBE goals for this Project or fails to maintain the specific DBE goal percentage involvement initially achieved, Contractor must provide documentation demonstrating that Contractor made good-faith efforts in attempting to do so through the submittal of an Aviation Department approved “DBE Good-Faith Effort Plan”.

25.07. The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this

Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate, which may include, but is not limited to:

- 25.07.1. Withholding monthly progress payments;
- 25.07.2. Assessing sanctions;
- 25.07.3. Liquidated damages; and/or
- 25.07.4. Disqualifying Contractor from future bidding as non-responsible.

Contractor agrees to include this clause in each subcontractor contract the Contractor signs with a subcontractor.

25.08. Additionally, Contractor agrees to the following prompt payment clause for all services performed pursuant to this Contract and the retainage payment clause for construction services in the event Contractor performs such work. Contractor further confirms and agrees that Contractor will not withhold any portion of payments due to any subcontractor for work performed pursuant to this contract. unless Contractor and Subcontractor are in a bona fide dispute regarding the payment being withheld.

25.09. The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Contractor receives from the City. In the event Contractor performs any construction work pursuant to this agreement and hires subcontractors to perform such construction work for which Contractor retains any funds as retainage, Contractor agrees to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

From the total of the amount determined to be payable on a partial payment for construction work, depending on contract value, not to exceed 10 percent of such total amount will be deducted and retained by the City until the final payment is made, except as may be provided (at the Contractor's option) in the subsection 90-08 of the FAA Advisory Circular 150/5370-10 titled PAYMENT OF WITHHELD FUNDS. The balance of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95% of the construction work has been completed, the Engineer shall, at the City's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

For construction work, the City may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the construction work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

25.10. Contractor will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the City. This includes, but is not limited to, instances in which Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE.

25.11. The Contractor shall utilize the specific DBEs listed to perform the work and supplies for which each is listed) unless Contractor obtains written consent by the City. Unless the City consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed by the listed DBE.

25.12. The Contractor will be required to obtain the City's DBE Liaison Officer's (DBELO) prior approval through the submittal of Change of Subcontractors/Suppliers DBE Form 3 (Exhibit B) hereto) is to be completed and submitted by the Contractor to BELO for prior approval when adding, changing, or deleting subcontractors that were submitted with the bid and approved by the City's Aviation Department. In cases where Contractor is seeking to terminate a previously identified DBE or reduce the scope of such a DBE, the Contractor will be required to make good faith efforts to find another DBE subcontractor to perform at least the same amount of work under the contract as the DBE that was terminated or whose scope of Work was reduced, to the extent needed to meet the contract goal the City has established for this Contract.

25.13. Such written consent will be provided only if the City agrees, for reasons stated in the concurrence document, that the Contractor has good cause to terminate or reduce the scope of Work of the DBE firm. For purposes of this paragraph, good cause includes circumstances listed in 49 CFR § 26

25.14. Before transmitting to the City a request to terminate and/or substitute a DBE subcontractor or reduce the DBE's scope of Work, Contractor must give notice in writing to the DBE subcontractor, with a copy to the City's Aviation Department of its intent to request to terminate and/or substitute the DBE or reduce its scope of Work, and the reason(s) for the request.

25.15. The Contractor must give the DBE five (5) business days to respond to the Contractor's notice and advise the City and the Contractor of the reasons, if any, why the DBE objects to the proposed termination or scope reduction of its subcontract and why the Contractor's action should

not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

25.16. In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

25.17. Notwithstanding Sections 24.9 through 24.16, in an emergency Contractor may reassign Work from one Subcontractor to another Subcontractor or perform such Work with its own forces or those of an affiliate without prior written approval from City. For purposes of this section, “emergency” means:

- 25.17.1. The safety of workers and the public is at risk;
- 25.17.2. The work in progress is subject to a significant loss (i.e., lose a concrete pour); or
- 25.17.3. The traveling public will be seriously impacted, and excessive travel delays incurred.

In the event of an emergency as defined in this section, Contractor must call in a report to the DBELO outlining the circumstances and the Work reassigned and submit a written notice to City within twenty-four (24) hours of the emergency. To the extent possible, Contractor must seek to reassign Work assigned to a DBE to another DBE. City will maintain a SUBCONTRACTOR EMERGENCY REASSIGNMENT – CALL IN LOG. Contractor must assess and report the value of the reassigned Work in its reporting to City.

25.18. During the term of this Contract, the Contractor must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Contract, to request additional information, documentation or verification of payments made to subcontractors in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of cancelled checks must properly identify the project name or project number to substantiate payment.

25.19. Contractor shall report DBE Subcontractor/Supplier activity and expenditures through the City of San Antonio online monitoring system. The reporting shall be done on a monthly basis and in the format required by the City’s online monitoring system. Reporting shall include all awards and payments to subcontractors/suppliers for goods and services provided under the agreement during the previous month. This report may be used by the City to verify utilization of and payment to DBEs.

25.20. The Contractor shall maintain records, as specified in the audit and records section of the contract, showing: (i) all subcontract/supplier awards to subcontractors, including specifically awards to DBE firms; (ii) specific efforts to identify and award such contracts to DBEs; and (iii) submit when requested, copies of executed contracts to establish actual DBE participation.

25.21. Contractor agrees to submit periodic reports of subcontract and/or supplier awards to DBE and non-DBE firms in such form and manner and at such times as the Aviation Department shall prescribe and shall provide access to books, records, and accounts to authorized officials of the City, Aviation Department, state, and/or federal agencies for the purpose of verifying DBE participation and good-faith efforts to carry out the City's DBE policy and DBE Program. All Aviation Department contractors are, at City's election, subject to a post-contract DBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a contractor's good-faith efforts on future airport contracts.

25.22. The Contractor shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit B.

25.23. Failure or refusal by Contractor to comply with the DBE and subcontracting provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be debarred from further contracts with the City of San Antonio.

25.24. The goals on this Contract shall also apply to amendments that require work beyond the scope of services originally required or contemplated to accomplish the project. The Contractor is asked to make "good faith efforts" to obtain DBE/ participation for additional scope(s) of services. Amendments that do not alter the type of service originally required to accomplish the project may be undertaken using the subcontractor and suppliers already under contract to the Contractor. Any amendment affecting the scope of service or value of the contract should be documented on a form acceptable to the City

25.25. The City requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of four (4) years after final completion. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

## **ARTICLE XXVI. Precedence in Case of Conflict**

In case of conflict between the elements of this Agreement, the elements have the following Precedence, for the purpose of construction:

- A. Modifications and/or Amendments to this Agreement, if any;
- B. This Agreement, including Attachments;
- C. The Request for Sealed Proposals, including Attachments and addenda (if any);
- D. JOC's submitted Proposal;
- E. Issued Job Orders;
- F. Drawings; and
- G. City's Specifications.

## **ARTICLE XXVII. Waivers**

27.01. **Non-Waiver of City's Rights.** Neither City's review, approval or acceptance of or payment for Work required under this Agreement, pursuant to an issued Job Order, waives City's rights under this Agreement or waives City's rights under any cause of action arising out of the performance of this Agreement.

27.02. **City Waiver and Subsequent JOC Breach.** City's waiver of any breach of any term, covenant, condition or agreement herein contained does not waive any subsequent breach of the same or any other term, covenant, condition or agreement.

## **ARTICLE XXVIII. Indemnification**

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

of CITY, it's officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, CONTRACTOR agrees to indemnify, defend, and hold City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.**

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

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

28.03 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within twenty-four (24) hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. The CITY shall have the right, at its

option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

28.04 Contractor's indemnity obligations under **Article XXVIII** herein shall not be limited in any way by the limits of any insurance coverage or by any limitation on the amount or type of damages, compensation, or benefits payable by, for, or to Contractor, any Subcontractor, supplier, or any other person or entity under any insurance policy, workers' compensation acts, disability benefit acts, or other employee benefits acts.

### **ARTICLE XXIX. Audit of Records**

29.01 JOC acknowledges and accepts the requirements regarding Audit of Records set forth in the City's General Conditions for City of San Antonio Construction Contracts, and additionally agrees to the following terms and conditions of this **Article XXIX**.

29.02 JOC shall retain, maintain and contractually shall require each Sub-Consultant and Subcontractor of JOC to retain and maintain all data, books and other records (hereafter collectively referred to as "records") relating to an issued Job Order and this Agreement for a period of four (4) years after completion of an issued Job Order. JOC acknowledges City may inspect and audit all JOC records at reasonable times and, upon request, JOC shall produce all original records. If approved by City in writing, photographs, microphotographs or other authentic reproductions may be retained and maintained by JOC, its Sub-Consultants and Subcontractors instead of original records and documents. City may withhold any payment to JOC and may deduct from any money owed to JOC, if City finds the retained and maintained documentation on any issued and performed Job Order to be incomplete or erroneous.

