

SAN ANTONIO WATER SYSTEM

**GENERAL CONDITIONS
(Proposed May 2019)**

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SAN ANTONIO WATER SYSTEM

GENERAL CONDITIONS

ARTICLE I. CONTRACT DEFINITIONS:

CAPITAL TERMS- Capitalized words shall have their customary and normal meaning unless further defined herein.

Wherever in these General Conditions or in other parts of the Contract Documents, the following terms, or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

1. ACPA - American Concrete Pipe Association.
2. ANSI - American National Standards Institute.
3. APPLICABLE LAW means:
 - (1) Any federal, state or local law, statute, code or regulation, including all SAWS rules and regulations;
 - (2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any governmental body having appropriate jurisdiction;
 - (3) Any established interpretation of law or regulation utilized by an appropriate governmental body if such interpretation is documented by such governmental body and generally applicable;
 - (4) Any governmental approval; and
 - (5) Any consent order or judicial decree, settlement agreement or similar agreement between SAWS and any governmental body;
4. ASTM - American Society for Testing Materials.
5. AUTHORIZATION TO PROCEED – Also referred to as Work Project Authorization and/or Notice to Proceed, a written notice given by Owner to Contractor establishing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents.
6. AWWA - American Water Works Association.
7. BIDDER - An individual, partnership, corporation, joint venture, submitting a proposal/bid.
8. BOARD – Board of Trustees of the San Antonio Water System.

9. CHANGE ORDER - A written order issued by the Owner to the Contractor authorizing additions, deletions, or revisions to the Work to be performed by the Contractor within the scope of construction services outlined in the Contract Documents. This includes changes in price and/or changes in time.
10. CITY- The City of San Antonio, Texas (“COSA”).
11. 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.
12. COMPETENT PERSON – Employee of prime Contractor who has the industry knowledge of construction safety practices and is well versed with construction practices and procedures.
13. CONDITIONAL LETTER OF ACCEPTANCE - The date certified in writing by the Owner when the Construction of the entire Project or any completed portions thereof as defined by SAWS is completed in accordance with the Contract Documents.
14. CONSTRUCTION OBSERVER/INSPECTOR (“COI”) - The Owner’s assigned authorized representative who observes, inspects, and may accept any or all parts of the Project and the materials to be used therein.
15. CONSULTANT - A person registered as a professional engineer pursuant to Texas Occupations Code, Title 6, Chapter 1001, employed to provide professional engineering services and having overall responsibility for the design of a project or a significant portion thereof, together with administrative supervision of any subconsultants the Consultant may retain. The term "Consultant," unless the context clearly indicates otherwise, means an engineer in private practice retained for a specific project under a contractual agreement with the Owner.
16. CONTRACT - The signatory Agreement (Standard Form) between SAWS and the Contractor governing the furnishing of material and performance of the Work. The Contract will include all Contract Documents.
17. CONTRACT DOCUMENTS - The Contract Documents consist of Bidding or Proposal Documents (which include but are not limited to the Invitation to Bid or Invitation for Competitive Sealed Proposals, the Instructions to Bidders or the Instructions to Respondents, the Supplementary Instructions to Respondents, the Contractor's completed Bid Proposal or Price Proposal form, the Addenda), the Contract, the Conditions of the Contract (General, Supplemental and Special Conditions), the Standard Drawings, the Construction Specifications, the Change Orders, the Payment and Performance Bonds, and the Good Faith Effort Plan. The Contract Documents form the complete Contract, which represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind between:

- (1) Consultant and Contractor;
 - (2) Owner and Subcontractor; or
 - (3) Any person or entities other than Owner and Contractor.
18. CONTRACTOR - The individual, partnership, corporation, joint venture, or other entity contracting with SAWS to complete the Work. The Contractor is directly responsible for the Subcontractors and vendors that they select to complete the Work.
 19. CONTRACT SUM - The total compensation payable to the Contractor for performing the Work as originally contracted or as subsequently adjusted by Change Orders.
 20. CONTRACT TIME –Unless otherwise provided, the period of time commencing as per Article 8.1, including any authorized adjustments, allotted in the Contract Documents for Final Completion of the Work. When the plural (“Contract Times”) is used, it refers to milestones designated in the Work Progress Schedule.
 21. ENGINEER - A Professional Engineer licensed by the State of Texas and duly authorized as a representative of the San Antonio Water System to provide professional engineering services on public works projects. Equivalent terms may include Engineer of Record, Program Engineer, Project Engineer, and/or Design Engineer or Consultant.
 22. FINAL CERTIFICATE OF ACCEPTANCE – Certifies that each and all of the stipulations, requirements and provisions of the contract with SAWS has been faithfully performed and complied with and the project is accepted.
 23. FINAL COMPLETION – The actual completion of the Work, including authorized changes to the Work, other than warranty work.
 24. 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 specifically provided for in Article 6.5.3 herein.
 25. HAZARDOUS MATERIAL(s)/SUBSTANCE - Pursuant to Section 26.263 of the Water Code hazardous material means any substance or material designated as such by the administrator of the Environmental Protection Agency pursuant to the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq.) (“CERCLA”), regulated pursuant to Section 311 of the Federal Clean Water Act (33 U.S.C. Sec. 1321 et seq.), or designated by the TCEQ and shall also include but not be limited to:
 - (1) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;
 - (2) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid

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

- (3) any other hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under applicable law pertaining to the environment or otherwise, or is capable of causing harm to human health or the environment, including “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.
26. INSTRUCTIONS TO BIDDERS - Owner instructions of a general nature outlining the duties and responsibilities of a prospective bidder.
27. LABORATORY - The testing laboratories of the Owner or any other testing laboratory that may be designated or approved in writing by the Owner.
28. LABOR BURDEN – The cost paid by an employer for employing individuals that are above the salary actually paid and reflected in their payroll. These are limited to the following:
- Payroll Taxes – both Federal and State (FICA, FUTA, SUTA)
 - Paid Holidays, Vacation Leave and Sick Leave
 - Retirement/Pension Costs (401K, etc.)
 - Health Care
 - Life/AD&D Insurance
 - Workers Compensation Insurance
 - Long-Term Disability Insurance
 - Short-Term Disability Insurance
 - Bonuses, if paid to all employees regardless of company’s financial performance
 - Safety Training and Personal Protective Equipment (PPE) given to all employees
29. LUMP SUM – Price of an entire group of services, where no breakdown is given for individual items.
30. MAJOR BID ITEM - Any individual bid item submitted by Contractor whose total cost, as determined by multiplying the bid schedule line item quantity for that bid item by the Contract unit price also provided in that bid schedule line item, is equal to or greater than 5 percent of the original contract total amount. The preceding criteria notwithstanding, the Owner and Consultant **reserve the right** to identify or exclude specific bid items as being "Major" in the Special Conditions for each Project.
31. MINORITY BUSINESS ENTERPRISE - A business structure that is certified by the State of Texas Historically Underutilized Business (HUB) Program or the South Central Texas Regional Certification Agency as being 51% owned, operated, and

- controlled by an ethnic minority group member(s) who is or are legally residing in or is or are a citizen(s) of the United States. The ethnic minority group members recognized by SAWS are African Americans, Hispanic Americans, Asian Americans, and Native Americans.
32. MUNICIPAL SEPARATE STORM SEWER SYSTEM (“MS4”) - A conveyance or system of conveyances (including roads with drainage systems, municipal streets catch basins, curbs, gutters, ditches, man-made channels or storm drains):
- .1 Owned or operated by a state, city, town, borough, county, district association or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial waters, storm water or other wastes including special districts under state law such as a sewer district, flood control district or drainage district or similar entity or a designated and approved management agency under Section 208 of the Clean Water Act that discharges to water of the United States;
 - .2 Designated or used for collection or conveying storm water; and
 - .3 That is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.
33. NEMA - National Electrical Manufacturers Association.
34. NFPA - National Fire Protection Association.
35. NON-HAZARDOUS MATERIAL(s)/SUBSTANCES - Any material(s) /substance(s) which is/are not designated as hazardous pursuant to Article I. 23 herein and the continued presence of such on the site is determined by the Owner's representative not to be detrimental to the completion of the Project.
36. NON-CONFORMANCE REPORT: A report from the Owner or Owner’s Representative that describes what went wrong, why it went wrong and how to avoid repeating the error.
37. NOTICE OF NON COMPLIANCE – A notice of neglect of compliance; failure to comply.
38. OWNER - The San Antonio Water System (“SAWS”).
39. OWNER'S REPRESENTATIVE - The Owner’s duly authorized representative for the Project.
40. PAYMENT BOND – In accordance with Chapter 2253 of the Texas Government Code as amended, the security furnished by the Contractor through the Surety in the full amount of the Contract Sum for the protection of all persons supplying labor and material in the prosecution of the Work who properly follow statutory requirements for perfecting claims against such security. If the Contract amount does not exceed \$25,000, a Payment Bond may not be required.

41. PERFORMANCE BOND - In accordance with Chapter 2253 of the Texas Government Code as amended, the security furnished by the Contractor through the Surety in the full amount of the Contract Sum as a guaranty that the Work will be faithfully performed and completed and that the Owner will be saved harmless from all costs and damages which the Owner may suffer by reason of the Contractor's default or failure to perform the Work. If the Contract amount does not exceed \$25,000, a Performance Bond may not be required.
42. PIPELINE PROJECT - Work Site and Work elements related to a sanitary sewer, water, or recycle water pipeline with all appurtenances and construction to be performed thereon under the Contract.
43. PLANS - The Plans, drawings, details and supplemental drawings, or reproductions thereof, produced and sealed by the Consultant and/or Engineer and approved by the Owner, showing the location, character, dimensions and details of the Work and which are a part of the Contract. Plans include standard details issued and sealed by the Consultant and/or Engineer or its representative.
44. PROJECT – The total design and construction of Work performed under the Contract Documents and may be the whole or a part of the Project and which may include construction by Owner or by separate Contractors. All references in these General Conditions to or concerning the Work or the Site of the Work will use the term “Project,”(including Pipeline Projects) notwithstanding that the Work only may be a part of the Project.
45. PROPOSAL - The offer of the bidder, made out on the prescribed forms, giving prices for performing the work described in the Plans and Specifications.
46. PUNCH LIST – List of Work remaining to be completed before final acceptance of the Project.
47. REQUEST FOR INFORMATION (RFI) – Document submitted by Contractor requesting clarification on a particular bid item, scope of work or intent of the Contract.
48. REQUEST FOR PROPOSAL (RFP) - Document submitted by Contractor to SAWS or document submitted by SAWS to Contractor requesting changes to the Contract.
49. ROW – Shall mean Right of Way.
50. SAFETY INCIDENT means any failure of the Contractor or any of the Contractor’s personnel to safely manage performance of the Contractor’s personnel or subcontractors in accordance with Applicable Law and as necessary to recognize and successfully prevent or avoid casualty losses to property and injury or death of persons (each such failure being a Safety Incident), including but not limited to:
 - a. The reported observation of a potential safety hazard, unsafe work practice, or lapse in prudent safety management that can reasonably be expected to lead to injury or death to any person, or damage to any property;

- b. The presence of any unsafe working condition, including without limitation any unauthorized or improper usage of equipment or faulty equipment, that reasonably be expected to lead to injury or death to any person, or damage to any property; or
 - c. The occurrence of bodily injury or death, or property damage arising out of or in connection with the Project or the performance of the Work.
51. SAFETY STAND-DOWN ORDER (SSDO) – The order defined under Article 5.28.9.
52. SAMPLES - Physical examples furnished by the Contractor to Owner to illustrate intended or anticipated materials, equipment or workmanship, and to assist Owner and Consultant in the establishment of workmanship and quality standards by which the Work will be judged.
53. SAN ANTONIO WATER SYSTEM - San Antonio Water System (“SAWS”) shall mean the San Antonio Water System Board of Trustees as established pursuant to Article 1115, Texas Revised Civil Statutes Annotated, and City of San Antonio Ordinance No. 75686. Whenever used in this Contract the term SAWS or Owner shall be, unless indicated otherwise, understood to mean the San Antonio Water System Board of Trustees, or its successors or any person or persons acting lawfully in an official capacity on behalf of SAWS at such time and within the power and authority specifically delegated to him or them by this Contract.
54. SEQUENCE OF CONSTRUCTION – The sequence defined under Article 5.14.
55. SERVICES – Collectively, all construction services and all other services related to the procurement and/or construction of the Project, including all consultancy, managerial, budgetary control, scheduling to be performed by or on behalf of Contractor hereunder, as necessary to the completion and delivery of the Project in accordance with the Contract Documents.
56. SCHEDULE OF VALUES - The detailed, itemized list of prices and costs that establishes the value of each part or component of the Work, to be developed by the Contractor in accordance with the Contract Documents, and to serve as the basis for progress payments of the completion of the work during the Project.
57. SHOP DRAWINGS - Drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are furnished by the Contractor and prepared by Contractor, first-tier or sub-tier subcontractors, manufacturer, supplier or distributor, and which illustrates and details some portion of the Work. Shop Drawings shall be furnished to the Owner as submittals.
58. SITE – The land(s) or area(s) (as indicated in the Contract Documents) upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished or designated by Owner for Contractor’s use, and any offsite location owned or leased by Owner as a location Owner has approved for the performance of Work and services hereunder.

59. SMALL BUSINESS ENTERPRISE – A business structure that is certified by the State of Texas Historically Underutilized Business (HUB) Program or the South Central Texas Regional Certification Agency as being 51% owned, operated and controlled by someone who is legally residing in or a citizen of the United States, and the business structure meets the U.S. Small Business Administration’s (“SBA”) size standard for a small business within the appropriate industry category.
60. SMALL, MINORITY, WOMAN AND VETERAN-OWNED BUSINESS (“SMWVB”) - A business structure certified by the State of Texas Historically Underutilized Business (“HUB”) Program, or the South Central Texas Regional Certification Agency that is 51% owned, operated, and controlled by a SMALL BUSINESS ENTERPRISE, a MINORITY BUSINESS ENTERPRISE, a WOMAN-OWNED BUSINESS ENTERPRISE or a VETERAN BUSINESS ENTERPRISE.
61. SPECIAL CONDITIONS – The part of the Contract Documents which adds special requirements that apply to a specific project as defined in Article XI herein.
62. SPECIFICATIONS - The specific instructions to the Contractor that are provided in the Contract Documents as to the requirements for materials, equipment, certain construction procedures, standards and quality of workmanship for the Work and performance of related services and other technical requirements and forming a part of the Contract.
63. SUBCONTRACTOR - The individual, firm, equipment/materials/supplies vendor, or corporation, having a first tier subcontract with the prime or general contractor, subject to the review of qualifications by the Consultant and the Owner's Representative, for the performance of a part of the Work. Sub-tier subcontractors must be identified by the subcontractors and be similarly subject to the review of qualifications by the Consultant and the Owner's Representative for the performance of a part of the Work.
64. SUBSTANTIAL COMPLETION – When construction of the project or a specified part thereof is sufficiently completed as determined by the Owner and Consultant/Engineer, in accordance with the Contract Documents so that the Project, or specified part thereof, could be utilized for the Owner's purposes for which it is intended.
65. SUPERINTENDENT - The Contractor’s onsite project representative whom the Contractor has authorized to communicate with the SAWS COI, pursuant to the terms of the Contract and as provided for in Article 5.4 herein.
66. SUPPLEMENTARY CONDITIONS – The conditions defined in Article XI herein.
67. SURETY - The corporate body licensed to conduct business in the State of Texas that provides assurance that the Contractor, or its substitute, will faithfully perform the Work covered by the Contract and make payment of any due, unpaid, eligible labor and supply claims arising there under and is in compliance with the provisions contained in Articles 3.4 and 3.5 herein.
68. UNDERGROUND FACILITIES - All pipelines, conduits, ducts, cables, wires,

manholes, vaults, tanks, tunnels or other such facilities or attachments and appurtenances thereto, and any encasement containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, sewage and drainage removal, traffic or other control systems.

