

GENERAL CONDITIONS OF THE CONTRACT
Construction Manager-at-Risk
Section 00700CMR

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ARTICLE 1 – DEFINITIONS

THE CONSTRUCTION MANAGER-AT-RISK IS ALSO REFERRED TO AS THE "CONTRACTOR" AND THE "BIDDER" (OR "OFFEROR") IN THE CONTRACT DOCUMENTS AND MAY ALSO BE REFERRED TO AS THE "MANAGER", THE "CMAR", THE "CM", AND THE "CMR", ALL OF WHICH WILL BE UNDERSTOOD TO MEAN THE "CONSTRUCTION MANAGER-AT-RISK" AS IDENTIFIED IN THE AGREEMENT.

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.

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

- 1.1 Addendum** - Written instruments issued by the Contract Awarding Authority which clarify, correct or change the bidding requirements or the Contract Documents prior to the Due Date. "Addenda" is the plural form of Addendum.
- 1.2 Agreement** - The written Construction Manager-at-Risk Agreement for the City of Austin for the Project into which these General Conditions have been incorporated.
- 1.3 Alternative Dispute Resolution** - The process by which a disputed Claim may be settled if the Owner and the CM cannot reach an agreement between themselves, as an alternative to litigation.
- 1.4 Architect / Engineer (A/E)** - The Owner's design professional identified as such in the Contract. See Section 1.5 of the Agreement. References to A/E in these General Conditions shall refer to the Owner's Principal Architect/Engineer, except as otherwise expressly provided herein. Nothing contained in the Contract Documents shall create any contractual or agency relationship between the respective A/E and CM.
- 1.5 Baseline Schedule** is the Schedule required under Section 2.4.2 for a specific Work Package or other scope of the Work and must conform to and be integrated with the CM's Progress Schedule for the Work.
- 1.6 Bid** - A complete, properly signed response to an Invitation for Bid that, if accepted, would bind the Bidder to perform the resultant Contract.
- 1.7 Bidder** - A person, firm, or entity, also referred to as the Offeror that submits a Bid or Proposal in response to a Solicitation. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 1.8 Bid Documents** - The advertisement or Invitation for Bids, Invitation for Proposals, Instructions to Bidders, the Bid form, the Contract Documents and Addenda.
- 1.9 Calendar Day** - Any day of the week; no days being excepted. Work on Saturdays, Sundays, and/or Legal Holidays shall be coordinated with Owner.
- 1.10 Calendar Day Contract:** All Work shall be done between 7:00 a.m. and 6:00 p.m. unless authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. Night Work may be revoked at any time by OWNER if CM fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.
- 1.11 Change Directive** - A written directive to CM, signed by Owner, ordering a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time Requirements, or both. A Change Directive may be used in the absence of total agreement on the terms of a Change Order. A Change Directive does not

change the Contract Amount or Contract Time Requirements, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.

- 1.12 Change Orders** - Written agreements entered into between CM and Owner authorizing an addition, deletion, or revision to the Contract, issued on or after the Execution Date of the Agreement.
- 1.13 CIT Consultant** – Owner’s consultant responsible for the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the Work by the Owner as required by Section 2269.058 of the Texas Local Government Code.
- 1.14 Claim** - A written demand 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.
- 1.15 Commissioning Authority or Agent** - A consultant retained by the Owner charged with supporting E/A in monitoring the Work for conformance with the Contract Documents, and with assisting in the facility's start-up and testing as a member of the commissioning team.
- 1.16 Construction Cost Limitation** means the cost limit or budget for construction which must not be exceeded and which is more particularly defined in the Agreement.
- 1.17 Construction Documents** means the Plans or Drawings and the Specifications and such other documents incorporated into the Contract Documents that set out the CM's scope of services to be performed under the Contract and/or the technical requirements for the design and construction of the Project.
- 1.18 Construction Phase** means the implementation and execution of the Work required by the Contract Documents, commencing with the Notice to Proceed in the GMP Amendments or as applicable, Work Package Authorization Amendment(s). The construction of the Project may be divided into different stages with owner concurrence each with different dates for implementation and completion.
- 1.19 Construction Trades Package** means portions of the Work (including portions of the Work under specific Work Packages) that have been assembled into a sub-set of Construction Documents that will be used for securing Competitive Sealed Proposals as part of the solicitation of portions of the Work.
- 1.20 Contract** - The binding legal agreement between the Owner and the CM. The Contract represents the entire and integrated agreement between Owner and CM for performance of the Work, as evidenced by the Contract Documents.
- 1.21 Contract Amount** - The moneys payable by Owner to CM for completion of the Work in accordance with the Contract Documents.
- 1.22 Contract Awarding Authority** - A City department authorized to enter into Contracts on behalf of the City.
- 1.23 Contract Documents** – See Article 4 of the Agreement.
- 1.24 Contract Time Requirements** means those requirements for the timely performance of the Work as set forth in Article 2 of the Agreement.
- 1.25 CM** - The individual, firm, corporation, or other business entity with whom Owner has entered into the Contract for performance of the Work.
- 1.26 Cost Management Report** means the report as further defined in the Agreement that compares the Construction Cost Limitation, in Preconstruction Phase to CM’s estimated

construction costs, and in Construction Phase to CM's actual construction costs, and which is updated as needed.

- 1.27 Critical Path** - The longest series of tasks that runs consecutively from the beginning to the end of the project, as determined by duration and workflow sequence. This longest path sets the managerial standard for how quickly a project can be completed, given appropriate resources.
- 1.28 Day** means that twenty-four hour period measured from midnight to the next midnight. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period.
- 1.29 Discrepancies** mean any error, omission, conflict, inconsistency, discrepancy, or lack of clarity in the Contract Documents discovered by the CM or that should reasonably have been discovered by the CM in fulfilling its obligations arising from the Contract and based upon its applicable standard of care as a construction manager at risk and not as a design professional.
- 1.30 Division 1** means the General Requirements Division (Division One) of the Specifications made a part of the Construction Documents, whether such Specifications are set out in a separate document or are part of the Project Manual.
- 1.31 Drawings** - Those portions of the Contract Documents which are graphic representations of the scope, extent and character of the Work to be furnished and performed by CM and which have been approved by Owner. Drawings may include plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings as so defined.
- 1.32 Due Date** - The date and time specified for receipt of Bids or Proposals.
- 1.33 Equal** - The terms "equal" or "approved equal" shall have the same meaning.
- 1.34 Execution Date** - Date of last signature of the parties to the Agreement.
- 1.35 Field Order** - A written order issued by Owner's Representative which orders minor changes in the Work and which does not involve a change in the Contract Amount or the Contract Time Requirements.
- 1.36 Final Completion** - The point in time when Owner determines that all Work has been completed and final payment to CM will be made in accordance with the Contract Documents.
- 1.37 Force Account** - a basis of payment for the direct performance of Work with payment based on the actual cost of the labor, equipment and materials furnished and consideration for overhead and profit as set forth in Section 11.5.
- 1.38 Hazardous Conditions** are any materials, wastes, substances, and chemicals deemed to be hazardous under applicable Legal Requirements or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- 1.39 Inspector** - The authorized representative of any regulatory agency that has jurisdiction over any portion of the Work.
- 1.40 Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or the Internet.
- 1.41 Legal Requirements** are all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees of any governmental or quasi-governmental entity having jurisdiction over the Project or Site, the practices involved in the Project or Site or any Work
- 1.42 Legal Holidays**
- 1.41.1 The following are recognized by the Owner:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

1.42.2 If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

1.42.3 Christmas Eve is observed only if it falls on a Monday through Thursday. If Christmas Eve falls on a Friday, that day is observed as the Christmas Day holiday.

- 1.43 Major Subcontractor** means a Subcontractor of the CM for the Construction Phase of the Project whose contract amount with the CM exceeds or is reasonably expected to exceed the sum of \$50,000.00.
- 1.44 Milestones** means a significant event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.45 Modification** means a written amendment to the Contract, including but not limited to (1) a Work Authorization Amendment, signed by both parties, (2) a Change Order, and (3) a Change Directive.
- 1.46 M/WBE Subcontracting Compliance Plan** means the plan submitted and updated by the CM in accordance with and as required to comply with the rules and ordinances Owner has adopted with regards to the solicitation, use, addition or removal of M/WBE firms, attached and incorporated as an Appendix to the Project Manual. CM, as a provision of the Agreement, must comply with the Owner's M/WBE Subcontracting Procurement Program in the Preconstruction and Construction phases of the Project, and during the administration of the Work.
- 1.47 Notice to Proceed** - A Written Notice given by Owner to CM fixing the date on which the Contract Time Requirements will commence to run and on which CM shall start to perform CM's obligations under the Contract Documents.
- 1.48 Owner** - City of Austin, Texas, a municipal corporation, home rule city and political subdivision organized and existing under the laws of the State of Texas, acting through the City Manager or his/her designee, officers, agents or employees to administer design and construction of the Project.
- 1.49 Owner's Representative** - The designated representative of the Owner.
- 1.50 Partial Occupancy or Use** - Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work, provided Owner and CM have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, utilities, corrective work, insurance and warranties.
- 1.51 Preconstruction Phase** means the portion of the Project in which a constructability review and report are generated; a Progress Schedule is generated; a review of the Construction Documents for Discrepancies occurs and a report of any Discrepancies is generated; and Subcontractor selection occurs.

- 1.52 Project** - The subject of the Work and its intended result.
- 1.53 Project Manual** - That portion of the Contract Documents which may include the following: introductory information; solicitation or bidding requirements, Contract forms and General and Supplemental General Conditions; General Requirements; Specifications; Drawings; MBE/WBE or DBE Procurement Program Package; Project Safety Manual; and Addenda.
- 1.54 Project Team** means the Owner, the Owner's Representative, the CM, the Principal Architect/Engineer, any consultants of the Principal Architect/Engineer designated by the Owner, any Owner's Third Party Contractors, and any Owner's consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different stages of the Work. The Project Team will be designated by and may be modified from time to time by Owner.
- 1.55 Resident Project Representative** - The authorized representative of A/E who may be assigned to the site or any part thereof.
- 1.56 Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CM and submitted by CM as required by the Contract Documents.
- 1.57 Site** is the land or premises on which the Project is located.
- 1.58 Specifications** - Those portions of the Contract Documents furnished by OWNER through its respective Architects/Engineers consisting of written technical descriptions as applied to the Work, which set forth to CM, in detail, the requirements which must be met by all materials, equipment, construction systems, standards, workmanship, equipment and services in order to render a completed and useful project.
- 1.59 Solicitation** - Solicitation means, as applicable, an Invitation for Bid or a Request for Proposal.
- 1.60 Stipulated Sum** means a lump sum amount for the Work in a Phase of the Project.
- 1.61 Substantial Completion** - 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 Owner can occupy or utilize the Work for its intended use, as evidenced by a Certificate of Substantial Completion approved by Owner.
- 1.62 Subcontractor** - An individual, firm, corporation, or other business entity having a direct contract with the CM for the performance of a portion of the Work under the Contract. A Subcontractor includes a supplier of tools, equipment or materials as well as an individual or entity renting tools or equipment to the CM.
- 1.63 Sub-Subcontractor** - An individual, firm, corporation, or other business entity who has a direct or indirect contract with a Subcontractor of any tier to perform a portion of the Work, to furnish tools, equipment or materials, or to rent tools or equipment.
- 1.64 Superintendent** - The representative of CM authorized in writing to receive and fulfill instructions from the Owner's Representative, and who shall supervise and direct construction of the Work.
- 1.65 Supplemental General Conditions** - The part of the Contract Documents which amends or supplements the General Conditions. All General Conditions which are not so amended or supplemented remain in full force and effect.
- 1.66 Supplier** - An individual or entity having a direct contract with CM or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CM or any Subcontractor.
- 1.67 Value Engineering** means the systematic application of recognized techniques by a multi-disciplined team to identify the function of a product or service, establish a worth

for that function, generate alternatives through the use of creative thinking, and provide the needed functions to accomplish the original purpose of the Project, reliably, without sacrificing safety, necessary quality, and environmental attributes of the Project.

- 1.68 Work** - The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.
- 1.69 Working Day** - Any day of the week, not including Saturdays, Sundays, or Legal Holidays in which conditions under the CM's control will permit work for a continuous period of not less than seven (7) hours during Working Hours. Upon agreement with Owner's Representative, work on Saturdays, Sundays and/or Legal Holidays may be allowed and will be considered a Working Day.
- 1.70 Working Day Contract** - All Work shall be done between 7:00 a.m. and 6:00 p.m. unless authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. If night Work is authorized and conditions under CM's control will permit Work for a continuous period of not less than seven (7) hours between 12:00 a.m. and 11:59 p.m. it will be considered a Working Day. Night Work may be revoked at any time by Owner if CM fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.
- 1.71 Written Notice** - Written communication between Owner and CM. Written Notice shall be deemed to have been duly served if delivered in person to Owner's Representative or CM's duly authorized representative, or if delivered at or sent by registered or certified mail to the attention of Owner's Representative or CM's duly authorized representative at the last business address known to the party giving notice.

ARTICLE 2 - PRELIMINARY MATTERS

- 2.1 Delivery of Agreement, Bonds, Insurance, etc.:** Within five (5) Working Days after written notification of award of Contract, CM shall deliver to Owner signed Agreement, Bond(s), Insurance Certificate(s) and other documentation required for execution of Contract.
 - 2.1.1** CM shall complete enrollment in the Owner Controlled Insurance Program (OCIP) within ten (10) Calendar Days after written notification of award of Contract.
- 2.2 Copies of Documents:** Owner shall furnish to CM one (1) Project Manual with original signatures, one (1) copy of the executed Project Manual, one (1) set of Drawings and one (1) copy of the Contract Documents in .pdf format. Additional copies will be furnished, upon request, at the cost specified in the Supplemental General Conditions.
- 2.3 Commencement of Contract Times; Notice to Proceed:** The applicable Contract Time Requirements will begin to run on the day indicated in the Notice to Proceed for the Work covered in such Notice. Notice to Proceed with regard to the Preconstruction Phase Services will be given at any time within sixty (60) calendar days after the Execution Date of the Agreement, unless extended by written agreement of the parties.
- 2.4 Before Starting Construction:**
 - 2.4.1** No Work shall be done at the site with regard to a Work Package prior to the preconstruction conference for such Work Package without Owner's approval. Before undertaking each part of the Work, CM shall carefully study the Contract Documents to check and verify pertinent figures shown thereon compare accurately to all applicable field measurements. CM shall promptly report in writing to Owner's Representative any conflict, error, ambiguity or discrepancy which CM may discover and shall obtain a written interpretation or

clarification from Owner's Representative before proceeding with any Work affected thereby. CM shall be liable to OWNER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which CM knew or reasonably should have known.