### **ARTICLE XXX. Third-Party Antitrust Violations**

JOC hereby assigns to City any claim for overcharges resulting from antitrust violations, to the extent that such violations concern materials or services supplied by third parties to JOC toward fulfillment of the requirements of an issued Job Order and this Agreement.

### **ARTICLE XXXI. Appropriations**

All obligations of City under this Agreement are subject to the appropriation of funds by the San Antonio City Council each fiscal year. If the San Antonio City Council fails to appropriate money for this Agreement in an annual City of San Antonio Budget, City may terminate this Agreement without penalties of any sort.

### **ARTICLE XXXII. Claims and Disputes**

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

32.09. A Claim either by JOC or by City shall be initiated electronically through Unifier and sent to the other Party within twenty-one (21) days after the occurrence of the event giving rise to such Claim.

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

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

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

32.12.3. No consequential damages shall be allowed.

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

32.13. No profit will be allowed on any damage claim.

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

32.15. **Alternative Dispute Resolution.**

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

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

32.15.5. **Mediation.** In the event that City or JOC contend that the other has committed a material breach of this Agreement, or the parties cannot reach an agreement, the Party alleging such a resolution of a claim or dispute pursuant to **Article XXXII.15.4** as a condition precedent to filing any lawsuit, either party shall request mediation of the dispute with the following requirements:

- a. A request for mediation shall be in writing and request that the mediation commence not fewer than thirty (30) or more than ninety (90) days following the date of the request except upon the written agreement of both Parties.
- b. In the event City and JOC are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) days following the date of the request for mediation, all conditions precedent in this **Article XXXII** shall be deemed to have occurred.
- c. The Parties shall share equally the mediator's fee and any filing fees. Venue for any mediation or lawsuit arising under this Agreement shall be in San Antonio, Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement shall be deemed a consent to suit.

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

### **ARTICLE XXXIII. Prohibited Interests in Contracts**

33.01. **Prohibited Financial Interests.** The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency, such as city owned utilities. A City officer or employee has a "prohibited financial interest" in a contract with City or in the sale to the City of land, materials, supplies or service if any of the following individual(s) or entities is a party to the contract or sale:

- 33.01.1. a City officer or City employee; or
- 33.01.2. a City officer's or City employee's spouse, sibling, parent, or other family member within the first degree of consanguinity or affinity; or
- 33.01.3. an entity in which a City officer or a City employee, or his/her parent, child or spouse directly or indirectly owns:
  - 33.01.3.1. ten percent (10%) or more of the voting stock or shares of the entity;  
or
  - 33.01.3.2. ten percent (10%) or more of the fair market value of the entity; or
- 33.01.4. an entity in which any individual or entity listed above is:
  - 33.01.4.1. a JOC Subcontractor or Sub-Consultant on a City contract; or
  - 33.01.4.2. a partner; or
  - 33.01.4.3. a parent or subsidiary business entity.

33.02. JOC warrants and certifies:

33.02.1. JOC, its officers, employees and agents are neither officers nor employees of City.

33.02.2. JOC has tendered to the City a Discretionary Contracts Disclosure Statement, in compliance with City's Ethics Code.

33.03. To enter into this Agreement, City relies on Consultant's warranties and certifications in **Article XXXIII.02.**

### **ARTICLE XXXIV. Non-Discrimination**

34.1 As a party to this Agreement with City, JOC understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, JOC shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. JOC represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Contract award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, JOC shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Subcontractors, Sub-Consultants, vendors, suppliers or commercial customers, nor shall JOC retaliate against any person for reporting instances of such discrimination. JOC shall provide equal opportunity for Subcontractors, Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector subcontracting, sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. JOC shall incorporate this clause into each of its Subcontractor, Sub-Consultant and supplier agreements entered into, pursuant to issued City Job Order agreements/contracts.

34.2 JOC's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement. JOC acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in the termination of an issued Job Order and/or this Agreement, the disqualification of JOC from participating in future City contracts or other sanctions. This **Article XXXIV** is not enforceable by or for the benefit of, nor creates any obligation to, any third party.

34.3 **JOC Outreach and Diversity Plan.** JOC acknowledges and commits, upon its execution of this Agreement, JOC shall provide City a detailed outreach and diversity plan for approval by City, to include a list of all of JOC’s Subcontractors and Sub-Consultants it expects to utilize in performing issued Job Orders and JOC shall require all of its utilized Subcontractors and Sub-Consultants to register in City’s Centralized Vendor Registry (hereafter referred to as “CVR”) through Unifier. JOC commits that it shall obtain approval in writing from City prior to adding, substituting or deleting any approved Subcontractors and/or Sub-Consultant from an issued Job Order.

### **ARTICLE XXXV. Notice**

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

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

Aviation Department  
Attention: Planning and Development  
9800 Airport Blvd  
San Antonio, Texas 78216

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

JOC NAME  
CONTACT NAME  
JOC ADDRESS  
CITY, STATE ZIP CODE

Notices pertaining to a Job Order shall be addressed to the parties at their respective addresses set forth above and also to the addresses specified in the Job Order. A Party’s address for notice shall be changed only by giving written notice to the other Party.

### **ARTICLE XXXVI. Compliance with Law**

36.01. JOC shall comply with the most current version of all applicable federal, state, and local laws, ordinances, rules, orders, directives, regulations, statutes, regulations, FAA Orders, certification requirements and FAA Advisory Circulars, building codes and local regulations. rules, regulations, orders in connection with the work and services performed under this Agreement. Without limiting the foregoing, JOC shall specifically observe and comply and cause its employees, officers, agents, subtenants, contractors, invitees, and licensees to observe and comply with all Rules and Regulations, which include without limitation the rules and regulations adopted in the City’s Code of Ordinances, Chapter 3, Airports, the San Antonio Airport System Sustainable Airport Manual, the Airport Soil Management Plan, SAT Contractor Safety Plan Requirement, SAT Construction Security Plan, and SAT Crane Procedures.

36.02. JOC agrees to comply with the applicable restrictions from Texas Government Code Chapters 2252, 2270, and 2271 prohibiting City from contracting with a company that engages in business with Iran, Sudan, or a designated Foreign Terrorist Organization; boycotts Israel; boycotts firearm entities or firearm trade associations; or boycotts energy companies. By signing this Agreement with the City of San Antonio, JOC hereby verifies they have reviewed the applicable state law restrictions, and warranties compliance with the certification requirements from Texas Government Code §2270.002 and §2274.002, if applicable. City hereby relies on JOC's verification. If found to be false, City may terminate the contract for material breach.

## **ARTICLE XXXVII. Public Information**

37.01. JOC acknowledges that this Agreement, all contract documents, and associated job order proposals, are public information within the meaning of Chapter 552 of the Texas Government Code and, accordingly, may be disclosed to the public.

37.02. JOC shall notify City, immediately, in the event JOC receives any requests for information from a third party, which pertain to the documentation and records referenced herein. JOC understands and agrees that City will process and handle all such requests.

## **ARTICLE XXXVIII. Miscellaneous**

38.01. **Written Amendments.** This Agreement only may be amended by a written agreement, signed by both Parties.

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

38.03. **Invalid, Illegal or Unenforceable Clauses.** If for any reason any one or more paragraphs of this Agreement are held to be invalid or unenforceable, then such invalidity or unenforceability shall not affect, impair, or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses, or parts of this Agreement held to be invalid or unenforceable. The invalidity or unenforceability of any section, sentence, clause, or

parts of this Agreement in any one or more instances shall not affect or prejudice in any way the validity of this Agreement in any other instance.

38.04. **Inure and Assignments.** This Agreement inures to the benefit of and binds the heirs, representatives, executors, administrators, successors and permitted assigns of the Parties hereto. This clause does not authorize any assignment not otherwise authorized.

38.05. **Full and Final Agreement.** This Agreement, together with all other contract documents, approved job orders and any other documents incorporated herein by reference, represents the full and final agreement between the Parties and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

38.06. **No Third Party Beneficiaries.** This Agreement only benefits the Parties, their successors and permitted assigns. This Agreement has no third party beneficiaries, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

38.07. **Interpretation.** Where herein used, plural constructions include the singular and singular constructions include the plural. Whether a pronoun is masculine, feminine or neutral does not affect meaning or application of the relevant term. The words "herein," "hereof" and other similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

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

38.09. **Executed Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than necessary to show execution by or on behalf of all Parties.

38.10. **Additional Documents and Instruments.** The Parties shall execute and deliver such additional documents and instruments as may be necessary fully to effect the provisions hereof. But no such additional documents may alter the rights or obligations of the Parties stated in this Agreement.

38.11. **Director Authority.** The Director of Aviation Department, without further San Antonio City Council action, may agree to, sign and deliver, on behalf of City, all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this

Agreement and also may declare defaults and pursue remedies for such defaults, including termination.

-----*Signature page follows*-----

**IN WITNESS WHEREOF**, the parties have caused their representatives to set their hands and execute this Agreement on the dates reflected below. This Agreement shall become effective on the date of the last signature hereto.