69. UNIT PRICE WORK - Work to be paid for by Owner on the basis of Contractor quoted unit prices in the Proposal based upon Owner estimated quantities.
70. VETERAN-OWNED BUSINESS ENTERPRISE – a business structure that is certified by the State of Texas Historically Underutilized Business (HUB) Program or the South Central Texas Regional Certification Agency as being at least 51% owned, operated and controlled by an individual who served in the United States Armed Forces, and who was discharged or released under conditions other than dishonorable.
71. WOMAN-OWNED BUSINESS ENTERPRISE – A business structure that is certified by the State of Texas Historically Underutilized Business (HUB) Program or the South Central Texas Regional Certification Agency as being 51% owned, operated and controlled by a woman or women who are legally residing in or citizens of the United States.
72. WORK - The entire completed construction or the various separately identifiable parts thereof required necessary, proper or incidental and required or reasonably inferable, to produce, construct and fully complete the construction project in strict accordance with the requirements of the Contract Documents. Work is the result of Contractor performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.
73. WORK CHANGE DIRECTIVE – A document utilized to memorialize minor changes in work as described in 6.2.2.
74. WORK PROGRESS SCHEDULE – As defined in Article 5.13.
75. WRITTEN NOTICE – Any notice, payment, statement or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by facsimile transmission, email or by mail, postage prepaid, or by overnight delivery to an officer, management level employee or other designated representative of either party. Mailed or email notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed received as of three (3) calendar days after mailing.

ARTICLE II. LEGAL RELATIONSHIPS AND RESPONSIBILITIES:

- 2.1 LEGAL RESPONSIBILITIES - The Contractor in the performance of the Work shall at all times comply with all Applicable Law, including without limitation all pertinent ordinances, regulations, or permit requirements, including but not limited to those of the City, regulations of SAWS, laws of the State of Texas, and of the United States, including but not limited to rules and regulations of the United States Department of

Labor, pertaining to Occupational Safety and Health Administration standards as presently existing or as may hereinafter be modified or amended.

- .1 Where construction projects cross or run along state highways, the Contractor shall at a minimum comply with governing Texas Department of Transportation Regulations as outlined in State Permits for each crossing. In cases where State regulations do not apply, City regulations or permit requirements shall be binding to the extent that they do not conflict with the requirements of the Contract Documents. Should a conflict exist, the terms of the Contract Documents shall prevail.
 - .2 Where construction projects cross or run along county roads, the Contractor shall at a minimum comply with governing Bexar County Public Works Regulations as outlined and required in the County Permit for each crossing and the Contract Documents.
- 2.2 GENERAL UNDERSTANDING – Contractor, at its own cost and expense, shall furnish all supervision, tools, implements, machinery, labor, materials and accessories, such as are necessary and proper for the purpose, and secure all required permits and licenses, and shall at its own cost and expense construct, build and complete, in a good, first class, substantial and workmanlike manner, the structures, work and improvements herein described and/or referred to in the Contract Documents.
- 2.3 INDEMNIFICATION - Contractor shall protect the public, SAWS, and the City fully by taking all precautions necessary to safeguard persons from death or bodily injury and to safeguard property of any nature whatsoever from damage. Where any dangerous condition or nuisance exists in and around construction sites, equipment and supply storage areas and other areas in any way connected with the performance of this contract, the Contractor shall provide and maintain warnings of such danger or nuisance. The Contractor shall not create an excavation, obstruction, or any dangerous condition or nuisance of any nature whatsoever in connection with the performance of this Contract unless necessary to its performance, and in that event the Contractor shall provide and maintain at all times any and all means of warning of any danger or nuisance created. The duties of the Contractor in this section shall be non-delegable, and the Contractor's compliance with the specific recommendations and requirements of SAWS or the City as to the means of warning shall not excuse the Contractor from the faithful performance of these duties should such recommendations and requirements not be adequate or reasonable under the circumstances.

In order to protect SAWS and the City against the Contractor's failure to perform any of the foregoing duties or any of the terms of this Contract, the Contractor shall indemnify and save harmless SAWS, City, and their agents and employees from all losses, damages, judgments, decrees, and expenses, liens, claims, demands, causes of action, or costs of any nature whatsoever, and/or any other liability, damage, fine or penalty (except where reimbursement for fines or penalties is prohibited by law), including all costs of defense, attorney's fees, and settlement arising out of or in any way connected with any claims or actions at law or in equity, brought against SAWS, the City and their agents and employees for the death or injury to persons or for damage to property caused, or allegedly caused, by any willful acts, negligence, nuisance, or

breach of any term or condition of this Contract in connection with work to be performed pursuant to said Contract, by the Contractor, its agents, subcontractors, or employees. The Contractor shall furthermore indemnify and save harmless SAWS and the City, and their agents and employees from all demands of subcontractors, workmen, material men, or suppliers of machinery and parts thereof, equipment, power tools, and supplies incurred in connection with work to be performed under this Contract. Property of any description, including but not limited to property of SAWS and the City, which shall be damaged in the performance of this Contract by the Contractor, its agents, employees, subcontractors or their employees and subcontractors shall be restored to its condition prior to damage by the Contractor at the Contractor's expense.

SUCH INDEMNITY SHALL APPLY WHERE THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, JUDGMENTS, DECREES, OR LIABILITY ARISE IN PART FROM THE NEGLIGENCE OF SAWS OR CITY OR THEIR AGENTS OR EMPLOYEES. IT IS THE EXPRESSED INTENTION OF THE CONTRACTOR, SAWS AND CITY THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR, TO INDEMNIFY AND PROTECT SAWS AND CITY FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, OR THE NEGLIGENCE OF THEIR AGENTS OR EMPLOYEES, WHERE THE NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. FURTHERMORE, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DEATH OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF SAWS OR CITY, THEIR AGENTS OR EMPLOYEES, UNMIXED WITH THE FAULT OF ANY PERSON OR ENTITY. The obligations of Contractor hereunder shall survive termination of this Contract for any reason. The foregoing notwithstanding, it is agreed that with respect to any statutory restrictions affecting the validity or enforceability of the indemnification obligation herein, it shall be subject to such restrictions, and the indemnification obligation herein shall be deemed to be amended to the minimum extent necessary to conform therewith, and shall otherwise continue in full force and effect.

In any claims against SAWS or the City or their agents or employees by Contractor, any employee of Contractor, any subcontractor, anyone directly or indirectly employed by Contractor, or any subcontractor or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under workers' compensation acts, disability benefit acts of other employer's benefit acts.

- 2.4 ROYALTIES AND PATENTS - The Contractor shall pay all royalties and license fees, and defend all suits or claim for infringement of any patent rights and shall indemnify and as provided under Article 2.3 save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such royalties and license fees and loss when a particular design or process, or the product of a particular manufacturer or manufacturers is specified by Owners Contract Document; provided, however, if the Contractor has reason to believe the design, process or product specified constitutes an infringement of a patent, he shall be responsible for such royalties, license fees and loss unless he promptly gives such information to the Owner.

- 2.5 NO WAIVER OF SAWS RIGHTS - Unless specifically and unambiguously set out in the Contract Documents at the time of bid or proposal opening, no observation/inspection or approval by the Owner or any COI, officer or employee of the Owner, any order, measurement or certificate by the Owner, or any estimate or payment by the Owner for any part of said Work, or material or method or equipment, or any extension of time, or termination of the Contract for any reason, or any possession of the Work, at any time shall operate as a waiver of any provision or obligation of this Contract or any right or power herein given or reserved to said Owner, or of any right to claim any indemnity or damages for patent or latent defects in the work or otherwise as herein provided for; nor shall any Owner waiver of any Contractor breach of this Contract be deemed as a waiver of any other or subsequent Contractor breach; and every Owner right or remedy under the Contract Documents shall be cumulative, and in addition to all other Owner rights and remedies.
- 2.6 INTEREST IN SAWS CONTRACT PROHIBITED - No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with SAWS, or shall be financially interested, directly, in the sale to SAWS of any land, materials, supplies or service, except on behalf of SAWS as an officer or employee. This prohibition extends to the City Public Service Board, City of San Antonio, and City boards and commissions other than those that are purely advisory.
- 2.7 EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS / NON-DISCRIMINATION CLAUSE - SAWS highly encourages Contractors to implement affirmative action practices in their employment programs. This means Contractor should not discriminate against any employee or applicant for employment because of race, color, religion, sex, pregnancy, sexual orientation, political belief or affiliation, age, disability or genetic information.
- 2.8 SMALL, MINORITY, WOMAN AND VETERAN-OWNED BUSINESS PROGRAM (SMWVB) REQUIREMENTS - SAWS highly encourages contractors to provide subcontracting opportunities to small, minority, woman, and veteran-owned business firms. The San Antonio Water System's Good Faith Effort Plan (GFEP) is **required and must be submitted** as part of the bid package to report all small, minority, woman, and veteran-owned firm participation for this project. The GFEP must reflect all information requested as part of the total construction Contract Documents.
- 2.9 STATE SALES TAX - The Owner qualifies for exemption from state and local sales tax and will upon request by the Contractor, furnish the Contractor with a tax exemption certificate. It is the Contractor's responsibility to claim exemption from payment of applicable state and local sales taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The Contract separates the cost of materials and tangible equipment from skill, labor and other associated costs of construction. This is in accordance with the Texas Tax Code to allow tax exemption on the Contract price for materials. Certain construction equipment that is owned or rented by the Contractor may be subject to state and local sales tax. The Contractor will not include in the Contract Sum or any modification thereto any amount for sales, use or similar taxes for which Owner is exempt.

2.10 PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS - The Provisions of Chapter 2258 of the Texas Government Code, and the “Wage and Labor Standard Provisions” amended in City of San Antonio Ordinance 2008-11-20-1045, expressly are made a part of this Contract and are incorporated herein by reference (the “PWRLSP”). In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this Contract is included as part of the bidding documents that are part of the Contract Documents. In accordance with the PWRLSP, the Contractor shall forfeit, as a penalty to Owner, sixty dollars (**\$60.00**) for each laborer, workman or mechanic employed for each calendar day, or portion thereof, in which such laborer, workman or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Contractor or any Subcontractor employed on the project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Contractor from its obligation under any federal or state law, regarding the wages to be paid to or hours worked by laborers, workmen or mechanics, insofar as applicable to the work to be performed hereunder. Contractor, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, religion, sex, pregnancy, sexual orientation, political belief or affiliation, age, disability or genetic information. Contractor agrees it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because race, color, religion, sex, pregnancy, sexual orientation, political belief or affiliation, age, disability or genetic information. This Contract provision shall be included in its entirety in all Subcontractor agreement(s) entered into by the Contractor or any Subcontractor employed on the project.

- .1 LCP Tracker – The Contractor and every lower-tier subcontractor will be required to submit certified payrolls and labor compliance documentation electronically utilizing the LCP Tracker web-based application as of the first Certified Payroll Report (CPR) and with every CPR thereafter. Electronic submittal of CPRs will be accessed through a link on SAWS’ “Business Center” web page. The Contractor and subcontractor will be provided a Logon identification and password to access the SAWS LCP Tracker reporting system. Electronic submittals will require data entry of weekly payroll information including: employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. This electronic submission requirement also applies to every lower-tier subcontractor required to provide labor compliance documentation.

Additional information on the LCP Tracker System can be found on: www.lcptracker.com.

2.11 ETHICS – To report suspected ethics violations impacting SAWS, please call 1-800-687-1918.

ARTICLE III. CONTRACT DOCUMENTS & BONDS:

3.1 PLANS AND SPECIFICATIONS – The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the

Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated and intended results. In cases of discrepancy between any drawing and the dimension figures written thereon, the dimension figures shall govern over scaled dimensions; Detailed Drawings and accompanying notations shall govern over general Drawings; Specifications shall govern over Drawings and Special Conditions shall govern over Supplemental Conditions, Specifications, Drawings and these General Conditions.

.1 For the purposes of clarification, the most recently issued document takes precedence over previous issues of the same document. The order of precedence for the Contract Document is as follows with the highest authority listed as “1.”

1. Contract amendments or Change Orders signed by Contractor and Owner.
2. Addenda, with those of later date having precedence over those of earlier date.
3. Special Conditions.
4. Supplementary Conditions.
5. General Conditions.
6. Specifications.
7. Drawings.

3.2 INTENT OF THE CONTRACT DOCUMENTS is to describe a functionally complete Project (or integral component part thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied by Contractor whether or not specifically called for by SAWS or its Consultant. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment such words shall be interpreted in accordance with that meaning. Where phrases such as “directed by”, “ordered by” or “to the satisfaction of”, “the Consultant”, “the SAWS COI” or “the Owner’s Representative” occur, it is to be understood that the directions, orders, or instructions to which they relate are within the scope of, and authorized by the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of bids except as may be otherwise specifically stated in writing.

3.3 DISCREPANCY IN CONTRACT DOCUMENTS - If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, Contractor shall so report to Consultant or Owner in writing immediately and before proceeding with the Work affected thereby and shall obtain a prompt written interpretation or clarification from SAWS or Consultant through an RFI; however, Contractor shall not be liable to SAWS or Consultant for failure to report any conflict, error or discrepancy in the Contract Documents unless Contractor had either actual knowledge thereof or should reasonably have known thereof. Any Work impacted by the conflict, error or discrepancy performed by Contractor after such discovery, until

authorized, will be done at the Contractor's risk and/or expense.

3.4 PLANS AND SPECIFICATIONS AT THE WORK SITE - The Contractor shall maintain at the Work site at least one copy of the most recent and complete set of Contract Documents to include, but not limited to, Plans, Specifications, Addenda, approved Shop Drawings and Change Orders, in good order and marked to record all changes to the Plans and/or existing physical conditions made during construction.

.1 RECORD DRAWINGS - Each month as the Work progresses the Consultant shall formally submit to SAWS, along with the monthly payment application, a set of red-line drawings noting work completed during that period. Red-line drawings should also reflect any and all variations to the Plans and reflect all actual dimensions necessary for the development of as built drawings. As a condition precedent to any progress payment or final payment, the Contractor shall have a duty to submit, and coordinate with Consultant, Contractor's properly marked drawings. The monthly updated redlined document shall be uploaded to CPMS along with the payment application. Prior to final payment to the Contractor, the Contractor who has control of the Work and is in a position to know how the Project was constructed, shall formally submit to the Consultant, at the final walk through the set of clearly marked red-line drawings and related documents noting work completed and any variations from the original plan and specifications for Consultant's use in preparing Owner's final "Record Drawings" for the SAWS permanent file.

3.5 PERFORMANCE BOND - CONTRACTOR shall furnish a Performance Bond in favor of SAWS in an amount equal to 100% of the total construction cost under this Contract. Total construction cost are defined as the entire cost of materials and their installation, and include, but are not limited to, the cost of labor, equipment, supplies, materials and additional construction costs. The Performance Bond shall: (1) guarantee the completion of the entire construction herein identified in conformity with the Plans and Specification approved by SAWS, and (2) guarantee the Work against defects in workmanship and materials for a period of twenty four (24) months after acceptance of the work by SAWS. The Performance Bond shall be in accordance with Chapter 2253 of the Texas Government Code and Chapter 3503 of the Texas Insurance Code and shall have corporate Sureties that are licensed to conduct business in Texas. The Contractor agrees that the following shall apply to Performance Bond provided by a Surety:

If any Performance Bond is in an amount in excess of ten (10%) percent of the Surety company's capital and surplus, the SAWS shall require, as a condition to accepting the Performance Bond, written certification that the surety company has reinsured the portion of the risk that exceeds ten (10%) percent of the surety company's capital and surplus with one or more reinsurers who are duly authorized, accredited, or trusted to do business in this state. The amount reinsured by any reinsurer may not exceed ten (10%) percent of the reinsurer's capital and surplus.

