

AN ORDINANCE **2007-06-21-0697**

SELECTING CLARK CONSTRUCTION GROUP, LLC/THOS. S. BYRNE, A JOINT VENTURE, AS THE BEST VALUE CONTRACTOR FOR THE CONSTRUCTION MANAGER AT RISK AT SAN ANTONIO INTERNATIONAL AIRPORT, ACCEPTING THEIR PROPOSAL FOR PRE-CONSTRUCTION SERVICES, AND AWARDING A CONTRACT IN AN AMOUNT NOT TO EXCEED \$3,759,633.00.

* * * * *

WHEREAS, the City's Airport Expansion Program consists of the construction of one new terminal (Terminal B), and as increased air traffic warrants, a second new terminal (Terminal C); a new parking facility, new bi-level roadway system, utility infrastructure, aircraft apron paving, expansion of the central utility plant, and demolition of existing Terminal 2; and

WHEREAS, the City adopted Competitive Sealed Proposals (CSP) and Design Build on October 23, 2003, and on February 1, 2007, the City Council authorized Construction Manager at Risk (CMR) as a third alternative delivery method; and

WHEREAS, the CMR method enables the City to select a construction contractor prior to completion of final design in order to secure contractor input such as constructability reviews, value engineering, and budget consultation and allows the City to achieve greater design control and continuity in the bidding and execution of subcontracts, as well as the ability to begin construction on portions of the project while design is being completed on others, reducing the project schedule and the number of change orders precipitated by design changes; and

WHEREAS, the CMR contracts directly with the subcontractors and is responsible for delivery of the project in the most expeditious and economical manner consistent with the interests of the City; and

WHEREAS, this Program, with estimated construction costs up to \$200 million, is the first Construction Manager at Risk project to be undertaken by the City of San Antonio, and staff has taken steps to ensure the success of the Program from the selection process through construction, using the services of outside industry experts, as well as outside legal counsel with Construction Management at Risk experience, to develop the solicitation documents and draft the contract; and

WHEREAS, as a result of the City's advertisement and outreach regarding this contracting opportunity, proposals were received on April 25, 2007 from Austin Commercial, LP; Bartlett Cocks/Walbridge Aldinger, a Joint Venture; Clark Construction/Thos. S. Byrne, a Joint Venture; Hunt Construction; Turner Construction Company; and Zachry Construction/Gilbane Building Company, a Joint Venture; and

WHEREAS, an Evaluation Panel comprised of City staff and staff members of other entities who have previously used the CMR delivery method, including the Cities of Phoenix and Houston (Aviation Departments), the University of Texas at San Antonio, and Alamo Community College District, short listed and interviewed the Clark Construction/Thos. S. Byrne, a Joint Venture; Turner Construction Company; and Zachry Construction /Gilbane Building Company, a Joint Venture and based upon its proposal and interview, the Panel recommends the selection of the Clark/Byrne Team as the Construction Manager at Risk for the San Antonio International Airport Terminal Expansion projects.

WHEREAS, the contract format for Construction Manager at Risk is divided into two phases: (1) preconstruction services, and (2) construction services, and the compensation is divided so that

preconstruction services are compensated similar to a professional services contract on an hourly-based not-to-exceed cost estimate, and the construction services are based on a not-to-exceed basis for the cost of construction work to be performed, general conditions costs, and the CMR fee; and

WHEREAS, the proposed ordinance only includes compensation for preconstruction services and upon completion of the design phase, the CMR will provide a Guaranteed Maximum Price (GMP) proposal for the construction costs of each project, which will be brought forward for City Council consideration as an amendment to the original contract, and will include the cost of work, the negotiated CMR fee of 3%, the cost of general conditions, and owner contingency; and

WHEREAS, City Council finds that the Construction Manager at Risk method is best suited for the complex and multi-project nature of this program and desires to select Clark Construction Group, LLC/Thos. S. Byrne, a Joint Venture, as the best value contractor for the Construction Manager at Risk at San Antonio International Airport, accept their Proposal for pre-construction services, and award a contract in an amount not to exceed \$3,759,633.00; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Clark Construction Group, LLC/Thos. S. Byrne, a Joint Venture, is selected as the best value contractor for the Construction Manager at Risk at San Antonio International Airport.

SECTION 2. The proposal of Clark Construction Group, LLC/Thos. S. Byrne, a Joint Venture, is accepted for pre-construction services, and the City Manager, or a designee, is authorized to execute the Construction Manager at Risk Contract, attached as Exhibit 1, in an amount not to exceed \$3,759,633.00.

SECTION 3. The amount of \$896,786.93 is appropriated in SAP Fund 51013000, Capital Improvements Funds, SAP WBS Element AV-00006-01-01-93, SAP GL account 6102100 – Interfund Transfer out entitled TRF TO 33-00151-90-02. The amount of \$896,786.93 is authorized to be transferred to SAP Fund 51099000.

SECTION 4. The budget in SAP Fund 51099000, SAP Project Definition 33-00151, NTE - Project 4 - Terminal B, shall be revised by increasing SAP WBS Element 33-00151-90-02 entitled TRF FR AV-00006-01-01-93, SAP GL account 6101100 – Interfund Transfer In, by the amount \$896,786.93.

SECTION 5. The amount of \$1,773,743.10 is appropriated in SAP Fund 51006000, San Antonio Airport System Construction Fund 2002, SAP WBS Element AV-00004-01-01-07, SAP GL account 6102100 – Interfund Transfer out entitled TRF TO 33-00151-90-03. The amount of \$1,773,743.10 is authorized to be transferred to SAP Fund 51099000.

SECTION 6. The budget in SAP Fund 51099000, SAP Project Definition 33-00151, NTE - Project 4 - Terminal B, shall be revised by increasing SAP WBS Element 33-00151-90-03 entitled TRF FR AV-00004-01-01-07, SAP GL account 6101100 – Interfund Transfer In, by the amount \$1,773,743.10.

SECTION 7. The amount of \$578,690.89 is appropriated in SAP Fund 51006001, 2005 PFC Bonds, SAP WBS Element AV-00012-01-01-06, SAP GL account 6102100 – Interfund Transfer out entitled TRF TO 33-00151-90-04. The amount of \$578,690.89 is authorized to be transferred to SAP Fund 51099000.

SECTION 8. The budget in SAP Fund 51099000, SAP Project Definition 33-00151, NTE - Project 4 - Terminal B, shall be revised by increasing SAP WBS Element 33-00151-90-04 entitled TRF FR AV-00012-01-01-06, SAP GL account 6101100 – Interfund Transfer In, by the amount \$578,690.89.

SECTION 9. The amount of \$50,577.10 is appropriated in SAP Fund 51013000, Capital Improvements Funds, SAP WBS Element AV-00006-01-01-94, SAP GL account 6102100 – Interfund Transfer out entitled TRF TO 33-00156-90-02. The amount of \$50,577.10 is authorized to be transferred to SAP Fund 51099000.

SECTION 10. The budget in SAP Fund 51099000, SAP Project Definition 33-00156, NTE - Project 9 - Central Plant Mods, shall be revised by increasing SAP WBS Element 33-00156-90-02 entitled TRF FR AV-00006-01-01-94, SAP GL account 6101100 – Interfund Transfer In, by the amount \$50,577.10.

SECTION 11. The amount of \$143,204.87 is appropriated in SAP Fund 51006001, 2005 PFC Bonds, SAP WBS Element AV-00012-01-01-05, SAP GL account 6102100 – Interfund Transfer out entitled TRF TO 33-00156-90-03. The amount of \$143,204.87 is authorized to be transferred to SAP Fund 51099000.

SECTION 12. The budget in SAP Fund 51099000, SAP Project Definition 33-00156, NTE - Project 9 - Central Plant Mods, shall be revised by increasing SAP WBS Element 33-00156-90-03 entitled TRF FR AV-00012-01-01-05, SAP GL account 6101100 – Interfund Transfer In, by the amount \$143,204.87.

SECTION 13. The amount of \$292,512.89 is appropriated in SAP Fund 51014000, PFC Capital Improvement Fund, SAP WBS Element AV-00007-01-01-21, SAP GL account 6102100 – Interfund Transfer out entitled TRF TO 33-00152-90-02. The amount of \$292,512.89 is authorized to be transferred to SAP Fund 51099000.

SECTION 14. The budget in SAP Fund 51099000, SAP Project Definition 33-00152, NTE-Project 12-Terminal 1 Modifications, shall be revised by increasing SAP WBS Element 33-00152-90-02 entitled TRF FR AV-00007-01-01-21, SAP GL account 6101100 – Interfund Transfer In, by the amount \$292,512.89.

SECTION 15. The amount of \$24,117.22 is appropriated in SAP Fund 51013000, Capital Improvement Funds, SAP WBS Element AV-00006-01-02-07, SAP GL account 6102100 – Interfund Transfer out entitled TRF TO 33-00200-90-01. The amount of \$24,117.22 is authorized to be transferred to SAP Fund 51099000.

SECTION 16. The budget in SAP Fund 51099000, SAP Project Definition 33-00200, Terminal 1 In-Bound BHS Replacement, shall be revised by increasing SAP WBS Element 33-00200-90-01 entitled TFR FR AV-00006-01-02-07, SAP GL account 6101100 – Interfund Transfer In, by the amount \$24,117.22.

SECTION 17. The amount of \$3,249,220.92 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00151, NTE - Project 4 - Terminal B, SAP WBS Element 33-00151-05-10, entitled Clark/Byrne Pre-Construction-Terminal B, SAP GL Account 5201140, and is authorized to be encumbered and made payable to Clark Construction Group, LLC/Thos. S. Byrne, for construction costs.

SECTION 18. The amount of \$193,781.97 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00156, NTE - Project 9 - Central Plant Modifications, SAP WBS Element 33-00156-05-10, entitled Clark/Byrne Pre-Construction-CUP, SAP GL Account 5201140, and is authorized to be encumbered and made payable to Clark Construction Group, LLC/Thos. S. Byrne, for construction costs.

SECTION 19. The amount of \$281,987.96 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00152, NTE - Project 12 - Terminal 1 Modifications, SAP WBS Element 33-00152-05-02-01, entitled Clark/Byrne Pre-Construction-Inline BHS, SAP GL Account 5201140, and is authorized to be encumbered and made payable to Clark Construction Group, LLC/Thos. S. Byrne, for construction costs.

SECTION 20. The amount of \$10,524.93 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00152, NTE - Project 12 - Terminal 1 Modifications, SAP WBS Element 33-00152-05-03-01, entitled Clark/Byrne Pre-Construction-Expd Ckpt, SAP GL Account 5201140, and is authorized to be encumbered and made payable to Clark Construction Group, LLC/Thos. S. Byrne, for construction costs.

SECTION 21. The amount of \$24,117.22 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00200, Terminal 1 In-Bound BHS Replacement, SAP WBS Element 33-00200-05-02, entitled Clare/Byrne Pre-Construction - Inbnd BHS, SAP GL Account 5201140, and is authorized to be encumbered and made payable to Clark Construction Group, LLC/Thos. S. Byrne, for construction costs.

SECTION 22. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 23. This Ordinance shall become effective immediately upon passage by eight (8) affirmative votes; otherwise said ordinance shall take effect on the tenth (10th) day after passage.

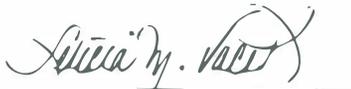
PASSED AND APPROVED this 21st day of June 2007.



M A Y O R

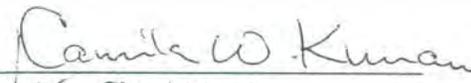
PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



for City Attorney

EXHIBIT 1

Detailed, Grouped by Each Transmittal Number

CM "At Risk" - Construction Management At Risk Project # 000.005

Carter & Burgess, Inc.

San Antonio International Airport
9800 Airport Blvd.
San Antonio, TX 78216

Tel: Fax:

Date: 7/16/2007

Reference Number: 0002

Transmitted To

James Ansari
Clark Construction Group - TX, LP.
7880 Airport Blvd.
Houston, TX 77061
Tel: (713) 636-3705
Fax: (713) 636-3745

Transmitted By

Diane Cook
Carter & Burgess, Inc.
1151 South Terminal Dr.
San Antonio, TX 78216
Tel: 210-832-5003
Fax: 210-832-5008

Acknowledgement Required

Package Transmitted For

Review, Records

Delivered Via

Hand Delivered

Tracking Number

CLB-07-0002-3.0.42

Item #	Qty	Item	Reference	Description	Notes	Status
001	1.00	Notice to Proceed & Contract	Clark/Byrne Notice to Proceed & Fully Executed Contract	(1) original (green sheet) copy of the Work Project Authorization, dated July 16, 2007 & (1) original Fully Executed copy of the Contract for the CM @ Risk Project.		Sent

Cc:	Company Name	Contact Name	Copies	Notes
	San Antonio International Airport	Mark Webb	1	NTP only
	San Antonio International Airport	Frances Sherertz	1	NTP Only
	San Antonio International Airport	Susan St. Cyr	1	Original NTP Only
	City of San Antonio	Anita Martin	1	NTP Only
	San Antonio International Airport	Lisa Lott Brice	1	NTP Only
	City of San Antonio	Leticia Vacek	1	Original NTP Only
	Carter & Burgess, Inc.	Mary Ortega-Itsell C.M.	1	NTP Only
	Carter & Burgess, Inc.	William Foss, A.I.A.	1	NTP Only
	Carter & Burgess, Inc.	Lea Ann Jones, P.E.	1	NTP & Contract Copy
	Carter & Burgess, Inc.	Helena Ragan	1	NTP Only

Remarks

Vicki Ashelin

Signature

7/16/07

Signed Date



**CITY OF SAN ANTONIO
DEPARTMENT OF AVIATION
WORK PROJECT AUTHORIZATION**

**PROJECT: CONSTRUCTION MANAGER AT RISK
AT SAN ANTONIO INTERNATIONAL AIRPORT**

July 16, 2007

**TO: Clark Construction Group, LLC/Thos. S. Byrne, a Joint Venture
Mr. James Ansari
7880 Airport Blvd.
Houston, Texas 77061**

- I. You are hereby notified the Construction Manager at Risk Contract, was approved on June 21, 2007, Ordinance No. 2007-06-21-0697.
- II. This authorization is for Pre-Construction Phase Services, as defined in the contract in the amount of \$3,759,633.
- III. Please coordinate Pre-Construction Phase activities with Ms. Mary Ortega-Itsell, Program Management Team.
- IV. Your contract, properly executed by officials of the City of San Antonio, is attached for your files.

Sincerely,


DIRECTOR OF PUBLIC WORKS

**cc: Mark Webb, Aviation Director
Frances Scherertz, Assistant Aviation Director
Susan St. Cyr, Planning & Engineering, Interim Manager
Anita Martin, SBEDA
Lisa Brice, Aviation Department
City Clerk
Mary Ortega-Itsell, Program Management Team
Diane Cook, Program Management Team
Bill Foss, Program Management Team
Lea Ann Jones, Program Management Team
PMT File**

**CITY OF SAN ANTONIO
CM@RISK-AT-RISK AGREEMENT
(CM@Risk Acts As Constructor – Multiple Projects)**

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CITY OF SAN ANTONIO
CM@RISK-AT-RISK AGREEMENT
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**CITY OF SAN ANTONIO
CM@RISK-AT-RISK AGREEMENT
(CM@Risk Acts as Constructor – Multiple Projects)**

This Construction Management-at-Risk Agreement ("Agreement") is entered into by and between the City of San Antonio, Texas, a Texas Municipal Corporation and home-rule City ("City" or "Owner") by and through its City Manager, pursuant to Ordinance Number _____ passed and approved by the City Council on _____, and _____ a _____ authorized to do business in the State of Texas. ("CM@Risk" or "CMR").

The City and the CM@Risk agree as follows:

This agreement is made effective as of the _____ day of _____ in the year 2007, by and between the

OWNER *(Insert Name and Address)*

The City of San Antonio
Aviation Director
9800 Airport Blvd.
San Antonio, Texas 78216
Fax No. (210)207-3500

The **Owner's Designated Representative** (ODR) is:

The Director of Aviation or his designee.

And the **CM@RISK** *(Insert Name and Address)*

Clark/Byrne a Joint Venture
2502 N Rocky Point Drive
Suite 200
Tamp, FL 33607
Attn: Sid Jordan

For construction management services in connection with the following **PROGRAM**

SAN ANTONIO INTERNATIONAL AIRPORT
TERMINAL EXPANSION PROGRAM

The **DESIGN CONSULTANTS** for the Program are *(Insert Name and Address)*

Milton Babbitt
3D International
219 E. Houston St. - Suite 350
San Antonio, TX 78205
Phone: 210.227.2500

The **PROGRAM MANAGER** for the Program is

911 Central Parkway North
Carter Burgess, Inc.
Suite 425
San Antonio, Texas 78232-5052



ARTICLE 1 GENERAL PROVISIONS

1.1 RELATIONSHIP OF THE PARTIES.

1.1.1 CM@Risk accepts the relationship of trust, good faith and fair dealing established by this Agreement and shall cooperate with the Owner and Design Consultants in furthering the Owner's interests. The CM@Risk accepts this relationship of trust and confidence established with the Owner and covenants with the Owner to furnish the CM@Risk's best skill and judgment in furthering the interests of the Owner. The CM@Risk shall furnish Construction Management Services as set forth herein and shall use the CM@Risk's best efforts to perform the Program and individual Projects in an expeditious and economical manner consistent with the interests of the Owner. The CM@Risk will perform the required services consistent with sound and generally accepted construction management and construction services practice, exercising the degree of skill, care and judgment consistent with such practices in San Antonio, Texas. The Owner shall endeavor to promote harmony and cooperation among the Owner, Design Consultants, CM@Risk and other persons or entities employed by the Owner for the Program.

1.1.2 The recommendations and advice of the CM@Risk concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the CM@Risk's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes and ordinances, building codes, rules and regulations. However, if the CM@Risk recognizes that portions of the Drawings and Specifications are at variance therewith, the CM@Risk shall promptly notify the A/E and Owner in writing.

1.1.3 CM@Risk is an independent contractor and not an agent of City. CM@Risk shall be liable to City for acts and omissions of CM@Risk and CM@Risk's Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work directly or indirectly under contract with CM@Risk, including any design professionals and their consultants and sub-consultants of any tier.

1.1.4 CM@Risk shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to CM@Risk by the terms of the Contract Documents, and to assume toward CM@Risk all the obligations and responsibilities that CM@Risk, by these Documents, assumes toward City. Each subcontract agreement shall preserve and protect the rights of City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, CM@Risk shall require each Subcontractor to enter into similar agreements with its sub-subcontractors. CM@Risk shall make available to each proposed subcontractor prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. CM@Risk shall provide City with a copy of each subcontract agreement upon request.

1.2 GENERAL CONDITIONS. For the Construction Phase the General Conditions of the Contract shall be the **GENERAL CONDITIONS FOR CITY OF SAN ANTONIO BUILDING CONSTRUCTION CONTRACTS**, ("City's General Conditions") which are attached hereto as Exhibit B, and incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently the City's General Conditions shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in the City's General Conditions shall mean the CM@Risk. The term "Building Construction Services Agreement" shall mean this City of San Antonio CM@Risk-at-Risk Agreement.



1.3 ADDITIONAL DEFINITIONS. The terms, words and phrases used in the Contract Documents shall have the meanings given in the City's General Conditions and as follows:

1.3.1 "City's Specifications" means the construction and contract administration requirements and standards detailed in the City's Specifications (also identified as Division 00 Documents) which are stored at the Owner's Designated Representative's (ODR) local office and are incorporated herein by reference.

1.3.2 "Construction Documents" means, collectively, the City's General Conditions, City's Supplementary and Special Conditions, the Drawings, Specifications, details, Change Orders and other documents prepared by the Design Consultants, its consultants and by the City's other consultants that describe the scope and quality of the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the City.

1.3.3 "GMP Amendment" means the City Council-approved document memorializing the Agreement between the City and CM@Risk regarding the duties of the CM@Risk in connection with a particular Project, establishing a Lump Sum Price for completion of the Construction Phase Work on the Project, amending this Agreement and shifting the risk of loss in connection with execution of the construction Work to the CM@Risk.

1.3.4 "Preliminary Budget" means the total estimated cost of each individual Project, including design, construction, and other associated costs and services that is established by the City prior to the commencement of design.

1.3.5 "Project Team" means the City, the City's Program Manager, the CM@Risk, and the Design Consultants, employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by City and may be modified from time to time by City.