**CITY OF SAN ANTONIO**

**NAME OF COMPANY**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

**EXHIBIT A – AVIATION GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS**

## **EXHIBIT B –DBE COMPLIANCE AND ENFORCEMENT AND DBE CHANGE OR ADDITION OF SUBCONTRACTOR/SUPPLIER FORM**

### **DBE Compliance and Enforcement**

DBE Subcontracting Obligation - Upon approval of the required DBE utilization documentation, Consultant/Contractor shall enter into a subcontract with each approved DBE subcontractor listed in its response submitted to City during the solicitation process (“Submittal”). The subcontract shall be for the scope of work and amount stated in the submittal documents. DBE subcontracts shall not be terminated, nor shall the scope of work or the amount to be paid to the DBE be altered by Consultant/Contractor without the written approval of the Aviation Department’s DBE Liaison Officer (DBELO).

Subcontractor Substitutions, Addition or Deletions - Consultant/Contractor must notify the DBELO in writing of the necessity to substitute, add or delete a DBE in order to fulfill the DBE requirements. A change shall not be made before the DBELO’s approval is given as to the acceptability of the change. The request shall be made utilizing DBE Form 3 (Change of Subcontractor/Supplier) attached hereto.

Failure to Meet DBE Contract Requirements – Failure to utilize DBEs as stated in Consultant’s/Contractor’s Submittal assurances shall constitute a breach of contract and may lead to the termination of the Contract.

Relief from DBE Requirements – After the effective date of the Contract, no relief of the DBE requirements will be granted except in exceptional circumstances. Requests for complete or partial wavier of the DBE requirements of this Contract must be submitted in writing the DBELO. The request for relief must contain details of the request, the circumstances that make the request necessary, and any additional relevant information. The request must be accompanied by a record of all efforts taken by Consultant/Contractor to contract with the DBEs listed in the Submittal or to locate and contract with replacement or substitute DBE subcontractor.

Penalties for Noncompliance - Failure to comply with any portion of the DBE Program, which failure continues for a period of 30 calendar days, or such longer period as the City may in its sole discretion agree to in writing, after Consultant/Contractor receives written notice from City of such noncompliance, may be subject to any or all of the following penalties:

- a. Withholding all or a portion of future payments until Consultant/Contractor is in compliance, as determined by DBELO.
- b. Termination of the Contract.
- c. Debarment from future City contracts or sub-contracts for a minimum of one year and a maximum of three years.

In the event a penalty is imposed, Consultant/Contractor shall continue to make any and all payments due and owing its subcontracts, laborer, suppliers, etc.in full and in a timely manner, without withholding or setoff of any amounts.

The City will actively implement the enforcement actions detailed above.



**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)  
CHANGE OR ADDITION OF SUBCONTRACTORS/SUPPLIERS ON FEDERALLY FUNDED CONTRACTS  
(DBE Form 3)**

**NAME OF PROJECT:** \_\_\_\_\_

Name of Bidder/Proposer: \_\_\_\_\_

The above named firm requests approval of the following addition(s) and/or deletion(s) of the Subcontractor/Supplier firm(s) to the approved DBE *Good Faith Effort Plan* for Federally Funded Contracts (**DBE Form 1**) and *Letter of Intent* (**DBE Form 2**) as originally submitted as part of the above referenced project. **No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

| Delete | Name of Firm | Is firm a Subcontractor or Supplier | Description of Work to be Performed by Firm | Is firm DBE Certified Yes or No? | Total Dollars of Work to be Performed by Firm |
|--------|--------------|-------------------------------------|---|----------------------------------|---|
|        |              |                                     |   |                                  |   |
|        |              |                                     |   |                                  |   |
|        |              |                                     |   |                                  |   |

REASON(S) FOR REMOVING EACH SUBCONTRACTOR(S)/SUPPLIER(S) LISTED ABOVE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Please indicate the name of the firm(s) you wish to add or substitute. **A Letter of Intent (DBE Form 2) for any additional/substitute subcontractor(s)/supplier(s) must be submitted to the City for approval with this form. No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

| Add | Name of Firm | Is firm a Subcontractor or Supplier | Description of Work to be Performed by Firm | Is firm DBE Certified Yes or No? | Estimated Dollars of Work to be Performed by Firm |
|-----|--------------|-------------------------------------|---|----------------------------------|---|
|     |              |                                     |   |                                  |   |
|     |              |                                     |   |                                  |   |
|     |              |                                     |   |                                  |   |

1. If a DBE Subcontractor/Supplier was deleted/terminated/replaced, was it replaced with another DBE Subcontractor/Supplier? Yes \_\_\_\_\_ No \_\_\_\_\_ If not, why not: \_\_\_\_\_
2. If another DBE Subcontractor/Supplier did not replace the DBE Subcontractor/Supplier, please submit for our review the good faith efforts used to find another DBE to perform at least the same amount of work under the contract as the DBE that was deleted/terminated/replaced.
3. If a Subcontractor/Supplier is added at any time during this project, Contractor shall submit for our review and approval the good faith efforts used to find a DBE to perform such work.

**AFFIRMATION**

*THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

Name & Title of Authorized Official: \_\_\_\_\_

Signature: \_\_\_\_\_

Approved: \_\_\_\_\_  
 AVIATION DEPARTMENT DBE LIAISON OFFICER

# EXHIBIT C - APPLICABLE BUILDING WAGE DETERMINATION

General Decision Number: TX20240231 04/05/2024

Superseded General Decision Number: TX20230231

State: Texas

Construction Type: Building

County: Bexar County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

|   |   |
|---|---|
| If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: | . Executive Order 14026 generally applies to the contract.<br>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.  |
| If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:         | . Executive Order 13658 generally applies to the contract.<br>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024. |

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

| Modification Number | Publication Date |
|---------------------|------------------|
| 0                   | 01/05/2024       |
| 1                   | 01/12/2024       |
| 2                   | 04/05/2024       |

ASBE0087-014 06/04/2023

|  | Rates    | Fringes |
|--|----------|---------|
| ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation).... | \$ 28.95 | 8.39    |

BOIL0074-003 07/01/2023

|                  | Rates    | Fringes |
|------------------|----------|---------|
| BOILERMAKER..... | \$ 37.00 | 24.64   |

\* ELEC0060-003 01/01/2024

|  | Rates    | Fringes  |
|--|----------|----------|
| ELECTRICIAN (Communication Technician Only)..... | \$ 33.50 | 18%+5.45 |

\* ELEC0060-004 01/01/2024

|  | Rates    | Fringes  |
|--|----------|----------|
| ELECTRICIAN (Excludes Low Voltage Wiring)..... | \$ 33.50 | 18%+5.45 |

ELEV0081-001 01/01/2023

|                        | Rates    | Fringes    |
|------------------------|----------|------------|
| ELEVATOR MECHANIC..... | \$ 46.83 | 37.335+a+b |

FOOTNOTES:

a. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

b. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.

ENGI0450-002 04/01/2014

|   | Rates    | Fringes |
|---|----------|---------|
| POWER EQUIPMENT OPERATOR<br>Cranes..... | \$ 34.85 | 9.85    |

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IRON0066-013 06/01/2023

|                             | Rates    | Fringes |
|-----------------------------|----------|---------|
| IRONWORKER, STRUCTURAL..... | \$ 26.00 | 7.53    |

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IRON0084-011 06/01/2023

|                             | Rates    | Fringes |
|-----------------------------|----------|---------|
| IRONWORKER, ORNAMENTAL..... | \$ 27.51 | 8.13    |

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PLUM0142-009 07/01/2023

|  | Rates    | Fringes |
|--|----------|---------|
| HVAC MECHANIC (Electrical<br>Temperature Control<br>Installation & Unit<br>Installation Only)..... | \$ 35.95 | 11.25   |
| PIPEFITTER (Including HVAC<br>Pipe Installation).....  | \$ 35.95 | 11.25   |
| Including HVAC Pipe Installation   |          |         |
| PLUMBER.....   | \$ 35.95 | 11.25   |
| Excludes HVAC Pipe Installation  |          |         |

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\* SFTX0669-002 04/01/2024

|  | Rates    | Fringes |
|--|----------|---------|
| SPRINKLER FITTER (Fire<br>Sprinklers)..... | \$ 36.15 | 23.88   |

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SHEE0067-004 07/03/2023

|   | Rates    | Fringes |
|---|----------|---------|
| Sheet metal worker<br>Excludes HVAC Duct<br>Installation..... | \$ 30.24 | 15.89   |
| HVAC Duct Installation Only.                                  | \$ 30.24 | 15.89   |

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\*\* SUCOSA 1/5/2024

|              | Rates    | Fringes |
|--------------|----------|---------|
| GLAZIER..... | \$ 12.59 | 0.87    |