If the amount of the Performance Bond exceeds \$100,000, the surety must also:

(1) hold a certificate of authority from the United States secretary of the treasury to

qualify as a surety on obligations permitted or required under federal law; or

- (2) have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in this state and is the holder of a certificate of authority from the United States secretary of the treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

The Performance Bond shall have corporate Sureties that are licensed to conduct business in Texas. The Contractor shall be responsible throughout the Term for monitoring the financial condition of any Surety issuing bonds under this Contract and for making inquiries no less often than annually to confirm that each such Surety maintains at least the minimum rating level specified in the Contract Documents. In the event the rating of any issuing Surety falls below such minimum level, or if any surety company is declared bankrupt or becomes insolvent or has the rights to do business in the State of Texas terminated, the Contractor shall promptly notify SAWS of such event and shall promptly (within 10 business days) take steps to ensure continued compliance with this Section by furnishing or arranging for the furnishing of a substitute or additional bond of a surety company whose rating and other qualifications satisfy all above requirements, Upon such notice by the Contractor of such an event, Owner shall not unreasonably withhold its approval of such assurance.

- 3.6 PAYMENT BOND - Contractor shall furnish Payment Bond in favor of SAWS in an amount equal to 100% of the total construction cost under this Contract. Total construction costs are defined as the entire cost of materials and their installation, and include, but are not limited to, the cost of labor, equipment, supplies, materials and additional construction costs. The Payment Bond shall be security for the payment of all persons supplying labor and material in the prosecution of the Work provided for in the Contract Documents. The Contractor agrees that the following shall apply to Payment Bonds provided by a Surety:

If any Payment Bond is in an amount in excess of ten (10%) percent of the Surety company's capital and surplus, the San Antonio Water System shall require, as a condition to accepting the Payment Bond, written certification that the surety company has reinsured the portion of the risk that exceeds ten (10%) percent of the surety company's capital and surplus with one or more reinsurers who are duly authorized, accredited, or trusted to do business in this state. The amount reinsured by any reinsurer may not exceed ten (10%) percent of the reinsurer's capital and surplus.

If the amount of the Payment Bond exceeds \$100,000, the Surety must also:

- (1) hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or
- (2) have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in this state and is the holder of a certificate of authority from the United States secretary of the treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

The Payment Bond shall have corporate Sureties that are licensed to conduct business

in Texas. The Contractor shall be responsible throughout the Term for monitoring the financial condition of any Surety issuing bonds under this Contract and for making inquiries no less often than annually to confirm that each such Surety maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing Surety falls below such minimum level, or if any surety company is declared bankrupt or becomes insolvent or has the rights to do business in the State of Texas terminated, the Contractor shall promptly notify SAWS of such event and shall promptly (within 10 business days) take steps to ensure continued compliance with this Section by furnishing or arranging for the furnishing of a substitute or additional bond of a surety company whose rating and other qualifications satisfy all above requirements, Upon such notice by the Contractor of such an event, Owner shall not unreasonably withhold its approval of such assurance.

- 3.7 CONTRACTOR AND SURETIES STILL BOUND - No assignment, transfer or subletting, without the written consent of SAWS, and no order of SAWS for or approval of any alterations or modifications in said Specifications, Plans, or Work, and no change in the requirements or order for extra work made by SAWS as provided in this Contract, shall ever in any manner release or diminish the responsibility of Contractor or any Surety on any bond of Contractor, but on the contrary, such responsibility shall extend to and comprehend all such changes and other matters.
- 3.8 CONTRACTS LESS THAN \$25,000 - If the Contract Sum is less than or equal to \$25,000, Owner and Contractor may agree (at Owner's discretion) to Contractor not providing Performance and Payment Bonds; provided that in such event, no money will be paid by Owner to Contractor until Final Completion and acceptance of all Work by the Owner. If Contractor elects to provide Performance and Payment Bonds, the Contract Sum shall be payable to Contractor through progress payments in accordance with these General Conditions.

ARTICLE IV. CONTRACT ADMINISTRATION:

4.1 GENERAL ADMINISTRATION

- .1 PLANS AND SPECIFICATIONS BY CONSULTANT - The Consultant will provide general administration of the Contract during construction in accordance with the Consultant's scope of work as defined in the Consultant's Contract with SAWS.
- .1 The Consultant has the authority to act on behalf of the Owner to the extent provided in the Construction Contract Documents. The Consultant will advise and consult with the Owner. The Owner's instruction to the Contractor may be issued through the Consultant, but the Owner reserves the right to issue instructions directly to the Contractor through other designated SAWS representatives. Contractor understands that SAWS may modify the authority of such Consultant as provided in the terms of its contract relationship with the Consultant, and the Owner shall, in such event, be vested with powers formerly exercised by such Consultant, provided written notice of such modification shall be immediately provided to the Contractor. Nothing herein shall authorize independent agreements

between Contractor and such Consultant, nor shall the Consultant be deemed to have a legal relationship with the Contractor.

- .2 Any and all oral instructions shall be confirmed expeditiously in writing with copies furnished to the Consultant, the Owner's designated representatives, and the Contractor by the party issuing the oral instruction.
- .3 Upon the Consultant's written recommendation, the Owner's Representative shall have the final authority to reject Work performed by the Contractor which does not meet the requirements of the Contract, and to order such Work repaired, removed, or replaced in accordance with Article 5.10. Rejected Work will be documented and all payments related to the rejected Work will be suspended until the Work is accepted by the Owner. A Non-Conformance Report (NCR) will be issued by the Owner's Representative and will remain in effect until the requirements of the Contract are met.

.2 PLANS AND SPECIFICATIONS BY SAWS ENGINEER

- .1 The Engineer shall confirm all oral instructions to the Contractor expeditiously in writing.
- .2 Any other provision contained herein notwithstanding, the Engineer shall have the authority to reject Work performed by the Contractor which does not meet the requirements of the Contract, and to order such Work repaired, removed, or replaced in accordance with Article 5.10. Rejected Work will be documented and all payments related to the rejected Work will be suspended until the Work is accepted by the Owner. A Non-Conformance Report (NCR) will be issued by the SAWS Engineer and will remain in effect until the requirements of the Contract are met.

4.2 ACCESS TO AND OBSERVATION/INSPECTION OF THE WORK

- .1 INSPECTION OF WORK BY CONSULTANT - The Contractor shall provide sufficient, safe, and proper facilities at all reasonable times for the observation and/or inspection of the Work by any duly authorized representative of the Owner. The Consultant and the Owner will make visits to the site at intervals appropriate to the various stages of construction to observe the progress of the executed Work and to determine if the Work is proceeding in accordance with the Contract Documents.
 - .1 On the basis of such visits and on-site observations as an experienced and qualified design professional, Consultant will keep Owner informed of the progress of the Work and will guard Owner against defects and deficiencies in the Work which are the responsibility of the Contractor to prevent and/or cure.
 - .2 No approval of any phase of the construction Project by any of the Owner's representatives or observer/inspectors shall relieve the Contractor from full

compliance with the Contract Documents regarding the ultimate Work product. Any additional cost, damages, or delays occasioned by patent or latent defects in the Work, and/or failure to meet the requirements of the Contract Documents, at any Project phase, shall be borne by the Contractor.

.2 INSPECTION OF WORK BY SAWS ENGINEER - The Contractor shall provide sufficient, safe and proper facilities at all reasonable times for the observation and/or inspection of the Work by the duly authorized representative of the Owner. The Engineer and/or COI will make visits to the site at intervals appropriate to the various stages of construction to observe the progress of the executed Work and to determine if the Work is proceeding in accordance with the Contract Documents.

.1 No approval of any phase of the construction Project by any of the Owner's observer and/or inspectors shall relieve the Contractor from full compliance with the Contract Documents regarding the ultimate Work product. Any additional cost, damages, or delays occasioned by patent or latent defects in the Work, and/or failure to meet the requirements of the Contract Documents, at any Project phase, shall be borne by the Contractor.

4.3 ASSIGNMENTS AND SUBLETTING - Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Contract, or any portion thereof, or any right, title or interest in, to or under the same, without the prior written consent of the Owner. Contractor shall not assign by power of attorney or otherwise any of the monies or other considerations to become due and payable by the Owner under this Contract, without the prior written consent of the Owner. The Contractor shall notify the Owner, by written notification by certified mail to the Owner, that such assignment, transfer, conveyance or subletting, or other disposition of this Contract or any portion thereof, or any right, title or interest, in, to or under the same, is contemplated. If the Contractor does not receive written approval of such contemplated action from the Owner within thirty (30) days of receipt of such initial request by the Contractor, such contemplated assignment, transfer, conveyance or subletting, or other disposition of this contract or any portion thereof, or any right, title or interest in, to, or under the same, shall be deemed disapproved. In no event shall the Owner be liable in excess of the consideration of this Contract in the case of any such assignment, transfer, conveyance or subletting of the Work or performance which is subject hereof.

.1 The Owner reserves the right to withhold any monthly payment hereafter provided for in the event of an assignment or subletting of a portion of the work without the prior consent and knowledge of the Owner and by reserving such right, the Owner shall not be deemed to have waived its right to declare a full breach of this Contract for Contractor's failure to comply with provisions hereof, such remedy being alternative only and exercisable at the option of the Owner.

4.4 SUBCONTRACTORS - The Contractor shall upon executing the Contract, notify the Owner in writing of the names of all proposed first tier Subcontractors for the Work. This should include the SMWVBs identified in the Good Faith Effort Plan.

.1 SUBCONTRACTUAL RELATIONS - By an appropriate written agreement, the

Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with its Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this paragraph and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to its Sub-subcontractor.

4.5 SEPARATE CONTRACTS

- .1 The Owner reserves the right to let other contracts in connection with this Work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his or her Work with their work.
- .2 When separate Contracts are awarded for different portions of the Project, "the Contractor" in the Contract Documents in each case shall be the Contractor who executes each separate Contract. This Contractor shall properly connect and coordinate its Work with the work of other Contractors. If any part of this Contractor's Work depends on proper execution or proper results on the work of any other separate Contractor, this Contractor shall inspect and promptly report in writing to the Consultant and SAWS COI any discrepancies or defects he may find in the work of any separate Contractor that render it unsuitable to achieve proper connection, execution and results. Failure of this Contractor to so inspect and report obvious discrepancies or defects shall constitute an acceptance of the other Contractor's work as fit and proper to receive this Contractor's Work, except as to defects which may develop in the other separate Contractor's work after the execution of this Contractor's work.
- .3 Any other provision contained herein notwithstanding, should this Contractor negligently cause damage to the work or property of any separate Contractor on the Project, this Contractor shall, upon due notice, endeavor to settle with such other Contractor by agreement. A reciprocal clause shall be placed in the Contract Documents between SAWS and the separate Contractor if involving other SAWS work. If such separate Contractor sues SAWS and/or its agents on account of any damage caused by this Contractor alleged to have been so sustained, SAWS and/or its agents shall notify this Contractor who shall defend, indemnify and hold harmless SAWS and/or its agents' interests and Contractor's own interests in such proceedings and pay all attorney fees, and costs in

connection therewith, and if any judgment against SAWS results there from, this Contractor shall pay or satisfy that judgment.

4.6 CONTRACT TERMINATION

- .1 **TERMINATION BY OWNER** - If the Contractor is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, without the consent of SAWS, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction pertaining to the Work, or otherwise is guilty of a substantial violation of a provision of the Contract Documents warranting Owner default of Contractor, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and Contractor's Surety, if any, ten (10) days written notice, terminate the employment of the Contractor and/or take possession of the Site and of all materials, and may upon order of a court of competent jurisdiction take possession of equipment, tools, construction equipment and machinery thereon owned by the Contractor. Any other provision contained herein notwithstanding, Surety shall, within fifteen (15) calendar days after written notice of terminations as provided above for cause has been provided to the Contractor and Surety or its authorized agents, assume the obligations of the Contractor for the Work or that portion of the Work which SAWS has ordered Contractor to discontinue and Surety may: i) perform the Work with forces employed by the Surety; ii) with the written consent of SAWS, tender a replacement contractor to take over and perform the Work, in which event the Surety shall be responsible for and pay the amount of costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of termination; or iii) with written consent of SAWS, tender and pay to SAWS in settlement the amount of money necessary to finish the balance of the uncompleted Work under the Contract, correct existing defective or nonconforming work, provide warranty for the Work in accord with the Contract and for any other loss sustained as a result of the Contractor's default. Surety shall assume Contractor's place in all respects and the amount of funds remaining and unpaid at the time of termination under the Contract shall be paid to Surety for all Work performed by the Surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of SAWS to deduct any and all costs, damages (liquidated or actual) SAWS incurred including, but not limited to, any and all additional fees and expenses of Consultant and any attorneys' fees SAWS incurs as a result of Contractor's default and subsequent termination. If the Surety does not, within the time specified herein, exercise its obligation to assume the obligations of the Contractor, or that portion of the Work which SAWS has terminated and ordered Contractor to discontinue, then SAWS shall have the power to complete the Work by contract or otherwise, as SAWS may deem necessary and proceed as provided herein. At its sole discretion, the Owner may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract sum remaining, including the cost of additional Owner administration and Consultant services made necessary by such default or neglect, in which event no further payment shall then

be made by the Owner until all Cost of completing the Work shall have been paid. If the unpaid balance of the Contract sum exceeds all the costs of finishing the Work, including direct and indirect consequential costs, attorney's fees and compensation for the Consultant's additional services made necessary thereby, such excess sum shall be paid to the Contractor, provided that Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits.. If such costs exceed the unpaid balance, the Contractor or its surety shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

- .1 **TERMINATION FOR CONVENIENCE** - The right to terminate this Contract for the convenience of Owner (including, but not limited to, non-appropriation of funding) expressly is retained by Owner. In the event of a termination for convenience by Owner, Owner shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Contractor. Upon Contractor's receipt of such written notice, Contractor immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Contractor shall then be paid by Owner, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred, the actual cost of all materials installed and the actual cost of all materials stored at the Site or away from the Site, as approved in writing by Owner, but not yet paid for and which cannot be returned; and actual, reasonable and documented demobilization costs, if any, paid by Contractor and approved by Owner in connection with the Work in place which is completed as of the date of termination by Owner and that is in conformance with the Contract Documents, less all amounts previously paid for the Work. No amount ever shall be owed or paid to Contractor for lost or anticipated profits on any part of the Work not performed or for consequential damages of any kind or unabsorbed overhead, opportunity costs or other damages as a result of a termination for convenience under this Section. In addition, any amount payable to the Contractor pursuant to this Section shall be reduced in the amount of (1) any claim Owner may have against the Contractor under this Contract, (2) the cost to correct any work performed by Contractor that does not comply with the Contract Documents, and (3) the fair value, as determined by Owner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to Owner, excluding normal spoilage and except to the extent that Owner shall have otherwise expressly assumed the risk of loss with respect to such property hereunder.
- .2 In the event that Owner shall be prevented from completing performance of its obligations under this Contract by an act of God or other occurrence whatsoever which is beyond the control of Owner, then Owner shall be excused from any further performance of its obligation and undertakings.
- .3 Contractor may not recover from Owner any lost or anticipated profit on Work not performed or consequential damages of any kind on or for termination of this Contract by Owner or Contractor or for any breach of

this Contract by Owner.