1.3.6 "Project" means those Projects included, or to be included in the Terminal Expansion CM@Risk at Risk Program ("Program"). At the time of execution of this Agreement, the Program is planned to include the Work required in the execution of this Agreement as described in this Contract and the individual Projects ("Individual Project") set out in Exhibit C.

1.3.7 "Project Work" means the provision of all services, labor, materials, supplies, and equipment that are required of the CM@Risk to complete each Individual Project in strict accordance with the requirements of the Contract and the Construction Documents. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term "reasonably inferable" takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

ARTICLE 2. CONSTRUCTION MANAGER'S RESPONSIBILITIES

2.1 GENERAL RESPONSIBILITIES.

2.1.1 The CM@Risk shall have overall responsibility for and shall provide complete Preconstruction Phase and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the City's requirements and the Scope of Services attached hereto as Exhibit A and described in this Article. The CM@Risk shall cooperate with the Design Consultants and endeavor to further the interests of the City and the Program and its Projects. CM@Risk shall furnish Preconstruction Phase Services and Construction Phase Services and



complete each Project in accordance with the Program Schedule in an expeditious and economical manner consistent with the interests of the City and in accordance with the Program Schedule.

2.1.2 Each Project shall include a Preconstruction Phase and a Construction Phase. The Preconstruction Phase of each Project shall commence upon the date specified in a City-issued Notice to Proceed with Preconstruction Phase Services for the specified Project, and, unless otherwise agreed, shall continue through 100% completion of the Construction Documents and execution of the GMP Amendment for each Individual Project. If however, it is deemed by the Director or his designee to be in the best interest of the City, the Construction Phase of any Individual Project may commence before the Preconstruction Phase is complete, in which case, the direction to do so will be memorialized in writing and both phases shall proceed concurrently.

2.2 PRECONSTRUCTION PHASE SERVICES. The Preconstruction Phase shall be deemed to commence upon the date specified in the Notice to Proceed with Preconstruction Phase Services, issued by the City and shall continue through completion of the Construction Documents and execution of the GMP Amendment for each individual Project. The duties of the CM@Risk include those set forth in this Paragraph and those more specifically described in Exhibit A. SCOPE OF SERVICES, which is attached hereto and incorporated herein by reference.

2.2.1 Consultation and Coordination.

2.2.1.1 The CM@Risk's Preconstruction Phase Services team shall attend meetings with the Project Team at regularly scheduled intervals throughout the Preconstruction Phase. Frequent Project Team meetings are anticipated prior to execution of the GMP Amendment for any individual Project and during completion of the Construction Documents.

2.2.1.2 The CM@Risk acknowledges that as part of its Preconstruction Phase Services it shall participate in the development and review of the Construction Documents. CM@Risk's participation in the design development process will be instrumental in preparing its GMP Proposal for each Project. Before submitting its GMP Proposal, the CM@Risk shall review the drawings, specifications and other Construction Documents and notify the City of any conflicts, errors, omissions or discrepancies in the documents of which it is aware.

2.2.1.3 Prior to the time that it submits its Guaranteed Maximum Price Proposal, the CM@Risk will acknowledge that it has been provided unrestricted access to the existing improvements and conditions on the Project Site and that it has thoroughly investigated those conditions. CM@Risk's investigation was instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. CM@Risk shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Preconstruction Phase Services or for Construction Phase Services arising from Project conditions that CM@Risk discovered or, in the exercise of reasonable care, should have discovered in CM@Risk's investigation.

2.2.1.4 The CM@Risk shall not be entitled to an increase in the Guaranteed Maximum Price for Work that is not detailed in the Contract Documents but is reasonably inferable from the Contract Documents. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the City. Notwithstanding the above and subject to the provisions of this Agreement and the General Conditions, the CM@Risk shall not be responsible for design, except for portions of the Work which the Contract Documents require the CM@Risk both to design and to build, portions of the Drawings and Specifications that are in the nature of performance



specifications and incidental designing/detailing as required by the Drawings and Specifications for shop drawing or submittal purposes.

2.2.2 Extent of Responsibility. The CM@Risk has a shared responsibility for discovery and resolution of discrepancies, errors and omissions in the Contract Documents. In such case, the CM@Risk's responsibility pertains to review, coordination, and recommendation of resolution of strategies, within budget constraints, but does not establish a liability for design.

2.2.3 Equal Employment Opportunity and Affirmative Action. The CM@Risk shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.3 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME.

2.3.1 Arrival at Net Reconciled 100% Estimate. When the Construction Drawings and Specifications are one-hundred percent (100%) complete, CM@Risk shall prepare and submit a CM@Risk Estimate ("CME") of the Cost of the Work and a Project Schedule for the Project. This CME will be compared and reconciled with the Program Manager Estimate ("PME") for the Project, prepared by the Program Management Team. Through a process of negotiation and consultation between the Owner, the Design Consultants, the Program Manager and the CM@Risk the CME and the PME will be reconciled to arrive at an agreed Cost and Schedule for the Project ("Net Reconciled Estimate"). In addition to, but separate from the Net Reconciled Estimate, the CM@Risk shall submit its proposed allowances (to include the proposed Construction Contingency amount) and Liquidated Damages it proposes be stipulated for each calendar day of delay until the Work is substantially complete.

2.3.2 Establishment of Lump Sum Construction Phase Fee and General Conditions Costs.

2.3.2.1 Upon acceptance by the City of the Net Reconciled Estimate, the City will calculate the Construction Phase Fee and the General Conditions Costs for the Project as follows:

2.3.2.1.1 The Construction Phase Fee Percentage as proposed will be applied to the Cost of the Work set out in the Net Reconciled Estimate. This Lump Sum Construction Phase Fee will be fixed at this stage of the process for the specific Project.

2.3.2.1.2 The agreed General Conditions Cost factor for the Project will be applied to a formula which takes into account the Cost of the Work (from the Net Reconciled Estimate), the agreed Project Scope, the agreed Project Schedule and the concurrent performance of the specific Project with other Projects in the Program. The Sum General Conditions Costs for the Project will be fixed at this stage of the process, as a Lump Sum.

2.3.2.2 The City will also negotiate allowances, including the Owner Controlled Contingency. The Owner Controlled Contingency will be established for increases in Cost of Work incurred by the CM@Risk for unforeseen causes or details of the Work not capable of reasonable anticipation at the time of the execution of the GMP Amendment. The amount of the Owner Controlled Contingency, except as otherwise provided in this Agreement, will be the maximum sum available to the CM@Risk for unforeseen circumstances and payment will be based on the mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. Any re-allocation of funds from the Owner Controlled Contingency to cover increases the Contract Sum for a Project must be approved by the Owner in advance and in writing, such approval not to be unreasonably withheld.

2.3.3 Bidding of Project.

2.3.3.1 Following establishment of the Net Reconciled Estimate for the Project and fixing of the Construction Phase Fee and General Conditions Costs to Lump Sum values, the CM@Risk shall publicly advertise, as prescribed for a governmental entity under Section 271.025 of the Local Government Code, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work other than the minor work that may be included in its General Conditions Costs.

2.3.3.2 The CM@Risk may perform portions of the Work itself if the CM@Risk submits its bid or proposal for those portions of the Work in the same manner as other trade contractors or subcontractors, and if the City determines that the CM@Risk's bid or proposal provides the best value for the City.

2.3.3.3 The City will make copies of construction documents available at City approved viewing sites. The CM@Risk shall coordinate the printing, binding and distribution of the initial issuance of construction documents to all Subcontractor proposers requesting documents, in order to provide proposals to the CM@Risk. A maximum of twenty-five (25) sets will be furnished to the CM@Risk at the expense of the Owner.

2.3.3.4 The CM@Risk shall include specific notices of the following statutory requirements in the information to bidders:

2.3.3.4.1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

2.3.3.4.2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258; and,

2.3.3.4.3 A notice of the sales tax exemption for the Project and the procedure for obtaining any required exemption verification or certificates.

2.3.3.4.4 Other notices required as set out in the Supplementary or Special Conditions

Nothing herein shall prevent the CM@Risk from including other notices required or allowed by law.

2.3.3.5 Upon receipt of bids/proposals, the CM@Risk and the City or its representative shall jointly open and review all trade contractor or subcontractor bids or proposals taking into consideration, the criteria listed in Texas Local Government Code 271.113(b). Following this review, the CM@Risk shall recommend the bidders/proposers that offer the best value to the City and with whom the CM@Risk desires to enter a sub-contract.

2.3.3.6 The bid/proposal review shall be handled in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the CM@Risk, the Design Consultants, the Program Management Team or the City.

2.3.3.7 All bids or proposals shall be made public after the award of the contract or not later than the seven days after the date of final selection of bids or proposals, whichever is later.

2.3.3.8 If a specific bidder among those whose bids are delivered by the CM@Risk to the Owner and Design Consultants (1) is recommended to the Owner by the CM@Risk; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or



exceptions, but the Owner requires that another bid be accepted, then the CM@Risk may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price proposed by the difference between the bid of the person or entity recommended to the Owner by the CM@Risk and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

2.3.4 Submission of Guaranteed Maximum Price Proposal.

2.3.4.1 Within three (3) days following the selection of all trade and subcontractors necessary to complete the Work, and written approval of such trade and subcontractors by the Owner the CM@Risk shall submit its Guaranteed Maximum Price ("GMP") Proposal to Owner. The GMP Proposal must be prepared in accordance with the guidelines and delivered in the format specified by Owner. Owner, at its sole option and discretion, may specify different requirements for the GMP Proposal. The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

2.3.4.2 The CM@Risk in its GMP Proposal shall provide:

2.3.4.2.1 The CM@Risk's Guaranteed Maximum Price which shall be an amount which includes the CM@Risk's Costs of the Work and all proposed allowances.

2.3.4.2.2 A detailed, itemized statement of the Cost of the Work organized by trade categories and list of all allowances, if any, and a detailed, itemized statement of their basis.

2.3.4.2.3 The date of Substantial Completion upon which the Proposed Guaranteed Maximum Price is based;

2.3.4.2.4 The Lump Sum Construction Phase Fee and Lump Sum General Conditions Costs.

2.3.4.2.5 A schedule for Construction Documents issuance dates upon which the date of substantial completion is based.

2.3.4.2.6 A complete Schedule of Values with line item breakdown of the calculations apportioned for the various divisions or phases of the Work. If the Owner has agreed to accept one or more portions of the Work separately, there will be a separate Schedule of Values for each portion or Project.

2.3.4.2.7 Mutually agreed Allowances.

2.3.4.2.8 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP Proposal.

2.3.4.2.9 A list of the clarifications and assumptions made by the CM@Risk in the preparation of the GMP Proposal to supplement the information contained in the Drawings and Specifications.

2.3.4.2.10 A list of the trade packages that have certified bids.



2.3.4.2.11 The CM@Risk's SBEDA or DBE submittals documentation to the extent required for the specific Project for which the GMP is proposed; and

2.3.4.2.12 Any other Project information requested by the Owner.

2.3.5 The Guaranteed Maximum Price Proposal shall include no amount for sales or use taxes for, which City is exempt and for which the Owner has timely provided to the CM@Risk an appropriate tax exemption certificate or other required verification of the Owner's tax exempt status. Such taxes shall not be reimbursable costs.

2.3.6 CM@Risk shall provide with its GMP Proposal, two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

2.3.7 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner the terms of this Agreement and its attachments shall control.

2.3.8 The CM@Risk shall meet with the Owner and Design Consultants to review the Guaranteed Maximum Price Proposal and the written statement of its basis. In the event that the Owner or Design Consultants discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM@Risk who shall make appropriate adjustments to the GMP Proposal.

2.3.9 The CM@Risk shall not withdraw its Guaranteed Maximum Price Proposal for any Project for ninety (90) days following submission to the Owner.

2.3.10 GMP Amendment. Owner may accept or reject the CM@Risk's Guaranteed Maximum Price Proposal or negotiate its terms with CM@Risk. The GMP Proposal shall not be effective without execution of a written Amendment, authorized and funded by City Council, documenting the agreement of the Parties to a Contract Price based on the GMP Proposal submitted by CM@Risk. ("GMP Amendment").

2.3.10.1 Prior to execution of the GMP Amendment by all Parties, the CM@Risk shall not incur any cost to be reimbursed as part of the Cost of Work for the Project, except as the Owner may specifically authorize in writing.

2.3.10.2 Following execution of the GMP Amendment, the Owner shall authorize and cause the Design Consultants to revise the Drawings and Specifications for the Project to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment for the Project. Such Drawings and Specifications shall be furnished to the CM@Risk in accordance with the schedules agreed to by the Owner, Design Consultants and CM@Risk. The CM@Risk shall promptly notify the Design Consultants and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.3.10.3 Once the GMP Amendment has been executed, the CM@Risk without reimbursement shall pay any costs or expenses, which would cause the revised Contract Sum for applicable Project to be exceeded.



2.3.11 Rejection of GMP Proposal. If the Owner rejects the GMP Proposal, or the parties are unable or unwilling to agree on the terms of the GMP Proposal, the Owner may elect not to execute a GMP Amendment with CM@Risk and may proceed with Public Solicitation in accordance with Texas Local Government Code for the Project. Such election shall not affect any other portion of this Agreement or the rights of the CM@Risk set forth in this Agreement, to the extent of Preconstruction or Construction Work is in progress on other Projects under the Agreement.

2.4 CONSTRUCTION PHASE SERVICES.

2.4.1 General. The Construction Phase will commence on the date specified in the Notice to Proceed with Construction Phase issued by City after execution of the GMP Amendment, and shall continue until Final Completion of all Work on the individual Project. In implementation of the responsibilities and duties of the CM@Risk for a Construction Phase, the CM@Risk shall provide the services described in Exhibit A. SCOPE OF SERVICES.

2.4.2 Unless otherwise approved, the City and the CM@Risk shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work. A Contract Time specific to each Project shall be established at the time of negotiation of each GMP Amendment and shall be measured from the date of commencement of the Construction Phase. The CM@Risk shall achieve Substantial Completion of the entire Work or each Project not later than the date set out in the GMP Amendment for that Project, subject to adjustment of this Contract Time as provided in the Contract Documents.

2.4.3 Time limits stated in the Contract Documents are of the essence in this Agreement.

2.4.4 If the CM@Risk does not complete the Work in accordance with the time limitations established in this Contract and in the approved schedule, the CM@Risk and the CM@Risk's surety shall be liable for and shall pay to the Owner the sums stipulated in the GMP Amendment for each Project as liquidated damages for each calendar day of delay until the Work is substantially complete. Liquidated damages shall comprise the Owner's sole remedy for delay damages.

2.4.5 Administration.

2.4.5.1 All subcontracts for Project Work shall be awarded in accordance with Texas Local Government Code, Section 271.118 and shall comply with the process set out in Paragraph 2.3.3 above.

2.4.5.2 The CM@Risk shall provide monthly written reports to the Owner and Design Consultants on the progress of the Project Work. The CM@Risk shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, work accomplished, and problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and the Design Consultants.

2.4.6 Professional Services. Section 3.12.10 of the City's General Conditions shall apply to both the Preconstruction and Construction Phases.

2.4.7 Hazardous Substances. Unless the city approves otherwise, CM@Risk shall have the responsibility for the handling, removal, or disposal or exposure of persons to Hazardous Substances in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or lead paint. The CM@Risk shall have no responsibility to initially discover the presence of such Hazardous Substances on the Project Site, but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the CM@Risk or the CM@Risk's consultants to be present on the



Project Site. These limitations shall not apply if the CM@Risk places or allows such hazardous materials to be placed on the Project Site.

ARTICLE 3. CITY'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES.

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of each Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The City will provide and maintain the Preliminary Budget and general schedule for the Project during the Preconstruction Phase. The Preliminary Budget will include the anticipated construction cost, contingencies for changes in the Work during construction, and other costs that are the responsibility of the Owner. The general schedule will set forth the Owner's plan for milestone dates and completion of the Project.

3.1.3 Structural and Environmental Tests, Surveys and Reports. In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense:

3.1.3.1 Reports, surveys, drawings and tests concerning the conditions at the Site which are required by law.

3.1.3.2 Surveys describing the physical characteristics, legal limitations and utility locations for the Site of each Project and a written legal description of the Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights of way, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and liens, both public and private, above and below grade including inverts and depts.. All information on the survey shall be referenced to a Project benchmark.

3.1.3.3 The services of geo-technical engineers when such services are reasonably requested by the CM@Risk. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

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

3.2 OWNER'S DESIGNATED REPRESENTATIVE. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, other than matters that require the approval of the City Council. To the extent permitted by law this representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the CM@Risk.

3.3 DESIGN CONSULTANTS. The CM@Risk's services shall be provided in conjunction with the services of the Design Consultants. The terms of the agreement between the Owner and the Design Consultants shall be available for inspection by the CM@Risk upon request.



- 3.4 LEGAL REQUIREMENTS. The Owner shall determine and advise the Design Consultants and CM@Risk of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project.
- 3.5 INDEPENDENT MATERIALS TESTING AND INSPECTION. In compliance with Texas Local Government Code, Section 271.118(d), the City will retain, independent of the CM@Risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the City. Such consultants will be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties, and responsibilities of those independent consultants will be described in the Agreements between the City and those consultants. The provision of inspection services by City shall not reduce or lessen CM@Risk's responsibility for the Work or its duty to establish and implement a program to monitor the quality of construction to guard the Owner against defects and deficiencies in the Work, required by the Contract Documents. CM@Risk is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.
- 3.6 CORRECTION OF DEFECTIVE WORK. City shall have the right to reject any defective Work on the Project. Should CM@Risk refuse or neglect to correct or to commence correction of any such Work within a reasonable time after notice, City may have the Work corrected and recover all expenses incurred from CM@Risk on demand.
- 3.7 SEPARATE CONTRACTS

3.7.1 Owner may perform other work related to the Project with its employees, separate contractors or vendors under its control. If the Owner is performing other work with separate contractors or vendors under its control, the CM@Risk agrees to cooperate and coordinate its work with the work of the Owner's separate contractors or vendors so that the Project can be completed in an orderly and coordinated manner, reasonably free of significant disruption to any party.

3.7.2 If the proper execution or results of any part of CM@Risk's work depends on work performed by such separate contractors vendors or employees, CM@Risk shall inspect such other work, and promptly report to the A/E in writing any patent defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CM@Risk's Work. CM@Risk's failure to so report shall constitute an acceptance of the other work as fit and proper for integration with CM@Risk's work except with regard to latent or non-apparent defects and deficiencies in the other work.

3.7.3 CM@Risk shall do all cutting, fitting and patching of his work that may be required to make its several parts come together properly and integrate with such other work. CM@Risk shall not endanger any work of others by cutting, excavating or otherwise altering the others' work and will only cut or alter others' work with the written consent of A/E and the other party or parties whose work will be affected.

ARTICLE 4. COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.

4.1 PRECONSTRUCTION PHASE COMPENSATION

4.1.1 The total Compensation for CM@Risk Preconstruction Phase Services shall not exceed the sum of THREE MILLION, SEVEN HUNDRED FIFTY NINE THOUSAND, SIX HUNDRED THIRTY THREE AND 0/100 DOLLARS (\$3,759,633) ("Preconstruction Phase Fee"). The Preconstruction Phase Fee stated herein shall include the cost of Preconstruction Services for the following Projects:

- a. Central Utility Package (CUP)
- b. Site Preparation, Terminal B
- c. Piers, Terminal B
- d. Terminal B Structure



- e. In-line Baggage Handling System for Terminal 1
- f. Terminal C Foundations, Structures and Interiors
- g. Terminal 2 Demolition
- h. Terminal B Wayfaring and Signage
- i. Consolidation Aviation Facility

CM@Risk's proposal for Pre-Construction Services dated May 31, 2007 is incorporated by reference herein, and attached as Exhibit E.

4.1.2 CM@Risk may submit invoices monthly for work performed and completed which has not been included on previous invoices. Payments shall be made to the Consultant in accordance with the CM@Risk's Cost Proposal. The scope and quantity of the services provided will be dependent upon services actually performed and authorized by the City. Charges will be assessed only for actual services rendered.

4.1.3 As additional Projects come on line, Preconstruction Phase Change Orders to the Contract will establish a specific not-to-exceed amount payable for Preconstruction Phase Services for each Project or a specified grouping of Projects.

4.2 PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.

4.2.1 Payments for Preconstruction Phase Services shall be made not more often than monthly following presentation of the CM@Risk's Application for Payment approved by the City, including all required attachments, and shall be in proportion to services performed. Retainage will not be withheld from payments for Preconstruction Phase Services.

4.2.2 Payments are due and payable thirty (30) days from the date the CM@Risk's approved Application for Payment invoice is received by the Owner.