\* SUTX2014-006 07/21/2014

|   | Rates       | Fringes |
|---|-------------|---------|
| BRICKLAYER.....   | \$ 22.15    | 0.00    |
| CARPENTER (Acoustical Ceiling<br>Installation Only).....  | \$ 17.83    | 0.00    |
| CARPENTER (Form Work Only).....   | \$ 13.63 ** | 0.00    |
| CARPENTER, Excludes<br>Acoustical Ceiling<br>Installation, Drywall<br>Hanging, Form Work, and Metal<br>Stud Installation..... | \$ 16.86 ** | 4.17    |
| CAULKER.....  | \$ 15.00 ** | 0.00    |
| CEMENT MASON/CONCRETE FINISHER...   | \$ 22.27    | 5.30    |
| DRYWALL FINISHER/TAPER.....   | \$ 13.81 ** | 0.00    |
| DRYWALL HANGER AND METAL STUD<br>INSTALLER.....   | \$ 15.18 ** | 0.00    |
| ELECTRICIAN (Low Voltage<br>Wiring Only).....   | \$ 20.39    | 3.04    |
| IRONWORKER, REINFORCING.....  | \$ 12.27 ** | 0.00    |
| LABORER: Common or General.....   | \$ 10.75 ** | 0.00    |
| LABORER: Mason Tender - Brick...  | \$ 11.88 ** | 0.00    |
| LABORER: Mason Tender -<br>Cement/Concrete.....   | \$ 12.00 ** | 0.00    |
| LABORER: Pipelayer.....   | \$ 11.00 ** | 0.00    |
| LABORER: Roof Tearoff.....  | \$ 11.28 ** | 0.00    |
| LABORER: Landscape and<br>Irrigation.....   | \$ 8.00 **  | 0.00    |
| OPERATOR:<br>Backhoe/Excavator/Trackhoe.....  | \$ 15.98 ** | 0.00    |
| OPERATOR: Bobcat/Skid<br>Steer/Skid Loader.....   | \$ 14.00 ** | 0.00    |
| OPERATOR: Bulldozer.....  | \$ 14.00 ** | 0.00    |
| OPERATOR: Drill.....  | \$ 14.50 ** | 0.00    |

|   |             |      |
|---|-------------|------|
| OPERATOR: Forklift.....   | \$ 12.50 ** | 0.00 |
| OPERATOR: Grader/Blade.....   | \$ 23.00    | 5.07 |
| OPERATOR: Loader.....   | \$ 12.79 ** | 0.00 |
| OPERATOR: Mechanic.....   | \$ 18.75    | 5.12 |
| OPERATOR: Paver (Asphalt,<br>Aggregate, and Concrete).....                      | \$ 16.03 ** | 0.00 |
| OPERATOR: Roller.....   | \$ 12.00 ** | 0.00 |
| PAINTER (Brush, Roller and<br>Spray), Excludes Drywall<br>Finishing/Taping..... |             |      |
|   | \$ 13.07 ** | 0.00 |
| ROOFER.....   | \$ 12.00 ** | 0.00 |
| TILE FINISHER.....  | \$ 11.32 ** | 0.00 |
| TILE SETTER.....  | \$ 14.94 ** | 0.00 |
| TRUCK DRIVER: Dump Truck.....   | \$ 12.39 ** | 1.18 |
| TRUCK DRIVER: Flatbed Truck.....  | \$ 19.65    | 8.57 |
| TRUCK DRIVER: Semi-Trailer<br>Truck.....  | \$ 12.50 ** | 0.00 |
| TRUCK DRIVER: Water Truck.....  | \$ 12.00 ** | 4.11 |

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.  
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\*\* Workers in this classification may be entitled to a higher  
minimum wage under Executive Order 14026 (\$17.20) or 13658  
(\$12.90). Please see the Note at the top of the wage  
determination for more information. Please also note that the  
minimum wage requirements of Executive Order 14026 are not  
currently being enforced as to any contract or subcontract to  
which the states of Texas, Louisiana, or Mississippi, including  
their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
for Federal Contractors applies to all contracts subject to the  
Davis-Bacon Act for which the contract is awarded (and any  
solicitation was issued) on or after January 1, 2017. If this  
contract is covered by the EO, the contractor must provide  
employees with 1 hour of paid sick leave for every 30 hours  
they work, up to 56 hours of paid sick leave each year.  
Employees must be permitted to use paid sick leave for their  
own illness, injury or other health-related needs, including

preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates.

LA indicates, the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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**WAGE DETERMINATION APPEALS PROCESS**

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

## EXHIBIT D – INSURANCE REQUIREMENTS

| <i>INSURANCE TYPE</i>   | <i>LIMITS</i>  |
|---|--|
| 1. Workers' Compensation<br>2. Employers' Liability   | Statutory<br>\$1,000,000/\$1,000,000/\$1,000,000   |
| 3. Commercial General Liability<br>Aviation Insurance to include coverage for the following:<br>a) Premises Operations<br>b) Products/Completed Operations<br>c) Personal/Advertising Injury<br>d) Contractual Liability<br>e) Independent Contractors<br>f) Damage to property rented to you*<br>g) Explosion, Collapse, Underground Property Hazard Liability | For Bodily Injury and Property Damage \$2,000,000 per occurrence; \$4,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage.<br><br>f.) \$500,000* |
| 4. Business Automobile Liability<br>a. Owned/leased vehicles<br>b. Non-owned vehicles<br>c. Hired Vehicles  | Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence. With AOA access \$5,000,000 CSL.  |
| 5. Builder's Risk   | All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.                                     |
| 6. Environmental Insurance- (Contractor's Pollution Legal Liability For transporting or handling hazardous materials or regulated substances)   | \$1,000,000 per occurrence, \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.                              |
| 7. *Umbrella Liability Coverage   | \$20,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage.  |
| *If Applicable<br>*Umbrella Liability Coverage may be reduced on the awarded contract with approved submitted waiver  |  |

## **EXHIBIT E – FEDERAL CONTRACT PROVISIONS**

*These Required Federal Contract Provisions for Construction Contracts provisions comply with the FAA’s required Contract Provisions for Airport Improvement Program and for Obligated Sponsors, which may be found at [https://www.faa.gov/airports/aip/procurement/federal\\_contract\\_provisions/](https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/). If there is a conflict between this Exhibit N (Required Federal Contract Provisions) and the FAA Provisions, the FAA Provisions control. As used in this Exhibit N (Required Federal Contract Provisions), “this contract” refers to this Contract and “Sponsor” refers to City.*

### **1. ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

### **2. BUY AMERICAN PREFERENCE**

The Contractor agrees to comply with 49 USC § 50101, BABA and other related Made in America Laws,<sup>1</sup> U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

### **3. GENERAL CIVIL RIGHTS PROVISIONS**

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the

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<sup>1</sup> Per Executive Order 14005 “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

completion of the contract.

#### 4. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt

by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## **5. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority

populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

## **6. COPELAND “ANTI-KICKBACK” ACT**

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

## **7. DAVIS-BACON REQUIREMENTS**

### **1. Minimum Wages.**

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional

classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act

have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and Basic Records.

- (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this

purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5(a)(3)(i), and that such information is correct and complete;
- (2) That each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

- (iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make

such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate

on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### 5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR §§ 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

#### 7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

#### 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government

contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

## **8. DISADVANTAGED BUSINESS ENTERPRISES**

### **Contract Assurance (49 CFR § 26.13) –**

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (49 CFR § 26.29) –** The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from City. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of City. This clause applies to both DBE and non-DBE subcontractors.

## **9. ENERGY CONSERVATION REQUIREMENTS**

Contractor agrees to comply with, and require subcontractors to comply with, mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201 *et seq*).

## **10. EQUAL OPPORTUNITY CLAUSE**

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment

advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **11. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:

- a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;
- b. “Director” means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. “Employer identification number” means the Federal social security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. “Minority” includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor’s or subcontractor’s failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor

should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process

has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to

ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the

Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

## **12. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

This contract and any resulting subcontracts hereby incorporate by reference the provisions of 29 CFR part 201, et seq., the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

## **13. PROHIBITION OF SEGREGATED FACILITIES**

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal

Employment Opportunity clause of this contract.

#### **14. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

This contract and any resulting subcontracts hereby incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

#### **15. PROCUREMENT OF RECOVERED MATERIALS**

Contractor agrees to, and shall require all subcontractors to agree to, comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, Contractor and subcontractors shall use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or

- a) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

#### **16. CERTIFICATION REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

By entering into this Agreement Contractor certifies and represents that

Contractor is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

- a) Contractor is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Contractor must ensure that no funding goes to any subcontractor who:

- Has been convicted of a Federal felony within the last 24 months; or
- Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

Contractor shall require each subcontractor to complete the two certificate statements below and include this requirement to complete the two certificate statements in all lower tier subcontracts. Subcontractor must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response.