2.4.2 It is mutually agreed between CM and Owner that successful completion of the Work within the applicable Contract Time Requirements is of primary importance. Therefore, the CM hereby agrees to submit to the Owner's Representative for review and approval, or acceptance, as appropriate, all information requested within this section, including a Baseline Schedule for the respective Work to be commenced, no later than five (5) working days prior to the preconstruction conference. The Owner's Representative will schedule the preconstruction conference upon the timely submittal of the required documents, unless time is extended by written mutual agreement. CM will submit the following:

- .1** A proposed Baseline Schedule (the "Baseline Schedule") for the respective Work to be commenced developed using the scheduling software authorized in Section 6.3 of the Agreement, unless otherwise approved by Owner's Representative to confirm that all Work will be completed within the respective Contract Time Requirements. The Baseline Schedule must (i) indicate the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents, (ii) identify the Critical Path for completing the Work, (iii) identify when all Subcontractors will be utilized, and (iv) take into consideration any limitations on Working Hours, including baseline Rain Days on Calendar Day Contracts, and (v) be prepared in accordance with City Standard Document -- Section 01310, Schedules and Reports, if applicable, otherwise in accordance with Section 01300 Submittals. Such Baseline Schedule shall also be consistent with the Project Schedule and the CM's Progress Schedule. This Baseline Schedule, a copy of which shall be made available at the job site(s), must contain sufficient detail to indicate that the CM has properly identified required Work elements and tasks, has provided for a sufficient and proper workforce and integration of Subcontractors, has provided sufficient resources and has considered the proper sequencing of the Work required to result in a successful Project that can be completed within the Contract time;
- .2** An organizational chart showing the principals and management personnel who will be involved with the Work, including each one's responsibilities for the Work;
- .3** To the extent not set forth in the Request for Qualifications for a Construction Manager-at-Risk -- Section 00400CMR Statement of CM's Experience, a complete listing of the CM's employees proposed for the Work. List each one by name and job title, and show length of employment with CM;
- .4** To the extent not set forth in the Request for Qualifications for a Construction Manager-at-Risk -- Section 00410 Statement of Bidder's Safety Experience, a discussion and confirmation of the CM's commitment to safety by providing a copy of its employee's safety handbook and the safety records for the past three years of CM's proposed project manager and Superintendent;
- .5** A preliminary schedule of Shop Drawing and sample submittals;

- .6 A preliminary schedule of values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. At a minimum, the schedule of values shall be broken out by trade and split between materials and labor. Such prices will be deemed to include an appropriate amount of overhead and profit applicable to each item of Work;
- .7 To the extent not set forth in the Request for Qualifications for a Construction Manager-at-Risk -- Section 00400CMR Statement of CM's Experience, a letter designating CM's Superintendent and project manager, and a confirmation of past project experience for the CM's Superintendent and project manager specifically intended for the Work;
- .8 A letter from CM and Subcontractor(s) listing salaried specialists. A salaried specialist is anyone except an hourly worker whose wage rate is governed by City Standard Document -- Section 00830;
- .9 A letter designating the "Competent Person(s)" on general safety and excavation safety measures along with certifications or other documentation of the safety representative's qualifications;
- .10 If applicable, an excavation safety system plan;
- .11 If applicable, a plan illustrating proposed locations of temporary facilities;
- .12 A completed Non-Use of Asbestos Affidavit (Prior to Construction); and
- .13 A letter designating the Texas Registered Professional Land Surveyor for layout of the Work, if the Work requires the services of a surveyor.
- .14 Appropriate safety training certificates for workers that will initially be on site;
- .15 A certificate of worker's compensation insurance coverage for all persons providing services on the Project (refer to 5.2.1.3 in Section 00700CMR for definition of persons providing services on the Project);
- .16 A Construction Equipment Emissions Reduction Plan.

2.4.3 Neither the acceptance nor the approval of any of the submittals required in Section 2.4.2, above, will constitute either the adoption, affirmation, or direction of the CM's means and methods.

2.1 Preconstruction Conference: Prior to commencement of Work at the site, CM must attend a preconstruction conference with Owner's Representative and others, as set forth in Division 1. Additionally, CM agrees to notify and host a preconstruction conference for the Subcontractors identified on the approved initial M/WBE Subcontracting Compliance Plan, Owner's Representative and others, as set forth in Division 1. CM will provide documentation of proof of the preconstruction conference upon request of the Owner. If CM includes Subcontractors at the initial preconstruction conference with the Owner, then the additional preconstruction conference will not be required.

2.2 Initially Acceptable Schedules: Unless otherwise provided in the Contract Documents, CM shall obtain approval of Owner's Representative on the Baseline Schedule submitted in accordance with Section 2.4.2.1 and Division 1 before the first progress payment will be made to CM. The Baseline Schedule must provide for an orderly progression of the designated portion of the Work to completion within the Contract Time Requirements, including any specified Milestones. Acceptance of the schedule by Owner's Representative will neither impose on Owner's Representative responsibility or liability for the sequencing, scheduling or progress of the Work nor interfere with or relieve CM from CM's full responsibility for such Work. CM's schedule of

Shop Drawings and sample submissions must provide an acceptable basis for reviewing and processing the required submittals. CM's schedule of values must conform to the requirements set forth in Division 1.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

- 3.1 Intent:** The intent of the Contract Documents is to include all information necessary for the proper execution and timely completion of the Work by CM. The CM will execute the Work described in and reasonably inferable from the Contract Documents as necessary to produce the results indicated by the Contract Documents. The Contract Documents are complementary and shall be interpreted in accordance with the Rules of Interpretation as set forth in the Agreement, with the understanding that a common sense approach will be utilized as necessary so that the Contract Documents produce the intended response.
- 3.2 Reporting and Resolving Discrepancies:** If, during the performance of the Work, CM discovers any Discrepancy within the Contract Documents or between the Contract Documents and any provisions of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual or code or instructions of any Supplier, CM shall report it to Owner's Representative in writing at once, and CM shall not proceed with the Work affected thereby until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Section 3.3.1 or 3.3.2. CM shall be liable to Owner for failure to report any such Discrepancy of which CM knew or should reasonably have discovered in fulfilling its obligations arising from the Contract and based upon its applicable standard of care as a construction manager at risk and not as a design professional.
- 3.3 Amending and Supplementing Contract Documents:**
- 3.3.1** The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
- .1** Change Order.
 - .2** Change Directive.
 - .3** Modification.
- 3.3.2** In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
- .1** Field Order.
 - .2** Shop Drawing or sample approved in accordance with the Contract Documents.
 - .3** Written interpretation or clarification issued in accordance with the Contract Documents.
- 3.4 Reuse of Documents Prohibited:** CM and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Owner: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of A/E or A/E's consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of Owner and A/E.

- 3.5** In the event of the breach by the Owner or CM of any of its obligations under the Contract, so as to support a claim by the other party, the provisions of this Contract will be equitably construed to allow the resolution of such a claim and all of the other provisions of this Contract shall continue in full force and effect as to the rights, responsibilities, and remedies of the Owner and CM.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

- 4.1 Availability of Lands:** The Owner will provide access to all land and interests in land required for the Work and will notify CM of any restrictions in such access. CM may make a claim if OWNER fails to provide timely access to the Work. CM must obtain any additional temporary construction facilities, stockpiling or storage sites not otherwise provided.

4.1.1 To the extent that terms of any special easement(s) relating to the Work are made part of the Contract Documents and in the event that the actions of the CM or its Subcontractors cause the Work to be delayed to the point that the ending date of such an easement has been exceeded, except where such delay is excused under the Contract Documents, the CM shall be responsible to reimburse the Owner for any additional costs required to extend the period of rights to any such easement in order to complete the Work. This delay shall be considered to be any period of time required by the CM to fully and satisfactorily execute the Work that is in addition to the original Contract duration, as modified by any executed Contract change orders.

4.2 Subsurface and Physical Conditions:

4.2.1 CM specifically represents that it has carefully examined the plans, the geotechnical report, if any, and the site of the proposed Work and is thoroughly familiar with all of the conditions surrounding construction of the Project, having had the opportunity to conduct any and all additional inquiry, tests and investigation that he/she deems necessary and proper. CM acknowledges the receipt of the geotechnical report, if any, and agrees that the report, while it is an accurate record of the geotechnical conditions at the boring locations, is not a guarantee of specific site conditions which may vary between boring locations.

4.2.2 Except as provided in Subsection 4.2.5 below, CM must notify Owner in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Contract. CM may not disturb the conditions until Owner conducts an investigation. Owner's Representative and A/E will promptly investigate such conditions with A/E. If it is determined that such conditions differ materially and cause an increase or decrease in the CM's cost of or time required for performance of any part of the Work, Owner's Representative will recommend an equitable adjustment in the Contract Amount or Contract Time Requirements, or both. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, Owner's Representative will notify CM in writing of such findings and the Contract will not be adjusted. CM may dispute such a determination in accordance with Article 16.

- 4.2.3** Notwithstanding any other provision of this Contract, CM is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the Work area. "Public utility lines" means the utility distribution and supply system, and "utility customer service lines" means the utility lines connecting customers to the utility distribution and collection system. Generally, existing utility customer service line connections are not shown on the Drawings. CM shall notify "One Call" and exercise due care to locate, mark, uncover and otherwise protect all such lines in the construction zone and any of CM's work or storage areas. CM's responsibility for the location and protection of utilities is primary and non-delegable. CM **shall indemnify or reimburse such expenses or costs (including fines that may be levied against Owner) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area.** Owner reserves the right to repair any damage CM causes to such utilities at CM's expense. If a public line and/or customer service line is damaged by CM, CM shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to the Owner's Representative.
- 4.2.4** CM shall take reasonable precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of OWNER and Texas Historical Commission. When such objects are uncovered unexpectedly, CM shall stop all Work in close proximity and notify Owner's Representative and Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities uncovered on Owner's property shall remain property of State of Texas, Texas Historical Commission conforming to Texas Natural Resources Code. If it is determined by Owner, in consultation with Texas Historical Commission, that exploration or excavation of primitive records or antiquities on Project site is necessary to avoid loss, CM shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in CM's cost of, or time required for, performance of the Work, the Contract Amount and/or Contract Time Requirements will be equitably adjusted.
- 4.2.5 Environmental Conditions.** CM must notify Owner in writing as soon as reasonably possible, but no later than one (1) calendar day after any significant environmental conditions are encountered at the site which are or may be subject to any Legal Requirements. CM may not disturb the conditions until Owner conducts an investigation. Owner's Representative and A/E will promptly investigate such conditions with A/E. If it is determined that such conditions are subject to Legal Requirements and cause an increase or decrease in the CM's cost of or time required for performance of any part of the Work, Owner's Representative will recommend an equitable adjustment in the Contract Amount or Contract Time Requirements, or both. If it is determined that such conditions are not subject to Legal Requirements, Owner's Representative will notify CM in writing of such findings and the Contract will not be adjusted. CM may dispute such a determination in accordance with Article 16.
- 4.3 Reference Points:** Unless otherwise specified, all control lines and bench marks suitable for use in layout will be furnished by Owner. Lay out of the Work shall be performed in accordance with Division 1. Controls, bench marks and property boundary markers shall be carefully preserved by CM by use of flags, staffs or other visible devices and in case of destruction or removal by CM or its employees, such controls and bench marks shall be replaced by a Registered Professional Land Surveyor at CM's

expense. City of Austin survey monuments damaged by CM will be reestablished by Owner at CM's expense.

4.4 Hazardous Materials or Conditions:

- 4.4.1** To the extent provided by applicable law, Owner shall be responsible for any hazardous material or Hazardous Conditions uncovered or revealed at the site which was not shown, indicated or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. CM shall immediately notify Owner's Representative of any suspected hazardous materials or conditions encountered before or during performance of the Work and shall take all necessary precautions to avoid further disturbance of the materials.
- 4.4.2** CM shall be responsible for any hazardous materials or conditions brought to the site by CM, Subcontractor, Suppliers or anyone else for whom CM is responsible.
- 4.4.3** No asbestos-containing materials shall be incorporated into the Work or brought on Project site without prior approval of Owner. The CM shall not knowingly use, specify, request or approve for use any asbestos containing materials or lead-based paint without the Owner's written approval. When a specific product is specified, the CM shall endeavor to verify that the product does not include asbestos containing material.
- 4.4.4** Refer to Division 1 for hazardous material and conditions definitions and procedures.
- .1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, CM is not responsible for any unexpected Hazardous Materials or Conditions encountered at the site. Upon encountering any Hazardous Conditions, CM must stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, applicable law or regulations, all government or quasi-government entities with jurisdiction over the Project or site.
 - .2** Upon receiving notice of the presence of suspected Hazardous Materials or Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Materials or Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Materials or render the Hazardous Materials or Conditions harmless.
 - .3** CM shall be obligated to resume Work at the affected area of the Project only after Owner's Representative provides written certification that (i) the Hazardous Materials or Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or site. The CM shall be responsible for continuing the Work in the unaffected portion of the Project and site.
 - .4** CM will be entitled, in accordance with these General Conditions, to an adjustment in its Contract Amount and/or Contract Time Requirements to the extent CM's cost and/or time of performance have been adversely impacted by the presence of Hazardous Materials or Conditions.

- .5 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Materials or Conditions introduced to the Site by CM, Subcontractors or anyone for whose acts they may be liable. **CM shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous materials or conditions introduced to the site by CM, Subcontractors or anyone for whose acts they may be liable.**

4.4.5 CM shall be responsible for use, storage and remediation of any hazardous materials or conditions brought to the Site by CM, Subcontractors, Suppliers or anyone else for whom CM is responsible.

ARTICLE 5 - BONDS AND INSURANCE

5.1 Surety and Insurance Companies: All bonds and insurance required by the Contract Documents shall be obtained from solvent surety or insurance companies that are duly licensed by the State of Texas and authorized to issue bonds or insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to OWNER and shall be issued by a surety which complies with the requirements of Texas Insurance Code Title 12, Chapter 3503. The surety must obtain reinsurance for any portion of the risk that exceeds 10% of the surety's capital and surplus. For bonds exceeding \$100,000, the surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.

5.2 Workers' Compensation Insurance Coverage:

5.2.1 Definitions:

- .1** 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.
- .2** Duration of the Project - includes the time from the beginning of the Work on the Project until the CM's/ person's Work on the Project has been completed and accepted by Owner.
- .3** Persons providing services on the Project ("subcontractor" in Texas Labor Code, Section 406.096) - includes all persons or entities performing all or part of the services the CM has undertaken to perform on the Project, regardless of whether that person contracted directly with the CM 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.