4.2.3 Additional Preconstruction Services.

4.2.3.1 From time to time City or ODR may request that CM@Risk perform services in addition to those Preconstruction Services required or reasonably inferable herein ("Additional Preconstruction Services"). If the scope of the Preconstruction Phase Services is materially changed, the Preconstruction Phase Fee for a specific Project may be equitably adjusted. There shall be no adjustments in the Preconstruction Phase Fee following execution of the GMP Amendment for any individual Project (or group of Projects if they were handled as a package), without the expressed written authorization of the Owner.

4.2.3.2 Each time the CM@Risk is requested to perform Preconstruction Services which CM@Risk believes to be Additional Preconstruction Services, and prior to performing such Additional Preconstruction Services, the CM@Risk shall submit a Cost Proposal for such work to the ODR for approval. CM@Risk shall proceed only after written acceptance by the ODR (with City Council approval as necessary) and issuance of a Notice to Proceed with Additional Preconstruction Services. If CM@Risk fails to provide the Cost Proposal or if CM@Risk begins performing Additional Preconstruction Services prior to written approval, CM@Risk waives any claim for additional compensation based on its performance of the Additional Preconstruction Services.

4.2.3.3 If the ODR concludes that all or part of the Preconstruction Services described in the Cost Proposal for Additional Preconstruction Services are services already required to be performed by CM@Risk pursuant to this Agreement or are reasonably inferable therefrom, then ODR shall notify CM@Risk of his determination and ODR and CM@Risk shall attempt, in good faith, to resolve their differences by negotiation. If within seven (7) Business Days, City and CM@Risk are unable to resolve their differences, then CM@Risk shall nevertheless perform the services requested by City as if the services



were services required to be performed pursuant to this Agreement, without prejudice, however, to the CM@Risk's right to pursue a claim for compensation for such disputed services.

4.2.3.4 Upon acceptance by City, each Cost Proposal for Additional Preconstruction Services and the services performed by CM@Risk pursuant to such Cost Proposal for Additional Preconstruction Services shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a required Service at the original execution of this Agreement.

4.2.3.5 CM@Risk shall not be entitled to any increase in the Preconstruction Phase costs because of Project Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant, as determined by ODR in his/her sole discretion.

ARTICLE 5. COMPENSATION AND PAYMENT FOR CONSTRUCTION PHASE SERVICES.

5.1 COMPENSATION FOR CONSTRUCTION PHASE WORK. Subject to City Council appropriation, City shall compensate the CM@Risk for properly performed and completed Construction Phase Services on each Project in the amount of the Contract Sum set out in the GMP Amendment applicable to the each Project.

5.1.1 Construction Phase Fee. The Construction Phase Fee, (representing the CM@Risk's profit and indirect overhead for the work performed) shall be 3% (three percent) of the agreed upon GMP. The Construction Phase Fee Percentage shall be multiplied by the GMP for the Individual Project as defined and established at the completion of the 100% Construction Documents for each Individual Project, less the unused portion of the Owner Controlled Contingency. The final Construction Phase Fee shall be adjusted at the time of Final Payment for each Individual Project to reflect the final Cost of the Work..

5.2 CHANGES IN THE WORK. Adjustments to the Contract Sum on account of changes in the Scope of the Work subsequent to the execution of the GMP Amendment for a Project may be determined by mutual acceptance of one of the following:

5.2.1 a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

5.2.2 unit prices stated in the Contract Documents or subsequently agreed upon;

5.2.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

5.2.4 on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case the CM@Risk shall keep and present, in such form as the Design Consultants may prescribe, an itemized accounting together with the supporting data as required by the Contract Documents.

ARTICLE 6. COST OF THE WORK AND GENERAL CONDITIONS FOR CONSTRUCTION PHASE

6.1 GENERAL CONDITIONS COSTS.

6.1.1 CM@Risk is entitled to receive payment for the General Conditions items incurred after receipt of a Notice to Proceed with Construction from the Owner through Substantial Completion of the Project. CM@Risk is not entitled to General Conditions Costs incurred before receipt of the Notice to Proceed.

6.1.2 General Conditions items are identified below, by the CM@Risk's Proposal for Construction Phase Services dated May 31, 2007, attached as Exhibit F, and by an exhibit to each GMP Amendment for each Individual Project. These items shall be included in the General Conditions Cost amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the Schedule of Values for the Project. Items not specifically included below or in the exhibit will not be allowed as a General Condition costs. In the event of a conflict between the documents, the accepted GMP Amendment shall take precedence.

6.1.2.1 The actual Worker Wage Rate for CM@Risk's hourly employees and the Monthly Salary Rate of CM@Risk's salaried personnel who are identified to the Owner in advance and in writing but only for the time actually stationed at the Project site with the Owner's prior consent. The Project Manager's Monthly Salary Rate may be included in the General Conditions Costs only when the Project Manager is directly managing the Project.

6.1.2.2 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of CM@Risk's jobsite office if incurred at the Project site and directly and solely in support of the Work.

6.1.2.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by CM@Risk, if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition Line Items. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its cost shall be based on actual cost of the item less its fair market salvage value.

6.1.2.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by CM@Risk, provided they are included in the list of allowable General Condition Line Items and Owner has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the CM@Risk, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the Owner and shall be in accordance with the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

6.1.2.5 The aggregate rental cost of any item charged to Owner shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, CM@Risk shall purchase the equipment and turn it over to Owner upon final completion of the Work or, at Owner's option, credit the Owner with the fair market resale value of the item.

6.1.2.6 Permit and inspection fees that are not subject to exemption.

6.1.2.7 Premiums for insurance and bonds to the extent directly attributable to the Program or an Individual Project.

6.1.2.8 Governmental sales and use or similar taxes imposed by a governmental authority which are related to the Work, and for which the Owner (1) is not exempt under



Texas law, or (2) has not timely provided a certificate of exemption or similar proof of the Owner's tax exempt status

6.2 COST OF THE WORK.

6.2.1 CM@Risk is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of Owner's written authorization to commence the Construction Phase Work through Final Completion of the Project. CM@Risk is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner's written authorization. Cost of the Work includes the following:

6.2.1.1. Costs of materials and equipment purchased directly by the CM@Risk and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to this Agreement and the General Conditions.

6.2.1.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations if not otherwise included in General Conditions.

6.2.1.3 Payments made to Subcontractors and their vendors or suppliers by CM@Risk for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

6.2.1.4 Payments earned by CM@Risk for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Agreement and approved by the Owner.

6.2.1.5 Testing fees pursuant to the Contract Documents.

6.2.1.6 Intellectual property royalties and licenses for items specifically required by the Construction Documents, which are, or will be, incorporated into the Work.

ARTICLE 7. CONSTRUCTION PHASE PAYMENTS

7.1 PROGRESS PAYMENTS.

7.1.1 The CM@Risk will receive periodic progress payments for Work performed, materials in place and suitably stored on Site on the various Projects, or as otherwise agreed by the Owner and the CM@Risk in writing. Payment shall not be due until receipt by the ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in the General Conditions, Special Conditions or Division 1 of the Project Specifications, and certified by the Design Consultants. Progress payments are made provisionally and do not constitute acceptance of Work in accordance with the Contract Documents. The Owner will not process progress payment applications for Change Order Work until all required parties execute the Change Order.

7.1.2 Each Application for Payment shall specify under which Individual Project, the Application is made. If requested the CM@Risk, with each Application for Payment, shall provide documentation required by the Owner or Design Consultants to demonstrate that cash disbursements already made by the CM@Risk on account of the Cost of Work either equal or exceed (1) progress payments already received by the CM@Risk; less that portion of those payments attributable to the CM@Risk's Fee.

7.1.3 Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the CM@Risk in accordance with the Contract Documents. The Schedule of Values shall allocate the entire GMP among the various portions of the Work, except that the CM@Risk's Fee shall be shown as a single separate item. The Schedule of Values shall be

prepared in such form and supported by such data to substantiate its accuracy as the Design Consultants shall require. This schedule, unless objected to by the Design Consultants shall be used as a basis for reviewing the CM@Risk's Applications for Payment.

7.1.4 Applications for Payment shall include the value of materials or equipment not incorporated into the Work but delivered and suitably stored at the site or at some other location agreed upon in writing by the parties hereto. Title to all equipment and materials shall pass to Owner upon payment therefor or incorporation into the Work, whichever shall first occur. The CM@Risk shall prepare and execute all documents necessary to effect and perfect such transfer of title.

7.1.5 Applications for Payment shall show the percentage completion of each portion of the Project Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the CM@Risk on account of that portion of the work for which the CM@Risk has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

7.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

7.1.6.1 Take that portion of the Guaranteed Maximum Price properly allocable to the completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the Schedule of Values.

7.1.6.2 Add that Portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the Site at a location agreed upon in writing by the Owner and Contract Manager.

7.1.6.3 Add the CM@Risk's Fee. The CM@Risk's Fee shall be computed based upon the Cost of the Work described in the two preceding Sections at the rate stated in the GMP Amendment for the applicable Project.

7.1.6.4 Subtract retainage of five percent (5%) of the sum of items 7.1.6.1 through 7.1.6.3.

7.1.6.5 Subtract the aggregate of previous payments made by the Owner.

7.1.6.6 Subtract the shortfall, if any, indicated by the CM@Risk in the documentation required by Section 7.1.6.1. above, to substantiate prior Applications for Payment or resulting from errors subsequently discovered by the Owners accountant's in such documentation.

7.1.6.7 Subtract amounts, if any, for which the Design Consultants have withheld or nullified a Certificate of Payment.

7.1.7 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the CM@Risk shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

7.1.8 Except with Owner's prior approval the CM@Risk shall not make advance payments to suppliers for materials or equipment which have not be delivered and stored at the Site.



7.1.9 Each Application for Payment shall include an affidavit signed by the CM@Risk's Designated Representative affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with the Contractor's invoice are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251.

7.2 FINAL PAYMENT.

7.2.1 CM@Risk's Request for Final Payment on a Project shall not be made until all Work is completed for that Individual Project and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to City of Conditional release of all liens and claims arising out of the Work, in a form approved by the City; written consent of surety to release of final payment; and an affidavit that, to the best of CM@Risk information, knowledge and belief, the release includes and covers all materials and services over which CM@Risk has control and for which a lien could be filed and that all known debts and claims arising from the Project will be satisfied. Alternatively, CM@Risk may, at its sole expense, furnish a bond satisfactory to City to indemnify City against any lien arising out of the Work. If any lien is asserted against City after all payments are made, CM@Risk shall reimburse City for all damages and costs City may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and City shall retain all other remedies available to it at law and in equity.

7.2.2 The acceptance by CM@Risk or CM@Risk's successors of Final Payment under this Agreement, shall constitute a full and complete release of City from any and all claims, demands, and causes of action whatsoever that CM@Risk, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against City arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by CM@Risk as unsettled at the time of the Request for Final Payment.

ARTICLE 8. INSURANCE AND BONDS.

8.1 INSURANCE. During both phases of each Project the Construction Manager shall purchase and maintain insurance as set forth herein and in the City's General Conditions, and any Supplementary General Conditions or Special Conditions. Such insurance shall be written for not less than the following limits or greater if required by law or the Contract Documents:

8.1.1 WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE: In accordance with all applicable State and Federal laws and endorsed specifically to include Employer's liability, including occupational disease, subject to a limit of liability of not less than \$500,000.00 and Waiver of subrogation in favor of the Owner.

8.1.1.1 Definitions.

a) Certificate of Coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC -82, DWC -83, or DWC-84), showing statutory Workers' Compensation Insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project. Other evidence of such insurance as may be required by City.

b) Duration of the Project. Includes the time from the beginning of a person's work on the Project until the contractor's/person's work on the Project has been completed and accepted by the City.

c) Persons Providing Services on the Project ("Subcontractor" in §406.096). Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent



contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

8.1.1.2 Coverage and Evidence of Coverage.

8.1.1.2.1 By CM@Risk. The CM@Risk 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, Title 5 for all employees of the CM@Risk providing services on the Project, for the duration of the Project. The CM@Risk must provide a Certificate of Coverage and a copy of its insurance Policy to the City commencement of any Work on or under this Contract. If the coverage period shown on the Contractor's current Certificate of Coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new Certificate of Coverage and a copy of its new Policy or Binder evidencing extension of the current Policy, with the City showing that coverage has been extended.

8.1.1.2.2 Contractors Providing Services. The CM@Risk shall contractually require each person with whom it contracts to provide services on a Project, to:

a) 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, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

b) provide to the CM@Risk, prior to that person beginning work on the Project, a Certificate Of Coverage and copy of its current insurance Policy showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

c) provide the Contractor, prior to the end of the coverage period, a new Certificate Of Coverage and a copy of its new Policy or Binder evidencing extension of, if the coverage period shown on the current Certificate Of Coverage ends during the duration of the Project;

8.1.1.2.3 The CM@Risk shall provide to the City all evidence of insurance required by Paragraphs 8.1.1.2 and 8.1.1.2 above, to the City prior to commencement of any Work on the Project.

8.1.1.3 The CM@Risk shall retain all required certificates and other evidence of insurance coverage for the duration of the Project and for four (4) years thereafter.

8.1.1.4 The CM@Risk shall notify the City in writing by, within ten (10) days after the CM@Risk knew any change that materially affects the provision of coverage of any person or entity providing services on the Project.



8.1.1.5 The CM@Risk shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Workers' Compensation Division, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

8.1.1.6 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

8.1.1.6.1 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 401.011(44) for all of its employees providing services on the Project for the duration of the Project;

8.1.1.6.2 Provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;

8.1.1.6.3 Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

8.1.1.6.4 Obtain from each other person with whom it contracts, and provide to the Contractor, a certificate of coverage, prior to the other person beginning work on the Project; and a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

8.1.1.6.5 Retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

8.1.1.6.6 Notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew, or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

8.1.1.6.7 Contractually require each person with whom it contracts to perform as required by items 8.1.1.6.1 through 8.1.1.6.7, with the certificates of coverage to be provided to the person for whom they are providing services.

8.1.1.7 By signing this contract or providing or causing to be provided a Certificate Of Coverage, the CM@Risk is representing to the City that all employees of the Contractor who will provide services on the Project will be covered by Workers' Compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CM@Risk to administrative penalties, criminal penalties, civil penalties, or other civil actions.

8.1.1.8 The CM@Risk's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City to declare the contract void if the CM@Risk does not remedy the breach within ten (10) days after receipt of notice of breach from the City.



8.1.1.9 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i)

8.1.2 COMMERCIAL GENERAL LIABILITY INSURANCE: Including coverage for Premises-Operations; Independent Contractor's Protective Liability covering liability for work sublet; Products-Completed Operations Coverage, Contractual Liability insuring the indemnity agreements contained in this Contract; Personal Injury and Broad form Property Damage, including coverage for damage due to collapse of or structural injury to any building or structure due to excavation, tunneling, pile driving, cofferdam or caisson work or dredging; to moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof; to blasting or explosions; or to wires, conduits, pipes, mains, sewers, tanks, tunnels or any other property below the surface of the ground. (i.e. Explosion, Collapse, and Underground Hazards), with combined limits of liability for bodily injury and property damage of not less than \$2,000,000 any one occurrence, and \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

8.1.2.1 All such insurance shall remain in full force and effect until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in compliance with the terms of this Contract.

8.1.2.2 CM@Risk shall maintain its Products and Completed Operations Insurance for the applicable statute of limitations period for at least two (2) years after final payment and furnish Owner with evidence of continuation of such insurance at final payment and for two (2) years thereafter.

8.1.2.3 Such insurance shall be endorsed to have the General Aggregate apply to the specific Project on which the covered Work is being performed, must contain a waiver of subrogation in favor of the Owner; and must include the Owner as additional insured.

8.1.3 COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE (owned, non-owned and hired vehicles): With limits of liability for bodily injury of not less than \$250,000.00 any one person, and \$500,000.00 any one occurrence, and for property damage of not less than \$250,000.00 any one occurrence. Such coverage shall include owned, hired and non-owned vehicles. Policy shall be endorsed to include a waiver of subrogation in favor of Owner and shall include the Owner as an additional insured.

8.1.4 BUILDERS RISK COVERAGE: In addition to the coverage required during the Preconstruction Phase, CM@Risk shall procure at his expense an "All Risk" Builder's Risk policy for the full amount of the applicable GMP Amendment covering construction of the Project, to protect the work, and shall include the materials and supplies stored on and off the job site or in transit, and shall remain in force and effect until final completion of the work and acceptance by the Owner. Policy to be endorsed to include the Owner as an additional insured and claims, if any, to be paid to Owner. Policy shall also be endorsed to include a waiver of subrogation in favor of Owner. Prior to commencing any construction work on each Project, CM@Risk shall provide evidence of such Builders Risk Coverage in such sublimits acceptable to the owner.

8.1.5 Miscellaneous Insurance Requirements.

8.1.5.1 Information in Trade Packages. CM@Risk shall include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base proposals. Notice shall also be given that copies of all insurance policies may be required by the Owner for purposes of verification of required insurance coverage.



8.1.5.2 Notice of Cancellation to Owner. Prior to commencing any work, CM@Risk shall furnish to Owner at the address shown below Certificates of Insurance and if requested by Owner a copy of the actual policies (or other evidence deemed sufficient by the City's Risk Manager) for all insurance coverage required by this Article and additional insurance called for elsewhere in the Contract Documents, certifying compliance with the minimum required coverage. CM@Risk shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. In addition, all policies shall also be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, the insurer shall provide the City written notice when known, of such cancellation or reduction. Both notices shall be delivered to the following address(s):

CITY OF SAN ANTONIO
Public Works Department
P. O. Box 839966
San Antonio, Texas 78283-3966

**With
copy
to**

DELEGATE DEPARTMENT (if any)
Aviation Department
9800 Airport Blvd.
San Antonio, Texas 78216

8.1.5.3 Company Rating. Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A (-) VI or better, if Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CM@Risk in accordance with this Contract on the basis of its not complying with the Contract Documents, Owner will notify CM@Risk in writing thereof. CM@Risk will provide to Owner such additional information in respect of insurance provided by him as Owner may reasonably request.

8.1.5.4 If CM@Risk fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of CM@Risk to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon CM@Risk'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 CM@Risk to stop work hereunder, and/or withhold any payment(s) which become due, to CM@Risk hereunder until CM@Risk demonstrates compliance with the requirements hereof. Nothing herein contained shall be construed as limiting in any way the extent to which CM@Risk may be held responsible for payments of damages to persons or property resulting from CM@Risk's performance of the Work covered under this Agreement.

8.1.5.5 The City reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CM@Risk. The CM@Risk will be reimbursed the incremental amount attributable to the adjustments requested by the City.

8.1.5.6 The City shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the CM@Risk and not covered by insurance shall be paid by the CM@Risk.

8.2 BONDS. The CM@Risk shall provide Performance and Payment bonds in the full penal amount of each Individual Project GMP Amendment within ten (10) days after it receives Notice that the



GMP Amendment is approved, as specified in the Request for Qualifications, in accordance with the terms of Texas Local Government Code Section 271.118(l)

ARTICLE 9. INDEMNIFICATION

9.1 GENERAL INDEMNIFICATION.

9.1.1 CM@Risk covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and expenses, of every kind and character whatsoever, including without limitation by enumeration the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of CM@Risk and of Owner) damage to property (other than the Work itself and including property of CM@Risk and of Owner), but only to the extent caused by the negligent acts or omissions of, or incident to or in connection with or resulting from the negligent acts or omissions of, CM@Risk, its agents, servants, and employees, or its subcontractors and their agents, servants, and employees, or in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract. Notwithstanding anything to the contrary included herein, in no event shall the CM@Risk be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

9.1.2 In addition to the above, CM@Risk also covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and expenses, of every kind and character whatsoever, including without limitation by enumeration the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of CM@Risk and of Owner) damage to property (other than the Work itself and including property of CM@Risk and of Owner), but only to the extent caused by the intentional, deliberate, grossly negligent, willful acts or omissions of, CM@Risk, its agents, servants, and employees, or its subcontractors and their agents, servants, and employees, or in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract, including but not limited to violations of any statute, regulation, ordinance or provision of this Agreement. Notwithstanding anything to the contrary included herein, in no event shall the CM@Risk be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

9.2 INTELLECTUAL PROPERTY INDEMNIFICATION.

9.2.1 CM@Risk 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 the 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 CM@Risk and its employee or its subcontractors and their agents, servants, and employees, based on any deliverable or any other materials furnished hereunder by the CM@Risk, and used by either City or CM@Risk within the scope of this agreement (unless said infringement results directly from CM@Risk's compliance with City's written standards or specifications). CM@Risk does not warrant against infringement by reason of Owner's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process. CM@Risk 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 and expressed in writing signed by the parties hereto. CM@Risk agrees to consult with the City Attorney during such defense or negotiations, and make good faith efforts to avoid any position adverse to the interest of the City. City will make available to CM@Risk any deliverables and/or works made for hire by CM@Risk which are necessary to the defense of CM@Risk against any claim of infringement for the duration of CM@Risk's legal defense.