Certifications:

The applicant represents that it is ( ) is not ( ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

The applicant represents that it is ( ) is not ( ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

If any subcontractor responds in the affirmative to either of the above representations, the subcontractor is ineligible to receive a contract unless City has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

## **17. TERMINATION FOR DEFAULT (CONSTRUCTION)**

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated

with Owner termination of this contract due to default of the Contractor.

### **18. TRADE RESTRICTION CERTIFICATION**

Entering into this contract, Contractor certifies that with respect to this contract, Contractor –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

Contractor must provide immediate written notice to the Owner if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to a contractor or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Contractor has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when awarding this

contract. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## **19. VETERAN’S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

## **20. TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

## **21. AFFIRMATIVE ACTION**

1. Contractor’s attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows:

### **Timetables**

|  |       |
|--|-------|
| Goals for minority participation for each trade: | 47.8% |
| Goals for female participation in each trade:    | 6.9%  |

These goals are applicable to all of the Contractor’s construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both

its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this contract, the "covered area" is the State of Texas, County of Bexar and City of San Antonio.

## **22. TERMINATION FOR CONVENIENCE**

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- a) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;

- b) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- c) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- d) reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provide are in addition to any other rights and remedies provided by law or under this contract.

### **23. CERTIFICATION REGARDING DEBARMENT**

By entering into this contract, Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

### **24. CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

Contractor shall verify that each lower tier subcontract that exceeds \$25,000 under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. Contractor shall accomplish this by:

- 1. Checking the System for Award Management at website: <http://www.sam.gov>.
- 2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
- 3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant Contractor or subcontractor.

### **25. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

#### **1. Overtime Requirements.**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

## 2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

## 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

## 4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

## **26. CERTIFICATION REGARDING LOBBYING**

By entering into this contract, Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents

for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **27. BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Contractor written notice that describes the nature of the breach and corrective actions Contractor must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which Contractor must correct the breach. Owner may proceed with termination of the contract if Contractor fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

## **28. CLEAN AIR AND WATER POLLUTION CONTROL**

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceed \$150,000.

## **29. CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

Contractor, to the greatest extent practicable, will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

## **30. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE**

## **SERVICES OR EQUIPMENT**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

**EXHIBIT F – FAA ADVISORY CIRCULARS-AIR OPERATIONS AREA (AOA)**



U.S. Department  
of Transportation

Federal Aviation  
Administration

# Advisory Circular

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**Subject:** Painting, Marking, and Lighting of Vehicles Used on an Airport      **Date:** April 1, 2010      **AC No:** AC 150/5210-5D  
**Initiated by:** AAS-100      **Change:**

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1. **PURPOSE.** This advisory circular (AC) provides guidance, specifications, and standards for painting, marking, and lighting of vehicles operating in the airport air operations area (AOA). The approved lights, colors, and markings herein assure the conspicuity of vehicles operating in the AOA from both the ground and the air.

2. **CANCELLATION.** This AC cancels AC 150/5210-5C, Painting, Marking, and Lighting of Vehicles Used on an Airport, dated August 31, 2007.

3. **APPLICATION.** The Federal Aviation Administration (FAA) recommends the guidelines and standards in this Advisory Circular for vehicles operating in the airport AOA. In general, use of this AC is not mandatory. *However*, use of this AC is mandatory for vehicles funded with federal grant monies through the Airport Improvement Program (AIP) and/or with revenue from the Passenger Facility Charges (PFC) Program. See Grant Assurance No. 34, "Policies, Standards, and Specifications," and PFC Assurance No. 9, "Standard and Specifications."

Vehicles covered by this AC that do not meet this standard may be used until the vehicle is repainted or replaced, but no later than **December 31, 2010**.

4. **PRINCIPAL CHANGES.** This AC contains new specifications and recommendations for the painting, marking, and lighting of Towbarless Tow Vehicles (TLTVs).

5. **METRIC UNITS.** To promote an orderly transition to metric units, this AC includes both English and metric dimensions. The metric conversions may not be exact equivalents, and until there is an official changeover to the metric system, the English dimensions will govern.

6. **COMMENTS OR SUGGESTIONS** for improvements to this AC should be sent to:

Manager, Airport Engineering Division  
Federal Aviation Administration  
ATTN: AAS-100  
800 Independence Avenue, S.W.  
Washington, DC 20591

Michael J. O'Donnell  
Director of Airport Safety and Standards

**PAINTING, MARKING, AND LIGHTING OF VEHICLES USED ON AN AIRPORT****1. SOURCES OF APPLICABLE DOCUMENTS.**

- a. American National Standards Institute, Inc. (ANSI), 25 West 43rd St. 4<sup>th</sup> Floor, New York, NY 10036. Website: [www.ansi.org](http://www.ansi.org)
- b. American Society for Testing & Materials (ASTM), ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959. Website: [www.astm.org](http://www.astm.org)
- c. The National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02169-7471. Website: [www.nfpa.org](http://www.nfpa.org)
- d. The U. S. General Services Administration (GSA), Centralized Mailing List Services, 501 West Felix Street, Whse 9, South End P.O. Box 6477, Fort Worth, Texas 76115-6477. Website: [www.gsa.gov](http://www.gsa.gov)
- e. The Superintendent of Documents, U.S. Government Printing Office, 732 North Capitol St. NW, Washington, DC 20401.
- f. Society of Automotive Engineers, Inc. (SAE), 400 Commonwealth Drive, Warrendale, PA 15096-0001. Website: [www.sae.org](http://www.sae.org)
- g. FAA Advisory Circulars: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75<sup>th</sup> Ave., Landover, MD 20785. Website: [www.faa.gov](http://www.faa.gov)
- h. FAA Engineering Briefs: [www.faa.gov/airports/engineering/engineering\\_briefs/](http://www.faa.gov/airports/engineering/engineering_briefs/)

**2. DEFINITIONS.** The following definitions apply in this AC:

- a. **Vehicle** – All conveyances, except aircraft, used on the ground to transport persons, cargo, equipment or those required to perform maintenance, construction, service, and security duties.
- b. **Air Operations Area (AOA)** – The portion of airport that encompasses the landing, take off, taxiing, and parking areas for aircraft.
- c. **Airport Emergency Vehicles** – Vehicles that are authorized in the AOA for emergency purposes (e.g., ambulances, aircraft rescue and fire fighting (ARFF) vehicles and emergency response vehicles) as authorized by the airport traffic control tower (ATCT) or an authorized on-site accident/incident commander.
- d. **Airport Operations Vehicles** – Vehicles routinely used by airport operations personnel for airport inspection and duties associated with airfield operations (such as airfield condition reporting and Incident Command) on the AOA and Movement Area.
- e. **Airport Security Vehicles** – Vehicles that are authorized in the AOA for security purposes, as needed (e.g. police cars).

- f. **Airfield Service Vehicles** – Vehicles that are routinely used in the AOA for airfield service, maintenance, or construction (e.g. snow blowers, snowplows, maintenance trucks, and tractors).
- g. **Aircraft Support Vehicles** – Vehicles that are routinely used in the AOA to support aircraft operations (e.g. aircraft pushback tractors, baggage/cargo tractors or trucks, air conditioning and aviation fuel trucks). These vehicles are typically owned by airlines, vendors, or contractors and are not eligible for Federal funding.
- h. **Reduced Visibility** – Prevailing visibility is less than one statute mile (1609 meters) and/or the runway visual range (RVR) is less than 6,000 feet (1830 meters).
- i. **Movement Area** – The runways, taxiways, and other areas of an airport/heliport that are used for taxiing/hover taxiing, air taxiing, takeoff, and landing of aircraft, exclusive of loading ramps and parking areas. At those airports/heliports with an operating airport traffic control tower (ATCT), specific approval for entry onto the movement area must be obtained from air traffic control (ATC).
- j. **Other Vehicles** – Vehicles that are not routinely authorized in the AOA (e.g. construction vehicles). These vehicles are typically owned by airlines, vendors, or contractors and are not eligible for Federal funding.
- k. **Peak Intensity** – Peak intensity, for purposes of this document, means the maximum magnitude of luminescence as measured in candela.
- l. **Towbarless Tow Vehicle (TLTV)** – a type of aircraft support vehicle whose main purpose is to tow aircraft in the AOA by way of nose gear capture.

### 3. VEHICLE PAINTING.

**NOTE:** *Airport vehicle paint and markings are a safety of flight requirement. The approved colors/markings herein assure conspicuity of vehicles operating in the AOA from both the ground and air.*

- a. **Airport Emergency Vehicles.**
  - (1) **Ambulances.** Ambulance vehicles are painted per the most current version of Federal Specification KKK-A-1822, *Federal Specification for the Star-of-Life Ambulance*. Ambulances are not considered vehicles routinely operating on the AOA.
  - (2) **Aircraft Rescue and Fire Fighting (ARFF) Vehicles.** Yellowish-green is the vehicle color standard. Color specifications are per Appendix A.