- 5.2.2** CM 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, Section 401.011(44) for all employees of the CM providing services on the Project, for the duration of the Project.
- 5.2.3** CM must provide a certificate of coverage to Owner prior to being awarded the Contract.
- 5.2.4** If the coverage period shown on the CM's current certificate of coverage ends during the duration of the Project, the CM must, prior to the end of the coverage period, file a new certificate of coverage with Owner showing that coverage has been extended.
- 5.2.5** CM shall obtain from each person providing services on the Project, and provide to Owner:
- .1** A certificate of coverage, prior to that person beginning Work on the Project, so Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - .2** No later than seven (7) days after receipt by CM, 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.
- 5.2.6** CM shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- 5.2.7** CM shall notify Owner in writing by certified mail or personal delivery, within ten (10) days after CM knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- 5.2.8** CM shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 5.2.9** CM shall contractually require each person with whom it contracts to provide services on a Project, to:
- .1** Provide coverage, based on proper reporting of classification codes and payroll amounts 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;
 - .2** Provide to CM, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - .3** Provide CM, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .4** Obtain from each other person with whom it contracts, and provide to CM: a) a certificate of coverage, prior to the other person beginning Work on the Project; and b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

- .5 Retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
- .6 Notify Owner 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
- .7 Contractually require each person with whom it contracts, to perform as required by Sections 5.2.9.1 - 5.2.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.

5.2.10 By signing this Contract or providing or causing to be provided a certificate of coverage, CM is representing to Owner that all employees of the CM 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 Texas Worker's Compensation Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject CM to administrative penalties, criminal penalties, civil penalties, or other civil actions.

5.2.11 CM's failure to comply with any of these provisions is a breach of Contract by CM which entitles Owner to declare the Contract void if CM does not remedy the breach within ten (10) days after receipt of notice of breach from Owner.

5.3 Other Bond and Insurance Requirements: For additional insurance requirements, refer to the Supplemental General Conditions.

5.4 Bonds:

5.4.1 General.

- .1 Bonds, when required, shall be executed on forms furnished by or acceptable to Owner. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- .2 If the surety on any bond furnished by CM is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CM shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to Owner.
- .3 When Performance Bonds and/or Payment Bonds are required, each shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CM's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent corporate surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by Owner pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of ten percent (10%) of its capital and surplus. Such a surety must reinsure any obligations over ten percent (10%).

5.4.2 Performance Bond.

- .1 If the Contract Amount exceeds \$100,000, CM shall furnish Owner with a Performance Bond in the form set out in City Standard Document -- Section 00610.

- .2 If the Contract Amount exceeds \$25,000 but is less than or equal to \$100,000, CM shall furnish Owner with a Performance Bond in the form set out in City Standard Document -- Section 00610, unless the original Contract Time is 60 Calendar Days/40 Working Days or less, in which case CM can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no moneys will be paid to CM until completion and acceptance of the Work by Owner; CM shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one (1) year warranty period.
- .3 If the Contract Amount is less than or equal to \$25,000, CM will not be required to furnish a Performance Bond; provided that no moneys will be paid to CM until completion and acceptance of the Work by Owner under the following terms and conditions: CM shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one (1) year warranty period.
- .4 If a Performance Bond is required to be furnished, it shall extend for the one (1) year warranty period.

5.4.3 Payment Bond.

- .1 If the Contract Amount exceeds \$25,000, CM shall furnish Owner with a Payment Bond in the form set out in City Standard Document -- Section 00620.
- .2 If the Contract Amount is less than or equal to \$25,000, CM will not be required to furnish a Payment Bond; provided that no moneys will be paid to CM until completion and acceptance of the Work by Owner under the terms and conditions specified in Section 5.4.2.3.

5.4.4 Maintenance Bond: If the Contract Documents contemplate a period of maintenance beyond the one (1) year contractual warranty period, Owner agrees that any bond to be required for such maintenance work will be in the amount of the maintenance work during any extended maintenance period.

5.5 Owner's Liability Insurance. Owner is a self-insured Texas municipality and governmental entity and does not maintain commercial general liability insurance coverage. Upon request, a letter of self-insurance will be provided by Owner.

ARTICLE 6 - CM'S RESPONSIBILITIES

6.1 Supervision and Superintendence:

- 6.1.1** CM shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CM shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CM shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- 6.1.2** CM shall have an English-speaking, competent Superintendent on the Work at all times that work is in progress. The Superintendent will be CM's representative on the Work and shall have the authority to act on the behalf of CM. All communications given to the Superintendent shall be as binding as if given to CM. Either CM or the Superintendent shall provide a cellular telephone number and an emergency and home telephone number at which one or the other may be reached if necessary when work is not in progress. The

Superintendent must be an employee of the CM, unless such requirement is waived in writing by the Owner's Representative. If the CM proposes a management structure with a Project Manager supervising, directing, and managing construction of the work in addition to or in substitution of a Superintendent, the requirements of these Construction Documents with respect to the Superintendent shall likewise apply to any such Project Manager.

- .1 CM shall present the resume of the proposed Superintendent to the Owner's Representative showing evidence of experience and successful superintendence and direction of work of a similar scale and complexity. If, in the opinion of the Owner's Representative, the proposed Superintendent does not indicate sufficient experience in line with the Work, he/she will not be allowed to be the designated Superintendent for the Work.
- .2 The Superintendent shall not be replaced without Written Notice to Owner's Representative. If CM deems it necessary to replace the Superintendent, CM shall provide the necessary information for approval, as stated above, on the proposed new Superintendent.
- .3 A qualified substitute Superintendent may be designated in the event that the designated Superintendent is temporarily away from the Work, but not to exceed a time limit acceptable to the Owner's Representative. CM shall replace the Superintendent upon Owner's request in the event the Superintendent is unable to perform to Owner's satisfaction.

6.2 Labor, Materials and Equipment:

6.2.1 CM shall maintain a work force adequate to accomplish the Work within the Contract Time Requirements. CM agrees to employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. CM, Subcontractors, Sub-subcontractors, and their employees may not use or possess any alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on Owner's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job. Subject to the applicable provisions of Texas law, CM, Subcontractors, Sub-subcontractors, and their employees may not use or possess any firearms or other weapons while on the job or on Owner's property. If Owner or Owner's Representative notifies CM that any worker or representative of CM is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of Texas law, or has possessed or was under the influence of alcohol or drugs on the job, CM shall immediately remove such worker or representative, including an officer or owner of CM, from performing Contract Work, and may not employ such worker or representative again on Contract Work without Owner's prior written consent. CM shall at all times maintain good discipline and order on or off the site in all matters pertaining to the Project. CM shall pay workers no less than the wage rates established in City Standard Document -- Section 00830, and maintain weekly payroll reports as evidence thereof, in accordance with the requirements of Chapter 2258 of the Texas Government Code.

6.2.2 Unless otherwise specified in Division 1, CM shall provide and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of

the Work, provided the Owner's CIT Consultant shall provide certain inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by Owner, as required by Section 2269.058 of the Texas Government Code.

6.2.3 All materials and equipment shall be of good quality and new (including new products made of recycled materials, pursuant to Section 361.426 of the Texas Health & Safety Code), except as otherwise provided in the Contract Documents. If required by Owner's Representative, CM shall furnish satisfactory evidence (reports of required tests, manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.2.4 Substitutes and "Approved Equal" Items:

.1 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains words reading that no like, equivalent or "approved equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be submitted by CM, at CM's sole risk, including disruptions to the Critical Path of the Progress Schedule, to A/E through Owner's Representative under the following circumstances:

.1.1 "Approved Equal": If in A/E's sole discretion an item of material or equipment proposed by CM is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by A/E as an "approved equal" item, in which case review of the proposed item may, in A/E's sole discretion, be accomplished without compliance with some or all of the requirements for evaluation of proposed substitute items. CM shall provide A/E with the documentation required for A/E to make its determination.

.1.2 Substitute Items: If in A/E's sole discretion an item of material or equipment proposed by CM does not qualify as an "approved equal" item under Subsection 6.2.4.1.1, it will be considered a proposed substitute item. CM shall submit sufficient information as provided in Division 1 to allow A/E to determine that the item of material or equipment proposed is essentially equivalent to that named and a substitute therefor.

.2 Substitute Construction Methods and Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CM may, at CM's sole risk, including disruptions to the Critical Path of the Progress Schedule, with prior approval of A/E furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. CM shall submit sufficient information to Owner's Representative to allow A/E, in A/E's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by A/E will be same as that provided for substitute items in Division 1.

- .3** A/E's Evaluation: A/E will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Subsections 6.2.4.1.1 and 6.2.4.1.2. A/E will be the sole judge of acceptability. No "approved equal" or substitute shall be ordered, installed, or utilized until A/E's review is complete, which will be evidenced by either a Change Order or completion of the Shop Drawing review procedure. Owner may require CM to furnish at CM's expense a special performance guarantee or other surety bond with respect to any "approved equal" or substitute or for any other delay or disruption to the Critical Path of the Project Schedule attributable to any such substitution. Owner shall not be responsible for any delay due to review time for any "approved equal" or substitute.
 - .4** CM's Expense: All data and documentation to be provided by CM in support of any proposed "approved equal" or substitute item will be at CM's expense.
 - .5** The approval of the A/E will not relieve the CM from primary responsibility and liability for the suitability and performance of any proposed substitute item, method or procedure and will not relieve CM from its primary responsibility and liability for curing defective Work and performing warranty work, which the CM shall cure and perform, regardless of any claim the CM may choose to advance against the A/E or manufacturer.
- 6.2.5** CM agrees to assign to Owner any rights it may have to bring antitrust suits against its Suppliers for overcharges on materials incorporated in the Project growing out of illegal price fixing agreements. CM further agrees to cooperate with Owner should Owner wish to prosecute suits against Suppliers for illegal price fixing.
- 6.3 Progress Schedule:** Unless otherwise provided in Division 1, CM shall adhere to the Baseline Schedule established in accordance with Section 2.6 as it may be adjusted from time to time as provided below:
- 6.3.1** CM shall submit to Owner's Representative for review and approval any proposed adjustments in the Progress Schedule that will not change the Contract Time Requirements (including Milestones) on a monthly basis. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Progress Schedule. CM's Progress Schedule must show how the CM will consistently advance the progress of the Work in accordance with the Critical Path of the Work and the Contract Time Requirements, including Milestones. Such adjustments will conform generally to the Progress Schedule then in effect and additionally will comply with any provisions of Division 1 applicable thereto.
 - 6.3.2** Proposed adjustments in the Progress Schedule that will change the Contract Time Requirements, including Milestones, shall be submitted in accordance with the requirements of Article 12. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Progress Schedule. Such adjustments may only be made by a Change Order or Modification in accordance with Article 12.
- 6.4 Concerning Subcontractors, Suppliers and Others:**
- 6.4.1** Assignment: CM agrees to retain direct control of and give direct attention to the fulfillment of this Contract. CM agrees not to, by Power of Attorney, or otherwise, assign said Contract without the prior written consent of Owner. In addition, without Owner's written consent, the CM will not subcontract the performance of the entire Work or the supervision and direction of the Work.

- 6.4.2** Award of Subcontracts for Portions of the Work: CM shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom Owner may have reasonable objection. Owner will communicate such objections by Written Notice. If Owner requires a change without good cause of any Subcontractor, person or organization previously accepted by Owner, the Contract Amount shall be increased or decreased by the difference in the cost occasioned by any such change, and appropriate Change Order shall be issued. CM shall not substitute any Subcontractor, person or organization that has been accepted by Owner, unless the substitute has been accepted in writing by Owner. No acceptance by Owner of any Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of Owner to reject defective Work. CM shall comply with the applicable DBE or M/WBE requirements set forth in the Solicitation and Contract Documents for this Project with respect to removing, adding or substituting Subcontractors and the subcontracting process.
- 6.4.3** CM shall enter into written agreements with all Subcontractors and Suppliers which specifically binds the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents for the benefit of Owner and A/E. The Owner reserves the right to specify that certain requirements shall be adhered to by all Subcontractors and Sub-subcontractors as indicated in other portions of the Contract Documents and these requirements shall be made a part of the agreement between CM and Subcontractor or Supplier. Subject to and in accordance with the above requirements, the CM must provide and will be deemed for all purposes to have provided in its contracts with Major Subcontractors or Suppliers on the Project (those contracts of more than \$50,000) the following specific provision: alternative dispute resolution (Sections 16.2 and 16.3), which shall be mandatory in the event of a subcontractor or supplier claim and a prerequisite for the submission of any derivative claim. The CM's standard subcontract form is subject to the Owner's review and approval. The Owner may request and the CM will provide within five (5) working days a copy of any subcontract requested by the Owner.
- 6.4.4** CM shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CM just as CM is responsible for CM's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between Owner and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner or A/E to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by laws and regulations.
- 6.4.5** CM shall be solely responsible for efficiently scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CM in order to avoid any delays or inefficiencies in the prosecution of the Work. CM shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner's Representative through CM.
- 6.4.6** The divisions and sections of the Specifications and the identifications of any Drawings shall not control CM in dividing or delineating the Work to be performed by any specific trade.

- 6.4.7** CM shall pay each Subcontractor and Supplier their appropriate share of payments made to CM not later than ten (10) Calendar Days of CM's receipt of payment from OWNER. Upon request from Owner, the CM has two (2) Working Days to provide documentation verifying Payment to Subcontractor(s). The CM is required to notify the Subcontractor(s) in writing of rejection of Application for Payment within two (2) Working Days following notification by Owner. Failure of CM to make payments properly to Subcontractors for labor, materials or equipment may be cause to reject future bids or proposals submitted by the CM and may be cause to reject an application for payment in accordance with paragraph 14.4.1.3.
- 6.4.8** To the extent allowed by Texas law, the Owner shall be deemed to be a third party beneficiary to each subcontract and may, if Owner elects, following a termination of the CM, require that the Subcontractor(s) perform all or a portion of unperformed duties and obligations under its subcontract(s) for the benefit of the Owner, rather than the CM; however, if the Owner requires any such performance by a Subcontractor for the Owner's direct benefit, then the Owner shall be bound and obligated to pay such Subcontractor the reasonable value for all Work performed by such Subcontractor to the date of the termination of the CM, less previous payments, and for all Work performed thereafter. In the event that the Owner elects to invoke its right under this section, Owner will provide notice of such election to the CM and the affected Subcontractor(s).