9.2.2 If such infringement claim or action has occurred or, in CM@Risk's judgment is likely to occur, City shall allow the CM@Risk at CM@Risk's option and expense, (unless such infringement results directly from CM@Risk'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 either: (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 CM@Risk, upon written request City shall return the deliverable and/or materials in question to CM@Risk and CM@Risk 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 Paragraph shall fail to satisfy the third-party claimant, these actions shall not relieve CM@Risk from its defense and indemnity obligations set forth in this Article.

9.2.3 The indemnification obligations under this Article 9 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 CM@Risk 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.

9.3 GENERAL PROVISIONS REGARDING INDEMNITY.

9.3.1 The provisions of this indemnification are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

9.3.2 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

9.3.3 CM@Risk shall promptly advise the City in writing of any claim or demand against the City or CM@Risk, as the case may be, known to CM@Risk, related to or arising out of CM@Risk's activities under this Agreement, and shall see to the investigation and defense of such claim or demand at CM@Risk's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving CM@Risk of any of its obligations under this Article.

9.3.4 Defense Counsel. City shall have the right to approve defense counsel to be retained by CM@Risk, which approval will not be unreasonably withheld, in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CM@Risk shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CM@Risk fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf and CM@Risk shall be liable for all costs incurred by City. City shall also 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.



ARTICLE 10. TERMINATION AND SUSPENSION

10.1.1 This Agreement or CM@Risk's Preconstruction or Construction Services on a specific Project may be terminated by the City at any time after issuance of the Director's Notice to Proceed, either for the City's convenience or because of the CM@Risk's failure to fulfill the contract obligations. Upon receipt of such notice CM@Risk's services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the City.

10.1.2 The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

10.1.3 TERMINATION FOR CONVENIENCE. If the termination is for the convenience of the City, and following inspection and acceptance of CM@Risk's services properly performed prior to the effective date of termination, an equitable adjustment in the contract price shall be made. Should the City choose to exercise its option to terminate, CM@Risk shall not, however, be entitled to its fee or general conditions related to the unperformed work, lost or anticipated profit on unperformed services nor shall CM@Risk be entitled to compensation for any unnecessary or unapproved work, performed during time between the issuance of the City's notice of termination and the actual termination date.

10.2 DEFAULTS WITH OPPORTUNITY FOR CURE. Should CM@Risk fail, as determined by the Owner, to satisfactorily perform the Preconstruction or Construction duties set out in this Agreement, including all Exhibits, or comply with any covenant required by the Contract Documents, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. CM@Risk shall have ten (10) calendar days after receipt of the written notice to cure such default. If CM@Risk fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part as City deems appropriate, and to contract with another CM@Risk to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new CM@Risk against CM@Risk's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

10.3 TERMINATION FOR CAUSE. Upon the occurrence of one (1) or more of the following events, and following written notice to CM@Risk given in accordance with the notice provisions contained in this Agreement, City may immediately terminate this Contract, in whole or in part, "for cause":

10.3.1 CM@Risk makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or

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

10.3.3 CM@Risk fails to cure, or initiate steps reasonably calculated to cure, a default listed in Section 9.3 below, within the time period required for cure; or

10.3.4 CM@Risk violates any rule, regulation or law to which CM@Risk is bound or shall be bound under the terms of this Agreement; or

10.3.5 CM@Risk attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of the Agreement; or

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

10.3.7 If the termination is due to CM@Risk's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the CM@Risk shall be liable to the City for any additional cost occasioned to the City thereby.

10.3.8 If, after notice of termination for failure to fulfill contract obligations, it is determined that the CM@Risk had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 10.1.3 of this clause.

- 10.4 TERMINATION BY LAW. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 10.5 ORDERLY TRANSFER FOLLOWING TERMINATION. Regardless of how this Agreement is terminated, CM@Risk shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, CM@Risk shall cease all operations of work being performed by CM@Risk, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to CM@Risk, in connection with the services rendered by CM@Risk under this Agreement, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at CM@Risk's sole cost and expense. Payment of compensation due or to become due to CM@Risk is conditioned upon delivery of all such documents.
- 10.6 ASSIGNMENT OF INTEREST IN SUBCONTRACTS AND PURCHASE ORDERS. In further assurance of the orderly transfer of Work, CM@Risk hereby assigns to Owner (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by CM@Risk for performance of any part of the Work, which assignment will be effective only upon termination for cause of the contract and upon acceptance by Owner in writing, and only as to those subcontracts and purchase orders which Owner designates in said writing. It is agreed and understood that Owner may accept said assignment at any time during the course of the Construction Phase of a Project prior to final completion. It is further agreed that all subcontracts and purchase orders shall provide that they are freely assignable by the CM@Risk to the Owner and assigns. It is further understood that such assignment is part of the consideration to Owner for entering into this Agreement with CM@Risk and may not be withdrawn prior to completion.
- 10.7 CLAIMS FOR OUTSTANDING COMPENSATION. Within forty-five (45) calendar days of the effective date of completion, termination or expiration of this Agreement, CM@Risk shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. **Failure by CM@Risk to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by CM@Risk of any and all right or claims to collect moneys that CM@Risk may rightfully be otherwise entitled to for services performed pursuant to this Agreement.**



- 10.8 TERMINATION NOT SOLE REMEDY. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue CM@Risk for any default hereunder or other action.
- 10.9 SUSPENSION. The Work may be suspended by the Owner as provided in the City's General Conditions; in such case the GMP, as established by the GMP Amendment shall be increased as provided in the General Conditions except that the term "Cost of Performance of the Contract" in the General Conditions shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Phase Fee.

ARTICLE 11. MISCELLANEOUS PROVISIONS

- 11.1 DISPUTE RESOLUTION. All disputes against the City that arise from this Agreement or any Project shall be resolved in accordance with the procedures and limitations of Texas Local Government Code Subchapter I, Chapter 271.151 et.seq., and the City's General Conditions. The City designates the Director of Aviation as its officer(s) for examining, negotiating and resolving claims and counterclaims.
- 11.2 ASSIGNMENT. This Agreement is a personal service contract for the services of CM@Risk and CM@Risk's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.
- 11.3 TITLE TO WORK. Immediately upon the performance of or payment for any part of the Work, as between CM@Risk and Owner, title thereto shall vest in Owner; provided however, the vesting of title shall not impose any obligations on Owner or relieve CM@Risk of any of its obligations hereunder.
- 11.4 AUDIT RIGHTS. Records of expenses pertaining to the Pre-Construction Phase reimbursable expenses of the project shall be available for audit by the City or the City's authorized representative on reasonable notice. The agreed upon Worker Wage Rates and Monthly Salary Rates are set forth on Exhibit F. The City and the CM@Risk have agreed that these wage and salary rates will apply during the Pre-Construction phase. CM@Risk shall not adjust such wage and salary rates without the written consent of the ODR. The Owner shall have the right to audit the number of individuals and time spent by such individuals assigned to the project to confirm that the number of individuals and the man-hours worked for the CM@Risk by each individual on the project are generally in accordance with the CM@Risk's invoices and its accepted CM@Risk's Pre-Construction and Construction Phase proposals dated May 31, 2007. Contractor agrees to maintain adequate books and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books and records, and shall have the right to audit same in accordance with this Section 11.4.
- 11.5 TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION. Pursuant to Section 231.006, Texas Family Code, CM@Risk certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 11.6 Franchise Tax Certification. A corporate or limited liability company CM@Risk certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.



- 11.7 PAYMENT OF DEBT OR DELINQUENCY TO THE CITY. It is the policy of the City that any person or entity doing business with the City shall at all times remain in financial good standing with all City Departments. In that regard, CM@Risk warrants that it has no outstanding obligations to any City Department at the time of the execution of this Agreement, and hereby covenants that it will timely pay, as they come due, any and all taxes, fees, fines or any other charges assessed by any City Department whether imposed by statute, ordinance or contract, without regard to whether these charges are associated with this Agreement, or CM@Risk's operation under this Agreement.
- 11.8 CONTRACT DOCUMENTS; MERGER. The Contract Documents form the entire and integrated Contract between City and CM@Risk and supersede all prior negotiations, representations or agreements, written or oral. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by CM@Risk and Owner.
- 11.9 CAPTIONS. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 11.10 GOVERNING LAW AND VENUE. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Bexar County shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the City is a party.
- 11.11 WAIVERS. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.
- 11.12 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.
- 11.13 RECORDS. Records of CM@Risk's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs CM@Risk in writing.
- 11.14 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the CM@Risk or Owner for whom it is intended; or sent by U. S. Mail, certified mail, return receipt requested, to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations. The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

If to City:
 City of San Antonio
 Aviation Director
 9800 Airport Blvd.
 San Antonio, Texas 78216
 Fax No. (210)207-3500

If to CM@Risk:
 Sidney Jordan
 Clark/Byrne a Joint Venture
 2502 N Rocky Point Drive
 Suite 200
 Tampa, FL 33607
 Fax No. (813) 207-2078

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

BY SIGNING BELOW, the CM@Risk confirms that it has read, understands and has actual knowledge of the **Indemnification Provisions** and its obligations thereunder, which are set out in Article 9 of this Agreement.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

<p>ATTEST:</p>  <p><i>Sheryl Sculley</i> City Clerk</p>	<p>CITY OF SAN ANTONIO, TEXAS</p> <p>By: <i>Sheryl Sculley</i> Sheryl Sculley, City Manager</p>
<p>APPROVED AS TO FORM:</p> <p><i>Tom Zetzsche</i> City Attorney</p>	<p>CM@RISK</p> <p>By: <i>Sidney J Jordan</i> Sidney J Jordan, President Southern Division Federal Tax ID #:</p>

56-2447399

**EXHIBIT A
SCOPE OF SERVICES**

PRE-CONSTRUCTION PHASE SERVICES. The CM@Risk shall perform the following Pre-Construction Phase Services.

1.1 Coordination and Consultation.

1.1.1 The CM@Risk's Preconstruction Phase Services team shall attend meetings with the Project Team at regularly scheduled intervals throughout the Preconstruction Phase. Frequent Project Team meetings are anticipated prior to the City's execution of the GMP Amendment for any individual Project and during completion of the Construction Documents.

1.1.2 Visit the site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required.

1.1.3 Identify for the City the employees and other personnel that it will assign to the Preconstruction Phase of the Individual Project and provide the Monthly Salary Rate for each of them. CM@Risk shall also identify any consultants that will be performing services during the Preconstruction Phase of each Individual Project. After execution of this Agreement by the City, CM@Risk shall not remove or replace the persons or entities assigned to the Project (Refer to Exhibit E "List of Key Employees" for identification of employees) except with the City's written consent, which consent shall not be unreasonably withheld. CM@Risk shall not assign to the Project or contract with any person or entity to which City has a reasonable objection. CM@Risk shall promptly update the list of persons and consultants no later than fifteen (15) calendar days after the change is made during the course of Preconstruction on an Individual Project.

1.1.4 Provide evaluations, recommendations and information to the Project Team regarding: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the CM@Risk and City's separate contractors, if any; cost factors, including costs of alternative materials, systems or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to complete the Individual Project in accordance with the Individual Project Schedule and Preliminary Budget for each Individual Project

1.2 Constructability Review.

1.2.1 Implement and conduct a constructability review to identify and document Individual Project cost and schedule savings opportunities. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

1.2.2 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Design Consultants during the schematic design, design development, and construction documents design phases of the Individual Project.

1.2.3 Consult with City and Design Consultants and other members of the Project Team on the selection of materials, equipment, component systems, and types of construction used on the Individual Project. Advise City on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.



1.2.4 Consult with City regarding any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.

1.2.5 Advise City on reasonable adjustments in the Individual Project scope, quality or other options for keeping the Individual Project cost to a minimum.

1.2.6 Prepare a "Constructability Report" which identifies items that, in the CM@Risk's opinion, may negatively impact construction of the Individual Project. The Constructability Report shall address the overall coordination of Individual Project Drawings, Specifications, and details and identify discrepancies that may generate Change Orders or claims once Individual Project construction commences.

1.2.7 Provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by the City and updated at least monthly during the Pre-Construction Services for each Individual Project.

1.2.8 Identify equipment or material requiring extended delivery times and advise the City on the need for expedited procurement of those items.

1.3 Scheduling and Sequencing.

1.3.1 Develop a critical path method schedule ("CPM Schedule") for City's review and approval that coordinates and integrates activities on the Individual Project, including the CM@Risk's services, the Design Consultants' design services, the work of other consultants and suppliers, and the City's activities with the anticipated construction schedules for other contractors. The CPM Schedule must identify all major milestones through each Individual Project's Final Completion. The CPM Schedule shall be created and maintained in accordance with the City's Specifications using Primavera 3.1 or higher. The CM@Risk shall update the CPM Schedule throughout the Design, Pre-Construction and Construction Phase as described in the City's Specifications.

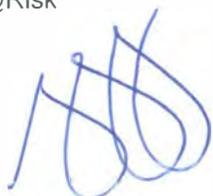
1.3.2 The CPM Schedule shall include other detailed schedule activities as directed by the City including, but not limited to, City-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems, and computer technology systems.

1.4 Budget and Cost Consultation.

1.4.1 Provide continuous cost consultation services for each Individual Project including, Value Engineering and recommendations for modification to the Contract Documents to incorporate such Value Engineering; and coordination with the Design Consultants regarding alignment of the Proposed GMP with the Preliminary Budget for each Individual Project.

1.4.2 Delivery of Final Report and a CM@Risk's Estimate (CME). CM@Risk will prepare a final report documenting all Pre-Construction Services, documenting design modifications resulting from Value Engineering, constructability reviews; schedule and sequencing changes, as well as a CME as defined in the Contract for utilization in arriving at a Net Reconciled Estimate for each Individual Project.

CONSTRUCTION PHASE SERVICES. In implementation of the responsibilities and duties of the CM@Risk for a Construction Phase, the CM@Risk shall provide the following services:



2.1 Work Execution and Coordination.

2.1.1 Construct the Work in strict accordance with the Construction Documents and as required by the City's General and Supplementary General Conditions and City's Specifications within the time required by the Program and Project Schedules approved by City.

2.1.2 CM@Risk shall award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the Work. CM@Risk shall self-perform only General Conditions Work and other Project Work which has been awarded to CM@Risk in accordance with the requirements of Texas Local Government Code Section 271.118(h) and this Agreement. City reserves the right to perform work related to the Individual Projects and to award separate contracts for work related to the Individual Projects.

2.1.3 Organize and maintain a competent, full-time staff which shall include but not limited to the "Key Personnel" as identified in Exhibit E attached hereto, at the Individual Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team. Fully monitor the Work of the Subcontractors and coordinate such Work with the activities and responsibilities of the Project Team to attain Substantial Completion by the date(s) by which the Contract Documents require CM@Risk to achieve Substantial Completion for each Individual Project and all Project Work related to that Individual Project.

2.1.4 Designate in writing a representative who is responsible for the day-to-day management of the Construction Services. The designated representative shall be the City's primary contact during the Construction Phase and shall be available as required for the benefit of the Individual Project and the City. The designated representative shall be authorized to act on behalf of, and bind the CM@Risk, in all matters related to Construction Services.

2.1.5 Attend City's regularly scheduled Program and Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes.

2.1.6 In addition to attending City's regularly scheduled Program and Individual Project progress meetings, CM@Risk shall schedule, direct and attend interim progress meetings with other members of the Project Team as required to maintain Program and Individual Project progress. CM@Risk shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

2.1.7 Coordinate delivery and installation of City-procured material and equipment.

2.1.8 In accordance with City's General and Supplementary Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

2.1.9 Obtain, with the assistance of the City and the Design Consultants, building permits and special permits for permanent improvements as required by law or the Construction Documents. Assist ODR or Design Consultants in obtaining all approvals required from authorities having jurisdiction over the Individual Project.

2.1.10 Coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Construction Documents.

2.1.11 Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Project Work. The CM@Risk shall keep the City informed of the progress and quality of the Project Work.



2.1.12 CM@Risk shall promptly correct any defective Project Work at CM@Risk's sole expense, unless the City agrees to accept the defective Project Work.

2.1.13 In accordance with the City's General Conditions regarding Record Documents and the City's Project Closeout Specification, the CM@Risk shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Project Work.

2.2 Scheduling.

2.2.1 Perform Individual Project scheduling, including regular monitoring, updating, and reissuing of the all Project Schedules as construction progresses, including, without limitation, Master Project Schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules; identify potential and actual variances between scheduled and probable completion dates, review the schedules for Work not started or incomplete and recommend to the City adjustments in the schedules to conform with the probable completion dates and provide summary reports to the City of each schedule update and document all changes in construction schedules. Incorporate activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials, processing of shop drawings, data, and samples, and delivery of long lead time items. Include City's occupancy requirements and occupancy priorities. Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule. Recommend action to City when any Subcontract requirements are not met, or appear unlikely to be met.

2.3 Cost Control.

2.3.1 Maintain cost accounting records in good form and in accordance with generally accepted accounting practices on all Individual Project expenditures; and afford the City access to these records and preserve them for a period of four years after final payment is made by the City to the CM@Risk for each Individual Project.

2.3.2 Prepare and administer, and provide to City, Subcontractors' schedule of values, Subcontractors' sworn statements and waivers of lien, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as reasonably required by City.

2.4 Wage Rates.

2.4.1 PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS.

The Provisions of Chapter 2258, Texas Government Code, are expressly made a part of this contract. In accordance therewith, the City will provide CM@Risk with a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this contract prior to the bidding of the Projects described in Section 2.3.3 and this schedule will become a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any sub-contractor under him. The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Contractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The Contractor, in the execution of this project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In



addition, Contractor agrees that he/she will abide by all applicable terms and City "General Conditions" governing wages and labor standards and practices, established by City Ordinance 60110, amended by City Ordinance 71312, and provisions of the Nondiscrimination Clause and the Small and/or Minority Business Advocacy Clause as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office.

2.5 Bidding Process and Bid Evaluation.

2.5.1 The CM@Risk shall publicly advertise and conduct the bidding/proposal process in accordance with the procedures outlined in Paragraph 2.3.3 of the Contract.

2.6 Documents, Shop Drawings, and Submissions.

2.6.1 The Design Consultants shall be the interpreter of the design intent of the Contract Documents, subject to the terms and conditions of the agreement between the A/E and the City, provided, however, the CM@Risk shall request such interpretations from the Design Consultants, with the City's consent, from time to time in order to facilitate the CM@Risk's accomplishment of its duties under this Agreement.

2.6.2 In collaboration with the other members of the Project Team, the CM@Risk shall establish and implement procedures for expediting the processing of Design Consultants' approval of shop drawings and other submissions, and in accordance with Specifications, as applicable. CM@Risk shall receive from the Subcontractors, and review all shop drawings and other submissions for conformance with the Contract Documents. CM@Risk shall coordinate shop drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.

2.6.3 The CM@Risk shall record in writing the progress of the Individual Project, submit written progress reports to the other members of the Project Team on a monthly basis (or on such more frequent basis as the City may reasonably require), including information on the Subcontractor Work and the percentage of completion, and keep a daily log of Individual Project construction activities available to the other members of the Project Team in accordance with the City's General and Supplemental Conditions; which daily logs shall be submitted to the City no less frequently than weekly for the immediately preceding week.

2.6.4 The CM@Risk shall maintain at the Individual Project site and make available to City, updated records of Subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Individual Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from City; and shall obtain data from Subcontractors and maintain a current set of record drawings and the Project Manual.

2.6.5 The CM@Risk shall create record and as-built drawings and procure warranties and guarantees in accordance with the General Conditions.

2.6.6 The CM@Risk shall provide City (if City so requires) with complete, unaltered copies of all subcontracts, and all amendments thereto.

2.7 Planning, Commissioning, Activation, and Warranties

2.7.1 The CM@Risk shall collaborate with the City and Consultant(s) of the City to complete the planning and tasks necessary for Terminal B and Terminal C Commissioning and Testing; Activation; and Warranties.