- .4 The Owner's termination of this Contract, whether for cause or for convenience, shall not be an election of remedies. In addition to any right of termination, the Owner shall be entitled to pursue and enforce any other right or remedy available by contract, law or at equity, including the right to pursue recovery of damages. The remedies of the Owner set forth in this Contract shall not be restrictive but shall be cumulative and in addition to all other remedies of Owner hereunder and under applicable state laws, including all laws related to fraud or latent defects. Nothing herein shall restrict, limit or otherwise diminish in any way the liability of the Contractor for defects or deficiencies under the statutory and common laws of the State of Texas. Owner reserves all rights and remedies that it may have against Contractor and all such rights and remedies shall survive termination for cause or for convenience. Without limitation of the rights and remedies that survive termination of the Contract for cause or for convenience, Contractor shall have an ongoing obligation that survives the termination of the Contract, whether that termination is for cause or for convenience, for the cost to repair any work not performed in accordance with the Contract Documents, for any damages caused by the negligence of Contractor or caused by any work performed by Contractor that does not comply with the Contract Documents and for any warranty claim for work completed prior to a termination for cause or convenience. Contractor shall not be entitled to lost or anticipated profits should the Owner choose to exercise its option to terminate this Contract for cause or convenience.

4.7 SUSPENSION OF WORK BY OWNER

The Owner may suspend said Work either partially or totally by its written order whenever in its opinion the interests of SAWS require the suspension of such Work. In the event that the Owner suspends Project Work, the Contractor hereby acknowledges and agrees that so long as the total suspension(s) is (are) for a period not to exceed ten (10) cumulative days accruing throughout the entire Contract Time, that the Contractor is not entitled to request a negotiated adjustment of the Contract Sum nor an extension of the Contract Time. Such right to suspend Project Work for periods not to exceed ten (10) cumulative days accruing throughout the entire Contract Time without compensation to the Contractor, is expressly reserved by SAWS.

- .1 SAWS may, through a written notice executed by the SAWS Owner's Representative, order the Contractor suspend, delay or interrupt all or any part of the construction Work for such period of time as the SAWS Owner's Representative may determine to be appropriate for the convenience of SAWS. Owner may suspend Work either partially or totally by its written order whenever it is SAWS opinion that SAWS' best interest is served by the suspension of the Work.
- .2 Subject to the limitations contained herein, any suspension of Work by the Owner may entitle the Contractor to request either a negotiated adjustment of Contract Sum or an extension of Contract Time, or both, as directly attributable to such

suspension of Project Work, provided:

- .1 No adjustment will be made pursuant to this Section for any suspension, delay or interruption to the extent caused by Contractor, including any suspension under Article 4.7.4. or 4.7.5. The Contractor shall not be entitled to any relief pursuant to this section absent the satisfactory demonstration to SAWS of the impact of the suspension, delay or interruption on the critical path of the construction Work Progress Schedule. Any equitable extension of the Contract Time shall not exceed the actual delay caused by the temporary suspension, as determined by Owner, and Engineer and or Consultant;
- .2 Any equitable adjustment to the Contract Sum shall be for the actual, necessary and reasonable costs of properly protecting any Work finished or partially finished during the period of the temporary suspension; provided, however, that no payment of profit and/or overhead shall be allowed on top of these costs; and
- .3 If it becomes necessary to move equipment from the Project and then return it to the Project when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary and reasonable cost of these moves may be made; provided, however, that no adjustment to the Contract Sum shall be due if the equipment is moved to, or utilized on, another Project of Owner. Stand-by fees shall not be paid on equipment not physically present on the Project.
- .4 The Owner and the SAWS COI shall at any time during the Contract Time have the right to suspend or stop the Work when the SAWS COI or any other authorized representative of the Owner reasonably believes that there exists any dangerous condition or nuisance to workers, the general public or property on the site or on property adjacent thereto or otherwise violates a term or condition of the Contract Documents. The Contractor shall not be entitled to any adjustment of the Contract Sum or extension of the Contract Time relating to any suspension of the Work by the Owner or the SAWS COI for any reasons under this Article 4.7.4 that are the fault of Contractor. Owner shall have no other liability of any kind to the Contractor with respect to any suspension of the Work for reasons under this Article 4.7.4.
- .5 The Owner and the SAWS COI shall at any time during the Contract Time have the right to suspend or stop the Work under Article 4.7 when the SAWS COI or any other authorized representative of the Owner reasonably believes that there exists on the Site any environmental condition which could reasonably be expected to result in any liability, costs or expense to the Owner or the Contractor arising under any Applicable Laws, statutes, ordinances, rules and regulations of any governmental, quasi-governmental or regulatory authority, which include, but are not limited to, the transportation, storage, placement, handling, treatment, discharge, generation, production, removal, or disposal (collectively, "Treatment") of any Hazardous Material Substance, or any other environmental condition

that would cause the Work to be in violation of any Applicable Laws. Notwithstanding the foregoing provisions of Article 4.7, provided the Contractor is not at fault in causing the environmental condition, the Contractor may be entitled to an adjustment to the Contract Time to complete the Project but the Contractor shall not be entitled to any adjustment of the Contract Sum relating to any suspension of the Work by the Owner or the SAWS COI under this Article 4.7.5., and the Owner shall have no other liability of any kind to the Contractor with respect to any suspension of the Work for environmental reasons under this Article 4.7.5. At all times during the performance of the Work by the Contractor under this Contract, the Contractor will comply with all Applicable Laws. The Contractor agrees to (a) give notice to the Owner immediately upon Contractor's acquiring knowledge of the existence of any Hazardous Material Substance or other environmental condition on the Site with a full description thereof, (b) promptly comply with any Applicable Laws requiring the removal, treatment or disposal of such Hazardous Material Substance or proper treatment of the environmental condition as required by Applicable Law and provide Owner with satisfactory evidence with such compliance and (c) provide Owner within thirty (30) days after demand by Owner with a bond, letter of credit or similar financial assurance evidencing to the Owner's satisfaction that adequate funds are available to pay the costs of removing, treating and disposing of such Hazardous Material Substance or proper treatment of the environmental condition as required by Applicable Law.

6. Any other provision contained herein notwithstanding, if the Work is stopped by SAWS for a period of ninety (90) consecutive days under an order of any court or other public authority having jurisdiction, or as a result of an act of a higher governmental authority, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a Contract with the Contractor, then the Contractor may upon ten (10) additional days written notice after first providing a complete and detailed written explanation of the event that constitutes an allowable termination under this provision to SAWS and the Consultant, at which time SAWS will promptly provide a written determination whether in its sole discretion the event detailed by the Contractor constitutes an acceptable Contract termination event, pursuant to this provision; if Owner determines that the event constitutes an acceptable termination event, then the Contractor may terminate the Contract and recover from the Owner payment for all Work performed as of the date that Contractor gives written notice of termination pursuant to this paragraph. Owner shall not be liable for the payment of any lost or anticipated profit on Work not performed or for any consequential damages on termination of this Contract. If the Work is recommenced during the ten (10) day notice period, the Contractor may not terminate the Contract.

4.8 PROTECTION OF PRIVATE PROPERTY - SAWS has secured right-of-way and easements, as shown on the plans, to be occupied by the finished construction, with

only such additional temporary construction easements as shown for use by the Contractor in carrying out its Work. The Contractor shall take proper measures to protect all property within all construction easements, and adjacent or adjoining property which might be injured by any process of construction; and, in case of any injury or damage, it shall restore at its own expense the damaged property to a condition equal to or better than that existing before such injury or damage was done, or it shall make good such injury or damage in a manner acceptable to SAWS and/or private or public owner.

- .1 The Contractor shall immediately correct customer complaints for such items as, but not limited to, driveway access, mailboxes, privacy fences, public safety hazards, public nuisances, water and sewer services as directed by the SAWS COI.
- .2 The Contractor shall not, except upon procuring written consent from proper private parties, enter or occupy with men, tools, materials, or equipment, any privately owned land except for those on easements or right of entry provided herein by SAWS. Contractor must submit a copy to SAWS of any written consent from a private party.
- .3 No tree shall be removed outside the permanent easement, except where expressly authorized in writing by the Owner and City of San Antonio. Any tree not authorized for removal shall be adequately protected against damage from construction operations. Contractor shall be responsible for any damage, destruction or other harm including but not limited to all costs, fees, or other expenses attributable thereto, caused to trees not authorized for removal that is due to or arise out of Contractor's Work at the Project.
- .4 The Contractor agrees to and shall abide by all easement or right of way requirements while performing Work within them.

ARTICLE V. CONTRACT RESPONSIBILITIES:

- 5.1 OWNER-CONTRACTOR OBLIGATIONS - The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the prior written consent of the Owner, nor shall the Contractor assign any monies due or to become due to it hereunder, without the prior written consent of the Owner and in the manner established in Article 4.3 herein.
- 5.2 OWNER'S RESPONSIBILITY - Projects contracted through other outside entities and containing utility work by SAWS shall be managed by the other entity with support by SAWS personnel. Contractor shall report directly to the other entity. Utility projects contracted through SAWS, which contain secondary street work, shall be managed by SAWS with support by other entity personnel. Contractor shall report directly to SAWS.

- .1 The design of the Project was performed by a professionally licensed Engineer who is an authorized representative of the Owner, who will exercise the authority and functions of the Owner as the project Consultant in the following respects:
 - .1 Provide Contractor with benchmarks.
 - .2 Checking of shop drawings furnished by the Contractor in compliance with Article 5.12 herein.
 - .3 Consultation and advice during construction and rendering those decisions requiring interpretation of the Plans and Specifications.
 - .4 Make visits to the Site at intervals appropriate to the various stages of construction operations to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to endeavor to guard the Owner against defects in the Work.
 - .5 Assist in the Substantial Completion inspection.
 - .6 Assist in the Final Completion inspection.
 - .7 Assist in the preparation of the monthly and final quantity and pay estimates.
 - .8 Any terms and conditions of the consultant's Contract with the Owner shall be cumulative of the above.
- .2 Unless otherwise provided or ordered, all resident observation and inspection on all SAWS contracted projects will be performed by the SAWS COI, who will exercise the authority and functions of the Owner in the following respects:
 - .1 Review laboratory, mill and shop tests of materials and equipment for general compliance with the Plans and Specifications.
 - .2 Observation and inspection of the authorized Work, and administration for the Owner, and review of all Work performed for general compliance with the Plans and Specifications.
 - .3 Stop the Work or any portion of the Work if Contractor fails to carry out the Work in accordance with the Contract, or fails to correct Work which is not in accordance with requirements of the Contract. However, the right of SAWS to stop the Work as provided for in Article 4.7, will not give rise to a Claim for delay or to a duty on the part of SAWS to exercise this right for the benefit of Contractor or any other person or entity. SAWS will provide the Contractor with a written explanation and detail for the stoppage of Work.
 - .4 Review monthly and final quantity and pay estimates.

- .5 Conduct Substantial Completion observation and inspection.
 - .6 Conduct Final Completion and inspection.
 - .7 Determine acceptability of the finally completed Work.
- .3 Quality assurance random sampling and testing of materials, inspection of laboratory testing processes and procedures for quality assurance purposes beyond those required to be performed at the expense of the Contractor under their quality control program in full compliance with Article 5.3 herein, may be performed by SAWS, at the expense of SAWS, in a certified commercial testing laboratory approved and designated by SAWS. The Contractor at their expense shall furnish assistance in obtaining and providing samples for SAWS quality assurance purposes.

5.3 CONTRACTOR'S RESPONSIBILITIES

- .1 Quality Control - The Contractor agrees and understands that the Contractor is responsible for performing quality control inspection and testing services to assure Project compliance with Contract Documents. Sampling and testing of materials, laboratory inspection of materials and processes for quality control purposes shall be performed at the expense of the Contractor or supplier by an independent commercial laboratory approved by the SAWS COI. All test reports and shop drawings shall be signed and sealed by a Texas Registered Professional Engineer and submitted to the SAWS COI. All structural members shall be marked or stamped individually with an identifying number for the purpose of cross-referencing all reports. All test reports and vendors' certifications for materials incorporated into the Project shall be submitted in accordance to the latest revision of the International Building Code, as required by City Building Permit, with sufficient time in advance as to allow the Owner, Owner's representative, Consultant, Owner's third party inspection agency and City building officials to review and approve materials, installation and placement prior to next stage of the Project. Approval does not constitute or relieve the Contractor's obligation under this Contract to fully comply with the Specifications and building permit requirements.
- .2 The Contractor shall supervise and direct the Work using the best skill and attention. Any provision contained herein notwithstanding, the Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for the implementation of safety precautions and for coordinating all portions of the Work under this Contract.
- .3 The Contractor shall give the SAWS COI reasonable advanced notice of the readiness of any Work for observation/inspection, and when practicable, twenty-four (24) hour notice. If any underground Work is performed without the proper prior notification to the COI, it shall be uncovered for observation/inspection and properly restored at the Contractor's expense.
- .4 If the Contractor, in the course of the Work, finds any discrepancies between the

Plans and the physical conditions of the Sites, or any errors or omissions in the Plans or the layout as given by survey points and instructions, he shall immediately inform the SAWS COI and Consultant, with a RFI, and the Consultant and/or Engineer shall promptly investigate the same. Any Work impacted by the discrepancy performed by Contractor after such discovery, until authorized, will be done at the Contractor's risk and/or expense.

- .5 Contractor's Risk and Inventory - Contractor shall be responsible for the complete, timely, performance of the Work under this Contract and compliance with the Contract Documents. Contractor shall be responsible for the safe storage and inventory control of all materials paid by SAWS as "materials on site", on the project Site and/or within off site bonded/insured storage facilities either owned or leased by the Contractor. Contractor shall allow full access, seven days a week, 24 hours, to storage facilities, whether on-Site or off-Site, as requested by SAWS COI. Contractor shall protect materials and Work from all theft, loss, vandalism, or damage from any cause whatsoever until final Project completion by Contractor and acceptance by Owner; and shall deliver said Work and improvements to SAWS in a completed and acceptable condition in accordance with the Contract Documents.
- .6 It is the intention of SAWS to be sensitive to the needs and concerns of the citizenry. It is the Contractor's responsibility to adhere to this policy to the best of its ability. The Contractor, subcontractor and its employees shall address all citizen inquiries about the Project, provide names and numbers of SAWS personnel for the public to contact, relay citizen complaints to SAWS, and provide continuous access to the citizen's property. Contractor shall at all times while prosecuting the Work on the Project act in a professional and workman like manner in dealing with the public. SAWS reserves the right to remove from or refuse entry to the Site or SAWS property any Contractor personnel or subcontractor personnel who, in SAWS sole determination, fail to act in a professional and workmanlike manner in dealing with SAWS or the public in general.
- .7 Permits - Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, including review fees, inspections, and licenses. Owner shall reasonably assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay any and all charges, fees and costs necessary for obtaining permits for the prosecution of the Work. The Contractor shall be responsible for all costs associated with registering with the City of San Antonio Right of Way Office (COSA ROW), applying and obtaining COSA ROW Street cut permit(s) as required for the Project and shall keep the permit active during the course of the Work. Contractor is also responsible for the initial permit, permit renewals, expedited permits and any and all costs inclusive of but not limited to COSA ROW inspection fees, penalties and/or any and all fees associated with the permit. To register, the Contractor should contact the COSA ROW office at 210-207-6949.
- .8 Project Sign – Each Project Specification will contain a detailed requirement for Project signage that identifies the Site and Work to general citizenry and shall be

in compliance with any municipal code, ordinance or permit.