6.5 Patent Fees and Royalties:

- 6.5.1** CM shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or the formulation or presentation of its Bid.
- 6.5.2** CM shall pay all royalties and license fees and shall provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patentee, copyright holder, or their duly authorized representative whether or not a particular design, device, material, or process is specified by OWNER.
- 6.5.3** **CM shall defend all suits or claims for infringement of any patent or copyright and shall save Owner harmless from any loss or liability, direct or indirect, arising with respect to CM's process in the formulation of its Bid or the performance of the Work or otherwise arising in connection therewith. Owner reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event CM shall indemnify and save harmless Owner from all costs and expenses of such defense as well as satisfaction of all judgments entered against Owner.**
- 6.5.4** Owner shall have the right to stop the Work and/or terminate this Agreement at any time in the event CM fails to disclose to Owner or Owner discovers that CM's work methodology includes the use of any infringing design, device, material or process.
- 6.5.5** **Permits, Fees:** Unless otherwise provided in the Supplemental General Conditions, CM shall obtain and pay for all construction permits, licenses and fees required for prosecution of the Work.

6.6 Laws and Regulations:

- 6.6.1** CM shall give all notices and comply with all Legal Requirements applicable to furnishing and performing the Work, including arranging for and obtaining any required inspections, tests, approvals or certifications from any public body having jurisdiction over the Work or any part thereof. Except where otherwise expressly required by applicable laws and regulations, neither Owner nor A/E shall be responsible for monitoring CM's compliance with any laws and regulations.
- 6.6.2** Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. CM shall plan and execute its operations in compliance with all applicable Legal Requirements concerning control and abatement of water pollution and prevention and control of air pollution.
- 6.6.3** If CM performs any Work knowing or having reason to know that it is contrary to laws or regulations, CM shall bear all claims, costs, losses and damages arising therefrom; however, it shall not be CM's primary responsibility to make certain that the Specifications and Drawings are in accordance with all Legal Requirements, but this does not relieve CM of CM's obligations under Article 3.

6.7 Taxes:

- 6.7.1** CM shall pay only those sales, consumer, use and other similar taxes required to be paid by CM in accordance with the laws and regulations of the State of Texas in the performance of this public works contract.
- 6.7.2** Owner is an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas and is thereby exempt from payment of Sales Tax under Chapter 151, Limited Use Sales, Excise and Use Tax, Texas Tax Code, and Article 1066 (C), Local Sales and Use Tax Act, Revised Civil Statutes of Texas.

6.8 Use of Premises:

- 6.8.1** CM shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, right-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CM shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of or in connection with the performance of the Work, CM shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. **CM shall indemnify, defend and hold harmless Owner, A/E, A/E'S Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including court costs and reasonable attorney's fees) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against Owner, A/E or any other party indemnified hereunder to the extent caused by or based upon performance of the work or failure to perform the Work.**
- 6.8.2** During the progress of the Work and on a daily basis, CM shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CM 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. CM shall leave the site clean and ready for occupancy by Owner at Substantial Completion of the Work. CM shall, at a minimum, restore to original condition all property not designated for alteration by the Contract Documents. If the CM fails to clean up at the completion of the Work, Owner may do so and the cost thereof will be charged against the CM.

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

6.9 Record Documents: CM shall maintain in a safe place at the site, or other location acceptable to Owner, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to Section 9.5) in good order and annotated to show all changes made during construction. These record documents together with all final samples and all final Shop Drawings will be available to Owner and A/E for reference during performance of the Work. Upon Substantial Completion of the Work, these record documents, samples and Shop Drawings shall be promptly delivered to Owner's Representative.

6.10 Safety and Protection:

6.10.1 CM shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Upon request, and prior to installation of measures, CM shall submit a site security plan for approval by Owner. By reviewing the plan or making recommendations or comments, Owner will not assume liability nor will CM be relieved of liability for damage, injury or loss. CM shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to:

- .1 all persons on the Work site or who may be affected by the Work;
- .2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- .3 other property at the site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

CM's responsibility for safety is not intended in any way to relieve Subcontractors of their own contractual and legal responsibility for complying with Legal Requirements and taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages, or accidents resulting from their performance of portions of the Work.

6.10.2 CM shall comply with all applicable Legal Requirements, including but not limited to all laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CM shall notify owners of adjacent property and of underground facilities, and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in Section 6.11.1.2 and 6.11.1.3 caused, directly or indirectly, in whole or in part, by CM, Subcontractor, Supplier or any person or organization directly or indirectly employed by any of them to perform or furnish any of the

Work or anyone for whose acts any of them may be liable, shall be remedied by CM (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner, or A/E, or A/E's consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the faults or negligence of CM or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CM's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to Owner and CM in accordance with Article 14 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). Without limitation, CM shall comply with the following specific provisions:

It shall be the duty and responsibility of CM and all of its subcontractors to be familiar with and comply with 29 USC Section 651, et seq., the Occupational Safety and Health Act of 1970, as amended ("OSHA") and to enforce and comply with all provisions of this Act.

The CM and all of its subcontractors shall comply with all applicable requirements of Subpart P of Part 1926 of 29 C.F.R, OSHA Safety and Health Standards, Texas Health and Safety Code Section 756.023, as amended, and shall submit a unit price for the particular excavation safety systems to be utilized by the CM for all excavations which exceed a depth of five feet (5').

Before commencing any excavation which will exceed a depth of five feet (5'), the CM shall provide the Owner with detailed plans and specifications regarding the safety systems to be utilized. Said plans and specifications shall include a certification from a Texas licensed professional engineer indicating full compliance with the OSHA provisions cited above.

6.10.3 Safety Representative: CM shall designate in writing a qualified and experienced safety representative (the "Safety Representative") at the site whose duties and responsibilities shall include safety training; identifying and mitigating hazardous conditions and unsafe work practices; and developing, maintaining, and supervising the implementation of safe work practices and safety programs as deemed necessary and appropriate for the Project. The term "Safety Representative" includes any designated Safety Supervisor, Superintendent or Safety Manager. The Safety Representative shall exercise due diligence in the execution of all Project related safety duties. The Safety Representative shall report directly to a company executive, not an on-site project manager. Upon request of OWNER, CM shall provide certifications or other acceptable documentation of the Safety Representative's qualifications. The following requirements will be effective as of September 1, 2010:

.1 The Safety Representative shall present certification of completion of the OSHA 30-hour Construction Industry Training Outreach Program described at:

http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html

.2 The Safety Representative shall verify that all construction workers (defined as persons covered by a prevailing wage determination) on the job site, whether employed by the CONTRACTOR or subcontractors, have completed the OSHA 10-hour Construction Industry Training Outreach Program described at:

http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html

The Safety Representative must receive a certificate of training completion before allowing a worker on site and shall have all such certificates available for inspection by the Owner.

- .3 The Safety Representative shall ensure that workers, including designated competent persons, have completed all applicable OSHA specific or other training needed to perform their job assignments. Training topics applicable to the scope of the current Project may include, but are not limited to, scaffolds, fall protection, cranes, excavations, electrical safety, tools, concrete and masonry construction, steel erection, operation of motor vehicles and mechanized equipment.
- .4 The Safety Representative shall post notice on the site of the Work stating that all workers shall have completed OSHA Construction Industry Training. The Owner may require, and the Safety Representative should consider providing a means of readily identifying workers who have completed the required training to monitor compliance with these requirements.

The Safety Representative shall ensure that all required OSHA and Workers Compensation notices to workers are posted in English and Spanish at one or more conspicuous locations on the work site.

6.10.4 Hazard Communication Programs: CM shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws and regulations.

6.10.5 Emergencies:

- .1 In emergencies affecting the safety or protection of persons or the Work at the site or adjacent thereto, CM, without special instruction or authorization from OWNER or A/E, is obligated to act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. CM shall give Owner's Representative telephone notification as soon as reasonably practical and a prompt written notice if CM believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner's Representative determines that a change in the Contract Documents is required because of the action taken by CM in response to such an emergency, a Change Directive or Change Order will be issued to document the consequences of such action; otherwise Owner will not be responsible for CM's emergency action.
- .2 Authorized agents of CM shall respond immediately to call-out at any time of any day or night when circumstances warrant the presence on Project site of CM or his agent to protect the Work or adjacent property from damage, restriction or limitation or to take such action or measures pertaining to the Work as may be necessary to provide for the safety of the public. Should CM and/or their agent fail to respond and take action to alleviate such an emergency situation, Owner may direct other forces to take action as necessary to remedy the emergency condition, and OWNER will deduct any cost of such remedial action from the funds due CM under this Contract.
- .3 In the event there is an accident involving injury to any individual or damage to any property on or near the Work, CM shall provide to Owner's Representative verbal notification within one (1) hour and written notification within twenty-four (24) hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses,

obtaining medical reports, police accident reports and other documentation that describes the event. Copies of such documentation shall be provided to Owner's Representative, for Owner's and A/E's records, within forty-eight (48) hours of the event. CM shall cooperate with Owner on any Owner investigation of any such incident.

6.10.6 Rest Breaks

- .1 Except as provided in subsection 6.11.6.2 below, an employee performing construction activity at a construction site is entitled to a rest break of not less than ten (10) minutes for every four (4) hours worked. No employee may be required to work more than 3.5 hours without a rest break. A rest break means a break from work within working hours, excluding meal breaks, during which an employee may not work. A rest break shall be scheduled as near as possible to the midpoint of the work period.
- .2 An employee is not entitled to a rest break under subsection 6.11.6.1 on any day the employee works less than 3.5 hours or spends more than half of his or her work time engaged in non-strenuous labor in a climate controlled environment.
- .3 A sign describing the requirements of this Section 6.11.6 in English and Spanish shall be posted by the employer in each establishment subject to the requirement of a rest break in a conspicuous place or places where notices to employees are customarily posted, in accordance with the Owner's then current rules for size, content, and location of such signage.
- .4 The violation of Ordinance No. 20100729-047, enacted July 29, 2010, which establishes the rest break requirements set forth above, may be enforced with criminal penalties and civil remedies, as set forth in the Ordinance.

6.10.7 If the CM fails to carry out the Work in accordance with the Contract serious or imminent danger safety violation has occurred, the Owner may order the CM 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 under this paragraph shall not give rise to a duty on the part of the Owner to supervise the CM's Work or to control the CM's means and methods or to exercise this right for the benefit of the CM or any other person or entity. All time lost due to Project shut down will be the CM's sole responsibility, will be charged against the Contract Time, and the CM will be responsible for any and all expenses incurred. This provision is in addition to and supplemental to the applicable provisions of the Project's ROCIP Safety Manual.

- .1 **Confined Space Program** - CM acknowledges and agrees that the Owner is temporarily transferring management and control of the site of the Work to the CM for the purpose of constructing the Project. The CM's responsibilities to manage the Work includes the responsibility to manage the property for purposes of compliance with 29 CFR 1926 subpart AA. To the best of Owner's knowledge and belief, Owner has provided the following information in the plans and specifications and other Contract Documents: (i) the location of each known permit space, (ii) the hazards or potential hazards in each space or the reason it is a permit space; and (iii) any precautions that the Owner or any previous contractor has implemented for the protection of employees in the permit space. This transfer will result in the CM being both the host employer and the controlling contractor for this portion of the Work.

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

6.12 CM's General Warranty and Guarantee:

6.12.1 CM warrants and guarantees to Owner that all Work will conform to the plans and specifications, be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective and that the whole and entire Work will function and operate as expressed or required by the Contract Documents. This warranty will survive the termination or expiration of the Contract. CM's warranty and guarantee hereunder excludes defects or damage caused by:

- .1 abuse, modification or improper maintenance or operation by persons other than CM, Subcontractors or Suppliers; or
- .2 normal wear and tear under normal usage.

Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section or the Contract Documents. Further, nothing in this warranty shall be limited by the CM's obligation to cure defects within any specific corrective or warranty period as required in the Contract Documents, including Section 13.7 below.

6.12.2 CM's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CM's obligation to perform the Work in accordance with the Contract Documents:

- .1 observations by Owner's Representative, Owner's CIT Consultant, and/or A/E;
- .2 recommendation of any progress or final payment by Owner's Representative;
- .3 the issuance of a certificate of Substantial Completion or any payment by Owner to CM under the Contract Documents;
- .4 use or occupancy of the Work or any part thereof by Owner;
- .5 any acceptance by OWNER or any failure to do so;
- .6 any review of a Shop Drawing or sample submittal;
- .7 any inspection, test or approval by others; or
- .8 any correction of defective Work by Owner.

6.13 INDEMNIFICATION:

6.13.1 CM shall defend, indemnify and hold harmless Owner, A/E, A/E'S Consultants and Subconsultants and their respective officers, directors, partners, employees, agents and other Consultants and any of them (the "INDEMNIFIED PARTIES") from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage:

- .1 Is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, and**
- .2 Is caused in whole or in part by any negligent act or omission of CM, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of the INDEMNIFIED PARTIES hereunder or whether liability is imposed upon such INDEMNIFIED PARTY by laws and regulations regardless of the negligence of any such person or entity.**

In the event that indemnification of the INDEMNIFIED PARTIES is prohibited by law, CM shall nonetheless be solely responsible for any liability arising out of or resulting from the performance of the Work, subject to the limitations set forth above, and shall indemnify and hold harmless the remaining INDEMNIFIED PARTIES, who may be legally indemnified, from such liability of the CM and the associated costs described above.

- 6.13.2** The indemnification obligation under Section 6.14.1 shall not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for CM or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 6.13.3** The obligations of CM under Section 6.14.1 shall not extend to the liability of Owner, A/E, A/E's consultants, and their officers, directors, partners, employees or agents caused primarily by negligent preparation of maps, drawings, surveys, designs or specifications upon which is placed the applicable state-authorized design professional seal of Owner's, A/E's or A/E's consultant's officers, directors, partners, employees or agents.
- 6.13.4** In the event CM fails to follow Owner's directives concerning use of the site, scheduling or course of construction, or engages in other conduct which proximately causes damage to property based on inverse condemnation or otherwise, then and in that event, CM shall indemnify Owner against all costs resulting from such claims.
- 6.13.5 As part of its indemnity obligations under Section 6.14.1, but subject to the limitation as set out in Section 6.14.3, in the event CM's negligence or breach of contract causes delay in the progress of the work or the performance of services being done by others on the Site or otherwise with regard to the Project (including Owner's separate contractors, design professionals, and consultants) so as to cause loss for which Owner becomes liable to such others, then CM shall indemnify Owner from and reimburse Owner for such loss.**
- 6.14 Survival of Obligations:** All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.
- 6.15 Losses from Natural Causes:** Unless otherwise specified, all loss or damage to CM arising out of the nature of the Work to be done or from action of the elements, floods or from unforeseeable circumstances in prosecution of the Work or from unusual

obstructions or difficulties which may be encountered in prosecution of the Work, shall be sustained and borne by CM at its own cost and expense.