EXHIBIT B
GENERAL CONDITIONS FOR
CITY OF SAN ANTONIO BUILDING CONSTRUCTION CONTRACTS



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

ARTICLE I. GENERAL PROVISIONS

1.1 **CONTRACT DEFINITIONS.** Wherever used in the Contract documents and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to both the singular and plural thereof.

1.1.1 The Contract Documents.

1.1.1.1 The Contract Documents consist of the formal Construction Manager at Risk Agreement (referred to hereafter as "Project Construction Services Agreement") between the Owner and the Contractor), these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract and Amendments issued after execution of the Contract. For purposes of this Subparagraph, an Amendment is a written Supplemental Agreement to the Contract signed by authorized representatives of both parties; a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1; or a written order for a minor change in the Work issued by the Design Consultants as described in Paragraph 7.3.

1.1.1.2 The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Project Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Contractor.

1.1.2 The Contract. The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Project Construction Services Agreement between the Owner and the CM@Risk ("hereinafter Contractor") by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the 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 by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

1.1.2.1 between the Design Consultants and Contractor;

1.1.2.2 between the Owner and a Subcontractor or Sub-subcontractor; or

1.1.2.3 between any persons or entities other than the Owner and Contractor.

Both the Contractor and the Design Consultants shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate the performance of each of their duties.

1.1.3 The Work. The term "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 the Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Contractor is responsible, to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 The Project. The Project is the total construction more particularly described in the Project Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the



Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

1.1.5 The Drawings. The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.6 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

1.1.7 The Project Manual. The Project Manual is the volume or volumes which contain the bidding requirements, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

1.1.8 Alternate. An Alternate is a variation in the Work on which the Owner requires a price separate from the Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted, the Owner will be entitled to a credit in the full value of the alternate as priced in the Contractor's Bid.

1.1.9 Base Bid. The Base Bid is the price quoted for the Work before Alternates are considered.

1.1.10 Hazardous Substance. The term Hazardous Substance is defined to include the following:

1.1.10.1 any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;

1.1.10.2 any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

1.1.10.3 radon;

1.1.10.4 any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

1.1.10.5 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;

1.1.10.6 any substance that, 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;

1.1.10.7 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.; 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

1.1.10.8 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.

1.1.11 City Council. The duly elected members of the City Council of the City of San Antonio, Texas.

1.1.12 Construction Observer/Inspector. ("COI") The authorized representative of the Director of Public Works, or its designee department, assigned by the Owner to observe and inspect any or all parts of the Project and the materials to be used therein. Sometimes also referred to as the Resident Inspector. Also referred to as Resident Inspector.

1.1.13 Department. The Department of Public Works, City of San Antonio, Texas or other department designee of the Department of Public Works.

1.1.14 Federally Assisted Contract. Any contract financed in whole or in part with federal funds

1.1.15 Field Work Directives. A written order issued by the Design Consultants or ODR which orders minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Duration.

1.1.16 Major Bid Item. Any individual bid item submitted by Contractor that constitutes, at a minimum, five percent (5%) of the total Contract Price proposed by the Contractor or, the dollar amount defined in the Special Conditions as constituting a "Major Bid Item", whichever is less; or in some instances specific bid Items which are identified and defined in other sections of this Agreement as constituting "Major Bid Items"

1.1.17 Notice to Proceed. (also "Work Project Authorization") A written notice given by Owner to Contractor to establishing the date on which the Contract Time will commence to run, and on which Contractor shall begin performance of its contractual obligations.

1.1.18 Site. Lands or areas (as indicated in the Contract Documents) furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

1.1.19 Other Definitions. As used in the Contract Documents, the following additional terms have the following meanings:

1.1.19.1 "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

1.1.19.2 "shall" means the action of the party to which reference is being made is mandatory;

1.1.19.3 "as required" means as prescribed in the Contract Documents; and

1.1.19.4 "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.

1.2 PRELIMINARY MATTERS.

1.2.1 Delivery of Bonds. When Contractor delivers the executed Agreements to City, Contractor shall also deliver to City such Bonds as Contractor may be required to furnish,



including but not limited to a Payment Bond in the form and amount specified in the Contract Documents; a Performance Bond in the form amount specified in the Contract Documents; and an Extended Warranty Bond in the form and amount specified in the Contract Documents.

1.2.2 Delivery of Evidence of Insurance. Prior to the commencement of any Work under this Agreement, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled with the name of the Project in the Description of Operations block of the Certificate. The original 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 Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and 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 his Agreement until such evidence of insurance shall have been delivered to it. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

1.2.3 Notice to Proceed and Commencement of Contract Times. Unless otherwise stated in the Notice to Proceed, the Contract Times will commence to run on the earlier of the date work actually commenced, or seven calendar days after issuance of City's Notice to Proceed. No Work shall be done at the Site prior to issuance of the Notice to Proceed.

1.2.4 Submission of Preliminary Schedules. Within ten (10) calendar days after receipt of City's Notice to Proceed for each project that comprises the Work, (unless otherwise specified elsewhere in the Contract Documents) Contractor shall submit to the Director the following:

1.2.4.1 A Preliminary Work Progress Schedule, which shall show the order in which the Contractor proposes to carry out the Work in accordance with the final approved phasing plan, and the anticipated start and completion dates of each phase of the Work. The 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;

1.2.4.2 A Preliminary Schedule of Shop Drawing and Sample Submittals, which shall list each required submittal and the times for submitting, reviewing and processing such submittal; and

1.2.4.3 A Preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the 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. Such prices will include and appropriate amount of overhead and profit applicable to each item of Work.

1.2.5 Preconstruction Conference. Within seven (7) days of issuance of the Notice to Proceed, but before any Work at the Site is started a conference attended by Contractor, Design Consultants/Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Work and discuss the Construction Progress Schedule referenced in this Article, procedures for handling Shop Drawings and other submittal, processing Applications for Payment and maintaining required records.

1.3 **CONTRACT DOCUMENTS.**

1.3.1 Execution of Contract Documents. The contract documents shall be signed by Owner and Contractor. If either the Owner or Contractor or both do not sign all of the Contract Documents, the Design Consultants shall identify such unsigned documents upon request. Execution of the Contract by the Contractor is a representation that the Contractor has been provided unrestricted access to the existing improvements and conditions on the Project Site and that it has thoroughly investigated those conditions. Contractor's investigation was instrumental in preparing its bid or proposal for the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum arising from conditions that



Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

A handwritten signature in blue ink, consisting of several overlapping loops and a vertical line on the left side.

1.3.2 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

1.3.2.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Design Consultants/Engineer, its consultants, or other consultants retained by the City for the Project that describe the Work to be executed by the Contractor (the "Construction Documents") are Instruments Of Service and shall remain the property of their authors whether the Project(s) for which they are made is executed or not. The Contractor shall be permitted to retain one record set. Neither the 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 the Design Consultants or the Design Consultants' consultants, and unless otherwise indicated the Design Consultants and the Design Consultants' consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Design Consultants, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Design Consultants and the Design Consultants' consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-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 the Owner, Design Consultants and the Design Consultants' consultants. The Contractor, Subcontractors, Sub-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 Consultants and the Design Consultants' 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 the Design Consultants and the Design Consultants' 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 in derogation of the Design Consultants' or Design Consultants' consultants' copyrights or other reserved rights.

1.3.2.2 All of the Contractor's documentary Work product reports and correspondence to City under this Agreement shall be the property of the City and, upon completion of this Agreement, such documentary Work product shall be promptly delivered to City in a reasonably organized form, without restriction on its future use by City on any additional Work associated with the any of the Projects.

1.3.2.3 The 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 the Contractor shall be replaced or reproduced at the Contractor's non-reimbursable, sole cost. In addition, City shall have access during normal business hours and following reasonable notice during the time this Agreement is in effect, and for four (4) years after Agreement expiration, to all of Contractor's records and documents covering reimbursable expenses, actual base hourly rates, time cards, annual salary escalation records maintained in connection with this Agreement, for purposes of auditing same at the sole cost of the City. The purpose of any such audit shall be for the verification of such costs. The Contractor shall not be required to keep records of, or provide access to the make up of any negotiated and agreed to lump sums or fixed overhead and profit multipliers. At the conclusion of any City audit, Contractor's will be afforded an audit exit conference to review the results of City's audit. Nothing herein shall deny the Contractor the right to retain duplicates. Refusal by the Contractor to comply with the provisions hereof shall entitle City to withhold further payments to Contractor until compliance is obtained.

1.3.2.4 All of the Contractor's documentary work product shall be maintained within the Contractor's San Antonio offices, unless otherwise authorized by the City. After



expiration of this Agreement, the Contractor's documents may be archived in the Contractor's central record storage facility.

1.3.3 Correlation and Intent.

1.3.3.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the indicated results. In cases of discrepancy between any drawing and the dimension figures written thereon, the dimension figures shall govern over scaled dimensions; Detailed Plan Drawings and accompanying notations shall govern over General Plan Drawings; Specifications shall govern over Plan Drawings and Special Conditions shall govern over Specifications, Plan Drawings and General Conditions. The most recent revision of Plans shall control over older revisions.

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

1.3.3.3 Unless otherwise stated in the Contract Documents, words which have 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" the Design Consultants/Engineer or the City's Resident Inspector occur, it is to be understood that the directions, orders, or instructions to which they relate are within the scope of, and authorized by the Contract Documents.

1.3.3.4 Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, 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 Bids except as may be otherwise 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.

1.3.3.5 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 as "1".

1. Contract Modifications signed by Contractor and Owner.
2. Addenda, with those of later date having precedence over those of earlier date.
3. Agreement
4. General Conditions
5. Specifications and Drawings.

1.3.3.6 Relation of Specifications and Drawings.

1.3.3.6.1 Drawings and Specifications are intended to be equivalent in authority and priority. Should they disagree in themselves, or with each other the Design Consultants shall determine the resolution.

1.3.3.6.2 Where the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the 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 substitution has been specifically accepted for use on this Project by the Design Consultants.

1.3.3.7 When the work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

1.3.3.8 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

1.3.4 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 that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2. OWNER

2.1 GENERAL

2.1.1 Owner Defined. The City of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County, and identified as Owner or as "the City" in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing who shall have the express authority to bind. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. ("Owner's Designated Representative" or "ODR") Whenever the term "City" or "Owner" is found in this Contract, such term shall include the City's agents, elected officials, employees, officers, directors, volunteers, and representatives, successors and assigns.

2.1.2 The Contractor acknowledges that no lien rights exist with respect to public property.

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER.

2.2.1 The City will provide and maintain the Preliminary Budget and general schedule for the Project. The Preliminary Budget will include the anticipated construction cost, contingencies for changes in the Work during construction, and other costs that are the responsibility of the Owner. The general schedule will set forth the Owner's plan for milestone dates and completion of the Project.

2.2.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations. The furnishing of these surveys and reports shall not relieve the Contractor of its duties under the Contract Documents or these General Conditions.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness following actual receipt of a written request.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge with five (5) complete sets of the Plans and Specifications. Additional complete sets of Plans and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets. All Contractors will be required to comply with the policy set out in the Supplementary or Special Conditions of this Contract, for protection of Sensitive Security Information, if any, contained in these and any other Contract Documents



2.2.6 Owner's personnel may, but are not required to be present at the construction site during progress of the Work to assist the Design Consultants in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

2.2.7 **OWNER'S RIGHT TO STOP THE WORK.** If the Contractor fails to commence and to continue to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2. CORRECTION OF WORK., or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner 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, the Owner's right under paragraph 12.2. CORRECTION OF WORK.

2.2.8 **OWNER'S RIGHT TO CARRY OUT THE WORK.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such three-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Consultants' additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts the Contractor shall pay the difference to the Owner.

ARTICLE 3. CONTRACTOR

3.1 GENERAL.

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The 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.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Consultants in the Design Consultants' administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the Site affecting it. Any error, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Design Consultants as a Request for Information in such form as the Design Consultants may require.

3.2.1.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Design Consultants, or the work installed by other contractors, is not guaranteed by the Design Consultants or the Owner.



3.2.1.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

3.2.2 The Contractor shall be deemed to have satisfied himself 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, the Contractor will review the Contract Documents to establish that:

3.2.2.1 the said design is in adequate, accurate, sufficient and fit for its purpose; and

3.2.2.2 there are no obvious or patent ambiguities, inaccuracies or inconsistencies within or between the documents forming the Contract; and

3.2.2.3 The Contractor can work with the aforementioned design so as to complete the Work and of each and every part thereof such that the Work and each and every part thereof will jointly and severally be in all respects fit for its or their purpose and in particular, but without limiting the generality of the foregoing, such that the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance specifications.

3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Design Consultants, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, Project codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Design Consultants.

3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Design Consultants in response to the Contractor's Notices or Requests for Information the Contractor shall make Claims as provided in Section 4.3. CLAIMS AND DISPUTES. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Design Consultants 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 the Contractor recognized such error, inconsistency, omission or differences and knowing failed to report it to the Design Consultants.

3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, 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 shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor prior to the commencement of Work.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.

3.3.1 The Contractor shall supervise, inspect and direct the Work competently and efficiently, using the Contractor's best skill and attention and devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, procedures, and for coordinating 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, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safely 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 the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Consultants and shall not proceed with that portion of the Work without further written instructions from the Design Consultants. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portion are in proper condition to receive subsequent Work.

3.3.4 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.

3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.3.6 The Contractor shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the 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 the 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 notwithstanding, the requirements of this paragraph are not intended to impose upon the Contractor any additional obligations that the 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.

3.4 LABOR AND MATERIALS.

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for 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.

3.4.1.1 PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS. The Provisions of Chapter 2258, Texas Government Code, are expressly made a part of this contract. In accordance therewith, the City will provide CM@Risk with a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this contract prior to the bidding of the Projects described in Section 2.3.3 of the Agreement and this schedule will become a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any sub-contractor under him. The establishment of



prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Contractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The Contractor, in the execution of this project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, Contractor agrees that he/she will abide by all applicable terms and City "General Conditions" governing wages and labor standards and practices, established by City ordinance 60110, amended by City ordinance 71312, and provisions of the Nondiscrimination Clause and the Small and/or Minority Business Advocacy Clause as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office.

3.4.2 Substitutions.

3.4.2.1 Substitutions and alternates may be rejected without explanation and will be considered 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 the Contractor (iii) and when in the judgment of the Owner or the Design Consultants, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

3.4.2.2 The Contractor must submit to the Design Consultants and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Design Consultants. Proposals for substitutions shall be submitted in triplicate to the Design Consultants in sufficient time to allow the Design Consultants no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

3.4.2.3 Whether or not any proposed substitution is accepted by the Owner or the Design Consultants, The Contractor shall reimburse the Owner for any fees charged by the Design Consultants or other consultants for evaluating each proposed substitute.

3.4.3 Except as otherwise required for safety or protection of persons or the Work or property at the Site, or adjacent thereto, no Work, will be allowed by Owner between the hours of 10:00 p.m. and 6:00 a.m. of the following day, unless directed by the ODR or requested in writing by Contractor and approved by the Director of Public Works or its Designee Department.

3.4.4 The 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. The Contractor shall be responsible to the Owner for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone whom the Contractor may allow to perform any Work on the Project, and their agents and employees, and their officers, employee, agents and consultants, whom the Contractor may allow to come on the job site with the exception of the Owner, the Design Consultants, and members of the Program Management Team. In addition, if the Contractor



receives written notice from the Owner complaining about any Subcontractors or employees or anyone who is a hindrance to proper or timely execution of the Work, Contractor shall remedy such complaint without delay to the Project and at no additional cost to the Owner. This provision shall be included in all contracts between the Contractor and between the Subcontractors at all times.

3.4.5 The Contractor recognizes that the Project Site is a public facility which represents the City of San Antonio, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job Site.

3.4.6 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.7 All materials and equipment shall be as specified in the Contract Documents, and if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Design Consultants/Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Design Consultants and in accordance with a Change Order

3.4.8 All materials shall be shipped, stored and handled in a manner that will protect and ensure their condition at the time of incorporation in the Work. After installation, they shall be properly protected against damage to ensure their being in the condition required by Subparagraph 3.5.1 when the Work is completed and accepted by the Owner.

3.4.9 The Contractor shall procure and furnish to the Owner all guarantees, warranties, spares and maintenance manuals that are called for by the specifications or that are normally provided by a manufacturer. The maintenance manual shall include a catalog and price list for any equipment, materials, supplies, or parts used in the inspection, calibration, maintenance or repair of the equipment. Items in the catalog shall be readily available for purchase.

3.4.10 During construction of the Work and for three years after Final Completion, the Contractor shall retain and shall require all Subcontractors to retain for inspection and audit by the 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 the Owner, a legible copy or the original of any or all such records shall be produced by the Contractor at the administrative office of the Owner. To the extent that it requests copies of such documents, the City will reimburse the Contractor and its Subcontractors for copying costs.

3.5 **WARRANTY.**

3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, included substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.



3.5.2 The Contractor agrees to assign to the Owner 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. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from subcontractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

3.5.3 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

3.5.4 The warranty provided in paragraph 3.5.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner. Each project, or approved phase of each project, shall have its own, separate, and independent date of Substantial Completion or Final Completion.

3.5.5 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of paragraphs 3.5.1 and 3.5.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

3.5.6 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Owner and Contractor acknowledge that the Work may involve construction work on more than one (1) Project for the Owner. Each Project, or approved phase of each Project, shall have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one year warranty on each phase or Project which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Design Consultants at least one month prior to the expiration of the one year warranty period on each Project or each phase of the Project which has been substantially completed. Prior to termination of the one year warranty period, Contractor shall accompany the Owner and Design Consultants on reinspection of the Project and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the Project which are observed or reported during the reinspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner and the Design Consultants, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Contractor's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

3.5.7 Warranties shall become effective on a date established by the Owner and Design Consultants 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. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner and Design Consultants or the date of final payment.

3.5.8 Neither the final payment nor any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the



Contractor or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship. The Contractor guarantees that the Work will conform to the Contract Documents.

3.5.9 The Project(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the Project(s) by external forces beyond Contractor's control. The Contractor, immediately upon notification by the Owner of water penetration, shall determine the source of water penetration and do any work necessary to make the Project(s) watertight. The Contractor also shall repair or replace any damaged material, finishes, and fixtures, damaged as a result of this water penetration, to return the Project(s) to original condition. The costs of such determination and repair shall be borne by the Contractor only to the extent that the leak(s) are attributable to faulty workmanship or unauthorized or defective materials.

3.6 **TAXES.** The Contractor will not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) the City is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

3.7 **PERMITS, FEES AND NOTICES.**

3.7.1 Permits. Unless otherwise provided in the Contract Documents, the Contractor shall obtain and pay for the Building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. Owner and Design Consultants shall assist Contractor, when necessary, in obtaining such permits and licenses.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, Building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Design Consultants and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, Building codes, and rules and regulations without such notice to the Design Consultants and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.7.5 The Contractor shall also assist in obtaining all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the 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 construction sites. 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.

3.8 **ALLOWANCES.**

3.8.1 The 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 the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.



3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

3.8.2.2 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 Contract Sum but not in the allowances;

3.8.2.3 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: (1) the difference between actual costs and the allowances under Section 3.8.2.1, and (2) changes in Contractor's costs under Section 3.8.2.2

3.8.3 Materials and equipment under an allowance shall be selected by the Owner within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.9 **SUPERINTENDENT.**

3.9.1 At all times during the progress of the Work Contractor shall assign a competent resident superintendent and any necessary assistants, all satisfactory to the Director of Public Works or Designee Department Director, as applicable. Any Superintendent designee shall be identified in writing to the ODR promptly after Owner issues written Notice to Proceed. The Superintendent shall represent the Contractor and all directions given to him shall be binding on the Contractor. The designated Superintendent shall not be replaced without written notice to the ODR and approval of the Director, except under extraordinary circumstances. The Superintendent may not be employed on any other project prior to final completion of the Work.

3.9.2 The Contractor shall furnish a list to the Design Consultants of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Design Consultants shall provide such information to the Owner.

3.9.2.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

3.9.2.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the work. Owner reserves the right to require Contractor to dismiss from the work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

3.9.2.3 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the City's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

3.10 **CONTRACTOR'S WORK PROGRESS SCHEDULES.**

3.10.1 Unless indicated otherwise in those documents, Contractor shall submit its initial Work Progress Schedule for the Work in relation to each Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to the ODR and the Design Consultants/Engineer. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with full reporting capability. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, and acceptance of all the Work of the Contract. ("Milestone Dates"). The initial schedule shall not exceed the time limits set forth in the Contract Documents. Contractor shall organize the Work Progress Schedule and provide adequate detail so the Schedule is capable of measuring and



forecasting the effect of delaying events on completed and uncompleted activities. When acceptable to the Owner, this initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the duration of the Contract.