**NOTE:** *A yellowish-green color provides optimum visibility during all light levels encountered during a 24-hour day and under variations of light that result from weather and seasonal changes.*

- b. **Airport Operations Vehicles.** Airport operations vehicles may be painted in colors designated by the airport operator. The characteristics must be coordinated with the respective ATCT and identified in the tower letter of agreement.
- c. **Airport Security Vehicles.** Comply with specific state or local requirements.

d. **Airfield Service Vehicles.** Chrome yellow is the vehicle color standard. Color specifications are per Appendix A. When vehicles are equipped with bumper bars 8 inches (200 mm) or more in depth, the bars must be painted in alternate stripes 4 inches (100 mm) in width of chrome yellow and black inclined 45° to the vertical.

e. **Aircraft Support Vehicles.**

(1) Any color or combination of colors other than yellowish-green or chrome yellow. The bumper bar paint scheme in paragraph 3.d (of alternating chrome yellow and black stripe) is recommended.

(2) TLTVs. International orange is the vehicle color standard. Retroreflective tape covering more than 25 percent of the vehicle's vertical surfaces may be used as a temporary measure to meet this standard prior to scheduled vehicle painting.

f. **Other Vehicles.** Any color or combination of colors other than solid black or white.

#### 4. VEHICLE MARKING.

a. **Airport Emergency Vehicles.**

(1) **Ambulances.** Ambulances are marked per the most current version of Federal Specification KKK-A-1822.

(2) **ARFF Vehicles.** Emergency rescue and fire fighting vehicles are marked with the letters "ARFF," "Fire," or "Rescue" and in accordance with 4.c.(1)-(5) of this AC.

b. **Airport Operations Vehicles.** Airport operations vehicles may be marked as designated by the airport operator. Marking must be coordinated with the respective ATCT and identified in the tower letter of agreement.

c. **Airfield Service Vehicles and Aircraft Support Vehicles.**

(1) Airport operator owned vehicles must display an identification number on each side and on the roof (the hood should be used if the vehicle has no roof).

(2) Side numbers will be a minimum of 16 inches (410 mm) in height and conspicuously located.

(3) Roof numbers will be a minimum of 24 inches (610 mm) in height and affixed with their bases toward the front of the vehicle. The identification numbers should provide sharp color contrast to the vehicle color.

(4) In addition to the identification numbers, airport operator-owned vehicles must display either the name of the airport and/or the airport insignia.

(5) To further improve night-time recognition of vehicles, a minimum 8 inch (200 mm) wide horizontal band of high gloss white paint or white reflective tape (Retroreflective, ASTM-D 4956-09, *Standard Specification for Retroreflective Sheeting for Traffic Control*, Type III & above) must be used around the vehicle's surface. Figures 1, 2, and 3 show suggested locations for the horizontal reflective band.

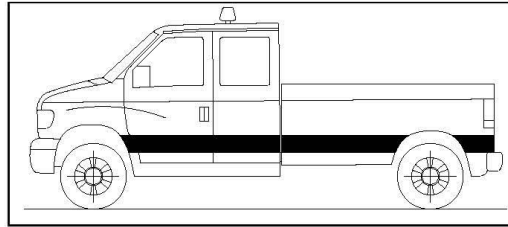


Figure 1: Suggested location for the horizontal reflective band, Option 1

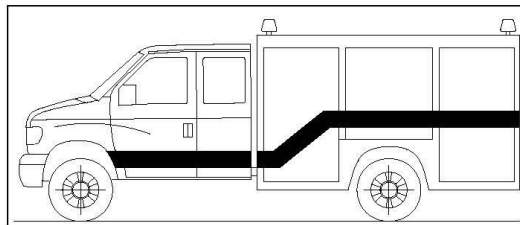


Figure 2: Suggested location for the horizontal reflective band, Option 2

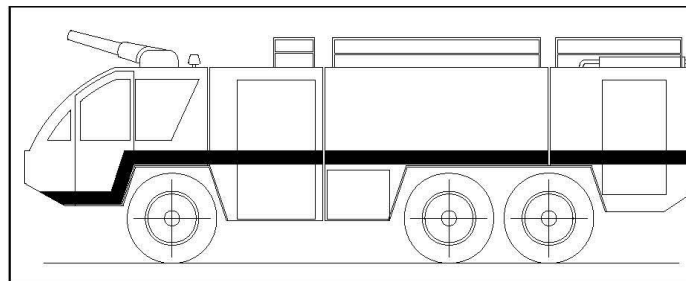


Figure 3: Suggested location for the horizontal reflective band, Option 3

(6) TLTVs. Retroreflective tape is used to outline the shape of a TLTV. If the vertical edge of the vehicle is rounded, the tape should be placed on the rounded portion to reflect light in both the horizontal and vertical planes. Where the placement of the tape may interfere with, or may be worn down by, maintenance or operational activities, tape is not required. Suggested locations for the retroreflective bands are shown in Figure 4.

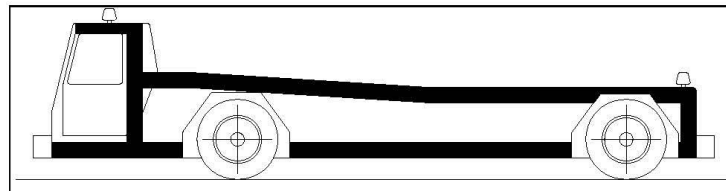


Figure 4: Suggested placement of retroreflective tape on a TLTV

**d. Airport Security and Other Vehicles.**

(1) Vehicles other than those that routinely traverse any portion of the AOA under the control of ATC, which are not escorted by a vehicle in constant two-way radio communication with ATC and properly equipped and authorized to operate in the AOA, must be provided with a flag on a staff attached to the vehicle so that the flag will be readily visible.

(2) At airports without air traffic control facilities, flags must be provided on all vehicles.

(3) The flag must be at least a 3-foot by 3-foot (0.9 meter by 0.9 meter) square having a checkered pattern of international orange and white squares at least 1 foot (300 mm) on each side (see Appendix A for the fabric color specification).

**5. VEHICLE LIGHTING.**

**a. Airfield Service, Aircraft Support, and Airport Operations Vehicles.**

(1) The standard for identification lighting is a yellow flashing light that is mounted on the uppermost part of the vehicle structure. A steady yellow light designates vehicles limited to non-movement areas.

(2) The light must be visible from any direction, day and night, including from the air.

(3) Color specifications for vehicle identification lights are per Appendix B.

(4) TLTVs. An LED light bar placed above the operator's cab may be used in place of the rotating yellow flashing light. In addition, a yellow flashing light (of any type) must be installed on the upper left-rear and right-rear corners of the TLTV, and must be activated when an aircraft is in tow. The size of the rear flashing lights must be large enough to meet the requirements of Section 5.c, but not so large as to interfere with the normal or towing operations of the TLTV.

**b. Airport Emergency, Security, and Other Vehicles, which are not escorted by a properly lighted vehicle, must be identified during periods of low visibility by a light.**

**c. Characteristics of Flashing Lights:**

(1) Ambulance lights must meet the specifications in the most current version of Federal Specification KKK-A-1822, and ARFF vehicles must meet NFPA, state, and local requirements.

(2) Lights must have peak intensity within the range of 40 to 400 candelas (effective) from 0° (horizontal) up to 10° above the horizontal and for 360° horizontally. The upper limit of 400 candelas (effective) is necessary to avoid damage to night vision.

(3) From 10° to 15° above the horizontal plane, the light output must be 1/10<sup>th</sup> of peak intensity or between 4 and 40 candelas (effective).

- (4) Lights must flash at  $75 \pm 15$  flashes per minute.

**NOTES:**

1. *The effective intensity of a flashing light is equal to the intensity of a steady-burning (fixed) light of the same color that produces the same visual range under identical conditions of observation.*
2. *If xenon flashtubes are used, refer to AC 150/5345-43, Specification for Obstruction Lighting Equipment, for guidance concerning methods of calculating effective intensity.*

**d. Light Colors.**

- (1) **Airport Emergency Vehicles.**
  - (a) **Ambulances.** Per the most current version of Federal Specification KKK-A-1822.
  - (b) **ARFF Vehicles.** Red or a combination of red-and-white flashing lights per the chromaticity requirements in Appendix B.
- (2) **Airport Security Vehicles.** Signal blue or a combination of red and signal blue flashing light per the chromaticity requirements in Appendix B.
- (3) **Airfield Service, Aircraft Support, Airport Operations, and Other Vehicles.** Yellow flashing light per the chromaticity requirements in Appendix B.

## APPENDIX A. COLOR SPECIFICATIONS

**A-1. SPECIFICATIONS.** Colors specified in Table A-1 are per the Commission Internationale de l'Eclairage (CIE) L\*a\*b\* system of color specification. For a description of this system, refer to American Society for Testing & Materials (ASTM) D 2244, *Standard Practice for Calculation of Color Tolerances and Color Differences from Instrumentally Measured Color Coordinates*.