6.16 Notice of Claim: Should CM suffer injury or damage to person or property because of any error, omission or act of Owner or of any of Owner's employees or agents or others for whose acts Owner is liable, a Claim must be made to the other party within thirty (30) calendar days of the event giving rise to such injury or damage. The provisions of this Section 6.17 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

6.17 Liquidated Damages: CM or its Surety shall be liable for liquidated damages as provided in the Agreement for the failure of the CM to timely complete the Work or any portion thereof within the Contract Time Requirements.

ARTICLE 7 - OTHER WORK

7.1 Owner may perform other work related to the Project at the site by Owner's own forces, or let other contracts therefor, or have other work performed by utility owners. CM and Owner agree to and shall use best efforts to cooperate and coordinate the Work with others performing work and other work related to the Project in order to avoid conflicts and delays in the Work. If CM believes that delay or additional cost is involved because of such action by Owner, CM may make a Claim as provided in Article 11 or 12.

7.2 CM shall afford other contractors who are in a contract with Owner and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CM shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CM shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Owner's Representative and the other contractors whose work will be affected. CM shall promptly remedy damage wrongfully caused by CM to completed or partially completed construction or to property of the Owner or separate contractors.

7.3 If the proper execution or results of any part of CM's Work depends upon work performed by others under this Article 7, CM shall inspect such other work and promptly report to Owner's Representative in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CM's Work. CM's failure to report will constitute an acceptance of such other work as fit and proper for integration with CM's Work except for latent or non-apparent defects and deficiencies in such other work.

7.4 Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of CM, who shall cooperate with them. CM shall participate with other separate contractors and Owner's Representative in reviewing their construction Progress Schedules when directed to do so. On the basis of such review, CM shall make any revisions to the construction Progress Schedule deemed necessary after a joint review and mutual agreement. The agreed upon construction Progress Schedules shall then constitute the Progress Schedules to be used by CM, separate contractors and Owner until subsequently revised.

7.5 CM shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, CM agrees to reasonably cooperate and coordinate its activities with those of such separate

contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption

- 7.6** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

- 8.1** Prior to the start of construction, Owner will designate in writing a person or entity to act as Owner's Representative during construction. Except as otherwise provided in these General Conditions, Owner shall issue all communications to CM through Owner's Representative. Owner's Representative will be responsible for providing Owner-supplied information and approvals in a timely manner to permit CM to fulfill its obligations under the Contract Document. Owner's Representative will also provide CM with prompt notice if it observes a failure on the part of the CM to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.
- 8.2** Owner will not supervise, direct, control or have authority over or be responsible for CM's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of CM to comply with laws and regulations applicable to furnishing or performing the Work. Owner is not responsible for CM's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of Owner to discover, or object to or condemn any defective Work or material shall not release CM from the obligation to properly and fully perform the Contract.
- 8.3** Owner is not responsible for the acts or omissions of CM, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work. CM acknowledges and agrees that Owner's direction to perform Work in accordance with the approved Progress Schedule is not a demand for acceleration or a dictation of CM's means or methods.
- 8.4** Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work. The Owner shall have a reasonable amount of time to investigate site conditions, review submittals, analyze requests for changes, and to make other decisions in the orderly administration of the Contract. CM must notify the Owner in writing, if the time for the investigation, review, analysis of any submittals, required for changes or otherwise required for Owner's decision, impacts in any way the Critical Path of the approved Progress Schedule.
- 8.5** The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 4 (Availability of Lands; Subsurface and Physical Conditions; Reference Points), Article 7 (Other Work) and Article 14 (Payments to CM and Completion).
- 8.6** **Notice of Claim:** Should Owner suffer injury or damage to person or property because of any error, omission or act of CM or of any of CM's employees or agents or others for whose acts CM is liable, a Claim will be made to the CM within thirty (30) calendar days after City has actual knowledge of such injury or damage. The provisions of this Section 8.6 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.
- 8.7** Owner shall, throughout the performance of the Work, cooperate with CM and perform its responsibilities, obligations and services in a timely manner to facilitate CM's timely and efficient performance of the Work and so as not to delay or interfere with CM's performance of its obligations under the Contract Documents.

8.8 Furnishing of Services and Information

8.8.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for CM's information and use the following, all of which CM is entitled to reasonably rely upon in performing the Work:

- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2** To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable CM to perform the Work;
- .4** A legal description of the Site;
- .5** To the extent available, as-built and record drawings of any existing structures at the Site; and
- .6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

ARTICLE 9 - A/E'S STATUS DURING CONSTRUCTION

9.1 A/E's Authority and Responsibilities:

- 9.1.1** The duties and responsibilities and the limitations of authority of A/E during construction, as set forth in the Contract Documents, may be assigned or assumed by the Owner, but shall not be extended without written consent of Owner and/or A/E. The assignment of any authority, duties or responsibilities to A/E under the Contract Documents, or under any agreement between Owner and A/E, or any undertaking, exercise or performance thereof by A/E, is intended to be for the sole and exclusive benefit of Owner and not for the benefit of CM, Subcontractor, Supplier, or any other person or organization, or for any surety or employee or agent of any of them.
- 9.1.2** A/E will not supervise, direct, control or have authority over or be responsible for CM's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. A/E is not responsible for any failure of CM to comply with laws and regulations applicable to the furnishing or performing the Work. A/E is not responsible for CM's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of A/E to discover, or object to or condemn any defective Work or material shall not release CM from the obligation to properly and fully perform the Contract.
- 9.1.3** A/E is not responsible for the acts or omissions of CM, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.
- 9.1.4** If Owner and A/E agree, A/E will review the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and

approvals and other documentation required to be delivered by Article 14, but only to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

- 9.1.5** The limitations upon authority and responsibility set forth in this Section 9.1 shall also apply to A/E's Consultants, Resident Project Representative and assistants.
- 9.2** [Intentionally omitted.]
- 9.3 Visits to Site:** If Owner and A/E agree, A/E will make visits to the site at intervals appropriate to the various stages of construction as A/E deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CM's executed Work. Based on information obtained during such visits and observations, A/E will endeavor for the benefit of Owner to determine, in general, if the Work is proceeding in accordance with the Contract Documents. A/E will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. A/E's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, A/E will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work. A/E's visits and on-site observations are subject to all the limitations on A/E's authority and responsibility set forth in Section 9.1.
- 9.4 Resident Project Representative:** If Owner and A/E agree, A/E will furnish a Resident Project Representative to assist A/E in providing more continuous observation of the Work. The responsibilities and authority and limitations of any such Resident Project Representative and assistants will be as provided in Section 9.1 and in the Supplemental General Conditions. Owner may designate another representative or agent to represent OWNER at the site who is not A/E, A/E's consultant, agent or employee.
- 9.5 Clarifications and Interpretations:** A/E may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness by Owner's Representative and will be binding on Owner and CM. If Owner or CM believes that a written clarification or interpretation justifies an adjustment in the Contract Amount or the Contract Time Requirements, OWNER or CM may make a Claim therefor as provided in Article 11 or 12.
- 9.6 Rejecting Defective Work:** A/E will recommend that Owner disapprove or reject Work which A/E believes to be defective, or believes will not produce a completed Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- 9.7 Shop Drawings:** Refer to Division 1 for A/E's authority concerning Shop Drawings.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Changes:

- 10.1.1** Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions or revisions in the Work. Such changes in the Work will be authorized by Change Order,

Change Directive or Field Order. In the event that the Owner and the CM are unable to negotiate the terms of a Change Order for the performance of additional Work, the Owner may, at its election, perform such additional Work with its own forces or with another contractor and such work will be considered "Other Work" in accordance with Article 7.

- 10.1.2** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and CM shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or Field Order. CM's proposals for changes in the Contract Amount and/or Contract Time Requirements shall be submitted within ten (10) Calendar Days of request by Owner's Representative, including impacts to the approved Progress Schedule, unless Owner's Representative grants an extension. Owner will review each proposal and respond to CM within ten (10) Calendar Days. After review by Owner, CM shall provide any supporting data requested by Owner's Representative within seven (7) Calendar Days, unless Owner's Representative grants an extension. Owner will determine within seven (7) Calendar Days whether to pursue the change in Work.
- 10.1.3** CM shall not be entitled to an increase in the Contract Amount or an extension of the Contract Time Requirements with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Sections 3.3.1 and 3.3.2, except in the case of an emergency as provided in Section 6.11.5 or in the case of uncovering Work as provided in Section 13.4.
- 10.1.4** Except in the case of an emergency as provided in Section 6.11.5, a Change Order or Change Directive is required before CM commences any activities associated with a change in the Work which, in CM's opinion, will result in a change in the Contract Amount and/or Contract Time Requirements.
- 10.1.5** If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Amount or Contract Time Requirements) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CM's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.2 Change Orders:

- 10.2.1** Owner and CM shall execute appropriate written Change Orders covering:
 - .1** a change in the Work;
 - .2** the amount of the adjustment in the Contract Amount, if any; and
 - .3** the extent of the adjustment in the Contract Time Requirements, if any.
- 10.2.2** An executed Change Order shall represent the complete, equitable, and final amount of adjustment in the Contract Amount and/or Contract Time Requirements owed to CM or Owner as a result of the occurrence or event causing the change in the Work encompassed by the Change Order.

10.3 Change Directives:

- 10.3.1** Without invalidating the Contract, Owner may, by written Change Directive, using the Force Account method, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time Requirements being adjusted as necessary. "Force Account" means a basis of payment for the direct performance of Work with payment based on the actual cost of the labor,

equipment and materials furnished and consideration for overhead and profit as set forth in Section 11.5, below. A Change Directive shall be used in the absence of complete and prompt agreement on the terms of a Change Order. Where practicable, any items of Work that may be agreed upon, prior to the performance of Work under this Section, will be included in a separate Change Order. For example, the cost of the installation of additional asphalt may be agreed upon based on the unit prices in the Bid.

- 10.3.2** If the Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on the method provided in Section 11.5.
- 10.3.3** A Change Directive shall be effective immediately and shall be recorded later by preparation and execution of an appropriate Change Order.
- 10.3.4** Upon receipt of a Change Directive, CM shall promptly proceed with the change in the Work involved, provided, prior to the commencement of any Work under this section, the CM must submit its proposed Work plan, anticipated schedule, and a list of its work force and equipment proposed to be used in the Work for Owner's approval. Upon such approval, CM must promptly commence and make continuous progress in the Work. The Owner reserves the right to withhold payment for low production or lack of progress.

10.4 Field Order:

- 10.4.1** Owner's Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount or the Contract Time Requirements and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These shall be accomplished by written Field Order and shall be binding on Owner and on CM who shall perform the Work involved promptly.
- 10.4.2** If CM believes that a Field Order would require an adjustment in the Contract Amount and/or Contract Time Requirements, CM shall make a prompt written request to Owner's Representative for a Change Order. Any request by CM for an adjustment in Contract Amount and/or Contract Time Requirements must be made in writing prior to beginning the work covered by the Field Order.

- 10.5 No Damages for Delay:** CM shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to CM is caused by failure of Owner to provide information or material, if any, which is to be furnished by Owner or access to the Work and only to the extent that such acts continue after the CM furnishes Owner with written notice of such failure. When such extra compensation is claimed a written statement thereof shall be presented by CM to Owner and if by Owner found correct shall be approved. If delay is caused by specific orders given by Owner to stop work or by performance of extra Work or by failure of Owner to provide material or necessary instructions for carrying on the Work, then such delay will entitle CM to an equivalent extension of time, CM's application for which shall, however, be subject to approval of Owner. No such extension of time shall release CM or surety on its performance bond from all CM's obligations hereunder which shall remain in full force until discharge of the Contract. In no event shall the CM be entitled to any compensation or recovery of any special damages in connection with any delays, including without limitation: consequential damages, lost opportunity costs, impact damages, or other similar damages. The Owner's exercise of any of its rights or remedies under the Contract Documents (including without limitation ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference in the CM'S performance of the Work. Except as otherwise provided herein, an extension of the Contract Time

Requirements, to the extent permitted under Article 12, shall be the sole remedy of the CM for any acknowledged delays.

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

- 11.1** The Contract Amount is stated in the Agreement and, including authorized adjustments, is the total amount payable by Owner to CM for performance of the Work under the Contract Documents.
- 11.2** The original Contract Amount may not be increased by more than twenty-five percent (25%) and it may not be decreased more than twenty-five percent (25%) without the consent of the CM to such decrease, except in the event of a termination for convenience under Section 15.2 or the failure of the City Council to appropriate sufficient funding for the Project, in which events it is agreed that the consent of the CM will not be required.
- 11.3** The Contract Amount shall only be changed by a Change Order. Any claim for an adjustment in the Contract Amount shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days) after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled as a result of said occurrence or event. If Owner and CM cannot otherwise agree, all Claims for adjustment in the Contract Amount shall be determined as set out in Article 16.
- 11.4 Determination of Value of Work:**
- 11.4.1** The value of any Work covered by a Change Order for an adjustment in the Contract Amount will be determined by one or more of the following methods:
- .1** by application of unit prices contained in the Contract Documents to the quantities of the items involved.
 - .2** by a mutually agreed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
 - .3** by cost of Work plus CM's fee for all overhead costs and profit (determined as provided in Section 11.5).
 - .4** No cost will be included in the change order for time spent preparing the change order, nor will costs be included for an estimate of time to negotiate the change order costs for machinery, tools, or equipment as described in Subsection 11.5.3
- 11.4.2** Before using the method described in Section 11.4.1.3, Owner and CM agree to negotiate a Change Order using the methods identified in Sections 11.4.1.1 and 11.4.1.2, as appropriate, to determine the adjustment in the Contract Amount.
- 11.5 Cost of Work:** If neither of the methods defined in Sections 11.4.1.1 nor 11.4.1.2 can be agreed upon before a change in the Work is commenced which will result in an adjustment in the Contract Amount, then the change in the Work will be performed by Change Directive, using the Force Account method, and payment will be made as follows:
- 11.5.1** For all personnel, CM will be entitled to reimbursement for wages or salaries and employee benefit costs for extra Work performed at such rates as authorized for Cost of the Work under Sections 7.3.1.1 through 7.3.1.3 of the

Agreement. No charge for superintendence will be made unless considered necessary and ordered by Owner.