3.10.2 The Work Progress Schedule is for the Contractor's use in managing the Work and submittal of the Schedule, and successive updates or revisions, is for the information of the Owner and to demonstrate that the Contractor has complied with requirements for planning the Work. The Owner's acceptance of a schedule, schedule update or revision constitutes the Owner's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.

3.10.2.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of the Contractor's proposed sequences and duration.

3.10.2.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute the Owner's consent, alter the terms of the Contract, or waive either the Contractor's responsibility for timely completion or the Owner's right to damages for the Contractor's failure to do so.

3.10.2.3 The Contractor's scheduled dates for completion of any activity or 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.

3.10.3 Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner of the accurate depiction of all progress to date and that the Contractor will follow the schedule as submitted in performing the Work.

3.10.4 Schedule Updates. Update the Work Progress Schedule and the Submittal Schedule monthly, as a minimum, to reflect progress to date and current plans for completing the Work, and submit paper and electronic copy of the update to the AE and ODR as directed. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. The Contractor may revise the Progress Schedule logic only with the Owner's concurrence when in the Contractor's judgment it becomes necessary for the management of the Work. Identify all proposed changes to schedule logic to Owner and to the AE via an Executive Summary accompanying the updated schedule for review prior to implementation of revisions.

3.10.4.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Design Consultants. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project cash flow for the Project.

3.10.4.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Design Consultants is required to review submittals, shop drawings, product data, or samples.

3.10.4.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

3.10.4.4 If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the



Owner or the Design Consultants to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Design Consultants.

3.10.4.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity duration so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

3.10.4.6 Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and duration used to prosecute the completed work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining work in the sequence and time indicated.

3.10.5 Completion of Work. The Contractor is accountable for completing the Work in the time stated in the Contract, or as otherwise amended by Change Order.

3.10.5.1 If, in the judgment of the Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to ensure timely completion of the entire work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of work placement by: increasing working forces; increasing equipment or tools; increasing hours of work or number of shifts; expediting delivery of materials; or taking other action proposed if acceptable to Owner.

3.10.5.2 Within ten (10) calendar days after such notice from the ODR, the Contractor shall notify the ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project.

3.10.5.3 Should the ODR deem the plan of action inadequate the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents.

3.10.5.4 The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph.

3.10.5.5 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

3.10.6 If reasonably required by Owner, Contractor shall also 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.



3.10.7 The Contractor shall recommend to the Owner and to the Design Consultants/Engineer a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the project schedule

3.10.8 This Article pertains to construction phase schedules. Additional requirements for design phase scheduling for Construction Manager-at-Risk and Design Build contracts are outlined in Division 1 Project Planning and Scheduling Specification. Refer to Special Conditions and Division 1 General Administration Specifications for additional schedule requirements.

3.11 DOCUMENTS AND SAMPLES AT THE SITE.

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and currently marked, to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design Consultants and shall be delivered to the Design Consultants for submittal to the Owner upon completion of the Work.

3.11.2 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 to inspection by the Owner, Design Consultants, or their respective agents, within five (5) working days of request by Owner, Design Consultants, or their respective agents.

3.12 SHOP DRAWINGS, PRODUCE DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared and furnished by the Contractor or its agents, manufacturer, supplier or distributor, and which illustrate and detail some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical samples of materials, equipment, or workmanship that are representative of some portion of the Work, furnished by the Contractor to Owner to assist Owner and Design Consultants/Engineer in the establishment of workmanship and quality standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Design Consultants is subject to the limitations of Section 4.2.7. Informational submittals upon which the Design Consultants 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 Consultants without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design Consultants 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 the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Design Consultants without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and filed construction criteria related thereto, or will do so, and has checked



and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The 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 has been approved by the Design Consultants.

3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Consultants' approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Design Consultants in writing of such deviation at the time of submittal and (1) the Design Consultants has given written approval in the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Consultants' approval thereof.

3.12.9 The 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 the Design Consultants on previous submittals. In the absence of such written notice the Design Consultants' approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of Architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The 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 are specifically required of the Contractor by the Contract Documents, the Owner and the Design Consultants will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly 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 the Design Consultants. The Owner and the Design Consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Design Consultants have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Design Consultants will 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. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 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.

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

3.13.3 The Contractor will abide by all applicable rules and regulations of the Owner with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by the City.





3.14 **CUTTING AND PATCHING**

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the work or to make its parts fit together properly

3.14.2 The Contractor shall not damage or endanger a portion of the work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor, such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.14.3 Any part of the finished Work damaged during installation or prior to substantial completion of the Work shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced.

3.15 **CLEANING UP.**

3.15.1 During the progress of the Work, Contractor shall keep the Site and surrounding area free from accumulations of waste materials, rubbish, and other debris resulting from the Work. Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements 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 the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost therefore shall be charged to the Contractor.

3.15.2 At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy, by Owner. Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements 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 the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost therefore shall be charged to the Contractor.

3.16 **ACCESS TO WORK.** The Contractor shall provide the Owner and Design Consultants access to the Work in preparation and in progress wherever located.

3.17 **PATENT FEES AND ROYALTIES.**

3.17.1 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 Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

3.18 **GENERAL INDEMNIFICATION.**

3.18.1 CM@Risk covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and

expenses, of every kind and character whatsoever, including without limitation by enumeration the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of CM@Risk and of Owner) damage to property (other than the Work itself and including property of CM@Risk and of Owner), but only to the extent caused by the negligent acts or omissions of, or incident to or in connection with or resulting from the negligent acts or omissions of, CM@Risk, its agents, servants, and employees, or its subcontractors and their agents, servants, and employees, or in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract. Notwithstanding anything to the contrary included herein, in no event shall the CM@Risk be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

3.18.2 In addition to the above, CM@Risk also covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and expenses, of every kind and character whatsoever, including without limitation by enumeration the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of CM@Risk and of Owner) damage to property (other than the Work itself and including property of CM@Risk and of Owner), but only to the extent caused by the intentional, deliberate, grossly negligent, willful acts or omissions of, CM@Risk, its agents, servants, and employees, or its subcontractors and their agents, servants, and employees, or in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract, including but not limited to violations of any statute, regulation, ordinance or provision of this Agreement. Notwithstanding anything to the contrary included herein, in no event shall the CM@Risk be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

3.18.3 **Intellectual Property Indemnification** CM@Risk 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 the 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 CM@Risk and its employee or its subcontractors and their agents, servants, and employees, based on any deliverable or any other materials furnished hereunder by the CM@Risk, and used by either City or CM@Risk within the scope of this agreement (unless said infringement results directly from CM@Risk's compliance with City's written standards or specifications). CM@Risk does not warrant against infringement by reason of Owner's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process. CM@Risk 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 and expressed in writing signed by the parties hereto. CM@Risk agrees to consult with the City Attorney during such defense or negotiations, and make good faith efforts to avoid any position adverse to the interest of the City. City will make available to CM@Risk any deliverables and/or works made for hire by CM@Risk which are necessary to the defense of CM@Risk against any claim of infringement for the duration of CM@Risk's legal defense.

3.18.4 If such infringement claim or action has occurred or, in CM@Risk's judgment is likely to occur, City shall allow the CM@Risk at CM@Risk's option and expense, (unless such infringement results directly from CM@Risk'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 either: (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 CM@Risk, upon written request City shall return the deliverable and/or materials in question to CM@Risk and CM@Risk 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 Paragraph shall fail to satisfy the third-party claimant, these actions shall not relieve CM@Risk from its defense and indemnity obligations set forth in this Article.

3.18.5 The indemnification obligations under this Article 9 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 CM@Risk 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.

3.18.6 Workmen Safety. The indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Design Consultants/Engineer pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

3.18.7 Other Provisions Regarding Indemnity.

3.18.7.1 The provisions of this indemnification are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

3.18.7.2 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

3.18.7.3 Contractor shall promptly advise the City in writing of any claim or demand against the City or Contractor, as the case may be, 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 Article.

3.18.7.4 Defense Counsel. City shall have the right to approve defense counsel, of which approval will 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 seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. 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 shall also 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.

3.18 **REPRESENTATIONS AND WARRANTIES.** The Contractor represents and warrants the following to the owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the final completion of the Work:



3.18.1 that it 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;

3.18.2 that it 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;

3.18.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

3.18.4 . that the execution of the Contract and its performance thereof is within its duly authorized powers; and

3.18.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

3.19 **BUSINESS STANDARDS.** Contractor, in performing its obligations under 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 Owner or affiliates. Contractor shall review, with Owner, 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 and agents in their relations with Owner's employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT.

4.1 DESIGN CONSULTANTS.

4.1.1 Definition. A person registered as an architect pursuant to Tex. Occupations Code Ann., Chapter 1051, as 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 Owner or Design-Build Contractor 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 the Contract. The term "Design Consultants/Engineer", unless the context clearly indicates otherwise, means an engineer or Design Consultants in private practice retained for a specific project under a contractual agreement with the City.

4.1.2 Duties, responsibilities and limitations of authority of the Design Consultants as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Design Consultants. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Design Consultants is terminated, the Owner shall employ a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultants.

4.2 ROLE OF THE DESIGN CONSULTANTS IN ADMINISTRATION OF THE CONTRACT.

4.2.1 The Design Consultants will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Design Consultants will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.



4.2.2 The Design Consultants will advise and consult with the Owner. The Owner's instruction to the Contractor may be issued through the Design Consultants/Engineer but the Owner reserves the right to issue instructions directly to the Contractor through other designated City representatives. Contractor understands that City may modify the authority of such Design Consultants as provided in the terms of its contract relationship with the Design Consultants, and the Director shall, in such event, be vested with powers formerly exercised by such Design Consultants, provided written notice of such modification shall be immediately served on the Contractor in writing. Nothing herein shall authorize independent agreements between Contractor and such Design Consultants, nor shall the Design Consultants be deemed to have a legal relationship with the Contractor.

4.2.3 The Design Consultants will make visits to the Site at intervals appropriate to the various stages of construction to operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and the Work. However, the Design Consultants will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Consultants will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. The Design Consultants' efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will generally conform to the Contract Documents.

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

4.2.5 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communication have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Design Consultants about matters arising out of or relating to the Contract. Communications by and with the Design Consultants' consultants shall be through the Design Consultants. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.6 Based on the Design Consultants' evaluations of the Contractor's Application for Payment, the Design Consultants will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.7 Except as otherwise provided in the Supplementary or Special Conditions, the Design Consultants and the Owner will have authority to reject Work that does not conform to the Contract Documents. Whenever the Design Consultants or Owner considers it necessary or advisable, the Design Consultants will have authority to require inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Consultants or Owner nor a decision made by either, in good faith, to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Consultants to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.8 The Design Consultants will review and approve or take other appropriate action upon the 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. The Design Consultants will respond to submittals such as Shop Drawings, Product Data, and Samples pursuant to the procedures set forth in Division 1 of 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 the Contractor as required by the Contract Documents. The Design Consultants' review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Design Consultants review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Consultants, or any construction means, methods, techniques, sequences or procedures. The Design Consultants approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.9 The Design Consultants will prepare Change Orders and Field Work Directives, and with concurrence of the ODR, will 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 the Contractor shall carry out promptly and record on the as-built record documents.

4.2.10 The Design Consultants and the Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Design Consultants will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.11 Upon written request of the Owner or Contractor the Design Consultants will issue its interpretation of the requirements of the plans and specifications. The Design Consultants' response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required for the Design Consultants shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Design Consultants to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Design Consultants will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

4.2.13 The Design Consultants' decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

4.3 CLAIMS AND DISPUTES.

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, 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 the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Time Limit on Claims. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims must be initiated by written notice to the Design Consultants and the Owner.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 13.4.1, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the Site which are subsurface or otherwise concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Design Consultants of such conditions promptly before conditions are disturbed, and in no event less than 3 days after first observation of the



conditions. The Design Consultants will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to Alternative Dispute Resolution pursuant to Article 4.5.

4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design Consultants, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design Consultants, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds. Claims shall be filed in accordance with this Section.

4.3.6 Claims for Additional Time.

4.3.3.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.3.2 The Contractor shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site, as determined from climatological data set forth in Division 1 of the Project specifications. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Design Consultants not later than the fifteenth day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

4.3.7 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 of others for whose acts such party is legally responsible, 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) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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

4.3.9 Claims for Consequential Damages. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the Contractor and to claims by the Owner:

4.3.6.1 No indirect or consequential damages will be allowed.

4.3.6.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages directly.

4.3.6.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.



4.3.6.4 The maximum daily limit on any recovery for delay shall be the amount originally estimated by the Contractor for job overhead costs divided by the total number of calendar days of Contract Time called for in the original Contract.

4.3.6.5 No damages will be allowed for home office overhead or other home office charges or any Eichleay formula calculation, except as expressly authorized by the Contract Documents.

4.3.6.6 No profit will be allowed on any damage claim, except as expressly authorized by the Contract Documents.

4.3.10 Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Contractor asserts a claim to the Contractor that the Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to:

4.3.10.1 the requirements of Paragraph 4.3 of these General Conditions; and

4.3.10.2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Contractor to seek and assert such claim against the Owner:

(i) the Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Contractor in the claim submittal materials.

(ii) The Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid.

(iii) The Subcontractor making the claim to the Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Contractor in the claim submittal materials.

4.3.10.3 Any failure of the 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.

4.3.10.4 Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or law.



4.3.11 Attorney's Fees. **IN ACCORDANCE WITH SECTION 271.159 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES OR CERTAIN DIRECT OR CONSEQUENTIAL DAMAGES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, AND CONTRACTOR HEREBY EXPRESSLY WAIVES SUCH CLAIMS.**

4.3.12 No Waiver of Governmental Immunity. **NOTHING IN THIS PARAGRAPH 4.3 SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**

4.4 RESOLUTION OF CLAIMS AND DISPUTES.

4.4.1 Decision of Design Consultants.

4.4.1.1 Claims by the Contractor against the Owner shall be referred initially to the Design Consultants for consideration and recommendation to the Owner. An initial recommendation by the Design Consultants shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Design Consultants with no recommendation having been rendered by the Design Consultants.

4.4.1.2 The Design Consultants will review Claims and within 10 days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Design Consultants is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

4.4.1.3 Following receipt of the Design Consultants' initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request resolution of the dispute pursuant to Paragraph 4.5.

4.4.1.4 If the Design Consultants requests a party to provide a response to a Claim to furnish additional supporting data, such party shall either provide a response on the requested supporting data, advise the Design Consultants when the response or supporting data will be furnished or advise the Design Consultants that no supporting data will be furnished.

4.4.2 Waiver of Lien. It is understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the Project, 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 Project or any of the improvements are so erected, built, or situated.

4.5 ALTERNATIVE DISPUTE RESOLUTION.

4.5.1 Continuation of Work Pending Dispute Resolution. Each party is required to continue to perform its obligations under this contract pending final resolution of any dispute arising out of or relating to this Contract unless it would be impossible or impracticable under the circumstances.

4.5.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the Parties agree that 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 days after a party delivers a written notice of such dispute then the parties shall proceed with the alternative dispute resolution process contained herein, including mediation and/or arbitration. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

4.5.3 Mediation.

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

4.5.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.

4.5.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

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

ARTICLE 5. SUBCONTRACTORS

5.1 **DEFINITION.** A Subcontractor is a person or entity who 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 or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 The Contractor shall upon executing the Contract, notify the Director in writing of the names of all proposed first tier Subcontractors for the Work.

5.2.2 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 Owner may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner prior to the Notice of Award and not objected to in writing by Owner prior to the Notice of Award will be deemed acceptable to Owner. Acceptance of any Subcontractor, other person, or organization by Owner shall not constitute a waiver of any right of Owner to reject defective Work. If Owner after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, the Contractor will be required to submit an acceptable substitute. The Contract Price will not be increased as a result of such substitution. Contractor shall not be required to employ any Subcontractor, other person, or organization against whom Contractor has reasonable objection.

5.2.3 Contractor shall be fully responsible to Owner for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of 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 Owner and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall



it create any obligation on the part of Owner 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. Owner 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.

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

5.2.5 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor, which specifically binds the Subcontractor to the applicable terms and, conditions of the Contract Documents for the benefit of Owner.

5.2.6 SBEDA/DBE Reporting and Auditing. During the term of the contract, the Contractor must report the actual payments to all SBEDA or DBE (as applicable) Subcontractors and Suppliers in the time intervals and format prescribed by the City of San Antonio. The City reserves the right, at any time during the term of the contract to request additional information, documentation or verification of payments made to such Subcontractors and Suppliers in connection with the Contract. Verification of amounts being reported may take the form of requesting copies of canceled checks paid to SBEDA or DBE Subcontractors and Suppliers and/or confirmation inquiries directly to the SBEDA or DBE participants. Proof of payments, such as copies of canceled checks must properly identify the project name or project number to substantiate a SBEDA or DBE payment for the Project.

5.2.7 Small Business Subcontractor Substitutions. See SBEDA or DBE Requirements in Supplementary Conditions for Substitution of Subcontractors. Failure to follow such procedures is an event of default under this Contract and may be grounds for termination.

5.2.8 Internet-based Project Management Systems. At its option Owner may administer its design and construction management through an Internet-based management system. In such cases, the contractor shall conduct communication through this media and perform all project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, amendment, change orders and other administrative activities. When such Systems are employed, the Owner shall administer the software, shall provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

5.3 **SUBCONTRACTUAL RELATIONS.** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Design Consultants. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Consultants under the Contract Documents with respect to the work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS.**



5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

5.4.1.1 assignment is effective only after Termination for Cause of the Contract by the Owner and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

5.4.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increase in cost resulting from the suspension.

ARTICLE 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS.

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner'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 Conditions of the Contract identical or substantially similar to these. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3. The City will be responsible for ensuring that all "Separate Subcontractors" working on the site and not under contract with the Contractor shall have insurance in the like form and amounts as required by this Agreement of the Contractor.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operation related to the Project with the Owner's own forces, the Owner shall be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract.

6.2 MUTUAL RESPONSIBILITY.

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operation by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design Consultants apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.



6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors, as provided in Section 10.2.5.

6.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP.

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Consultants will allocate the cost among those responsible.

ARTICLE 7. CHANGES IN THE WORK

7.1 GENERAL.

7.1.1 Changes in the Work may be accomplished after the execution of the Contract, and without invalidating the Contract, by Change Order, Field Work Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Design Consultants; a Field Work Directive requires agreement by the Owner and Design Consultants and may or may not be agreed to by the Contractor; an order for a minor change in the work may be issued by the Design Consultants alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Field Work Directive or order for a minor change in the Work.

7.2 CHANGE ORDERS.

7.2.1 A Change Order is a written modification of the Contract prepared by the Design Consultants and signed by the Owner, Contractor and Design Consultants, (and approved by the City Council, if required) which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times and is issued on or after the Effective Date of the Agreement.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3. The Contractor and subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by Division 1 of the Project Specifications.

7.2.3 Acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

7.3 FIELD WORK DIRECTIVES.

7.3.1 A Field Work Directive is a written order prepared by the Design Consultants and signed by the Owner and Design Consultants, directing a change in the Work prior to agreement on



adjustment, if any, in the Contract Sum or Contract time, or both. The Owner may by Field Work Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Field Work Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

7.3.3.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.3.2 unit prices stated in the Contract Documents or subsequently agreed upon;

7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

7.3.3.4 as provided in Section 7.3.6.

7.3.4 Upon receipt of a Field Work Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Consultants 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.

7.3.5 A Field Work Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Design Consultants on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Design Consultants may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

7.3.6.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

7.3.6.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

7.3.6.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

7.3.6.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost plus the Contractor's allocated percent for profit and overhead as confirmed by the Design Consultants, subject to equitable adjustment recommended by the Design Consultants and approved by the Owner. 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, if any,



with respect to that change. The credit will not include any reduction in the Contractor's Lump Sum Construction Phase fee or Lump Sum General Condition Cost.

7.3.8 Pending final determination of the total cost of a Field Work Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Design Consultants will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.3.

7.3.9 When the Owner and Contractor agree with the determination made by the Design Consultants 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.

7.4 **MINOR CHANGES TO THE WORK.** The Design Consultants will 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 the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8. TIME

8.1 DEFINITIONS.

8.1.1 Contract Time. Unless otherwise provided, Contract Time is the period of time, including 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.