- .9 Pre-Construction and Post-Construction Videos – The Contractor shall provide pre-construction videos prior to commencement of the project in accordance with standard specification for construction Item No. 1114, Pre-Construction Videos. The video shall identify the condition of all existing surface features within the Project limits. The Contractor shall submit two copies of the completed video prior to request for mobilization. The Contractor shall also submit two copies of the completed post-construction video of all surface features within the Project limits within ten (10) days following the date of Substantial Completion.
- .10 Large Water Main Shut Downs: Projects that include a Large Water Main (16-inches and larger), will require advance coordination from the Contractor with Owner, with a minimum of two weeks' notice to Owner prior to the desired shut down date. The Contractor is to have all material and equipment on Site and have the necessary prep work done in order to minimize the shutdown period required for the tie in Work. Mains Larger than 16-inches that will be required to be shutdown throughout the year may (as solely determined by Owner) require a temporary water main, valves and other appurtenances to keep the water main in service. The size of the temporary water main will be determined by Owner and shown on the Plans by the Consultant or as Directed by Owner.
- .11 Water and Sewer Service to Customers – the Contractor shall maintain uninterrupted service to SAWS customers at all times.
- .12 Contractor will abide by all applicable policies and regulations of Owner with respect to conduct, including smoking, parking of vehicles, security regulations and entry to adjacent facilities owned by the Owner.
- .13 Independent Contractor - In performing the Work under this Contract, the relationship between Owner and Contractor is that of an independent contractor. Contractor shall exercise independent judgment in performing the Work and solely is responsible for setting working hours, scheduling and/or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making Contractor an agent, servant or employee of Owner or making Contractor or any of Contractor's employees, agents or servants eligible for the fringe benefits, such as retirement, and worker's compensation which Owner provides to its employees.
- .14 All RFI's shall be dated and addressed to a particular named party for action within CPMS. RFI's shall be responded to by SAWS in a timely fashion. Upon receipt by the Contractor of a response to the RFI by SAWS, the issue will be considered resolved and closed.
- .15 Contractor shall respond to an RFP in accordance with Article 6.3. Failure by the Contractor to respond within the allotted time shall cause Contractor to forfeit any right to claim additional time related to responding to the RFP.

- 5.4 SUPERINTENDENT - The Contractor shall keep on-Site for the Project during its progress a Competent Person, able to communicate fluently in English, and any necessary assistants, all satisfactory to the Owner. A Superintendent shall be identified in writing to the Owner at the pre-construction meeting. The Superintendent shall represent the Contractor, and all directions given to the Superintendent shall be binding on the Contractor. Oral directions from the SAWS representatives involving critical situations or Work elements shall be immediately (as may be reasonable under the circumstances and in accordance with the Contract Documents), confirmed in writing by Owner to the Contractor. The Contractor's Superintendent shall provide full-time on-site supervision to any Work ongoing at the Site by its own forces or subcontractors, using the best industry skill and attention. The Contractor's Superintendent shall not be replaced without first providing written notice to the Owner. The written notice provided to the Owner shall contain the credentials for their proposed replacement Superintendent. The Owner will review the credentials supplied and if, in the Owner's discretion, they are appropriate for the Work, approve the proposed replacement Superintendent. The Superintendent may not be employed on any other project prior to Final Completion of the Work, without the approval of the Owner, which approval will not be unreasonably withheld.
- 5.5 INCIDENTAL WORK, CONNECTIONS AND PASSAGEWAYS - The Contractor shall perform all incidental Work necessary to complete this Contract, including, but not by way of limitation, the following: Contractor shall make and provide all suitable reconnections with existing improvements as are necessarily incidental to the proper completion of the Project; Contractor shall provide passageways or leave open such thoroughfares in the Work area as may be reasonably required by SAWS and shall protect and guard same at Contractor's own risk, and shall continuously maintain the Work area in a clean, safe and workmanlike manner.
- 5.6 CONDITIONS AT SITE
- .1 Contractor declares that prior to the submission of the Proposal on this Contract, the Contractor has thoroughly examined the location(s) of the Work to be performed, has become familiar through their own investigation with any and all conditions, including but not limited to typical local geophysical conditions at or near this Project, and has read and has thoroughly understood the "Contract Documents" and any other document made available prior to the bid opening, as they may relate to the physical conditions prevalent or likely to be encountered in the performance of the Work at such location(s). Any testing, boring, soil profiles and water elevations shown on Contract Documents, or otherwise provided, were obtained solely for the use of SAWS in the preparations of its plans and the Contractor is cautioned, and SAWS MAKES NO WARRANTY OR REPRESENTATION, AS REGARDING THE ACCURACY OF SUCH DATA AND THE CONTRACTOR SHOULD MAKE NO RELIANCE THEREON IN DETERMINING CONTRACTOR'S MEANS AND METHODS OF CONSTRUCTION. Contractor, by the performance of the above, hereby generally acknowledges that such "Contract Documents" are not obviously deficient and will enable the Contractor to accomplish the proper performance of the Work at the Project Site.

- .2 The Contractor shall immediately, and before such discovered conditions and/or structures are further disturbed, notify the Owner with a RFI of (1) subsurface or latent physical and/or structural conditions at the site differing materially from those indicated in the Plans, Specifications, and other Contract Documents or (2) newly discovered, unknown physical conditions at the Site of an unusual nature differing materially from those geophysical conditions typically encountered in the type of Work being performed and generally being recognized as not indigenous to the Texas environs and are not indicative of or otherwise disclaimed in the Plans, Specifications, and Contract Documents. The Owner, or designated representative, shall promptly investigate the reported physical and/or structural conditions, and shall determine whether or not the physical and/or structural conditions do materially so differ and whether they impact the critical path of the Contractor's work to the extent that Contractor is entitled to a Change Order increasing the Contract Time. No additional costs will be allowed.
 - .1 No Claim of the Contractor under this Article shall be allowed unless the Contractor has given the written notice called for above prior to further disturbing the discovered conditions and/or structures.
 - .2 Any other provision contained herein notwithstanding, no Claim by the Contractor for an equitable adjustment to the Contract Time or Contract Sum, or both, shall be allowed if claimed by the Contractor after Final Payment as defined in Article 7.6 herein has been made by SAWS to the Contractor under the terms of this Contract.

5.7 CONTRACTOR'S STANDARD COMMERCIAL INSURANCE SPECIFICATIONS AND CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS

- .1 Commercial Insurance Specifications ("Insurance Specifications"):
 - .1 Commencing on the date of this Contract, the Contractor shall, at its own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect it and Owner and the City and their employees and agents from claims, which may arise out of or result from its operations under this Contract, whether such operations are by itself, by any sub-contractor, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:
 - .1 Workers' Compensation (WC) insurance that will protect the Contractor, SAWS and the City from claims under statutory Workers' Compensation laws, disability laws or such other employee benefit laws and that will fulfill the requirements of the jurisdiction in which the Work is to be performed.

This line of insurance coverage shall be endorsed to provide a Waiver of Subrogation in favor of Owner and the City with respect to both this insurance coverage and the Employers' Liability (EL) Insurance (as specified immediately below in Article 5.7 .1 .1 .2).

- .2 Employers' Liability (EL) insurance (Part 2 under the standard Workers' Compensation insurance policy) that will protect the Contractor, SAWS and the City for damages because of bodily injury, sickness, disease of vendor's employees apart from that imposed by Workers' Compensation laws.

The EL line of insurance coverage shall have minimum policy limits of liability of not less than:

\$1,000,000.00	Bodily Injury by Accident
\$1,000,000.00	Bodily Injury by Disease - Each Employee
\$1,000,000.00	Bodily Injury by Disease - Policy Limit

- .3 Commercial General Liability (CGL) insurance that will protect the Contractor, SAWS and the City from claims for damages because of bodily injury, personal injury, sickness, disease or death and insurance that will protect the Contractor, SAWS and the City from claims for damages to or destruction of tangible property of others, including loss of use thereof.

This line of insurance coverage shall:

- Cover independent contractors;
- Not include any exclusions relating to blasting, explosion, collapse of buildings or damage to underground property;
- The GENERAL AGGREGATE limit shall apply per Project;
- Afford coverage for Products Liability and/or Completed Operations and, Contractual Liability.

The minimum policy limits of liability for this line of insurance coverage shall be:

\$1,000,000.00	Occurrence Limit
\$2,000,000.00	General Aggregate
\$2,000,000.00	Products/Completed Operations Aggregate
\$1,000,000.00	Personal and Advertising Injury
\$1,000,000.00	Contractual Liability

This line of insurance coverage shall be endorsed:

- Additional Insured - The Commercial General Liability policy shall be endorsed naming SAWS and the City as an Additional Insured for both ongoing and completed operations, policies providing for a blanket Additional Insured status if there is a

contract with such requirement between both parties is acceptable, and

- Waiver of Subrogation - The Commercial General Liability policy shall be endorsed with the Waiver of Subrogation in favor of SAWS and the City.

OR

- .4 Owner and Contractor Protective Liability (OCP) Insurance policy which insures SAWS and the City and their agents and employees with the same coverage specified in Article 5.7.1.1.3 above unless the CGL policy specified in Article 5.7.1.1.3 above includes the Endorsement CG2503 - per project general aggregate limit applies.
- .5 Commercial/Business Automobile Liability (AL) insurance that will protect the Contractor, SAWS and the City from claims for damages arising out of the maintenance, operation, or use of any owned, non-owned or hired vehicles.

Minimum policy limits of liability for this line of insurance coverage for bodily injury and property damage combined shall be not less than \$1,000,000.00 per each occurrence.

This line of insurance coverage shall be endorsed:

- Additional Insured - The Commercial/Business Automobile Liability policy shall be endorsed naming SAWS and the City as an Additional Insured; and
 - Waiver of Subrogation - The Commercial/Business Automobile Liability policy shall be endorsed with the Waiver of Subrogation in favor of SAWS and the City.
- .6 Excess/Umbrella Liability (UL) insurance shall have minimum policy limits of \$2,000,000 per occurrence and \$2,000,000 in the aggregate. This policy shall be of an "Occurrence" type and the limit of liability shall be concurrent with (following form) and in excess of the EL, CGL, and AL lines of insurance coverage as described in Articles 5.7.1.1.2, 5.7.1.1.3, and 5.7.1.1.5 listed above.

NOTE - For the Excess/Umbrella Liability policy, describe in the Description of Operations section of the Certificate of Liability Insurance ("Certificate"), the coverage form under which this line of coverage is written – either:

- Umbrella liability form; or

- Excess Liability form.

This line of insurance coverage shall be endorsed:

- Additional Insured - The Commercial General Liability policy shall be endorsed naming SAWS and the City as an Additional Insured for both ongoing and completed operations.
- Waiver of Subrogation - The Commercial General Liability policy shall be endorsed with the Waiver of Subrogation in favor of SAWS and the City.

- .7 Contractor's Pollution Liability Insurance with limits of \$2,000,000 per claim/occurrence/\$2,000,000 in the aggregate.

The policy shall provide either a "claims made" or an "occurrence based" coverage for all claims, liabilities, damages, costs, fees, and expenses of any kind or character arising out of any Pollution Condition(s) (as defined below) that is in any way related to Contractor's operations, actions or inactions, and completed operations associated with any work performed by Contractor, its subcontractors, or any of their respective employees, agents, representatives, or officers under this Contract.

If the Policy is "claims made" based, coverage must be maintained for a minimum of twenty-four (24) months after the date that a Conditional Letter of Acceptance is issued, or if the Contract is terminated for any reason, for a minimum of twenty-four (24) months following the date of termination.

The "claims made" policy retroactive date will be no later than the Contract effective date or the project commencement date, whichever is earliest.

If the Policy is "occurrence based", no policy retroactive date is required and, the twenty-four (24) months extension of coverage after the date that a Conditional Letter of Acceptance is issued, or if the Contract is terminated for any reason, is not required.

Any exceptions to the above cited coverage forms must be reviewed and approved by SAWS Risk Manager.

"Pollution Condition(s)" means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, sewage, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally

present in the environment in the amounts or concentrations discovered.

The Contractor's Pollution Liability Insurance will pay on behalf of the Contractor, SAWS and the City all claims, demands, damages, liabilities, costs, fees, and expenses of any kind or character for bodily injury or death, property damage, environmental or natural resource damage, and any fines, fees, assessments or penalties of any kind assessed by any governmental department, agency or commission that result from or are related to a Pollution Condition(s). Coverage will include all subcontractors hired by Contractor to perform any work on the Project or under this Contract.

The policy shall also include the following coverage provisions:

- .1 Provide for bodily injury to include physical injury, sickness, disease, mental anguish and emotional distress sustained by any person, including death;
- .2 All costs that are related to or that arise out of or from the investigation or adjustment of any claim or in connection with any court, arbitration, mediation, state administrative hearing, or other proceeding of any kind, including attorney's fees, expert witness fees, costs, charges and expenses of any kind or character, that arise out of or that are related to a Pollution Condition(s);
- .3 Coverage shall be Primary and in addition to any other valid and collectible insurance carried by SAWS and the City as respects to this Contract;
- .4 Coverage for Natural Resource Damages and any fines, fees penalties or assessments by any governmental agency, commission or department related to any Pollution Condition(s);
- .5 Insured versus Insured exclusion, if found in the policy, shall not apply to a claim by an Insured who qualifies as a Client of the Named Insured under the policy;
- .6 If Non-Owned Disposal sites are used for disposal of wastes, these sites shall be specifically included under the Contractors Pollution Liability Insurance policy; and
- .7 Coverage for punitive, exemplary, and multiple damages.

Commercial/Business Automobile Liability policy of the Contractor hauling excavated spoil shall either be endorsed to provide coverage under the CA-9948 endorsement or the Contractor's Pollution Liability Insurance policy shall be

endorsed to provide transportation coverage beyond the boundaries of the job site.

NOTE - For the Contractor's Pollution Liability, declare on the Certificate of Liability Insurance ("Certificate") the coverage form under which this line of insurance is written – either:

- Claims-made form - if the coverage form declared on the Certificate is the Claims-made form, also include on the Certificate the "Retroactive-date" when this line of coverage was first written or started, or the Contract date or the project commencement date, whichever is earliest; or
- Occurrence based form – no additional wording required.

- .8 Installation Floater – Physical Damage Insurance which insures SAWS and the City for damages to all Property Purchased for, or Assigned to, the Project commencing on the start date through completion. Policy Limits shall be in an amount equal to the total contract cost contracted herewith. The policy form shall be an All Risk form and shall include coverage for both during transit and while stored at the work site.
- .2 Contractor shall require all Sub-contractors to carry lines of insurance coverage appropriate to their Scope of Work performed.
- .3 Contractor agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and the City are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.
- .4 Contractor shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.
- .5 Contractor is responsible for the deductibles under all lines of insurance coverage required by these Insurance Specifications.
- .6 The stated policy limits of each line of insurance coverage required by these Specifications are MINIMUM ONLY and it shall be the Contractor's responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the Contractor's liability.
- .7 These minimum limits required of each line of insurance coverage may be either basic policy limits of the WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella liability form) or excess (Excess Liability

form) limits. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Insurance Specifications, does not release the Contractor from compliance herewith.