Table A-1. Specification for vehicle and flag colors

| Standard Illuminant D65<br>Usage | Chrome Yellow |      |      | Yellowish-Green |       |      | International Orange        |      |      |
|----------------------------------|---------------|------|------|-----------------|-------|------|-----------------------------|------|------|
|                                  | Vehicle Paint |      |      | Vehicle Paint   |       |      | Vehicle Paint / Flag Fabric |      |      |
| CIELAB DATA                      | L*            | a*   | b*   | L*              | a*    | b*   | L*                          | a*   | b*   |
| Centroid Color                   | 72.8          | 24.4 | 77.6 | 78.3            | -10.2 | 80.4 | 45.0                        | 53.5 | 52.0 |
| Point 1                          | 72.8          | 31.8 | 82.9 | 78.3            | -9.0  | 92.0 | 45.0                        | 61.4 | 47.8 |
| Point 2                          | 72.8          | 25.5 | 66.7 | 78.3            | -7.6  | 73.2 | 45.0                        | 53.9 | 41.4 |
| Point 3                          | 72.8          | 18.0 | 69.3 | 78.3            | -11.0 | 69.3 | 45.0                        | 53.5 | 53.4 |
| Point 4                          | 72.8          | 22.4 | 86.0 | 78.3            | -13.4 | 86.2 | 45.0                        | 49.7 | 60.4 |
| Light Limit                      | 77.8          |      |      | 83.3            |       |      | 49.9                        |      |      |
| Dark Limit                       | 67.8          |      |      | 73.3            |       |      | 41.6                        |      |      |
| Max ΔE                           | 11.1          |      |      | 11.7            |       |      | 10.7                        |      |      |

**A-2. COLOR TESTS.** Acceptable colors are those that meet the gloss rating test and either a visual or an instrumental color test as follows:

**NOTE:** *Flag fabric colors must meet either the instrumental tests in Table A-1 or the visual method described in paragraph A-2b(1).*

a. **Gloss Rating Test.** This test is performed per ASTM D 523, *Standard Test Method for Specular Gloss*, on a paint sample of the color to be applied on the vehicle. An acceptable color sample is high gloss with a minimum gloss rating of 70 units, for 60° geometry.

b. **Color Test Methods:**

(1) **Visual.** Prepare a master specimen of the color (per Table A-1) and gloss (per paragraph A-2a). This specimen will be the master color and be used as the basis of comparison per ASTM D 5531-05, *Standard Guide for the Preparation, Maintenance, and Distribution of Physical Product Standards for Color and Geometric Appearance of Coatings*. To verify the paint color of a vehicle visually, vehicle paint samples must be

prepared and viewed per ASTM D 1729-96 (Reapproved 2009), *Standard Practice for Visual Appraisal of Colors and Color Differences of Diffusely-Illuminated Opaque Materials*.

**(2) Instrumental.** This test requires a test specimen sample and reference to Table A-1. All test specimen measurements should be conducted per ASTM E 1164-09a *Standard Practice for Obtaining Spectrometric Data for Object-Color Evaluation*. Test specimen tolerances must be per Table A-1 per the following:

(a) Plot the centroid color using the a\* and b\* CIELAB coordinate data from Table A-1 on graph paper or by entry of the coordinate data into a computer program. Plot and connect points 1 through 4 from the same table to form a quadrilateral; noting that the centroid color is within this figure. See Figure A-1 for plots of all three color specifications in Table A-1.

(b) Perform color sample measurements per ASTM E 1164-09a. If necessary, convert measurements to CIELAB L\*, a\*, and b\* color space. See ASTM E 308-08, *Standard Practice for Computing the Colors of Objects by Using the CIE System*, for color space conversion formulae.

(c) An acceptable color is one that meets:

(i) the chromaticity requirements of the color samples a\* and b\* CIELAB coordinate data by falling within the quadrilateral;

(ii) the L\* data lightness requirement by falling within the range defined by the light and dark data of Table A-1;

(iii) the total color difference ( $\Delta E$ ) by not exceeding the limits in Table A-1 when the CIELAB data are computed in the following formula:

$$\Delta E = (\Delta L^* + \Delta a^{*2} + \Delta b^{*2})^{\frac{1}{2}}$$

where  $\Delta L^*$ ,  $\Delta a^*$ , and  $\Delta b^*$  values are the differences between those values for the centroid color in Table A-1 and those of the color sample measurements.

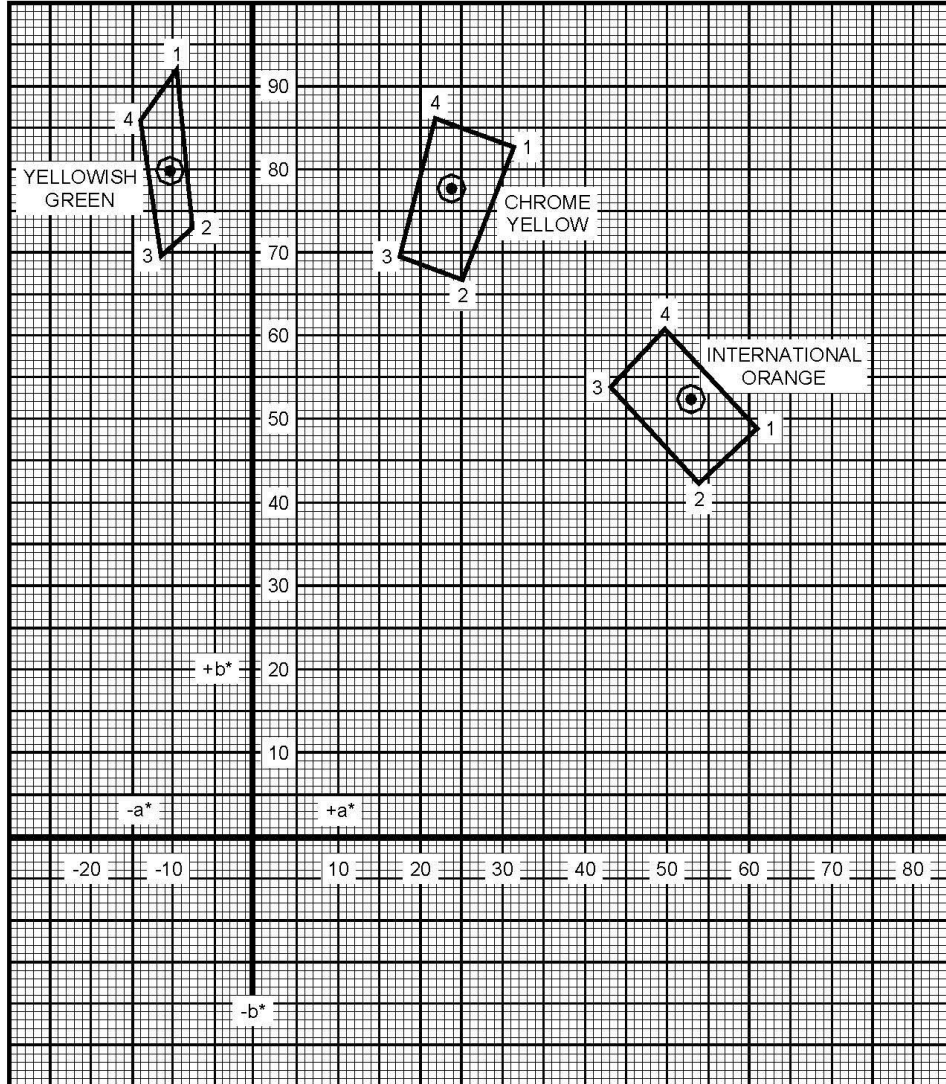


Figure A-1. Plot of selected color paint specifications

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**APPENDIX B. COLOR SPECIFICATIONS FOR VEHICLE IDENTIFICATION LIGHTS**

**B-1. SPECIFICATIONS.** The Society of Automotive Engineers (SAE) Standard J578 Revised December 2006, *Color Specification*, defines the acceptable color boundary limits and measurement of emitted red, white, signal blue, and yellow light for vehicle lights. This standard applies to the overall emitted color of light from the device in lieu of emitted light from any small area of the lens. The color of emitted light must fall within the color boundaries per SAE J578 Revised December 2006 (color boundary equations are in the standard) using color measurement methods detailed in the standard. See FAA Engineering Brief #67, *Light Sources Other Than Incandescent and Xenon for Airport and Obstruction Lighting Fixtures*, for additional information and *Alternative Lighting Devices*.