8.1.2 Commencement of Work. The date of commencement of the Work is the date established in the Agreement.

8.1.3 Substantial Completion. The date of Substantial Completion is the date certified by the Design Consultants and Owner in accordance with Section 9.8, when the Work or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents, so as to be operational and fit for the use intended by the Owner.

8.1.4 Day. The term "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. A Working Day is a day of eleven hours as measured from seven o'clock a.m. to six o'clock p.m. on weekdays, except legal holidays.

8.2 PROGRESS AND COMPLETION.

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on a Project or elsewhere prior to the effective date of insurance for that Project as required by Article 11 to be furnished by the Contractor and Owner. The date of commencement is established by the Contract Documents or a Notice To Proceed given by the Owner. The Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work.



8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

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8.3 DELAYS AND EXTENSIONS OF TIME.

8.3.1 The Owner, except as provided for in this Subparagraph 8.3.1, shall not be liable to the Contractor for delay to the Contractor's work or by reason of unreasonably severe weather, fire, act of God, riot, strike, force Majeure, action of workmen or others, or any cause beyond the Owner's control. Should any of these factors delay the Project's critical path, as evidenced by a time impact analysis developed by Contractor and verified by the Design Consultants, the Program Manager, and the ODR, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such delays.

8.3.2 Should the Contractor be delayed by the act, neglect or default of the Owner or the Design Consultants, 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 the Design Consultants, the Program Manager and the ODR, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within twenty one (21) days. In addition, Contractor, upon timely notice to the City and substantiation by the Design Consultants, the Program Manager and the ODR, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs associated for the Contractor to administer their Work and does not include costs associated for any tier of Subcontractor or Vendor to administer their Work. Compensation for the Subcontractor's and Vendor'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 the Owner-caused event. In no event will Contractor be entitled to home office or other off-site expenses or damages.

8.3.3 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

8.3.4 This Agreement does not permit the recovery of damages by the Contractor for delay, disruption or acceleration, other than those described above in Subparagraph 8.3.2 Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time or as contemplated in Subparagraph 8.3.2.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 **CONTRACT SUM.** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 **SCHEDULE OF VALUES.** Before the first Application for Payment, the contractor shall submit to the Design Consultants 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 the Design Consultants may require. This schedule, unless objected to by the Design Consultants, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 **APPLICATIONS FOR PAYMENT.**

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Design Consultants an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Design Consultants may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Field Work Directives, or by interim determination of the Design Consultants, but not yet included in Change Orders.



9.3.1.2 Such applications may not include requests for payment for portions of the work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the 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 OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

9.3.4 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, 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 that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

9.4 CERTIFICATES FOR PAYMENT.

9.4.1 The Design Consultants will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the contractor, for such amount as the Design Consultants determines is properly due, or notify the Contractor and Owner in writing of the Design Consultants' reasons for withholding certification in whole or in part as provided in Section 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Design Consultants to the Owner, based on the Design Consultants' 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 the Design Consultants' 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 specific qualifications expressed by the Design Consultants. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Design Consultants have (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other

data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION.

9.5.1 The Design Consultants may withhold a Certificate for Payment in whole or in part, to the extent reasonable necessary to protect the Owner, if in the Design Consultants' opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Design Consultants are unable to certify payment in the amount of the Application, the Design Consultants will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Design Consultants cannot agree on a revised amount, the Design Consultants will promptly issue a Certificate for Payment for the amount for which the Design Consultants are able to make such representations to the Owner. The Design Consultants may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may modify the whole or a part of a Certificate for Payment because of such extent as may be necessary in the Design Consultants' opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

9.5.1.1 defective Work not remedied;

9.5.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

9.5.1.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

9.5.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

9.5.1.5 damage to the Owner or another contractor;

9.5.1.6 reasonable evidence that the Work will 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; or

9.5.1.7 persistent failure to carry out the Work in accordance with the Contract Documents.

The Owner will pay undisputed portions of such Application for Payment within the time frames established in the Paragraph 9.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in subparagraph 9.5.1.

9.6 PROGRESS PAYMENTS.

9.6.1 After the Design Consultants have issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design Consultants.

9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors as are applicable to the contractor hereunder, and if the Owner so requests, shall



provide copies of such subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

9.6.3 The Design Consultants will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Design Consultants and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Design Consultants 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.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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

9.7 **FAILURE OF PAYMENT.**

9.7.1 If the Design Consultants do not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Design Consultants, then the Contractor may, upon seven additional days' written notice to the Owner and Design Consultants, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.8 **SUBSTANTIAL COMPLETION.**

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. In the event substantial completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until substantial completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Agreement Between the Owner Contractor or Owner and Construction Manager-at-Risk.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Consultants a comprehensive list of items to be completed or corrected prior to 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.

9.8.3 Upon receipt of the Contractor's list, the Design Consultants will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Consultants' or Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or



correct such item upon notification by the Design Consultants. In such case, the Contractor shall then submit a request for another inspection by the Design Consultants or Owner to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is substantially complete, the Design Consultants or Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish 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 designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.8.5 The Certificate of Substantial completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.8.6 Retainage is not due to the contractor until 30 days after final completion of each portion of the Work as set out in Paragraph 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

9.9 PARTIAL OCCUPANCY OR USE.

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under section 11.2.6 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 the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, 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 the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Consultants as provide under Section 9.8.2. Consent of the 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 the Owner and Contractor or, if no agreement is reached, by decision of the Design Consultants.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Design Consultants shall jointly 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.

9.9.3 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.

9.10 FINAL COMPLETION AND FINAL PAYMENT.

9.10.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Design Consultants thereof in writing. Thereupon, the Design Consultants and Owner will 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 Design Consultants will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Design Consultants is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the



Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

9.10.2 The Contractor shall not be entitled to final payment unless and until it submits to the Design Consultants its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Design Consultants or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by Issuance of Change Orders affecting final completion, and the Design Consultants so confirms, the Owner shall, upon application by the Contractor and certification by the Design Consultants, and without terminating the Contract, make payment of the balance due 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 the Contractor to the Design Consultants prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment except that it shall not constitute a waiver of claims.

9.10.4 The Owner shall make final payment of all sums due the Contractor not more than thirty (30) days after the Design Consultants' execution of a final Certificate for Payment.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payees as unsettled at the time of final Application for Payment.

9.11 **AUDIT RIGHTS.** Records of expenses pertaining to the Pre-Construction Phase reimbursable expenses of the project shall be available for audit by the City or the City's authorized representative on reasonable notice. The agreed upon Worker Wage Rates and Monthly Salary Rates are set forth on Exhibit F. The City and the CM@Risk have agreed that these wage and salary rates will apply during the Pre-Construction phase. CM@Risk shall not adjust such wage and salary rates without the written consent of the ODR. The Owner shall have the right to audit the number of individuals and time spent by such individuals assigned to the project to confirm that the number of individuals and the man-hours worked for the CM@Risk by each individual on the project are generally in accordance with the CM@Risk's invoices and its accepted CM@Risk's Pre-Construction and Construction Phase proposals dated May 31, 2007. Contractor agrees to maintain adequate books and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books and records, and shall have the right to audit same in accordance with this Section 11.1.

9.12 **ADDITIONAL INSPECTIONS.** In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Design Consultants are required to make more than 1 inspection for Substantial Completion; (2) the Design Consultants are required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within sixty days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Design Consultants for any additional inspections or services.



ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The 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 Owner 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. Owner shall have the right, but not the obligation, to inspect Contractor's complete responsibility for protecting the safety and health of It's employees and subcontractor.

10.1.2 Contractor shall notify Owner immediately, by telephone with prompt confirmation in writing, of injuries and fatalities as Owner shall deem necessary, 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.

10.1.3 Contractor has adopted or will 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 Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work. Contractor will remove any of its employees from performing the Work 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. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

10.1.4 Contractor will 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). Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

10.1.5 Both Owner and Contractor agree these safety and health terms to be of the highest importance, and a breach or violation of any of the terms of this Paragraph by Contractor will be considered to be material and substantial breach of this Agreement. In the event that Owner shall determine that Contractor has breached or violation the terms of this Paragraph, then Owner shall determine, immediately upon written notice to Contractor. Work shall not recommence until Owner shall be satisfied that the safety provisions hereof shall not be breached or violated thereafter. If Owner shall terminate the Contract, the Owner and Contractor shall complete their obligations hereunder to one another in accordance with Paragraph 13.3 "Termination for Cause".

10.1.6 Nothing contained in this Paragraph shall, however, be interpreted as creating or altering the legal duty of Owner to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or altering the status of Contractor as an independent contractor.

10.1.7 Notwithstanding either of the above provisions or whether Owner exercises its rights set forth herein, Owner does not warrant nor represent to Contractor, Contractor's employees or



agents, any subcontractors, or any other third party that Contractor's policy meets the requirements of any applicable law, code, rule, or regulation, nor does Owner warrant that the proper enforcement of Contractor's policy will insure that no accidents or injuries will occur. In addition, any action by Owner under these provisions in no way diminishes any of Contractor's obligations under applicable law or the contract documents.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

10.2.1.3 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.

10.2.2 The 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.

10.2.3 The 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 owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the contract documents) CM@Risk also covenants and agrees to HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of CM@Risk and of Owner) referred to in Clauses 10.2.1.2 and 10.2.1.3 but only to the extent caused in whole or in part by the acts or omissions of CM@Risk, its agents, servants, and employees, or its subcontractors and their agents, servants, and employees, or anyone directly or indirectly employed by them, in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract, including but not limited to violations of any statute, regulation, ordinance or provision of this Agreement. Notwithstanding anything to the contrary included herein, in no event shall the CM@Risk be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law the foregoing obligations of the contractor are in addition to the contractor's obligations under paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Consultants.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.



A handwritten signature in blue ink, consisting of several overlapping loops and a vertical stroke on the left side.

10.3 **EMERGENCIES.**

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 **PUBLIC CONVENIENCE AND SAFETY.**

10.4.1 The Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant 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.

10.4.2 The Owner reserves the right to remedy any neglect on the part of the Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Contractor's neglect shall be deducted from the Contract Sum. The Contractor shall notify the City Traffic Control Department 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 forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Contractor shall, when directed by the Design Consultants or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 **BARRICADES, LIGHTS AND WATCHMEN.**

10.5.1 If the Work is carried on or adjacent to any street, alley or public place, the Contractor shall, at the Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall 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 will be visible at night, shall indicate in bold letters thereon the Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever evidence is found of such damage, the Design Consultants may order the damaged portion immediately removed and replaced by the Contractor at Contractor's cost and expense. The Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 **PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.**

10.6.1 In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Design Consultants. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner



reserves the right of entry upon the Project site 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 the Owner's property. The Owner's actions shall conform to the Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

10.7.1 When existing storm sewers or drains have to be taken up or removed, the Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Contractor shall provide and maintain, at the Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Contractor shall, at the Contractor's own expense, construct such troughs, pipes, or other structures 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 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 the Design Consultants. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT.

10.8.1 When the Contractor desires to use the Owner's water in connection with the Work, the Contractor shall make complete and satisfactory arrangements with the San Antonio Water Service and shall be responsible for the cost of the water the Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the San Antonio Water Service.

10.8.2 The Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner, or with any retail electric provider in the event that separately metered electrical connections are required for the Project. The Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Contractor through a retail electric provider.

10.9 USE OF FIRE HYDRANTS.

10.9.1 The 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 the Owner, unless duly authorized to do so by the City.

10.10 ENVIRONMENTAL COMPLIANCE.

10.10.1 The Owner has developed an Environmental Management System (EMS), based upon International Standards Organization (ISO) Standard 14001. As part of the EMS, the Owner has adopted an environmental policy. The Contractor acknowledges receipt of the environmental policy as a part of the Bid Documents and shall adhere to the policy and provide information to the Owner in the form and at the times requested by the Owner in furtherance of the policy.

10.10.2 The 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.

10.10.3 In the event the Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Design Consultants and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a mutually agreeable Change Order with the Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Contractor or any of its Subcontractors, the Contractor shall be responsible for remediating the condition at the sole expense of the Contractor in accordance with the 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 the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. 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 Paragraph 4.3 and Article 8.

10.10.4 The Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Contractor or any Subcontractor or Supplier. The 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 disposal, notify the Owner and the Design Consultants so that they may observe the activities; provided, however, that it shall be the Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

ARTICLE 11. INSURANCE AND BONDS.

11.1 CONTRACTOR'S LIABILITY INSURANCE.

11.1.1 Without limiting any of the other obligations or liabilities of the Contractor under the Contract Documents, during both phases of each Project the Contractor shall purchase and maintain, during the term of the Contract and at the Contractor's own expense, the minimum liability insurance coverage described below with companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to the Owner. Contractor shall also require each Subcontractor performing work under the Contract, at the Subcontractor's own expense, to maintain during the term of the Contract levels of insurance that are necessary and appropriate for the Work performed, which levels of insurance comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name the Contractor and the Owner as additional insureds by using endorsement CG 20 26 or its equivalent. Prior to commencing any work, CM@Risk shall furnish to Owner at the address shown below Certificates of Insurance and if requested by Owner a copy of the actual policies (or other evidence deemed sufficient by the City's Risk Manager) for all insurance coverage required by Articles 11.1.1.1 through 11.1.1.3 and additional insurance called for elsewhere in the Contract Documents, certifying compliance with the minimum required coverage.

11.1.1.1 **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:** In accordance with all applicable State and Federal laws and endorsed specifically to include Employer's liability, including occupational disease, subject to a limit of liability of not less



than \$500,000.00 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit. The policy shall be endorsed to provide a waiver of subrogation in favor of the Owner.

The CM@Risk shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Workers' Compensation Division, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

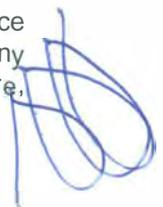
11.1.1.2 Commercial General Liability Insurance, Including Personal Injury Liability, Independent Contractor's Liability, Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract as applicable, fully insuring Contractor's (or Subcontractor's) liability for injury to or death of the Owner's employees and third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of \$2,000,000 per occurrence, \$5,000,000 annual aggregate, or its equivalent via a combination of primary and Umbrella/Excess coverages. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than 60 months following completion of the contract and acceptance of work by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Owner shall be named as an additional insured by using endorsement CG 20 26 or its equivalent.

The general liability policy shall include coverage extended to apply to completed operations, asbestos hazards (if the project involves work with asbestos), and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (2) years after final completion and acceptance of the Work, with evidence of same filed with Owner. Such insurance shall be endorsed to have the General Aggregate apply to the specific Project on which the covered Work is being performed, must contain a waiver of subrogation in favor of the Owner and must include the Owner as an additional insured. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in compliance with the terms of this Contract.

11.1.1.3 Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limits of \$250,000.00 any one person, and \$500,000.00 any one occurrence, and for property damage of not less than \$250,000.00 any one occurrence. Such insurance shall include coverage for loading and unloading hazards. Policy shall be endorsed to include a waiver of subrogation in favor of the Owner and shall include the Owner as an additional insured.

11.1.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required under Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled, nonrenewed, allowed to expire, or materially changed until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.1. Information concerning reduction of coverage shall be furnished by the Contractor to the Owner with reasonable promptness in accordance with the Contractor's information and belief.

11.1.3 If any insurance company for the Contractor, which company provides insurance required under the Contract Documents, becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Contractor shall procure,



immediately upon first notice of such occurrence and without cost to the Owner, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

11.2 PROPERTY INSURANCE

11.2.1 In addition to the insurance described in Paragraphs 11.1 and 11.4, the Contractor shall obtain at its expense, and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new Project, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, or renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, the Owner shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be written jointly in the names of the Owner, the Contractor, Subcontractors, and Sub-Subcontractors as their interests may appear. The policy shall have endorsements as follows:

11.2.1.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

11.2.1.2 Loss, if any, shall be adjusted with and made payable to the CM at Risk with the Owner as loss payee as their interests may appear.

11.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.2.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.2.4 If requested, the Contractor shall provide to the Owner evidence of the property insurance policy(ies) procured under this Paragraph 11.2 before any exposure to loss may occur.

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

11.2.6 Partial occupancy or use in accordance with Paragraph 9.8 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.3 PERFORMANCE BOND AND PAYMENT BONDS



11.3.1 Subject to the provisions of Subparagraph 11.3.2, the Contractor shall, with the execution and delivery of the each Project Building Construction Services Agreement, furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses 11.3.1.1 and 11.3.1.2 below, which surety bonds shall be in accordance with the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.3.3 and approved by the Owner. 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:

11.3.1.1 Performance Bond. A good and sufficient bond in an amount equal to 100% of the total Contract Sum of each Project, 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 the Owner. This bond shall also 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 and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

11.3.1.2 Payment Bond. A good and sufficient bond in an amount equal to 100% of the total Contract Sum of each Project, 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.

11.3.2 No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party in any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, copies of which are attached hereto, shall be approved by the Owner, and shall be executed by not less than one 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 the Owner. Each bond shall be executed by the Contractor and the surety, to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

11.3.3 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 the Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on the Owner until it has been approved as to form by the City Attorney, executed for the Owner by the City Manager, the performance and payment bonds and evidence of insurance have been furnished as required by the Contract Documents, and the fully executed contract has been delivered to the Contractor.

11.3.4 The failure of the Contractor to execute the Contract or deliver the required statutory bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as the Owner can assemble and deliver the Contract shall, at the Owner's option, constitute a material breach of the Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain the proceeds of the bid. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Contractor's failure to execute and furnish the statutory bonds and to sign the Contract within ten (10) days, the filing of a bid proposal will be considered as an acceptance of this Subparagraph 11.3.5. In the event the Owner should readvertise for bids, the defaulting Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the readvertisement shall be the bid referred to in this Paragraph.

11.4 'UMBRELLA' LIABILITY INSURANCE



11.4.1 The 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. The Owner shall be named as AN additional insured using endorsement CG 20 26 or its equivalent.

11.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

11.5.1 Each insurance policy to be furnished by the Contractor shall include the following required provisions within the certificate of insurance, and within the body of the insurance contract or by endorsement to the policy:

11.5.1.1 That the Owner shall be named as an additional insured on all liability coverages, using endorsement CG 20 26 or its equivalent. Where the Owner employs a Construction Manager on the Project, the Contractor and Subcontractor shall include the Construction Manager on all liability insurance policies to the same extent as the Owner is required to be named as an additional insured.

11.5.1.2 Each insurance policy shall require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to Owner by certified mail. The CM@Risk shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the CM@Risk knew or should have known, of any change that materially affects the provision of coverage.

11.5.1.3 The term "Owner" or "City of San Antonio" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Owner and the individual members, employees and agents thereof in their official capacities, while acting on behalf of Owner (the City of San Antonio).

11.5.1.4 The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The insurance coverage furnished by Contractor as required is considered to be primary insurance for purposes of the Project and the additional insureds named in the required policies.

11.5.1.5 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 by contractual liability coverage sufficient to include such obligations with the applicable liability policies.

11.5.2 Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability that:

11.5.2.1 All policies must comply with the applicable requirements and special provisions of this Article.

11.5.2.2 Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A (-) VI or better.

11.5.2.3 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 are otherwise acceptable to the Owner.

11.5.3 The Contractor agrees to the following special provisions:

11.5.3.1 The 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 the Owner, it being the intention that the insurance policies shall protect all 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 11.

11.5.3.2 Insurance companies issuing the insurance policies and the Contractor shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Contractor.

11.5.3.3 Approval, disapproval or failure to act by the Owner regarding any insurance supplied by the Contractor (or any Subcontractors) shall not relieve the 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 the Contractor's insurance company shall likewise not exonerate or relieve the Contractor from liability.

11.5.3.4 The Owner reserves the right to review the insurance requirements of this Article 11 during the effective period of this Contract and to adjust insurance coverages and their limits when deemed necessary and prudent by the Owner's Risk Management Division, based upon changes in statutory law, court decisions or the claims history of the field as well as that of the Contractor. The 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 written request by the Owner, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

11.5.3.5 No special payments shall be made for any insurance policies that the Contractor and Subcontractors are required to carry; all are included in the Contract Sum.

11.5.4 Any insurance policies required under this Article may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Article be limited or circumvented by doing so.

ARTICLE 12. UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Owner's or Design Consultants' request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner or Design Consultants, be uncovered for the Owner's or Design Consultants' inspection and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Design Consultants has not specifically requested to inspect prior to its being covered, the Design Consultants may request to see such Work and the Contractor shall uncover it. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct Work rejected by the Owner or Design Consultants or 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. The Contractor shall bear costs of correcting such rejected Work, including additional testing and



inspections and compensation for the Design Consultants' services and expenses made necessary thereby.