- .8 Each line of insurance coverage that is required under these Insurance Specifications shall be so written so as to provide SAWS and the City thirty (30) calendar days advance written notice directly of any suspension, cancellation or non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- .9 Within five (5) calendar days of a suspension, cancellation or non-renewal of any required line of insurance coverage, the Contractor shall provide SAWS a replacement Certificate with all applicable endorsements included. SAWS shall have the option to suspend the Contractor's performance should there be a lapse in coverage at any time during this Contract.
- .10 Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this Contract.
- .11 In addition to any other remedies SAWS may have, upon the Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, SAWS shall have the right to order the Contractor to stop performing services hereunder and/or withhold any payment(s) which become due to the Contractor hereunder until the Contractor demonstrates compliance with the Insurance Specifications hereof.
- .12 Nothing herein contained shall be construed as limiting, in any way, the extent to which the Contractor may be held responsible for payments for damages to persons or property resulting from the Contractor's or its sub-contractors' performance of the services covered under this Contract.
- .13 It is agreed that the Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAWS, the City and their employees and agents for liability arising out of operations under this Contract.
- .14 Contractor agrees that all lines of insurance coverage required by these Insurance Specifications shall be with insurance companies, firms or entities that have an A.M. Best rating of "A- ("A"- minus)" and a Financial Size Category of a "VII" or better. All lines of insurance coverage shall be of an "Occurrence" type except for the Contractor's Pollution Liability line of insurance coverage.

SAWS will accept worker's compensation insurance coverage written by the Texas Workers Compensation Insurance Fund.

- .15 SAWS reserves the right to review the above stated Insurance Specifications during the effective period of this Contract and any extension or renewal

hereof and to request modification of lines of insurance coverage and their respective liability limits when deemed necessary and prudent by SAWS' Risk Manager and Legal Department based upon changes in statutory law, court decisions, or circumstances surrounding this Contract.

In no instance will SAWS and the City allow modification whereupon SAWS and the City may incur increased risk exposure.

.2 Certificate(s) of Liability Insurance ("Certificate") Requirements

Prior to the commencement of any Services under this Contract and once notified by SAWS Contracting Official that your Company has been selected as the apparent successful Contractor pursuant to a competitive bid selection process, pending Board final approval, and, a request is made for you to submit your Company's Certificate of Liability Insurance, that Certificate must meet all of the following requirements:

- .1 The Contractor shall have completed by its insurance agent(s), and submitted to SAWS Contracting Department within 5 business days, a Certificate(s) of Liability Insurance ("Certificate(s)") providing evidence of the lines of insurance coverage pursuant to Articles 5.7.1.1 through 5.7.1.5 above.
- .2 The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, office and FAX phone numbers, email address, and contact person's name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with Articles 5.7.2.1.6 (Certificate Holder) and Articles 5.7.2.1.7 (Distribution of Completed Certificates) below.
- .3 SAWS will not accept Memoranda of Insurance or Binders as proof of insurance.
- .4 SAWS shall have no duty to pay or perform under this construction Contract until such certificate(s) and applicable endorsements have been received, reviewed and deemed 100% compliant with the CONTRACTOR'S STANDARD COMMERCIAL INSURANCE SPECIFICATIONS AND CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS as contained in the bid documents by SAWS' Risk Management/Contract Services Department. No one other than SAWS Risk Manager shall have authority to waive any part of these requirements.
- .5 The SAWS Project/Contract number(s) along with its Project Name must be included in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.
- .6 Certificate Holder - SAWS shall be shown as the Certificate Holder in

the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms and formatted as follows:

San Antonio Water System
c/o Ebix BPO
PO Box 100085-ZD
Ref. # (SAWS Contract/Project #)*
Duluth, GA 30096

**SAWS Contracting Official will include in the above address, the correct, complete Ref# in the written confirmation of your selection as a Contractor pending final Board approval.*

DO NOT BEGIN THE DISTRIBUTION OF ANY CERTIFICATE(S) BEFORE RECEIVING AND INSERTING THE COMPLETE REFERENCE NUMBER INTO THE CERTIFICATE HOLDER ADDRESS SHOWN ABOVE.

.7 Distribution of Completed Certificates - Completed Certificates shall be distributed by the Contractor as follows:

.1 Send Original:

.1 By Mail:

San Antonio Water System
C/O Ebix BPO
P.O. Box 100085-ZD
Ref. # (SAWS Contract/Project #)
Duluth, GA 30096

.2 By Fax: 1-770-325-6502

.3 By E-Mail: saws@ebix.com

.2 Send Copy to:

San Antonio Water System
Attention: Contract Administration
P.O. Box 2449
San Antonio, TX 78298-2449

.8 Contractor shall be responsible for obtaining Certificates of Insurance from the first tier Sub-contractor, and upon request furnish copies to SAWS.

.3 SURVIVAL

Any and all representations, agreements, conditions and warranties made by

Contractor under this Contract including, without limitation, the provisions of Articles 5.7.1.1.2, 5.7.1.1.3 and 5.7.1.1.4 of these COMMERCIAL INSURANCE SPECIFICATIONS AND CERTIFICATES OF LIABILITY INSURANCE REQUIREMENTS are of the essence of this Contract and shall survive the execution and delivery of it, and all statements contained in any document required by SAWS whether delivered at the time of the execution, or at a later date, shall constitute representations and warranties hereunder.

5.8 MATERIALS & WORKMANSHIP

- .1 MATERIALS - Unless otherwise specified, all materials incorporated in the permanent Work shall be new, and both workmanship and materials shall be of good quality in accordance with Specifications. The Contractor shall, if required, furnish satisfactory evidence as to the supply or manufacture, and quality of materials supplied. All materials that come in direct or indirect contact with potable water must conform to ANSI/NSF Standard 60 for direct additives and ANSI/NSF 61 for indirect additives and must be in full compliance with all current regulations of the TCEQ and any other applicable regulatory requirements.
- .2 USE OF MATERIALS WITHIN THE RIGHT-OF-WAY - The Contractor, with the approval of the SAWS COI, may use in the Work any suitable stone, gravel, or sand found in the excavation that otherwise meets or exceeds Contract Specifications. The Contractor shall not over excavate any material from within the right-of-way, which is not within the excavation limits as required under the Plans and Specifications. Any over excavation will be at the Contractor's expense. No recycled concrete shall be used.
- .3 SALVAGEABLE MATERIAL - Salvageable material, as stated by the Contract documents, shall remain the property of the Owner and shall be relocated and stored at the job site by the Contractor unless the Contract Document provide for storage elsewhere.
- .4 DISPOSAL OF NON-HAZARDOUS MATERIAL/SUBSTANCES - The Contractor shall be responsible for disposing of all Non-Hazardous Material as the term is defined in Article I herein including old concrete or any other Non-Hazardous Materials/Substances which is required to be removed from the Project. Unless a written exception is approved by Owner, such material shall not be deposited in any sanitary sewer, creek, river, watercourse or MS4 as the term is defined herein.
- .5 DISPOSAL OF HAZARDOUS MATERIAL/SUBSTANCES - The Contractor shall be responsible for disposing of all Hazardous Materials/Substances, as that term is defined in Article I herein, in accordance with all applicable Federal, state and local laws, rules, regulations or ordinances, and in accordance with any specific instructions set out in the Plans and Specification herein.
- .6 RECLAMATION OF LOW AREAS - The Contractor may undertake the reclamation of low areas with the prior approval of the Owner.

- .7 **BLOCKAGE OF THE MS4** - The Contractor shall comply with the provisions of the appropriate City Ordinances. In no event shall the Contractor block any portion of the MS4 with fill. Should any blockage occur, the Contractor shall remove such fill, at Contractor's expense, as directed by the SAWS COI.
- 5.9 **TESTING** - The Owner or the Consultant may require special inspection, testing or approval of material or Work for determining compliance with the requirements of the Contract Documents. Upon Owner-authorized direction by the Consultant, the Contractor shall promptly arrange for such special testing, inspection or approval procedure. Should the material or Work fail to comply with the requirements of the Contract Documents, the Contractor shall bear all costs of the special testing, inspection or approval as well as the cost of replacement of any unsatisfactory material or Work as provided by Article 5.10, otherwise, should the Work prove not defective, the Owner shall bear such costs and an appropriate Change Order shall be issued.
- 5.10 **REMOVAL OF DEFECTIVE WORK**
- .1 Contractor shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Work that does not conform with the Contract Documents (“Defective Work”). The Contractor shall be solely responsible for the removal of Defective Work. In the event of a failure of the Contractor to correct any such Defective Work in a timely manner, Owner shall have the right, but not the obligation, to correct or provide for the correction of such Defective Work and the costs and expenses reasonably incurred by Owner in connection therewith shall be reimbursed by the Contractor to Owner as provided in Article 7.5.1. Owner shall provide the Contractor with seven (7) days’ advance written notice prior to exercising its right to correct or provide for the correction of any Defective Work pursuant to this subsection .1.
- .2 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may, in its sole discretion, do so instead of requiring its removal and correction, in which case the Contractor’s compensation will be reduced as appropriate and agreed upon by Change Order.
- .3 The obligations specified in this Section establish only the Contractor’s specific obligation to correct the Defective Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Contractor under this Contract. This Section is intended to supplement (and not to limit) the Contractor’s obligations under the Contract Documents or Applicable Law.
- 5.11 **EQUAL MATERIALS** - It is not the intent of the Specifications to unreasonably limit materials to the product of any particular manufacturer or supplier. Where definite materials, equipment and/or fixtures have been specified by name, manufacturer or catalog number, it has been done so as to set a definite standard and/or a reference for comparison as to quality, application, physical conformity, and other characteristics. It is not the intention to discriminate against or prevent any dealer, jobber or manufacturer from furnishing materials, equipment, and/or fixtures that meet or exceed the

characteristics of the specified items. Unless otherwise provided for in the Specifications, Contractor's substitution of materials, equipment and/or fixtures shall not be made without prior written approval from the Consultant, and the Owner's request for substitutions will not be accepted from anyone except the Contractor, and such requests will not be accepted (if appropriate), until after the Contract has been awarded.

5.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- .1 Shop Drawings, Product Data, Samples and similar submittals are not part of the Contract. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.
- .2 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Engineer/Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor will be returned by the Engineer/Consultant without action. Contractor shall submit to Engineer/Consultant for review and approval or for other appropriate action, five (5) hard copies and/or electronic copies, if requested by COI, of all Shop Drawings, Product Data, Samples or similar submittals bearing a stamp or specific written indication that Contractor has satisfied the Contractor's responsibilities under the Contract Documents with respect to its review of its submission. All Shop Drawings, Product Data, Samples and similar submittals in regards to Pipeline Projects shall be provided to the Engineer/Consultant during pre-construction meeting.
 - .1 By approving and submitting Shop Drawings, Product Data, Samples and similar Submittals, the Contractor represents that the Contractor has determined and verified materials, quantities, specified performance criteria, installation requirements, catalog numbers, field measurements and filed construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
 - .2 Contractor shall give Engineer/Consultant specific written notice of each variation that the Shop Drawings, Product Data, Samples and similar submittals may have from the requirements of the Contract Documents, and, in addition, shall cause a specific Contractor notation to be made on each Shop Drawing, Product Data, Sample and similar submittals submitted to Consultant for review, approval, or other appropriate action highlighting each such variation.
 - .3 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data,

Samples or similar submittals until the respective submittal has been approved by the Engineer/Consultant. The Engineer/Consultant will review and return such submittals within twenty (20) calendar days or within a reasonable period so as to not delay the Project.

- .4 Engineer/Consultant's review, approval, or other appropriate action regarding Contractor's submissions will be only to check conformity with the design concept of the Project and for compliance with the information contained in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate component item will not indicate approval of the assembly into which the item is functionally integrated. Contractor shall make corrections required by Engineer/Consultant, and shall return the required number of corrected copies of Shop Drawings, Product Data, Samples or similar submittals to the Contractor. Contractor may be required to resubmit as required revised Shop Drawings, Product Data, Samples or similar submittals for further review and approval. Contractor shall direct specific attention in writing to any new revisions not specified by Contractor on previous Contractor submissions.
- .3 The Work shall be in accordance with approved submittals, except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer/Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer/Consultant in writing of such deviation at the time of submittal and (1) the Engineer/Consultant has given written approval regarding the specific deviation as a minor change in the Work, or (2) a Change Order or Work Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer/Consultant's approval thereof.
- .4 Where Engineer/Consultant requires by written request an approved Contractor Shop Drawing, Product Data, Sample, or similar submittals, any related Work performed by Contractor prior to Consultant's review and approval of the affected submission will be at the sole risk of Contractor.
- .5 The Contractor shall not be required to provide professional services which constitute the practice of architecture or Engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of Applicable Law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract

Documents, the Owner and the Engineer/Consultant will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a design professional, properly licensed in the State of Texas, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer/Consultant. The Owner and the Engineer/Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Engineer/Consultant have specified to the Contractor all performance and design criteria that such services must satisfy. The Engineer/Consultant will review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Documents.

5.13 CONTRACTOR'S WORK PROGRESS SCHEDULE

- .1 Work Progress Schedule Method. Contractor shall create and maintain a Critical Path Method (hereafter referred to as "CPM") Work Progress Schedule, showing the manner of execution of Work which Contractor intends to follow, in order to complete the Project within the allotted time. The "Work Progress Schedule" and successive updates or revisions thereof shall mean the schedule approved by the Owner and Consultant for execution of the Project, which has been developed and shall be continuously updated by the Contractor for the Contractor's use in managing the Work. The Work Progress Schedule shall employ computerized CPM for the planning, scheduling and reporting of Work. Contractor shall create and maintain the Work Progress Schedule using project management scheduling software compatible with the Owner's project management scheduling software. The observance of the requirements is an essential part of the Work to be performed under the Contract. The Work Progress Schedule is for the information of the Owner and to demonstrate that the Contractor has complied with requirements for planning the Work. The Owner's acceptance of a schedule and schedule updates or revisions constitutes the Owner's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.
- .2 Scheduling Personnel. Unless otherwise indicated in writing by the Owner, Contractor shall provide an individual, who shall be referred to hereafter as "Scheduler," to create and maintain the Work Progress Schedule. Scheduler shall be proficient in CPM analysis, possess sufficient experience to be able to perform required tasks on the specified software and able to prepare and interpret reports from the software. Scheduler shall be made available for discussion or meetings when requested by the Owner.
- .3 Submission of Work Progress Schedule(s).
 - .1 Ten days after the pre-construction meeting Contractor shall submit through

CPMS the Work Progress Schedule(s), as defined in 5.13.1,

- .2 The Work Progress Schedule must 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 or “Hold Points” designated by the Owner during the review process, identify the critical path for completing the Work, identify when all Subcontractors will be utilized, and take into consideration any limitations on Working Hours. This Work Progress Schedule, a copy of which shall be made available at the job site(s), must contain sufficient detail to indicate that the Contractor 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.
 - .3 All Work Progress Schedule submittals shall be in the electronic form to include PDF plots of the schedule, a PDF plot defining the Critical Path and two week look-ahead, and include the native compatible scheduling file format. In addition to making a copy available at the job site(s), Contractor shall submit the Work Progress Schedule to the Owner and the Consultant via CPMS
 - .4 Contractor shall maintain a schedule of Shop Drawings and Sample Submittals and each submitted Shop Drawing and Sample Submittal shall list each required submittal and the expected time(s) for submitting, reviewing and processing such submittal.
 - .5 The Owner shall review the Work Progress Schedule within fourteen (14) calendar days for compliance with the Specifications and notify Contractor of its acceptability.
- .4 Work Progress Schedule Sequencing. The Work Progress Schedule shall show the sequence and interdependence of activities required for complete performance of the Work. Contractor shall be responsible for assuring Work sequences are logical and show a coordinated plan of Work in accordance with the sequence of work outlined in the Plans. The purpose of the Owner requiring the Work Progress Schedules shall be to:
- .1 Ensure adequate planning during the execution and progress of the Work in accordance with the allowable number of calendar days and all milestones;
 - .2 Assure coordination of the efforts of Contractor, the Owner, utilities and others that may be involved in the Project and those activities are included in the Work Progress Schedule highlighting coordination points with others;
 - .3 Assist Contractor and the Owner in monitoring the progress of the Work and evaluating proposed changes to the Contract; and

- .4 Assist the Owner in administering the Contract Time requirements.
- .5 Work Progress Schedule Joint Review and Acceptance.
 - .1 Within fourteen (14) calendar days of receipt of Contractor's proposed Work Progress Schedule, the Owner shall evaluate the Work Progress Schedule for compliance with this specification and notify Contractor of its findings. If the Owner requests a revision or justification, Contractor shall provide satisfaction to the Owner within seven (7) calendar days. If Contractor submits a Work Progress Schedule for acceptance, based on a sequence of work not shown in the Plans, Contractor shall notify the Owner in writing of said sequence of work, separate from the Work Progress Schedule submittal.
 - .2 Owner's review and acceptance of Work Progress Schedule only is for conformance to the requirements of the Contract Documents. Review and acceptance by the Owner of Contractor's Work Progress Schedule does not relieve Contractor of any of its responsibility for the Work Progress Schedule, Contractor's ability to meet interim milestone dates (if so specified) or meeting the Contract completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of Contractor's Work Progress Schedule. In the event Contractor fails to define any element of Work, activity or logic and Owner's review does not detect this omission or error, such omission or error, whether or when discovered by Contractor or the Owner, shall be corrected by Contractor at the next monthly Work Progress Schedule update and shall not affect the Project or Contract completion date.
 - .3 Acceptance of the Work Progress Schedule, or update and/or revision thereto, does not indicate any approval of the Contractor's proposed sequences and duration.
 - .4 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute the Owner's consent to any changes, alter the terms of the Contract, waive either the Contractor's responsibility for timely completion, or waive the Owner's right to damages for the Contractor's failure to do so.
 - .5 The Contractor's scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract Times.
 - .6 Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner, as of the date of the submittal; of the accurate depiction of all progress to date and that the Contractor will follow the schedule as submitted in performing the Work.