- 11.5.2** CM will receive the actual cost, including freight charges, of the materials used and installed on such Work. In case material invoices indicate a discount may be taken, the actual cost will be the invoice price minus the discount.
- 11.5.3** For machinery, trucks, power tools, or other similar equipment (the "equipment") agreed to be necessary by OWNER and CM, CM shall be entitled to reimbursement at such rates as authorized under Section 7.3.1.7 of the Agreement with regard to such types of costs. The established equipment rates will be paid for each hour that the equipment is utilized in the Work. In the event that the equipment is used intermittently during the Work, full payment for an eight-hour day will be made if the equipment is not idle more than four (4) hours of the day. If the equipment is idle more than four (4) hours in a day, then payment will be made only for the actual hours worked.
- 11.5.4** The actual cost of CM's bond(s) on the extra Work will be paid based on invoices from surety.
- 11.5.5** CM shall be entitled to reimbursement for actual, direct General Conditions Costs reasonably and necessarily incurred by CM in the performance of the extra Work.
- 11.5.6** The compensation, as herein provided for, shall be received by CM and any affected Subcontractor as payment in full for work done by Change Directive and will include use of small tools, and total overhead expense and profit. CM shall maintain a documented, itemized accounting, evidencing the expenses and savings, including overhead and profit, associated with such changes, both as an expense and savings, in the performance of the Work resulting from the change. CM and Owner's Representative shall compare records of work done by Change Directive at the end of each day. Copies of these records will be made upon forms provided for this purpose by Owner and signed by both Owner's Representative and CM, with one copy being retained by Owner and one by CM. Refusal by CM to sign these records within two (2) working days of presentation does not invalidate the accuracy of the record.
- 11.5.7** CM shall not be entitled to additional markup for indirect overhead or for profit except to the extent CM is entitled to an increase in the CM's Fee in accordance with Section 7.2.2 of the Agreement.

11.6 Unit Price Work:

- 11.6.1** Where the Contract Documents provide that all or part of the Work is to be unit price Work, initially the Contract Amount will be deemed to include for all unit price work an amount equal to the sum of the established unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Bid. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Amount. Determinations of the actual quantities and classifications of unit price work performed by CM will be made by Owner's Representative. Owner's Representative will review with CM the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).
- 11.6.2** When "plan quantity" is indicated for a Bid item, CM shall be paid amount specified in the Contract Documents without any measurements.

- 11.6.3** Each unit price will be deemed to include an amount considered by CM to be adequate to cover CM's overhead and profit for each separately identified item.
- 11.6.4** A Major Item is any individual Bid item in the Bid that has a total cost equal to or greater than five percent (5%) of the original Contract Amount or \$50,000, whichever is greater, computed on the basis of Bid quantities and Contract unit prices.
- 11.6.5** Owner or CM may make a Claim for an adjustment in the Contract Amount in accordance with Article 11 if:
- .1** the actual quantity of any Major Item should become as much as twenty percent (20%) more than or twenty percent (20%) less than that in the Bid; or
 - .2** CM presents documentation contesting accuracy of "plan quantity" and Owner's Representative verifies quantity and determines original value is in error by five percent (5%) or more;

Provided, however, in the event a Major Item is reduced by twenty percent (20%) or more of the amount in the Bid, no additional Article 11 profit or overhead will be added, if, due to other additions in the Work, the net value of the Contract Amount is not reduced.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1 Requisites for Changes in Contract Time Requirements:

- 12.1.1** The Contract Time Requirements (including Milestones) may only be changed by Change Order or Modification duly executed by both CM and Owner's Representative. Any claim for an adjustment of the Contract Time Requirements (including Milestones) shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days after the start of the occurrence or event giving rise to the delay) and stating the general nature of the delay. Notice of the extent of the delay with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed is the entire adjustment to which claimant is entitled as a result of said occurrence or event. If Owner and CM cannot otherwise agree, all Claims for adjustment in the Contract Time Requirements (including Milestones) shall be determined as set out in Article 16. No Claim for an adjustment in the Contract Time Requirements (including Milestones) will be valid if not submitted in accordance with the requirements of this Article.
- 12.1.2** When CM is at fault and Owner stops the Work, so that corrections in the Work can be made by CM, no extension in time will be allowed.
- 12.1.3** When CM is prevented from completing any part of the Work within the Contract Time Requirements (including Milestones) due to delay beyond the control of both Owner and CM, an extension of the Contract Time Requirements (including Milestones) in an amount equal to the time lost due to such delay shall be CM's sole and exclusive remedy for such delay. If performance by the CM or Owner is interrupted by any occurrence not occasioned by its own conduct, whether such occurrence be an act of god or the result of war, riot, civil commotion, sovereign conduct, or the conduct of a third party, then such performance will be excused for a period of time

necessary to remedy its effects, provided, however, in such an event, a conference will be held within three (3) business days to establish a proposed new Progress Schedule for the Project.

12.1.4 Owner will consider time extension requests and may grant CM an extension of time because of:

- .1** Changes ordered in the work which justify additional time.
- .2** Failure of materials or products being at the Project site due to delays in transportation or failures of Suppliers, which are not the result of CM's, Subcontractor's or Supplier's negligence. The request for an extension of time shall be supported by a citation of acts demonstrating that the delays are beyond CM's control, including, but not limited to, CM's efforts to overcome such delays documented as follows:
 - a)** Copy of purchase order for delayed item(s) indicating date ordered by CM/ Subcontractor and date purchase order received by Supplier.
 - b)** If item(s) require Shop Drawings or other submittal information in accordance with the Contract Documents, provide record of date submittal(s) forwarded to Owner's Representative, date submittal(s) returned to CM, and date submittal(s) forwarded to Supplier.
 - c)** Copy of document(s) from Supplier, on Supplier's letterhead, indicating date(s) item(s) would be ready for shipment and/or actual shipment date(s).
 - d)** Copies of all correspondence between CM / Subcontractor and Supplier indicating CM / Subcontractor's efforts to expedite item(s).
 - e)** If item(s) are being purchased by a Subcontractor, provide correspondence, meeting notes, etc., that reflect CM's efforts with the Subcontractor to expedite delivery of the item(s).
- .3** When acts of Owner, A/E, Owner's CIT Consultant, utility owners or other contractors employed by Owner delay progress of work through no fault of CM. The CM will only be entitled to an extension of time for delays that affect the Critical Path of the Work and that are not caused by the CM.
- .4** When CM is delayed by strikes, lockouts, fires, losses from natural causes, or other unavoidable cause or causes beyond CM's control.

12.2 Weather Delays:

12.2.1 CM may be granted an extension of time because of unusual inclement weather, including but not limited to unusual rainfall events, which are beyond the normal rainfall recorded and expected for Austin, Texas. However, the CM will not be granted an extension of time for "normal rainfall", as described below.

12.2.2 "Unusual Inclement Weather" is defined as a rain event or other weather related event which occurs at the site and is of sufficient magnitude to prevent CM from performing units of Work critical to maintaining the Progress Schedule.

12.2.3 Baseline Rain Day Determination. "Normal rainfall" compiled by the State climatologist, based on U.S. Weather Bureau Records for Austin, Texas, is considered a part of the Calendar Day Contract, and is not a justification for an extension of time. Listed below are the number of days in each month for which no compensatory days for rainfall events ("Rain Days") in such months may be claimed:

January.....	8 days
February.....	8 days
March.....	7 days
April.....	7 days
May.....	9 days
June.....	6 days
July.....	5 days
August.....	5 days
September.....	7 days
October.....	7 days
November.....	7 days
December.....	7 days

Rain Days in addition to the baseline Rain Day determination described above will be measured with the Owner’s Representative’s approval at the nearest operational public weather data collection facility to the site, including but not limited to the Owner’s early warning flood gauge system.

- 12.2.4** CM may receive credit in any month for Unusual Inclement Weather, and specifically for any Rain Days in that month which exceed the number of Rain Days allocated to that month, if a Claim is made in accordance with Section 12.1.1 and the weather event meets the definition for "Unusual Inclement Weather", and as applicable, "Rain Day" and such claimed day is a day on which Work critical to maintaining the Progress Schedule is scheduled to be performed and is otherwise capable of being performed.

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

- 13.1 Notice of Defects:** Prompt notice of all defective Work of which Owner, Owner’s CIT Consultant, or A/E has actual knowledge will be given to CM. All defective Work may be rejected, corrected or accepted as provided in Article 13. CM must give Owner and A/E prompt notice of any defective Work of which CM has actual knowledge.
- 13.2 Access to Work:** Owner, Owner’s CIT Consultant, A/E, A/E’s Consultants, other representatives and personnel of Owner, independent testing laboratories and governmental agencies having jurisdiction will have access to the Work at reasonable times for observing, inspecting and testing. CM shall provide them proper and safe conditions for such access, and advise them of CM’s site safety procedures and programs so that they may comply therewith as applicable.
- 13.3 Tests and Inspections:**
 - 13.3.1** CM shall give timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
 - 13.3.2** Owner shall employ and pay for services of an independent testing laboratory to perform all inspections, tests or approvals required by the Contract Documents except:
 - .1** for inspections, tests or approvals covered by Section 13.3.3 below;
 - .2** that costs incurred with tests or inspections conducted pursuant to Section 13.4.3 below shall be paid as provided in Section 13.4.3;

- .3 for reinspecting or retesting defective Work, including any associated costs incurred by the testing laboratory for cancelled tests or standby time; and
- .4 as otherwise specifically provided in the Contract Documents. All testing laboratories shall meet the requirements of ASTM E-329.

13.3.3 If laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CM shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith and furnish Owner's Representative the required certificates of inspection or approval. CM shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Owner's CIT Consultant's review of materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to CM'S purchase thereof for incorporation in the Work.

13.3.4 CM shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for Owner's and A/E's review of submittals covering materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to CM's purchase thereof for incorporation in the Work.

13.4 Uncovering Work:

13.4.1 If any Work (or the work of others) that is to be inspected, tested or approved is covered by CM without written concurrence of Owner's Representative, or if any Work is covered contrary to the written request of Owner's Representative, it must, if requested by Owner's Representative, be uncovered and recovered at CM's expense.

13.4.2 Uncovering Work as provided in Section 13.4.1 shall be at CM's expense unless CM has given Owner's Representative timely notice of CM's intention to cover the same and Owner's Representative has not acted within five (5) working days to such notice.

13.4.3 If Owner's Representative considers it necessary or advisable that covered Work be observed, inspected or tested, CM shall uncover, expose or otherwise make available for observation, inspection or testing that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CM shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Amount, and may make a Claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CM shall be allowed an increase in the Contract Amount or an extension of the Contract Time Requirements (including Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and CM may make a Claim therefor as provided in Articles 11 and 12.

13.5 Owner May Stop the Work:

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

13.5.2 If CM fails to correct defective Work or submit a satisfactory plan to take corrective action, with procedure and time schedule, Owner may order CM to stop the Work, or any portion thereof, until cause for such order has been eliminated, or take any other action permitted by this Contract. A notice to stop the Work, based on defects, shall not stop calendar or working days charged to the Project.

13.6 Correction or Removal of Defective Work: If required by Owner, CM shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner's Representative, remove it from the site and replace it with Work that is not defective. CM shall correct or remove and replace defective Work, or submit a plan of action detailing how the deficiency will be corrected, within the time frame identified in the notice of defective Work. CM shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.7 Express Warranty (Corrective) period:

13.7.1 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee or express warranty required by the Contract Documents or by any specific provision of the Contract Documents (e.g. Section 14.11.2), any Work, including work performed after the Substantial Completion date, is found to be defective, CM shall promptly, without cost to Owner and in accordance with Owner's written instructions:

- (i) correct such defective Work, or, if it has been rejected by Owner, remove it from the site and replace it with Work that is not defective, and
- (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

If CM does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CM. The warranty (corrective) period will be deemed to be renewed and recommenced in connection with the completed items of Work requiring correction.

13.7.2 In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the warranty (corrective) period for that item may start to run from an earlier date if so provided in the Contract Documents.

13.7.3 If correction of defective Work will affect the function or use of the facility CM shall not proceed with correction of defective Work without prior coordination and approval of Owner.

- 13.7.4** The obligations of the CM to perform warranty (corrective) work will survive the acceptance of the Work and any termination of the Contract.
- 13.7.5** Owner will utilize the "Warranty Item Form" a copy of which is attached hereto for the purpose of providing written notice of warranty defects. CM will acknowledge receipt of the notice by dating, signing, completing and returning the form to Owner when the defect is corrected, including such information on or attached to the form to describe the nature of the repairs or corrections that were made. If the defect cannot be corrected within seven (7) Calendar Days of receipt of notice, CM shall promptly provide a written explanation to Owner's Representative describing the repairs needed and the time required to complete the repairs.
- 13.7.6** Establishment of the required period for correction of Work as described in Subsection 13.7.1 above relates only to the specific obligation of the CM 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 CM's liability with respect to the CM's obligations, other than specifically to correct the nonconforming or defective Work that was discovered during the applicable corrective period established herein.
- 13.8 Acceptance of Defective Work:** If, instead of requiring correction or removal and replacement of defective Work, Owner decides to accept it, Owner may do so. CM shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating Owner for the diminished value of the defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CM to Owner after a calculation by OWNER of the diminution in value of the defective Work.
- 13.9 Owner May Correct Defective Work:** If CM fails within a reasonable time after Written Notice of Owner to correct defective Work, or to remove and replace rejected Work, or if CM fails to perform the Work in accordance with the Contract Documents, or if CM fails to comply with any other provision of the Contract Documents, Owner may, after seven (7) calendar days' Written Notice to CM, correct and remedy any such deficiency. If, in the opinion of the Owner's Representative, significant progress has not been made during this seven (7) calendar day period to correct the deficiency, the Owner may exercise any actions necessary to remedy the deficiency. In exercising the rights and remedies under this paragraph, Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude CM from all or part of the site, take possession of all or part of the Work, and suspend CM's services related thereto, and incorporate in the Work all materials and equipment stored at the site or for which Owner has paid CM but which are stored elsewhere. CM shall allow Owner, its agents and employees, Owner's other contractors, A/E and A/E's consultants access to the site to enable Owner to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by Owner in exercising such rights and remedies will be charged against CM and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CM's defective Work. CM shall not be allowed an extension of the Contract Time Requirements (including Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CM AND COMPLETION

14.1 Application for Progress Payment:

- 14.1.1** No more often than once a month, CM shall submit to Owner's Representative for review an Application for Payment, in a form acceptable to Owner, filled out and signed by CM covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. The Application for Payment shall constitute CM's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon CM's receipt of payment, whichever occurs earlier. Notwithstanding anything to the contrary in the Contract Documents, OWNER shall pay CM all undisputed amounts in an Application for Payment within the times required by the Agreement.
- 14.1.2** Such applications shall not include requests for payment on account of changes in the Work which have been properly authorized by Change Directives but not yet included in Change Orders.
- 14.1.3** Such applications shall not include requests for payment of amounts the CM does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason.
- 14.1.4** If payment is requested on the basis of materials or equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall be accompanied by such bills of sale, data and other procedures satisfactory to Owner substantiating Owner's title to such materials or equipment or otherwise protecting Owner's interest. Payment on account of such materials or equipment will not include any amount for CM's overhead or profit or relieve CM of its obligation to protect and install such materials or equipment in accordance with the requirements of the Contract and to restore damaged or defective Work. If materials or equipment are stored at another location, at the direction of the Owner they shall be stored in a bonded and insured facility, accessible to A/E, CIT Consultant, and Owner, and shall be clearly marked as property of Owner. Title to materials delivered to the site of the Work or a staging area will pass to OWNER upon payment by Owner without the necessity for further documentation. Risk of loss will not pass to Owner until acceptance.
- 14.1.5** Owner will pay CM total amount of approved Application for Payment, less five percent (5%) of amount thereof, which five percent (5%) will be retained until final payment, less all previous payments and less all other sums that may be retained by Owner under the terms of this Agreement. If the Work is near completion and delay occurs due to no fault or neglect of CM, Owner may pay a portion of the retained amount to CM. CM, at Owner's option, may be relieved of the obligation to complete the Work and, thereupon, CM shall receive payment of the balance due under the Contract subject to the conditions stated under Section 15.2.
- 14.1.6** Applications for Payment shall include the following documentation:
- .1** updated Progress Schedule;
 - .2** monthly subcontractor report;

- .3 any other documentation required under the Supplemental General Conditions.