12.2.2 If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Design Consultants or the Owner to do so unless the Owner has previously given the Contractor a written acceptance or waiver of the defect or nonconformity. The Contractor's obligation to correct defective or nonconforming Work remains in effect for:

12.2.2.1 one year after the date of Substantial Completion of the Work or designated portion of the Work;

12.2.2.2 one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8.2; or

12.2.2.3 the stipulated duration of any applicable special warranty required by the Contract Documents.

12.2.3 The one-year period described in Subparagraphs 12.2.2.1 and 12.2.2.2 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.

12.2.4 The obligations of the Contractor under this Paragraph 12.2.4 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Subparagraphs 12.2.2.1 and 12.2.2.2 does not limit the ability of the Owner to require the Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Design Consultants at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one year period also does not relieve the Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

12.2.5 The 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 the Contractor nor accepted by the Owner.

12.2.6 If the Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Design Consultants, the Owner may correct it in accordance with Paragraph 2.2.8. If the Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Design Consultants, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Contractor, including compensation for the Design Consultants' services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Contractor then or thereafter are not sufficient to cover the deficiency, the Contractor shall pay the difference to the Owner.

12.2.7 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.



12.2.8 Nothing contained in this Paragraph 12.2.8 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2.2.2 relates only to the specific obligation of the 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, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.2.9 Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13. COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 **FINAL COMPLETION OF CONTRACT.** The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Design Consultants, and final acceptance and final payment is made by the Owner.

13.2 **WARRANTY FULFILLMENT.** Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Design Consultants will make a detailed inspection of the Work and will advise the Contractor and the Contractor's Surety of the items that require correction. The Design Consultants will make a subsequent inspection and if the corrections have been properly performed, the Design Consultants will issue a letter of release on the maintenance stipulations to the Contractor and the Surety. If for any reason the 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 been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE.

13.3.1 Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Contractor, including but not limited to the following causes:

13.3.1.1 Failure or refusal of the Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

13.3.1.2 A reasonable belief that the progress of the Work being made by the Contractor is insufficient to complete the Work within the specified time.

13.3.1.3 Failure or refusal of the Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

13.3.1.4 A reasonable belief that the Contractor has abandoned the Work.

13.3.1.5 A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.



13.3.1.6 Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Design Consultants or the Owner as provided for in the Contract Documents.

13.3.1.7 Failure or refusal of the Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Design Consultants.

13.3.1.8 A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

13.3.1.9 Repeated and flagrant violation of safe working procedures.

13.3.1.10 The filing by the Contractor of litigation against the Owner prior to completion of the Work.

13.3.2 When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3.5, the Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Contractor and the surety or its authorized agents assume the obligations of the Contractor for the Work or that portion of the Work which the Owner has ordered the Contractor to discontinue and may:

13.3.2.1 perform the Work with forces employed by the surety;

13.3.2.2 with the written consent of the Owner, 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 for 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

13.3.2.3 with the written consent of the Owner, tender and pay to the Owner 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 the Owner for any other loss sustained as a result of Contractor's default.

In the event of termination for cause involving Clause 13.3.2.1 or 13.3.2.2, the Surety shall assume the Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner 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 the Owner to deduct any costs, damages, or liquidated or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Design Consultants and attorneys fees, as a result of such termination..

13.3.3 The balance of the Contract Sum remaining at the time of the Contractor's default and of the 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 Subparagraph 13.3.2, exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the



Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Contractor and the surety shall be liable to the Owner 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 the Design Consultants and attorney's fees), and liquidated or actual damages incurred as a result of the termination.

13.3.4 The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3.2.3, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Contractor, then the Owner may pay to the Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Contractor, then the Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the 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 workmen employed and provided by the Owner.

13.3.5 The right to terminate this Contract for the convenience of the Owner (including but not limited to nonappropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Contractor. Upon the Contractor's receipt of such written notice, the Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

13.4.1 The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Contractor for any reason, including but not limited to:

13.4.1.1 the causes described in Clauses 13.3.1.1 through 13.3.1.10 above;

13.4.1.2 where other provisions in the Contract Documents require or permit temporary suspension of the Work;

13.4.1.3 situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

13.4.1.4 other unforeseen conditions or circumstances.

13.4.2 The Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Contractor arising from a temporary suspension due to a cause described in Clause 13.4.1.1 above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses 13.4.1.2 through 13.4.1.4, where the Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the



Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Contractor under Subparagraph 4.3 of these General Conditions:

13.4.2.1 an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Design Consultants and the Owner;

13.4.2.2 an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

13.4.2.3 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 shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14. MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

14.1.1 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.

14.1.2 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. The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

14.2.1 The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Contractor, except where assignment is compelled by court order or other operation of law.

14.3 WRITTEN NOTICE.

14.3.1 Except as otherwise provided in Article 16, 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 mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed 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 communicated as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

14.4.1 The duties and obligations imposed on the Contractor by the Contract Documents and the rights and remedies available to the Owner 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.

14.4.2 No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.5 INTEREST

14.5.1 The Owner 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 Paragraph 9.6 of these General Conditions.

14.6 INDEPENDENT MATERIALS TESTING AND INSPECTION.

14.6.1 In some circumstances, the City will retain independent of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the City. Such consultants will be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties, and responsibilities of those independent consultants will be described in the Agreements between the City and those consultants. The provision of inspection services by City shall not reduce or lessen Contractor's responsibility for the Work or its duty to establish and implement a program to monitor the quality of construction to guard the Owner against defects and deficiencies in the Work, required above. Contractor is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

14.7 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

14.6.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit 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 the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the 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: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Pursuant to the subsection above, Concessionaire warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Concessionaire further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code. Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.8 VENUE

14.7.1 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.

14.9 INDEPENDENT CONTRACTOR



14.8.1 In performing the Work under this Contract, the relationship between the Owner and the Contractor is that of an independent contractor. The Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling 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 the Contractor an agent, servant, or employee of the Owner, or making the Contractor or any of the Contractor's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

A handwritten signature in blue ink, consisting of several overlapping loops and lines, located in the bottom right corner of the page.

14.10 NONDISCRIMINATION

14.9.1 As a condition of this Contract, the Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.11 GIFTS TO PUBLIC SERVANTS

14.10.1 The Owner may terminate this Contract immediately if the Contractor has offered, conferred, or agreed to confer any benefit on a City of San Antonio employee or official that the City of San Antonio employee or official is prohibited by law from accepting.

14.10.2 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.

14.10.3 Notwithstanding any other legal remedies, the Owner may require the Contractor to remove any employee of the Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of San Antonio employee or official.

ARTICLE 15. RIGHT TO AUDIT CONTRACTOR'S RECORDS

15.1 By execution of the Project Construction Services Agreement, the Contractor grants the Owner the right to audit, at the Owner's election, all of the Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Contractor agrees to retain its Project records for a minimum of three (3) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. Any payment, settlement, satisfaction, or release provided under this Contract shall be subject to the Owner's rights as may be disclosed by any audit.



EXHIBIT C

PROJECT DEFINITION

The Program, at the time of execution of this Contract, is planned to include the following Individual Projects. City reserves the right at the discretion of the Director, to add additional Projects or to remove any of the Projects currently included in the Program. If Projects are added the revised fee for Preconstruction Services on the added Project will be memorialized as an Amendment to this Agreement and the Project shall proceed through the Preconstruction Services Phase and Construction Phase I accordance with the procedure set forth herein. If Projects are removed from the Program, the CM@Risk will be equitably compensated for work performed to date of notification of removal of the Project.

Project 4 - Volume 1 Terminal B Foundations, Structure & Interiors

This Project consists of the complete construction of Terminal B, designed as a stand-alone terminal even though it is added directly to the west end of Terminal 1. Arrivals and departures are the principal levels and there are eight gates. There is a small service level below the arrivals level and some mezzanine level area. The curbside edge of each of the principal levels is a sidewalk and adjoins sidewalk areas that are part of the on-going roadway construction project. The total floor area is about 225,000 square feet.

The arrivals level consists of baggage claim, a meeter-greeter area, some concession space and a variety of public and non-public support spaces at the head house (the portion under the ticketing area). At this level under the concourse is the baggage screening enclosure, airline offices, concession storage, mechanical rooms and a large open area for outbound baggage make-up that can be closed with overhead doors.

The departures level consists of the main ticketing hall and, to the east, a range of public and private support spaces. West of the ticket line is the security checkpoint and queue, exiting to the concourse past a large concession area. There are two departures lounges, each set up for four gates. Separating the two departures lounges is another cluster of concession and support spaces.

The service level houses a transformer vault, switchgear room and chilled/hot water pump rooms. Mezzanine areas occur at various locations and house mechanical spaces.

Elevators and escalators from arrivals to departures are located at the west end of the terminal, where the concourse joins the head house. Elevators and escalators to the mezzanine level, where a pedestrian bridge connects the terminal to the existing short term parking garage, will be located either at the west end of the terminal or near the east end of the ticketing hall. If the bridge is at the east end there will also be a short bridge internal to the ticketing area.

The pedestrian bridge to the parking garage will be a separate Project. It is approximately 250 feet long and is covered, but not fully or enclosed or air conditioned.

Minimal concrete apron paving adjacent to the terminal will be part of this Project, along with the installation of passenger loading bridge (supplied by others) and pavement markings for aircraft parking.

The building is founded on deep drilled piers. Arrivals and departures level floors are pan slab and the arrivals level floor is suspended, with hydronic lines suspended from the structure. Floors at the concourse are also pan slab. The structure above the departures level is steel.

Exterior walls surfaces are stone, integral color CMU and rainscreen metal panels. Glazing is low-e glass in conventional aluminum framing with Kynar finish and with steel subframing for tall curtain wall sections. There is a cantilevered Kalwall canopy running the entire length of the



terminal at curbside. There are four entrance vestibules at arrivals level and the same number at departures, all with powered sliding storefront doors.

Interior finishes are epoxy terrazzo at baggage claim, ticketing, concourse, concession areas and public restrooms. Departure lounges are carpet. Wall surfaces are large-format ceramic tile and drywall. Ceilings are curved and flat suspended perforated metal panels, fabric panels, lay-in acoustical panels and drywall.

Air handling unit rooms are concentrated at the arrivals level, under the concourse, and at the mezzanine. The entire building is sprinkled and has a compliant fire alarm system. There will be a large emergency generator capable of operating the air handling units in addition to the normal emergency loads.

Lighting is primarily fluorescent, with metal halide at high spaces. Much of the fluorescent lighting is indirect.

There will be two public art projects in the terminal, one suspended work in the ticketing hall and a work in the concourse that consists of patterns in the terrazzo floor and film applications to glazing. The artists have been selected and the contractor will assist in installation of the works.

Project 4 - Volume 2 Terminal B Baggage Handling System

This contract will be for an in-line outbound baggage system with three screening machines (assumed to be 9000 CTX) in an enclosed and air conditioned area also housing ETD and control areas at ramp level. Two conveyors originate at the ticket counters and there will be at least one curbside conveyor designed for oversize items. Discharge from the screening area is to two sloped-plate outbound carousels.

There will be three flat-plate carousels at baggage claim, loaded directly by tug trains.

Conveyors will typically be suspended from the cast-in-place concrete structure.

Design documents will be provided by the BHS consultant will be 60% complete. The consultant will provide services during bidding and will also provide construction administration services.

Project 4 – Volume 3 Terminal B IT and Security

This Project will be bid from 30% complete bridging documents and a Design-Build contractor selected to implement the design, with oversight by the design consultant.

The scope includes an AV paging system. The security component of the Project includes access control card readers, door alarm contacts, video surveillance cameras and other security-related components, all integrated into the Airport's existing head end.

The communication component includes a premise distribution system, fiber optic and copper cabling, MUFIDS (multi-user flight information display system), telephone, radio, cable access television, antenna locations and airport data network and wireless system.

Project 5 - Volume 1 Terminal C Foundations, Structure & Interiors

Terminal C Preconstruction Activities - The Project consists of the evaluation of proposed building systems and materials, cost estimating, value engineering and conceptual construction scheduling for Terminal C. This will involve working with all disciplines of the design team.

Terminal C – Terminal C is similar in concept to Terminal B. It will front on the roadways under construction at this time. It is designed to open as a five gate terminal with future extensions of the concourse (to the north) and the head house (to the west) to ultimately accommodate



between 11 and 13 gates. The total area for the five-gate initial construction is 175,000 square feet.

There is a service level with the same mechanical spaces as Terminal B.

The arrivals level has flat plate baggage claim devices and a range of public and non-public support spaces, including car rental counters. The departures level has the same range of functional areas as Terminal B. Mezzanine spaces in this terminal also are for mechanical spaces only.

The building systems and materials are the same as for Terminal B.

This Project includes an enclosed and air conditioned pedestrian connector between Terminals B and C. This is a curved structure, following the line of the roadway, about 15 feet wide. The connector is located at arrivals level and will be a landside (non-secure) connector. It will be designed so that it can accommodate a second level at departures level that would be an airside, or secure, route between the terminals.

Project 7 Terminal 2 Demolition

This Project consists of the total demolition of Terminal 2, together with demolition of substantial aircraft parking apron. A portion of the east end of the terminal, a narrow strip near the west end and a portion of the curbside canopy will already have been removed when the total demolition is undertaken.

The core of Terminal 2 was built in 1950. Since then there have been additions at eight to ten year intervals and multiple interior renovations – to the point where almost none of the original construction is visible. The total floor area is approximately 165,000 square feet.

The original construction had a single principal level for ticketing, baggage claim and boarding. A sub-level exists under a substantial portion of the original structure and this includes equipment spaces, generally now vacant, and a vehicular tunnel under the north end. The existing second floor over the building core is original and there is, in addition, a small third floor -- part of the original control tower, since removed.

Extensions have been made to the east and west and a curbside canopy added. At-grade boarding areas, now used for other purposes, were constructed to the northwest. The most substantial addition, dating to the late 1960s, is the circular concourse and the enclosed ramp leading up to it. The concourse has habitable space at ramp level as well as at the boarding level.

The foundation of the original structure is deep piers and the main floor is a suspended pan slab. The original superstructure is also cast-in-place pan slab at all levels, including the roof. This pattern of construction was extended into some of the additions, but additions after 1965 are generally slab-on-fill with steel superstructure. Original exterior walls are plastered clay tile; CMU was used later as a substrate. The concourse addition is steel-framed with precast concrete wall panels. The curbside canopy framing is steel and it's carried on precast concrete "trees".

None of the original MEP equipment is still in use, but various pieces are scattered through the building with significant pieces in the basement. Most air handling units are in steel-framed enclosures on the roof.

No comprehensive hazmat survey of the existing building has yet been done, though various portions have been surveyed. It is anticipated that a substantial quantity of hazardous material is present in the structure which will require environmental remediation prior to demolition.



Project 9 Central Utility Plant Modifications

The Central Utility Plant (CUP) was completed in 1984 and presently serves Terminals 1 and 2. It will be expanded to serve Terminals 1, B and C. Existing chilling capacity is 2100 tons which will be expanded to 3600 tons.

The physical expansion of the building is 1800 square feet on one level. The expansion will house two new boilers, replacing the two existing boilers. The expansion, like the original building, will be suspended concrete slab on deep drilled piers. The superstructure will be steel with exterior walls of CMU.

Space in the existing building freed up by removal of the boilers will accommodate a new 1000 or 1200 ton chiller. Three existing chillers in the 450 ton range will be replaced with 600 ton machines.

The two existing cooling towers will be sequentially demolished and replaced with three 1200 ton cooling towers with plastic fill. The basin and sumps will be replaced along with all piping from the chillers to the cooling towers. The existing CMU cooling tower screen will be replaced with a screen of textured CMU and aluminum louvers.

The existing emergency generator will be replaced with a larger unit designed to drive some of the chilled water pumps, allowing chilled water to be drawn from the existing thermal storage tank and pumped to the terminals. Electrical switchgear will be upsized.

Project 12 –Terminal 1 Renovations

The scope of this renovation has not been finalized and depends on which airline(s) will occupy Terminal B, which will move from Terminal 2 and which may move around within Terminal 1. Renovations will typically be to back-of-house spaces, not public areas. However, some changes to the ticket counter configuration may be required as well as reconfiguration of some boarding lounges. It is the intent to not disturb core elements like stairs, public restrooms and mechanical spaces.

Spaces to be renovated include airline offices behind the ticket counters and airline offices and other support spaces at ramp level. Some support spaces at concourse level may also be included in the scope.

Modifications to HVAC ductwork will be required, but not typically modification to the air handling equipment. Some additional plumbing for private restrooms will be required. Lighting will be new and provisions for power upgraded.

Project 12 - Volume 1 Terminal 1 Inline Check Bag Security Screening

There are two parts of this Project: replacement of inbound claim devices and the implementation of an in-line system.

Replacement of the inbound devices consists of the replacement of three flat plate carousels in the baggage claim area and two flat plate devices in the international arrivals area. The configuration of the replacement devices will be the same as the existing.

Baggage screening is currently done in the ticketing hall at Terminal 1, though one airline has installed its own in-line system at ramp level. This Project is for a consolidated in-line system located at ramp level in what is now the outbound bag make-up area. The system, as conceptually designed, will include new drops from the ticket counter belts merging to collector conveyors that serve three screening machines (assumed to be CTX 9000). Discharge is to



shared conveyors serving a run-out belt for each airline. The screening machines, EDT area, search room and control area will be enclosed and air conditioned. Staff areas will be in a separate air conditioned enclosure within the bag shed.

To accommodate this, the existing baggage shed will be expanded by approximately 13,000 square feet. The expansion, like the existing, will be slab-on-fill with a steel superstructure. The enclosure for the existing emergency generator, which is to be replaced as part of another contract, will be removed together with other miscellaneous interior construction.

Some retrofit to the existing outbound baggage shed will be required. This includes fire shutters for the conveyor openings for the ticket counters, an alternate means of protection for the conveyor openings at baggage claim and a sprinkler system for the entire baggage shed.

This Project will be implemented in phases, allowing continual outbound baggage operations for each airline, with minimal interruption.

Design documents will be provided by the BHS consultant will be 95% complete. The consultant will provide services during bidding and will also provide construction administration services.

Project 12 - Volume 2 Expand Security Checkpoint
Project 12 - Volume 5 Tenant Relocation Costs



EXHIBIT D

KEY EMPLOYEE LIST

Preconstruction Phase:

1. Jim Ansari – Officer in Charge
2. Chris Desko – Sr. Project Manager
3. William Wood – Sr. Superintendent
4. Nader Homayouni – Sr. Building System Manager
5. Martin Kerstens – Sr. IT/Security Manager
6. Ed Hobson – Sr. Estimator
7. Jeff Giles – Sr. Estimator
8. Bob Aniol – Sr. Estimator
9. Mark Christensen – Purchasing Manager

Construction Phase:

1. Jim Ansari – Officer in Charge
2. Chris Desko – Sr. Project Manager
3. William Wood – Sr. Superintendent
4. Nader Homayouni – Sr. Building System Manager
5. Martin Kerstens – Sr. IT/Security Manager
6. Ed Hobson – Sr. Estimator
7. Mark Christensen – Project Manager



CMS or Ordinance Number: CN4600006011

TSLGRS File Code:1000-25

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Clark/Byrne

Commencement Date:

7/18/2007

Expiration Date:

7/18/2012



CMS or Ordinance Number: OR00000200706210697

TSLGRS File Code: 1000-05

Document Title:
ORD - CMR-Project 4 (Terminal B)
Clark/Byrne

Ordinance Date:
6/21/2007



CITY OF SAN ANTONIO

Aviation Department

WORK PROJECT AUTHORIZATION

PROJECT: CONSTRUCTION MANAGER AT RISK
AT SAN ANTONIO INTERNATIONAL AIRPORT

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
08 JUN 23 PM 10:23

June 20, 2008

Mr. James Ansari
Clark Construction Group, LLC/Thos. S. Byrne, A Joint Venture
1303 North Terminal Drive
San Antonio, Texas 78216
Houston, Texas 77061

Dear Mr. Ansari:

- I. You are hereby notified the Construction Manager at Risk Guaranteed Maximum Price Proposals (GMP) for Structural Steel and Below-grade Waterproofing was approved at \$10,373,911 on June 19, 2008.
- II. Please coordinate Construction Phase activities with Mr. Christopher Allen, Program Management Team.
- III. Your Change Order, properly executed by officials of the City of San Antonio, will be forwarded to you upon execution.
- IV. This is your notice to proceed.

Sincerely,

A handwritten signature in cursive script that reads "Mark Webb".

Mark Webb
Aviation Director

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
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cc: Ms. Sherertz
Ms. Gallagher
Ms. Brice
City Clerk
Mr. Allen, Program Management Team
PMT File

"AN EQUAL OPPORTUNITY EMPLOYER"