.6 Work Progress Schedule Updates and Revisions - The Work Progress Schedule and the Submittal Schedule shall be updated continuously and submitted monthly, as a minimum, to reflect progress to date and current plans for completing the Work. In addition to the requirements of the Work Progress Schedule stated elsewhere herein, each Work Progress Schedule update shall include a progress narrative (“Progress Narrative”), explaining the Project’s progress, identifying all progress made out of sequence, defining the Critical Path, identification of any potential delays, and other relevant data. The progress narrative shall be uploaded to CPMS along with the Payment Application. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule, Progress Narrative and “Executive Summary.” The anticipated date of Substantial Completion shall show all extensions of time granted through Change Order(s) as of the date of the update. The Contractor, after coordination and consultation with the Owner, may revise the Work Progress Schedule logic only with the Owner’s concurrence, which will not be unreasonably withheld, when, in the Contractor’s judgment, it becomes necessary for the management of the Work. The Contractor shall identify all proposed changes to schedule logic to Owner and to the Engineer/Consultant via an Executive Summary accompanying the updated schedule for review prior to implementation of any revisions. The Executive Summary shall include not only the proposed changes to the schedule logic but also the reason(s) for the proposed revision(s), what the revision(s) is (are) composed of and how the revision(s) is (are) incorporated into the Work Progress Schedule. The Executive Summary shall be uploaded to CPMS along with the Payment Application and Progress Narrative. If the Contractor’s operations are materially affected by changes in the Plans or in the amount of Work, or if he has failed to comply with the anticipated progress, the Contractor shall submit a revised schedule reflecting the change in progress, within five (5) calendar days of the occurrence of such event. The schedule may also be revised by the Contractor in response to the reasonable request of the Owner.

.1 Contractor shall meet with the Owner each month, at a scheduled Work Progress Schedule update meeting, to review actual progress made through the date of the Work Progress Schedule update, as determined by the Owner. The review of progress shall include dates of activities actually started and/or completed, the percentage of Work completed, the remaining duration of each activity started and/or completed, and the amount of Work still to complete, with an analysis of the relationship between the remaining duration of the activity and the quantity of material to install over that given period of time with a citation of past productivity.

.2 Each schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of CPM scheduling by the Contractor, Owner, and Engineer/Consultant. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project cash flow for the Project. The layout of the Work Progress Schedule shall include the following columns:

1. Activity ID
 2. Activity Description
 3. Original Durations
 4. Remaining Durations
 - Early Start and Finish Dates
 - Late Start and Finish Date
 - Total Float
 - Performance Percent Complete
 - Display logic and target bars in the Gantt bar chart view
- .3 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Engineer/Consultant is required to review submittals, shop drawings, product data, or samples.
- .4 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.
- .5 If any updated schedule exceeds the time limits set forth in the Contract Documents for Substantial Completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in Substantial Completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Engineer/Consultant to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Engineer/Consultant.
- .6 Neither the Owner nor the Contractor shall have exclusive ownership of float time in the schedule, and all float time (if any) shall inure to the benefit of the project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity duration so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.
- .7 Submission of any schedule under this Contract constitutes a representation by the Contractor that as of the date of the submittal: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and duration used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work

in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining work in the sequence and time indicated.

- .8 The Contractor shall submit in conjunction with and no later than its monthly request for payment, a copy of the current adjusted Work Progress Schedule showing the progress of the Work to date and the progress narrative set forth in 5.13.6. If it is determined by Owner that the Contractor is not maintaining its anticipated progress, then the Owner may withhold approval of the monthly progress payment as provided in Article 7.5.

5.14 SEQUENCE OF CONSTRUCTION

- .1 PHASES OF CONSTRUCTION - The Contractor shall perform the Work as provided in the "Special Conditions" or as shown on the Contract Documents. The Contractor may submit to Owner a revised "Contractor Phasing Plan" prior to start of construction for review and approval by the Owner. If the Owner determines that the revised Contractor's Phasing Plan is not acceptable as being in the best interest of the Owner, then the Contractor shall proceed with the Work in accordance with the Owner's Phasing Plan at no additional cost to the Owner.
- .2 DETOUR ROUTES - A detour route for through traffic (the means and methods of which as to be determined by the Contractor) must be provided by the Contractor where the proposed construction is located within the limits of a street designated as "Collector", "Secondary" or Primary". The detour route must be approved by the ROW owner, such approval to be obtained by Contractor prior to construction. The Contractor shall not begin construction of the Project or close any streets until adequate barricades, detour signs and electronic message boards (if needed) have been provided, erected and maintained in accordance with the detour route and details shown on the Plans or as shown on the approved traffic control plan. The Contractor shall notify the SAWS COI forty-eight (48) hours in advance of closing any street to through traffic. Local traffic shall be permitted the use of streets under construction where feasible.

5.15 CONSTRUCTION STAKES – Unless otherwise specified, all control lines and bench marks suitable for use in the layout will be furnished by the Owner. Lay out of the Work shall be performed in accordance with the Contract Documents. Controls, bench marks and property boundary markers shall be carefully preserved by Contractor by use of flags, staffs or other visible devices and in case of destruction or removal by Contractor or its employees, such controls and benchmarks shall be replaced by a Registered Professional Land Surveyor ("RPLS"), licensed in the State of Texas at Contractor's expense.

- .1 During the course of the Work, Contractor's RPLS shall certify in writing, along with the monthly payment application, that all elevations and grades are being installed in compliance with the Contract Documents and upload the certification to CPMS.
- .2 The Contractor shall verify that the controls and benchmarks are in accordance with the Contract Documents one week prior to beginning the Work. Contractor

shall provide a copy of the surveyor's insurance certificate prior to start of Work. Contractor shall submit, prior to start of Work, a letter designating the Registered Professional Land Surveyor, licensed in the State of Texas.

5.16 PUBLIC UTILITIES

.1 Owner's Responsibility:

- .1 The Owner shall cause to be sent a set of Plans and Specifications to utilities listed on the plans. The Owner shall request that the utilities review such Plans and Specifications to determine and/or verify the location of any utilities within the Project Site. The utility shall further be requested to communicate in writing the results of such review to the Contractor.

.2 Contractor's Responsibility:

- .1 The Contractor is hereby required to become familiar with all the existing utility structures, lines and mains that are known to exist and may be encountered within and/or adjacent to the limits of the work covered by the Contract. While the existence and location of underground utilities indicated on the Plans and Specifications are taken from the most current utility records available to the Consultant and/or Engineer, the Contractor understands and acknowledges that the notation of such underground utilities on the Plans and Specifications does not constitute a warranty, representation or guarantee by the Owner or Consultant regarding those Underground Facilities. In addition, Contractor further understands and acknowledges that Owner and Consultant are under no obligation to indicate the location of any private service lines on the Plans and Specifications.
- .2 The Contractor shall go to the Project Site, locate, and verify depth of any utilities indicated on the Plans prior to the Commencement of Work. The Contractor shall further investigate the possible location of any private service lines prior to the Commencement of Work as defined under Article 8. To facilitate this obligation on the part of Contractor, the Contractor shall communicate with the utilities listed on the Plans and Specifications, call for locations and subsequently visit the project site with a qualified utility representative of each utility listed on the Plans and Specifications, prior to the commencement of Work. The information resulting from such on-site investigations shall govern over the information notated on the Plans and Specifications, when and if a conflict between such information arises. In the event such investigations on the part of Contractor result in a utility location adjustment, Contractor shall not commence Work until the completion of such adjustment has been completed.
- .3 The Contractor acknowledges and agrees that maintaining continuity of utility service to utility customers is critical, including but not limited to the need for temporary water services.

- .4 The Contractor shall be responsible for protecting the integrity of all utilities (public or private) either shown on the Plans and Specifications or discovered during the Contractor investigations required in Article 5.16.2.2 herein. Such method of protection shall first be reviewed and approved by the affected utility.
 - .5 The Contractor shall be responsible for any damages to any utilities (public or private) either shown on the Plans and Specifications or discovered during Contractor investigations acquired in Article 5.16.2.2 herein. Any existing utilities shown on the Plans and Specifications or discovered during Contractor investigations set out herein which cannot be relocated shall be protected by the Contractor as part of the original Proposal price submitted by Contractor. The Contractor shall pay for temporary relocation of utilities for the Contractor's convenience.
 - .6 Contractor shall be responsible for damage to utilities not shown on the Plans and Specifications and not discovered during Contractor's investigations required in Article 5.16.2.2 herein when the existence of such a utility or the suspected existence of such a utility should have been anticipated and investigated by the Contractor, based upon certain physical manifestations observed during the course of construction or other tangible evidence which constitutes common knowledge in the construction industry of the probable existence of a utility. Temporary clearance of high voltage (600 volts and above) and overhead electrical lines is required prior to the operation of equipment within 10 feet of such lines (Texas Health and Safety Code, sections 752.003 and 752.006). The Contractor shall bear the expense to obtain the necessary temporary clearance from the high voltage line operator, owner or utility company.
- 4 In the case of sewer, water, gas, electric, telephone, cablevision cable, or any other utility shown on the Plans and Specifications and/or discovered during the Contractor's investigations required in Article 5.16.2.2 herein, the Contractor will use care in excavating over, under and around such lines and will provide all necessary temporary bridging during construction so as to maintain continuous service of the utility line. The Contractor shall backfill around the main and complete its construction operations in such a manner as to leave the utility line firmly and securely bedded in its original position without damage to any protective coatings.
 - .5 In instances where gas or water mains are exposed during construction, the utility company owning or operating the service shall be given at least a twenty-four (24) hour notice by the Contractor prior to backfilling in order that the protective coating on the mains may be inspected and/or repaired by utility company.
 - .6 BRACING AND SUPPORTING - In areas where utilities are known to be near the Project Site, and could be damaged by soil movement, slips or cave-ins, the Contractor shall take all precautions necessary to protect such utilities from damage and shall pay for the repair of any such damages caused by Contractor's failure to properly protect the utility.

- 5.17 SUBSURFACE CONDITIONS - Reports of explorations and tests of subsurface conditions at the construction Site, where applicable, may be available for review. These reports if available were procured by SAWS in order to generally forecast soil conditions at various depths to assist the Consultant in designing the Project. The logs and descriptive data are NOT PART OF THE CONTRACT DOCUMENTS but are made available for the general information of bidders and SAWS SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTY (INCLUDING WITHOUT LIMITATION AND IMPLIED WARRANTIES OF MERCHANTABILITY) OR GUARANTEE AS TO SUITABILITY OF FITNESS OF THE REPORTS, DATA OR INFORMATION FOR ANY PARTICULAR PURPOSE and neither SAWS nor the Consultant assumes any obligation or responsibility, either specific or implied, for the accuracy or completeness of any information contained therein. Sub-surface conditions along and across the Project Site may vary significantly from those shown on the test reports. All excavations shall be unclassified (as provided in the Specifications) and shall include all materials encountered regardless of their nature or the manner in which they are removed.
- 5.18 WORKING HOURS - No Work, with the exception of such items as curing of concrete or maintenance of barricades, will be allowed by the Owner between the hours of 6:00 p.m. and 7:00 a.m. of the following day, unless contained in the Contract Documents, directed by Owner or requested in writing by Contractor and approved by Owner and the ROW Owner. In addition to no Work being permitted on Sundays or holidays, no Work shall occur on Saturdays without specific, written permission of the Owner's representative forty-eight (48) hours in advance of intent to perform Work.
- 5.19 USE OF STREETS RIGHT OF WAY - The Contractor shall confine the movements of all steel tracked equipment to the limits of the Project and any such equipment will not be allowed to use City, public or private streets unless being transported on pneumatic tired vehicles. Any damage to existing City streets caused by any of the Contractor's equipment shall be repaired by Contractor at its own expense upon direction, and in the manner prescribed by City's or other appropriate entities specifications and the SAWS COI.
- 5.20 DAMAGES TO STREETS - caused by the Contractor, within the limits of the Project but not within the current phase being constructed, shall be repaired by the Contractor at its own expense upon direction by the SAWS COI.
- 5.21 DUST CONTROL - The Contractor will apply appropriate amounts of water (or other appropriate substance) to the area under construction and on detours as required to maintain sufficient moisture content in the surface layer for dust control.
- 5.22 SANITARY PROVISIONS - The Contractor shall provide and maintain in a neat, sanitary condition, restroom facilities for the use of its employees and authorized on-site visitors as may be necessary to comply with the requirements and regulations of the City Health Department and of the State Department of Health.
- 5.23 USE OF EXPLOSIVES - The use of explosives of any kind for this Project is strictly prohibited.

5.24 WATER - The responsibility shall be upon the Contractor to provide and maintain an adequate supply of water for construction and on-site domestic consumption. Any connections and piping that the Contractor deems necessary for providing and maintaining an adequate water supply to the Site shall be installed at its expense and at locations approved by the SAWS COI. A fire hydrant meter is required. Before final Project acceptance, all temporary connections and piping installed by the Contractor in accordance with this paragraph shall be removed in a manner satisfactory to the SAWS COI.

5.25 ELECTRICITY - All electric current required by the Contractor at the Site shall be procured by Contractor. All necessary meters, switches, connections and wiring shall be installed at locations approved by the SAWS COI. Before final acceptance, all meters, switches, connections and wiring installed by the Contractor pursuant to this paragraph shall be removed in a manner satisfactory to the SAWS COI.