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

14.3 Review of Applications for Progress Payment:

14.3.1 Owner's Representative will, within seven (7) calendar days after receipt of each Application for Payment, either indicate a recommendation for payment and forward the Application for processing by Owner, or return the Application to CM indicating Owner's Representative's reasons for refusing to recommend payment. In the latter case, CM shall make the necessary corrections and resubmit the Application.

14.3.2 Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative, based upon Owner's Representative's on-site observations of the executed Work and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief:

- .1 the Work has progressed to the point indicated; and
- .2 the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for unit price Work, and to any other qualifications stated in the recommendation).

14.3.3 By recommending any such payment, Owner's Representative will not thereby be deemed to have represented that:

- .1 exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work;
- .2 examination has been made to ascertain how or for what purpose CM has used money previously paid on account of the Contract Amount;
- .3 CM's construction means, methods, techniques, sequences or procedures have been reviewed; or
- .4 that there may not be other matters or issues between the parties that might entitle CM to be paid additionally by Owner or entitle Owner to withhold payment to CM.

14.4 Decisions to Withhold Payment:

14.4.1 Owner may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

- .1 defective Work not remedied;
- .2 third party Claims filed or reasonable evidence indicating probable filing of such Claims;
- .3 failure of CM to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;

- .5 damage to Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time Requirements, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure of CM to submit a schedule of values in accordance with the Contract Documents;
- .8 failure of CM to submit a submittal schedule in accordance with the Contract Documents;
- .9 failure of CM to submit and update a construction Progress Schedule in accordance with the Contract Documents;
- .10 failure of CM to maintain a record of changes on drawings and documents;
- .11 failure of CM to maintain weekly payroll reports and, as applicable, provide copies of reports in a timely manner upon request of Owner;
- .12 failure of CM to submit monthly subcontractor reports;
- .13 CM's neglect or unsatisfactory prosecution of the Work, including failure to clean up;
- .14 failure of CM to comply with the Austin City Code, Chapter 2-9-A, as amended, "Minority-Owned and Women-Owned Business Enterprise Procurement Program;"
- .15 property damage claims that are the responsibility of the CM (per Section 00810CMR); or
- .16 failure of CM to comply with any provision of the Contract Documents.

14.4.2 When the above reasons for withholding payment are removed, CM shall resubmit a statement for the value of Work performed. Payment will be made within thirty (30) calendar days of receipt of approved Application for Payment.

14.5 Delayed Payments: Should Owner fail to make payment to CM of sum named in any Application for Payment within thirty (30) calendar days after the day on which Owner received the mutually acceptable Application for Payment, then Owner will pay to CM, in addition to sum shown as due by such Application for Payment, interest thereon at the rate specified in Government Code, Section 2251.025(b) from date due until fully paid, which shall fully liquidate any injury to CM growing out of such delay in payment.

14.6 Arrears: No money shall be paid by Owner upon any claim, debt, demand or account whatsoever, to any person, firm or corporation who is in arrears to City for taxes; and City shall be entitled to counterclaim and automatically offset against any such debt, claim, demand or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand or account after said taxes are due, shall affect the right of Owner to so offset said taxes, and associated penalties and interest if applicable, against the same.

14.7 Substantial Completion:

14.7.1 When the CM considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the CM shall notify Owner's Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner's Representative does not consider the Work substantially complete, Owner's Representative will notify CM giving reasons therefor. After performing any required Work, CM shall then submit another request for Owner's

Representative to determine Substantial Completion. If Owner's Representative considers the Work substantially complete, Owner's Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which CM shall finish the punch list, and shall establish responsibilities of the Owner and CM for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of CM to complete all Work in accordance with the Contract Documents. If a Certificate of Occupancy is required by public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered substantially complete. The certificate of Substantial Completion shall be signed by Owner and CM to evidence acceptance of the responsibilities assigned to them in such certificate.

14.7.2 Owner shall have the right to exclude CM from the Work after the date of Substantial Completion, but Owner will allow CM reasonable access to complete or correct items on the punch list and complete warranty work.

14.8 Partial Utilization: Use by Owner, at Owner's option, of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) Owner and CM agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with CM's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work in accordance with the following:

14.8.1 Owner at any time may request CM to permit Owner to use any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If CM agrees that such part of the Work is substantially complete, CM shall certify to Owner's Representative that such part of the Work is substantially complete and request Owner's Representative to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. CM at any time may notify Owner's Representative that CM considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. The provisions of Sections 14.7.1 and 14.7.2 will apply with respect to notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted.

14.8.2 Such partial utilization is authorized by public authorities having jurisdiction over the Work.

14.9 Final Inspection: Upon Written Notice from CM that the entire Work or an agreed portion thereof is complete, Owner's Representative will make a final inspection with CM and provide Written Notice of all particulars in which this inspection reveals that the Work is incomplete or defective. CM shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies. Owner's CIT Consultant and other third party consultants and any other governmental authority with jurisdiction over the Project may assist Owner in the inspection and testing of the Work and CM agrees to and shall cooperate with any such consultants or authorities with respect to any such inspections and tests.

14.10 Final Application for Payment: CM may make application for final payment following the procedure for progress payments after CM has completed all such corrections to the satisfaction of Owner's Representative and delivered the following documents:

- 14.10.1** Affidavit by CM certifying the payment of all debts and claims;
- 14.10.2** Three (3) complete operating and maintenance manuals, each containing maintenance and operating instructions, schedules, guarantees, and other documentation required by the Contract Documents;
- 14.10.3** Record documents (as provided in Section 6.10);
- 14.10.4** Consent of surety, if any, to final payment. If surety is not provided, complete and legally effective releases or waivers (satisfactory to Owner) of all claims arising out of or filed in connection with the Work;
- 14.10.5** Certificate evidencing that insurance required by the Supplemental General Conditions will remain in force after final payment and through the warranty period;
- 14.10.6** Non-Use of Asbestos Affidavit (After Construction);
- 14.10.7** Subcontractor report and all other documentation necessary for evaluation of CM's fulfillment of the Contract MBE/WBE or DBE goals;
- 14.10.8** Documentation of notice to claimants, to the extent applicable and subject to Subsection 14.11.4; and
- 14.10.9** Any other documentation called for in the Contract Documents.

14.11 Final Payment and Acceptance:

- 14.11.1** If, on the basis of observation of the Work during construction, final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and CM's other obligations under the Contract Documents have been fulfilled and there are no outstanding claims, Owner's Representative will recommend the final Application for Payment and thereby notify the Owner, who will pay to CM the balance due CM under the terms of the Contract. If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation, CM may execute a re-vegetation letter with fiscal posted (letter of credit) to ensure completion of this item. This Work must be accomplished within one hundred twenty (120) Calendar Days of the date of Final Completion of the Work. When the permanent erosion control has been established, Owner will initiate an inspection for final acceptance of the erosion controls. If the re-vegetation is not completed within the one hundred twenty (120) Calendar Days, Owner, at its option, may complete the Work using the posted fiscal.
- 14.11.2** If the Contract measures Contract Time to Final Completion, rather than Substantial Completion, Owner's Representative will issue a letter of final acceptance to CM which establishes the Final Completion date and initiates the one-year warranty period. If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation and CM has executed a re-vegetation letter with fiscal posted (letter of credit) to ensure completion of this item, the Owner's Representative will issue a letter of conditional acceptance to CM which established the Final Completion date and initiates the one-year warranty period.
- 14.11.3** Final payment is considered to have taken place when CM or any of its representatives negotiates Owner's final payment check, whether labeled final

or not, for cash or deposits check in any financial institution for its monetary return.

14.11.4 The Owner will withhold funds sufficient to cover the amount of any unresolved contract claims from final payment for six months under the following limited conditions:

- .1** CM must provide written notice to the claimant (via certified mail or hand delivery) that (i) Owner will hold funds in the amount of the disputed claim for six (6) months from the date of the receipt of the notice and (ii) CM and the claimant have certain alternative dispute resolution rights; and
- .2** CM must provide Owner with a copy of the receipted notice.

Provided the claimant has received notice under this section, Owner will release the withheld funds, if the CM provides a bond in substantial compliance with the provisions of Section 52.231 of the Texas Property Code; when the Owner receives a settlement or release of the claim with accompanying instructions regarding payment; upon resolution of the claim in litigation, if suit is filed within such six (6) month period and the Owner receives written notice of such filing; or when such six (6) month period has passed, if no such bond, settlement, release, or notice of filing of suit have been received. The above provisions notwithstanding, if efforts to timely resolve a disputed claim are not being made to Owner's reasonable satisfaction, Owner may, in its complete discretion, file an interpleader action and deposit the withheld funds in the registry of a court of competent jurisdiction. In addition, CM must include a provision in each of its subcontracts that the prevailing party in any litigation arising thereunder will be entitled to recover its costs of court and reasonable attorney's fees.

14.12 Waiver of Claims: The making and acceptance of final payment will constitute:

14.12.1 a waiver of claims by Owner against CM, except claims arising from unsettled claims, from defective Work appearing after final inspection, from failure to comply with the Contract Documents or the terms of any warranty specified therein, or from CM's continuing obligations under the Contract Documents; and

14.12.2 a waiver of all claims by CM against Owner other than those previously made in writing and still unsettled.

14.13 CM'S Payment Obligations

CM will pay Subcontractors in accordance with the Texas Prompt Payment Act, the Texas Construction Trust Fund Act, and its contractual obligations to such parties, all the amounts CM has received from Owner on account of their work. CM will impose similar requirements on the Subcontractors to pay those parties with whom they have contracted. CM will indemnify and defend Owner against any claims for payment and mechanic's liens.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 OWNER May Suspend Work Without Cause: At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by Written Notice to CM which will fix the date on which the Work will be resumed. CM shall resume the Work on the date so fixed. CM shall be allowed an adjustment in the Contract Amount or an extension of the Contract Time Requirements, or both, directly attributable to any such suspension if CM makes an approved Claim therefor as provided in Articles 11 and 12.

15.2 Owner May Terminate Without Cause: Upon seven (7) calendar days' Written Notice to CM, Owner may, without cause and without prejudice to any right or remedy of Owner, elect to terminate the Agreement. In such case, CM shall be paid (without duplication of any items):

15.2.1 for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;

15.2.2 for reasonable demobilization costs;

15.2.3 for anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination but not for anticipated profit on the entire Contract not previously paid, unabsorbed overhead, or lost opportunity; and

15.2.4 for all claims incurred in settlement of terminated contracts with Subcontractors, Suppliers and others, including for anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination but not for anticipated profit on the entire Contract not previously paid, unabsorbed overhead, or lost opportunity. CM agrees to negotiate in good faith with Subcontractors, Suppliers and others to mitigate Owner's cost.

15.3 Owner May Terminate With Cause:

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

- .1 if CM persistently fails to perform the Work in accordance with the Contract Documents;
- .2 if CM disregards laws or regulations of any public body having jurisdiction;
- .3 if CM disregards the authority of Owner's Representative;
- .4 if CM makes fraudulent statements;
- .5 if CM fails to maintain a work force adequate to accomplish the Work within the Contract Time Requirements;
- .6 if CM fails to make adequate progress and endangers successful completion of the Contract; or
- .7 if CM otherwise violates in any substantial way any provisions of the Contract Documents;

Owner may, after giving CM (and the surety, if any) seven (7) calendar days Written Notice terminate the services of CM. Owner, at its option, may proceed with negotiation with surety for completion of the Work. Alternatively, Owner may under these circumstances exclude CM from the site and take possession of the Work (without liability to CM for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which Owner has paid CM but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case CM shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds all claims, costs, losses and damages sustained by Owner arising out of or resulting from completing the Work, such excess will be paid to CM. If such claims, costs, losses and damage exceed such unpaid balance, CM or surety shall pay the difference to Owner. In the event that a termination for cause is found to be wrongful, the termination shall be converted to a termination without cause as set forth in Section 15.2 and CM's remedy for wrongful termination is limited to the recovery of the payments

permitted for termination without cause as set forth in Section 15.2. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, CM will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from CM'S default.