**EXHIBIT G – FAA ADVISORY CIRCULARS-OPERATIONAL SAFETY ON AIRPORTS DURING CONSTRUCTION**

| NUMBER      | TITLE  |
|-------------|--|
| 150/5370-2G | Operational Safety on Airports During Construction |

**EXHIBIT H –FAA ADVISORY CIRCULARS REQUIRED FOR USE IN AIP  
FUNDED, BIL FUNDED, AND PFC APPROVED PROJECTS**



**FAA  
Airports**

## **Current FAA Advisory Circulars Required for Use in AIP Funded, BIL Funded, and PFC Approved Projects**

Updated: 11/17/2022

View current and previous versions of these ACs and any associated changes at:  
[http://www.faa.gov/airports/resources/advisory\\_circulars](http://www.faa.gov/airports/resources/advisory_circulars) and  
[http://www.faa.gov/regulations\\_policies/advisory\\_circulars/](http://www.faa.gov/regulations_policies/advisory_circulars/).<sup>1</sup>

| <b>NUMBER</b>                  | <b>TITLE</b>   |
|--------------------------------|--|
| 70/7460-1M                     | Obstruction Marking and Lighting   |
| 150/5000-9B                    | Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations |
| 150/5000-17                    | Critical Aircraft and Regular Use Determination                                  |
| 150/5020-1                     | Noise Control and Compatibility Planning for Airports                            |
| 150/5070-6B,<br>Changes 1 - 2  | Airport Master Plans   |
| 150/5070-7<br>Change 1         | The Airport System Planning Process  |
| 150/5100-13C                   | Development of State Aviation Standards for Airport Pavement Construction        |
| 150/5200-28G                   | Notices to Airmen (NOTAMs) for Airport Operators                                 |
| 150/5200-30D,<br>Changes 1 - 2 | Airport Field Condition Assessments and Winter Operations Safety                 |
| 150/5200-31C,<br>Changes 1 - 2 | Airport Emergency Plan   |
| 150/5200-33C                   | Hazardous Wildlife Attractants on or near Airports                               |

<sup>1</sup> All grant recipients are responsible for reviewing errata sheets and addendums pertaining to these Advisory Circulars.

| NUMBER                        | TITLE   |
|-------------------------------|---|
| 150/5200-34A                  | Construction or Establishment of Landfills Near Public Airports   |
| 150/5200-38                   | Protocol for the Conduct and Review of Wildlife Hazard Site Visits, Wildlife Hazard Assessments, and Wildlife Hazard Management Plans |
| 150/5210-5D                   | Painting, Marking, and Lighting of Vehicles Used on an Airport  |
| 150/5210-7D                   | Aircraft Rescue and Fire Fighting Communications  |
| 150/5210-13C                  | Airport Water Rescue Plans and Equipment  |
| 150/5210-14B                  | Aircraft Rescue Fire Fighting Equipment, Tools and Clothing   |
| 150/5210-15A                  | Aircraft Rescue and Firefighting Station Building Design  |
| 150/5210-18A                  | Systems for Interactive Training of Airport Personnel   |
| 150/5210-19A                  | Driver's Enhanced Vision System (DEVs)  |
| 150/5220-10E                  | Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles   |
| 150/5220-16E,<br>Change 1     | Automated Weather Observing Systems (AWOS) for Non-Federal Applications   |
| 150/5220-17B                  | Aircraft Rescue and Fire Fighting (ARFF) Training Facilities  |
| 150/5220-18A                  | Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials   |
| 150/5220-20A                  | Airport Snow and Ice Control Equipment  |
| 150/5220-21C                  | Aircraft Boarding Equipment   |
| 150/5220-22B                  | Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns   |
| 150/5220-23A                  | Frangible Connections   |
| 150/5220-24                   | Airport Foreign Object Debris (FOD) Detection Equipment   |
| 150/5220-25                   | Airport Avian Radar Systems   |
| 150/5220-26,<br>Changes 1 - 2 | Airport Ground Vehicle Automatic Dependent Surveillance - Broadcast (ADS-B) Out Squitter Equipment                                    |
| 150/5230-4C                   | Aircraft Fuel Storage, Handling, Training, and Dispensing on Airports   |
| 150/5300-13B                  | Airport Design  |
| 150/5300-14D                  | Design of Aircraft Deicing Facilities   |
| 150/5300-15A                  | Use of Value Engineering for Engineering and Design of Airport Grant Projects   |

| NUMBER                         | TITLE  |
|--------------------------------|--|
| 150/5300-16B                   | General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey             |
| 150/5300-17C,<br>Change 1      | Standards for Using Remote Sensing Technologies in Airport Surveys   |
| 150/5300-18B,<br>Change 1      | General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards |
| 150/5300-19                    | Airport Data and Information Program   |
| 150/5320-5D                    | Airport Drainage Design  |
| 150/5320-6G                    | Airport Pavement Design and Evaluation   |
| 150/5320-12C,<br>Changes 1 - 8 | Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces   |
| 150/5320-15A                   | Management of Airport Industrial Waste   |
| 150/5320-17A                   | Airfield Pavement Surface Evaluation and Rating Manuals  |
| 150/5325-4B                    | Runway Length Requirements for Airport Design  |
| 150/5335-5D                    | Standardized Method of Reporting Airport Pavement Strength - PCR   |
| 150/5340-1M,<br>Change 1       | Standards for Airport Markings   |
| 150/5340-5D                    | Segmented Circle Airport Marker System   |
| 150/5340-18G,<br>Change 1      | Standards for Airport Sign Systems   |
| 150/5340-26C                   | Maintenance of Airport Visual Aid Facilities   |
| 150/5340-30J                   | Design and Installation Details for Airport Visual Aids  |
| 150/5345-3G                    | Specification for L-821, Panels for the Control of Airport Lighting  |
| 150/5345-5B                    | Specifications for Airport Lighting Circuit Selector Switch  |
| 150/5345-7F                    | Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits   |
| 150/5345-10H                   | Specification for Constant Current Regulators and Regulator Monitors   |
| 150/5345-12F                   | Specification for Airport and Heliport Beacons   |

| NUMBER       | TITLE   |
|--------------|---|
| 150/5345-13B | Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits |
| 150/5345-26E | FAA Specification For L-823 Plug and Receptacle, Cable Connectors                                       |
| 150/5345-27F | FAA Specification for Wind Cone Assemblies  |
| 150/5345-28H | Precision Approach Path Indicator (PAPI) Systems  |
| 150/5345-39E | Specification for L-853, Runway and Taxiway Retroreflective Markers                                     |
| 150/5345-42J | Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories            |
| 150/5345-43J | Specification for Obstruction Lighting Equipment  |
| 150/5345-44K | Specification for Runway and Taxiway Signs  |
| 150/5345-45C | Low-Impact Resistant (LIR) Structures   |
| 150/5345-46E | Specification for Runway and Taxiway Light Fixtures   |
| 150/5345-47C | Specification for Series to Series Isolation Transformers for Airport Lighting Systems                  |
| 150/5345-49D | Specification L-854, Radio Control Equipment  |
| 150/5345-50B | Specification for Portable Runway and Taxiway Lights  |
| 150/5345-51B | Specification for Discharge-Type Flashing Light Equipment   |
| 150/5345-52A | Generic Visual Glideslope Indicators (GVGI)   |
| 150/5345-53D | Airport Lighting Equipment Certification Program  |
| 150/5345-54B | Specification for L-884, Power and Control Unit for Land and Hold Short Lighting Systems                |
| 150/5345-55A | Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure                        |
| 150/5345-56B | Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)                          |
| 150/5360-12F | Airport Signing and Graphics  |
| 150/5360-13A | Airport Terminal Planning   |
| 150/5360-14A | Access to Airports By Individuals With Disabilities   |
| 150/5370-2G  | Operational Safety on Airports During Construction  |

| NUMBER       | TITLE   |
|--------------|---|
| 150/5370-10H | Standard Specifications for Construction of Airports                      |
| 150/5370-11B | Use of Nondestructive Testing in the Evaluation of Airport Pavements      |
| 150/5370-13A | Off-Peak Construction of Airport Pavements Using Hot-Mix Asphalt          |
| 150/5370-15B | Airside Applications for Artificial Turf                                  |
| 150/5370-16  | Rapid Construction of Rigid (Portland Cement Concrete) Airfield Pavements |
| 150/5370-17  | Airside Use of Heated Pavement Systems                                    |
| 150/5380-6C  | Guidelines and Procedures for Maintenance of Airport Pavements            |
| 150/5380-7B  | Airport Pavement Management Program                                       |
| 150/5380-9   | Guidelines and Procedures for Measuring Airfield Pavement Roughness       |
| 150/5390-2C  | Heliport Design   |
| 150/5395-1B  | Seaplane Bases  |

**THE FOLLOWING ADDITIONAL ADVISORY CIRCULARS APPLY TO AIP AND BIL PROJECTS ONLY**

| NUMBER                     | TITLE  |
|----------------------------|--|
| 150/5100-14E, Change 1     | Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects      |
| 150/5100-17, Changes 1 - 7 | Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects |
| 150/5100-21                | State Block Grant Program  |
| 150/5370-12B               | Quality Management for Federally Funded Airport Construction Projects                        |