- 15.3.2** Where CM's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against CM and surety then existing or which may thereafter accrue. Any retention or payment of moneys due CM by Owner will not release CM from liability. In the event Owner terminates Contract with cause, Owner may reject any and all Bids submitted by CM for up to three (3) years. In addition, in the event of a termination for cause, CM and its principals shall not submit any further Bids to Owner for three (3) years after the date of such termination.
- 15.4 CM May Stop Work or Terminate:** If through no act or fault of CM, the Work is suspended for a period of more than ninety (90) calendar days by Owner or under an order of court or other public authority, or (except during disputes) Owner's Representative fails to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) Owner fails for sixty (60) calendar days after it is submitted to pay CM any sum finally determined by Owner to be due, then CM may, upon seven (7) calendar days' Written Notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in Section 15.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if (except during disputes) Owner's Representative has failed to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) Owner has failed for sixty (60) calendar days after it is submitted to pay CM any sum finally determined by Owner to be due, CM may upon seven (7) calendar days' Written Notice to Owner stop the Work until payment of all such amounts due CM, including interest thereon. The provisions of this Section 15.4 are not intended to preclude CM from making a Claim under Articles 11 and 12 for an increase in Contract Amount or Contract Time Requirements or otherwise for expenses or damage directly attributable to CM's stopping Work as permitted by this Section.
- 15.5 Discretionary Notice to Cure:** In its complete discretion, Owner may, but is not required to, provide a Notice to Cure to CM and its surety to cure an event of default described above and/or an anticipatory breach of contract and, if required by Owner, to attend a meeting with Owner, regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, CM shall prepare a report describing its program and measures to affect the cure of the event of default and/or anticipatory breach of contract within the time required by the Notice to Cure. The CM'S report must be delivered to Owner at least three (3) days prior to any requested meeting with the Owner and surety.
- 15.6 Bankruptcy:** If CM declares bankruptcy or is adjudged bankrupt or makes an assignment for the benefit of creditors or if a receiver is appointed for the benefit of creditors or if a receiver is appointed by reason of CM's insolvency, CM may be unable to perform this Contract in accordance with the Contract requirements. In such an

event, Owner may demand CM or its successor in interest provide Owner with adequate assurance of CM'S future performance in accordance with the terms and conditions of the Contract. If CM fails to provide adequate assurance of future performance to Owner's reasonable satisfaction within ten (10) days of such a request, Owner may terminate the CM'S services for cause or without cause, as set forth above. If CM fails to provide timely adequate assurance of its performance and actual performance, Owner may prosecute the Work with its own forces or with other contractors on a time and material or other appropriate basis and the cost of which will be charged against the Contract balance.

15.7 Duty to Mitigate: In the event of any termination or suspension under this Contract, the CM agrees to and shall take all reasonable actions to mitigate its damages and any and all claims which may be asserted against the Owner.

15.8 Responsibility during Demobilization: While demobilizing, the CM will take all necessary and reasonable actions to preserve and protect the Work, the site and other property of the OWNER or others at the site.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 Filing of Claims:

16.1.1 Claims arising from the circumstances identified in Sections 3.2, 4.1, 4.2.2, 4.2.4, 6.4.2, 6.11.5.2, 6.17, 7.5, 8.6, 9.5, 10.4.2, 13.4.3, 13.8, 13.9, 15.1, 15.2, 15.3, or 15.4, or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within thirty (30) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered in writing within thirty (30) calendar days after Written Notice of Claim is delivered by claimant and shall represent that the adjustment claimed covers all known amounts and/or extensions of time to which claimant is entitled.

16.1.2 Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, Owner's Representative and CM shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to: (i) submit additional supporting data requested by the other party; (ii) modify the initial Claim; or (iii) request Alternative Dispute Resolution.

16.2 Alternative Dispute Resolution:

16.2.1 If a dispute exists concerning a Claim, the parties agree to use the following procedure prior to pursuing any other available remedies. Owner reserves the right to include the A/E or the CIT Consultant as a party.

16.2.2 Negotiating with Previously Uninvolved Personnel: Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) Calendar Days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. If a previously involved senior level decision maker is unavailable due to the size of the CM's organization or any other reason, the CM shall nonetheless provide an appropriate senior level decision maker for the meeting. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations shall

be concluded within thirty (30) Calendar Days of the first meeting, unless mutually agreed otherwise. This step may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

16.2.3 Mediation:

- .1 If the procedure described in 16.2.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. Owner and CM agree to select within thirty (30) calendar days a mediator trained in mediation skills, to assist with resolution of the dispute. Owner and CM agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to ask the Travis County Dispute Resolution Center to select a qualified individual, which selection shall be binding on the parties.
- .2 Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all parties for the exchange of points of view and (iii) separate meetings between the mediator and each party to the dispute for the formulation of resolution alternatives. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, unless mutually agreed otherwise. Should the parties fail to reach a resolution of the dispute through mediation, then each party is released to pursue other remedies available to them.

16.3 Resolution of Disputes between CM and Subcontractor or Supplier: If a dispute exists concerning a claim between a CM and a Subcontractor or Supplier, the CM agrees to participate with such Subcontractor and/or Supplier in a process substantially paralleling the steps set out in Sections 16.1 and 16.2 above, including the delivery of written notices, submission of supporting data, negotiation with previously uninvolved personnel, and, if such alternative dispute resolution process is unsuccessful, mediation between the parties to the claim. If the CM and Subcontractor or Supplier agreement provides an alternative dispute resolution process, which provides substantially equivalent rights to those set forth herein, it may be followed, unless the CM and affected Subcontractor or Supplier agree to follow the process outlined above. The OWNER is not a party to the alternative dispute resolution process between the CM and Subcontractor or Supplier and will not pay any costs incurred in the process. Each party will be responsible for its own expenses incurred in the process, which will include an equal share of the mediation expenses, unless otherwise determined by the mediator. NOTICE: THE PROCESS SET FORTH HEREIN IS NOT A SUBSTITUTE FOR THE STATUTORY PAYMENT BOND CLAIM PROCESS.

16.4 Claim Calculation:

- 16.4.1** Delay Claims: The intent of paying for delay damages is to reimburse the CM for actual expense arising out of a compensable delay. No profit or force account markups, other than labor burden, will be allowed for delay claims by the CM seeking reimbursement for expenses arising out of an alleged event of delay. No consequential damages will be allowed to the CM in connection with

any claimed delays. If the CM requests compensation for delay damages and the delay is determined to be compensable, then standby equipment costs and project overhead compensation will be based on the duration of the compensable delay and the following:

- .1 Standby equipment costs will not be allowed during periods when the equipment would have otherwise been idle. Standby equipment time will not exceed more than eight (8) hours per twenty-four (24) hour day, forty (40) hours per week, and one hundred seventy-six (176) hours per month. Standby equipment costs will be paid at 50 percent (50%) of the applicable Rental Rate Blue Book rates and calculated by dividing the monthly rate by one hundred seventy-six (176), multiplying the result by the number of standby hours and multiplying that number by the regional adjustment factor and the rate adjustment factor contained in the Blue Book. Operating costs will not be allowed.
- .2 Project overhead will be determined from actual costs that the CM will be required to document. Project overhead is defined as the administrative and supervisory expenses incurred at the work site and will not include home office overhead.

16.4.2 General: Except as limited with respect to delay claims, as set forth above, the criteria set forth in Section 11.4.1 may be used as a basis to calculate an adjustment in the Contract Amount in the resolution of a claim, provided that there will be no compensation for home office overhead.

16.5 MBE/WBE Program Progressive Sanctions. CM is subject to progressive sanctions for failure of CM to comply with Austin City Code, Chapters 2-9-A and B, as amended: "Minority-owned and Women-owned Business Enterprise Procurement Program." Available sanctions for Program violations are set forth in Program rules adopted by the Small and Minority Business Resources Department (SMBR), as amended, and may include the following progressive sanctions for Program violations within a rolling 24-month period: (i) a period of probation for up to six (6) months, (ii) a period of suspension from bidding for up to 24 months for the second violation, and (iii) a period of debarment for up to five (5) years for the third violation. If the CM engages in more than one of the violations listed below at any given time, Owner has the discretion to determine whether such actions should be counted as multiple violations of the MBE/WBE Ordinance. Program violations include:

- 16.5.1** providing false or misleading information to the Owner in connection with the submission of a Bid, responses to request for qualifications or Proposals, Good Faith Efforts documentation, post award compliance or other Program operations;
- 16.5.2** Substituting or removing M/WBE Subcontractors without first receiving approval for such substitutions, which may include the addition of an unapproved Subcontractor and failure to use a Subcontractor listed in the approved Compliance Plan; and
- 16.5.3** Failure to comply with the approved Compliance Plan without an approved request for a change, an approved Change Order or other approved change to the Contract.
- 16.5.4** violation of any other provision of the "Minority-owned and Women-owned Business Enterprise Procurement Program";
- 16.5.5** providing false or misleading information to the Owner in connection with an application for or challenge to certification, recertification or decertification as a MBE/WBE; and

16.5.6 bid shopping.

The Progressive Sanctions will be administered in accordance with the City of Austin Purchasing Office Probation, Suspension, and Debarment Procedures for Vendors, which includes notice and an opportunity for a hearing.

ARTICLE 17 – MISCELLANEOUS

- 17.1 Venue:** In the event of any suit at law or in equity involving the Contract, venue shall be exclusively in Travis County, Texas and the laws of the State of Texas shall apply to the interpretation and enforcement of the Contract.
- 17.2 Extent of Agreement:** This Contract represents the entire and integrated agreement between the Owner and CM with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.
- 17.3 Cumulative Remedies:** The rights and remedies available to the parties are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantees or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. Specifically, the Owner is not required to only assess liquidated damages, and Owner may elect to pursue its actual damages resulting from the failure of the CM to complete the Work in accordance with the requirements of the Contract Documents.
- 17.4 Severability:** If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of this Contract; this being the intent of the parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.
- 17.5 Independent Contractor:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. CM is an independent contractor and CM's services shall be those of an independent contractor. CM agrees and understands that the Contract does not grant any rights or privileges established for employees of Owner.
- 17.6 Prohibition of Gratuities:** Owner may, by Written Notice to CM, terminate the Contract without liability if is determined by Owner that gratuities were offered or given by CM or any agent or representative of CM to any officer or employee of Owner with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is terminated by Owner pursuant to this provision, Owner shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by CM in providing such gratuities.
- 17.7 Prohibition Against Personal Interest in Contracts:** No officer, employee, independent consultant, or elected official of Owner who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any violation of this provision, with the knowledge, expressed or implied, of CM shall render the Contract voidable by Owner.

17.8 Owner's Right to Audit:

17.8.1 Records means all records generated by or on behalf of CM and each Subcontractor and Supplier of CM, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Contract, including, without limitation:

- .1 accounting records;
- .2 written policies and procedures;
- .3 subcontract files (including proposals of successful and unsuccessful Bidders, Bid recaps, etc.);
- .4 original estimates and estimating work sheets;
- .5 correspondence;
- .6 Change Order files (including documentation covering negotiated settlements);
- .7 back charge logs and supporting documentation;
- .8 general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends;
- .9 lump sum agreements between CM and any Subcontractor or Supplier;
- .10 records necessary to evaluate: Contract compliance, Change Order pricing, and any Claim submitted by CM or any of its payees; and
- .11 any other CM record that may substantiate any charge related to this Contract.

17.8.2 CM shall allow Owner's agent or its authorized representative to inspect, audit, and/or reproduce, or all three, all Records generated by or on behalf of CM and each Subcontractor and Supplier, upon Owner's written request. Further, CM shall allow Owner's agent or authorized representative to interview any of CM's employees, all Subcontractors and all Suppliers, and all their respective employees.

17.8.3 CM shall retain all its Records, and require all its Subcontractors and Suppliers to retain their respective Records, during this Contract and for three (3) years after final payment, until all audit and litigation matters that Owner has brought to the attention of CM are resolved, or as otherwise required by law, whichever is longer. Owner's right to inspect, audit, or reproduce Records, or interview employees of CM or its respective Subcontractors or Suppliers exists during this Contract, and for three (3) years after final payment, until all audit and litigation matters that Owner has brought to CM'S attention are resolved, or as otherwise required by law, whichever is longer, and at no cost to Owner, either from CM or any of its Subcontractors or Suppliers that may furnish Records or make employees available for interviewing.

17.8.4 CM must provide sufficient and accessible facilities during its normal business hours for Owner to inspect, audit, or reproduce Records, or all three, and to interview any person about the Records.

17.8.5 CM shall insert these requirements in each written contract between CM and any Subcontractor or Supplier and require each Subcontractor and Supplier to comply with these provisions.

17.9 Survival: The terms and conditions of this Contract, which contemplate a period of time beyond completion or termination will survive such completion or termination and not be merged therein or otherwise terminated.

17.10 No Waiver: The waiver of any provision of this Contract will not be deemed to be a waiver of any other provision of this Contract. No waiver of any provision of this Contract will be deemed to constitute a continuing waiver unless expressly provided in writing, nor will a waiver of any default be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Contract, whether the default is known or not, shall not constitute a waiver or estoppel of the right to do so.

17.11 Conditions Precedent to Right to Sue: Notwithstanding anything herein to the contrary, the CM will have at least 90 days to give notice of a claim for damages as a condition precedent to the right to sue on the Contract, subject to the contractual claim and alternative dispute resolution processes set forth herein.

17.12 Waiver of Trial by Jury: Owner and CM agree that they have knowingly waived the right to trial by jury and have instead agreed that, in the event of any litigation arising out of or connected to this Contract, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.

17.13 Contractor Evaluation: The Owner will review and evaluate the Contractor's Work and performance on the Project and provide the Contractor with a written Contractor Evaluation Report in accordance with City of Austin Administrative Rule R161-13.37. Rule R161-13.37 provides an appeal process.

<http://www.austintexas.gov/department/contract-management>

End of General Conditions Terms

WARRANTY ITEM NO. _____ **(PROJECT NAME)**

The General Conditions of the Contract require that Warranty Defects be corrected within 7 days after written notice is received.

TO: _____
CMR name/ address / telephone / fax / email

ATTENTION OF: _____

FROM: _____
project manager name / address / telephone / fax / email

PROJECT: _____
name / location / CIP ID number

END OF ONE YEAR WARRANTY : _____

SUBJECT: _____

- If checked, the damage requires immediate attention. The Contractor has been called.
- If checked, the Consultant has been asked to consult with the Contractor on the problem.

PLEASE CORRECT OR REPAIR THE FOLLOWING ITEM(S):

DATE OF REQUEST _____ **SIGNATURE** _____
Project Manager

- XC:
- _____ Phone No. _____
 - _____ Phone No. _____
 - _____ Phone No. _____
 - _____ Phone No. _____

RESPONSE FROM CM: DATE CORRECTION WAS MADE: _____

The Contractor must endeavor to correct the defect within 7 calendar days after written notice is given. If the defect cannot be corrected in that time, Contractor shall provide a written explanation to the Owner's Representative describing the repairs needed and the time required to complete the repairs.

Description of corrections made:

DATE OF REPLY _____ **SIGNATURE** _____

When the repair is complete, the contractor should return a copy to each of the following:

- _____ Phone No. _____

End