5.26 CLEANING

- .1 The Contractor shall at all times keep the Project Site safe and free from accumulation of waste materials or rubbish caused by the Work under this Contract. This includes the maintenance of grass, shrubbery, and trees within the ROW.
- .2 Upon completion of the Work, and prior to the Owner's final inspection, the Contractor shall present the Site in a neat and clean condition, prepared for acceptance by Owner.
- .3 Prior to final acceptance of the Work, Contractor shall reasonably restore the Project Site to its pre-Project condition (accounting for such restoration concerns as cosmetic appearance, landscaping, drainage gradients, accessibility, etc.) to the extent permitted by the Project improvements. All of this incidental Work is to be performed by Contractor to the satisfaction of the SAWS COI.

5.27 ACCESS REQUIREMENTS - The Contractor shall provide access to residents and businesses affected by the construction of this Project to the greatest extent possible.

5.28 SAFETY PRECAUTIONS AND PROGRAMS

- .1 In the performance of this Contract, the Contractor shall protect the public, SAWS and the City by taking all precautions necessary to safeguard persons from death or bodily injury and to safeguard property of any nature whatsoever from damage. Contractor shall be responsible for institution and enforcement of appropriate safety measures for the prevention of accidents at the Site. The Contractor shall assign a Safety Officer who shall be a competent safety personnel properly trained in safety procedures to the Project who will be responsible for regular visits to the Site in order to assure the Contractor's Safety Management Plan is implemented and maintained throughout the duration of the Contract. Where any dangerous condition or nuisance exists in and around construction Sites, equipment and supply storage that are in any manner connected with or arise from

the performance of this Contract, the Contractor shall provide and maintain warning of such danger or nuisance. The Contractor shall not create any dangerous condition or nuisance of any nature whatsoever in connection with the performance of this Contract including, but not limited to, excavations and obstructions, unless necessary to its performance, and in that event the Contractor shall provide and maintain at all times a means of warning of any danger or nuisance so created. The duties of the Contractor in this paragraph shall be non-delegable and the Contractor's compliance with the specific recommendation and requirements of SAWS as to the means of warning shall not excuse the Contractor from the faithful performance of these duties should such recommendations and requirements not be adequate or reasonable under the circumstances. The Contractor shall take all precautions necessary for the safety of and shall provide protection to prevent damage, injury, or loss to:

- .1 All employees on the Work, and all other persons who may reasonably be foreseen to be affected by the Work.
 - .2 All the Work and all materials to be incorporated at street crossings, along proposed detour routes, and at material stockpiles. Where directed by the Owner or its duly authorized representative, the Contractor shall provide and maintain suitable warning signs, barricades and lights, in accordance with the details included in the Contract Documents, to direct traffic around the Work in progress and to assure the safety of the public. The Contractor shall provide adequate warning signs, barricades, and lights and, where necessary, flagmen for the Project or portions of the Project within which operations are being prosecuted in any one day or which will be closed overnight.
 - .3 Other property at the Site or adjacent thereto, including but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- .2 The Contractor shall comply with all Applicable Law including but not limited to the U.S. Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (Public Law 91-596 and all subsequent amendments) and under Section 107 of the Contract Work Hours and Safety Standards Act (Public Law 91-54 and all subsequent amendments). This Project is subject to all of the Safety and Health Regulations (CFR 29, Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974 and CFR 29, Part 1910 and all subsequent amendments, General Industry Safety and Health Regulations Identified as Applicable to Construction. Contractors shall be knowledgeable with the requirements of these regulations and any amendments thereto.
 - .3 On trench excavation that exceeds a depth of five (5) feet, trench excavation protection shall be accomplished as required by the most current provisions of part 1926 subpart P - Excavations, of the Occupational Safety and Health's Standards and interpretations and as further defined in the note(s) on the Plans

and other Contract Documents.

- .4 In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor resulting from emergency Work shall be considered by Owner in accordance with Articles VI and VIII for Completion Time.
- .5 The Contractor shall provide, at the Site, such equipment and medical facilities as are necessary to supply first aid service to anyone who may be injured in connection with the Work. Such equipment shall comply with the most current regulations of the Occupational Safety and Health Administration of the United States Department of Labor.
- .6 The Contractor must promptly report in writing to the Owner all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on or adjacent to the Site which caused death, personal injury, or property damage, giving full details and any statements of witnesses. In addition, if death, serious injury, or serious damage is caused, the accident then shall be reported immediately by telephone or messenger to the SAWS COI and/or Owner's Representative.
- .7 SAWS requires all Contractor job sites shall be immediately accessible to appropriate local, State and Federal agency safety officials.
- .8 This Section shall in no way be interpreted or construed to limit Contractor's Indemnification obligations under Article 2.3 of the Contract.
- .9 SAWS may, in its sole discretion, at any time, order in writing a temporary stand down of Contractor's performance of the Work ("Safety Stand-Down Order" (SSDO)) as a result of any one or more Safety Incidents, whereupon Contractor shall immediately direct all of Contractor's personnel and sub-contractors to stop all Work and to require Contractor to conduct a comprehensive review of Contractor's safety management plan and any Site conditions affecting safety at any Project Site, for the purpose of (i) identifying any safety hazards and unsafe working conditions, (ii) conducting safety training of the Contractor's personnel involved in performance of the Work who were or may have been exposed to harm in connection with such Safety Incident(s), and (iii) taking any corrective action that Contractor determines to be necessary and appropriate to fulfill its obligations in accordance with this Contract. Upon receipt of Owner's Safety Stand-Down Order, Contractor shall not resume performance of the Work until it has issued to SAWS a written report, which shall be due within forty-eight (48) hours of the receipt of Owner's Safety Stand-Down Order, detailing the course of action that Contractor has taken, or plans to take, to resolve the Safety Incident(s) described therein, and to prevent the recurrence thereof. After reviewing such course of action with SAWS, Contractor shall, in the exercise of the Contractor's reasonable judgment, propose the date by which Contractor will complete all corrective actions. Work shall resume only upon SAWS delivery of further written notice to Contractor withdrawing the SAWS' Safety Stand-Down Order,

which notice of withdrawal shall not be issued until SAWS is reasonably satisfied that Contractor has sufficiently implemented all appropriate corrective actions as necessary to enable Contractor to safely resume Work, fulfill its contractual obligations set forth in this Contract, and thereby avoid recurrence of the Safety Incident(s). Contractor shall not be entitled to an adjustment of the Contractor's compensation, or the Contract Time, as the result of SAWS issuance in good faith of a Safety Stand-Down Order. If Contractor fails to implement the corrective action in the manner proposed by Contractor and determined by SAWS to be reasonably acceptable, such failure shall be deemed a material breach of this Contract and SAWS may, without further notice, terminate this Contract for cause. In responding to any Safety Stand-Down Order, Contractor's evaluation of the need for, and its plan of, corrective action shall be undertaken as an independent contractor, pursuant to this subsection, and nothing herein shall be construed or interpreted to mean that SAWS has assumed or agreed to assume any duty of care to the Contractor or its personnel, or to provide guidance or instruction as to the Contractor's means and methods for managing safety as required by this Contract. Any action taken by SAWS hereunder to enforce SAWS rights to require Contractor to fulfill its safety obligations under this Contract shall be deemed to be undertaken solely for the purpose of fulfilling SAWS contractual expectation of results in terms of delivery of the Project without causing injury or harm to persons or property.

ARTICLE VI. CONTRACT CHANGES:

- 6.1 CHANGE ORDERS - The Contract Sum and/or the Contract Time may be increased or decreased only by written Change Order. A Change Order signed by the Contractor indicates its acceptance and approval thereof including the adjustment in the Contract Sum and/or the Contract Time. Any compensation paid in conjunction with the terms of a Change Order shall comprise the total compensation due the Contractor for the work or the change defined in the Change Order. By signing the Change Order, the Contractor acknowledges that the stipulated compensation includes payment for the Work required under the Change Order plus any payment allowed for the interruption of schedules, stop work orders, extended overhead, delay, or any other impact, claim or ripple effect; and by signing the Change Order the Contractor waives any reservation or claim for additional compensation with respect to the subject of the Change Order. Unless modified by the Change Order, all Work performed under a Change Order shall be completed in accordance with these Contract Documents. Each Change Order shall be specific and final as to prices and extensions of time with no reservations or other provisions allowing for future additional money or time as a result of the changes identified and fully compensated in the change order.
- 6.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract and Applicable Law consisting of additions, deletions or other revisions and the Contract Sum and/or the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order and shall be performed by Contractor under the applicable provisions of the Contract Documents as provided herein.
- .1 MAJOR CHANGES IN THE WORK - any significant change in a Major Bid

Item constitutes a major change in the Work and shall be implemented by a Change Order that shall be binding on the Owner and Contractor. A significant change that constitutes a Major Change in the Work shall be defined as follows:

- .1 An increase or decrease of five percent (5%) or more in the number of units (not price) for a Major Bid Item as included in the Consultant's estimated quantities included in the Contract Documents; or
 - .2 An increase or decrease of five percent (5%) or more in the dollar value of a lump sum, Major Bid Item.
 - .3 Any change in the Contract Sum resulting from a Major Change in the Work, which reflects among other things, quantity changes, market price changes, and any quantity or volume discounts that might apply, shall be determined as specified in Article 6.5.
- .2 MINOR CHANGES IN THE WORK - The SAWS COI will have authority to order such minor changes in the Work not involving an adjustment in the Contract Sum or Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be implemented by a written directive (a "Work Change Directive") and shall be binding on the Owner and Contractor. The Contractor shall carry out any written directive promptly.
- .1 If the Contractor does not agree with the SAWS COI that a Minor Change in the work is minor and will result in no adjustment in Contract Sum or Contract Time, he must so notify the Owner in writing, within seven (7) calendar days of issuance of the written directive and prior to beginning any disputed Work. If the Contractor fails to file such written notification as provided for above, he shall waive and forever forfeit its rights to file a claim for additional compensation or time for the Work under this section.
 - .3 In the event there is a Major Change In The Work as provided for in Article 6.2.1, that causes an increase in the number of units for a Major Bid item, Owner may consider a price increase for the Major Bid item for those additional units. In any event the Contractor shall not be entitled to an adjustment of price due to a decrease in a Major Bid Item.
- 6.3 Contractor proposals, along with the supporting data (including impact to the critical path, if any) for the proposals as specified in Article 6.5.4, shall be submitted no later than seven (7) calendar days for Pipeline Projects or fourteen (14) days for treatment and facility projects after the owner's issuance of an RFP request by Owner's Representative, unless Owner's Representative grants an extension. Failure of Contractor to provide the complete and proper proposal including all support will not be cause for the Contractor to claim delay or additional time.
- 6.4 Unless procured under Texas Government Code Chapter 2269, the entire cost of extra Work resulting from Change Orders including the incremental cost of extra Work resulting from any prior Change Orders, modifications, or additions so ordered, shall

not cumulatively exceed twenty-five percent (25%) of the original Contract Sum, in accordance with Texas Local Government Code, Chapter 252 and provided further that the price is agreed upon in writing by Owner and Contractor before materials are furnished or the Work is done. Contractor shall be responsible for keeping records that track the Contractor's cumulative total for Change Orders and Contractor, by entering this Contract, approves, understands and agrees that no Work is approved, no payment will be made, and no Change Order is authorized, that exceed the statutory limit provided herein and any Work undertaken or performed by the Contractor in excess of this amount is at the Contractors sole risk and expense.

- 6.5 Changes or Credits for the Work covered by an approved Change Order shall be determined by one or a combination of the following methods:
- .1 UNIT PRICE - Submitted by the Contractor in the original Contractor Proposal as part of the base bid or as a designated additive or deductive alternate, and if agreed to by the Contractor and the Owner, appropriately adjusted either upward or downward to reflect any increases or decreases in the amount of labor, material or equipment as they relate to Major Bid Items.
 - .2 AGREED CONTRACT CHANGES - Lump Sum Agreement between Owner and Contractor as to the price, quantity and time for changes in the Work. SAWS will submit to the Contractor in CPMS an RFP developed by SAWS using industry standard methods for the additional work. Should the Contractor agree with the RFP cost, Contractor would need to accept the cost in CPMS and no additional information is required. Should the Contractor not agree with the RFP cost submitted, then the Contractor shall submit an itemized, estimated cost breakdown together with supporting data. This itemized breakdown shall be in accordance with the requirements established in Article 6.5.4 and 6.5.5 and will be used as a basis for negotiation.
 - .3 FORCE ACCOUNT - If no Agreed Contract Change or unit price can be reached after good faith negotiations between SAWS and Contractor, the Owner may direct the Work be performed by the Contractor on a Force Account basis, and payment by SAWS shall be upon the basis of Actual Cost of the Work as specified in Article 6.5.4 plus the participation allowances as specified in Article 6.5.5.
 - .4 ACTUAL COST OF THE WORK – The “Actual Cost” incurred by the Contractor to perform the additional Work. Contractor shall provide a complete breakdown of the Actual Costs to the Owner on a daily basis as follows:
 - .1 Labor: Estimated labor costs to be included for self-performed Work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the Contractor reasonably anticipates will perform the Change Order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined in paragraphs 6.5.5 of this Article.

- .2 Labor burden shall be allowed at a maximum of 35%. Any burden in excess of the percentage shown shall be submitted (with all proper backup documentation) for review and approval by the Owner and will be subjected to audit.
- .3 Materials: Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased.
- .4 The Contractor's actual incremental ownership or rental cost of equipment during the time of use on the extra Work. Rental cost shall be based on current Rental Blue Book for Construction Equipment or Equipment Watch rates (hereafter collectively referred to as the Blue Book). In determining the Blue Book rates, Contractor shall calculate the cost of use for the equipment based on the rate most beneficial to the Owner. Contractor shall identify the type and make of equipment used including the model number.

For Contractor-owned machinery, trucks, power tools or other equipment, necessary for use on Change Order work, the Blue Book rate, as modified by the following, will be used to establish Contractor's allowable hourly rental rates. Equipment used shall be at the rates in effect for each section of the Blue Book at the time of use. The following formula shall be used to compute the hourly rates:

$$H = \underline{M \times R1 \times R2} + OP$$

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Where H = Hourly Rate

M = Monthly Rate

R1 = Rate Adjustment Factor

R2 = Regional Adjustment Factor

OP = Operating Costs

If Contractor-owned machinery and/or equipment is not available and equipment is rented from an outside source, the hourly rate shall be established by dividing the actual invoice cost by the actual number of hours the equipment is involved in the Work. Owner reserves the right to limit the hourly rate, weekly or monthly basis, to comparable Blue Book rates whichever cost is more advantageous to SAWS. When the invoice specifies that the rental rate does not include fuel, lubricants, repairs and servicing, the Blue Book hourly operating cost shall be allowed to be added for each hour the equipment operates. The allowable equipment hourly rates shall be paid for each hour that the equipment is involved in the Work. Fuel necessary to operate the equipment will be considered as a separate direct

cost associated with the change order work.

- .5 Insurance and any extra bond premiums shall be allowed at a maximum of two (2%) percent of the total change order cost. Any insurance and extra bond premiums in excess of the percentage shown shall be submitted for review and approval by the Owner and will be subjected to audit.

.5 PARTICIPATION ALLOWANCE

- .1 For Contractor's proposals covering both increases and decreases in the amount of the Contract, the application of overhead and profit percentages (as provided in the following tables) shall be on the net increase in the Actual Cost for the Contractor or Subcontractor performing the Work. However, where the Contractor or first tier Subcontractor receives proposals for additive and deductive amounts from separate sub tier subcontractors, the commission shall be allowed on the added amounts prior to subtraction of the credit amounts. The cost of such extra Work shall be added to the Contract Sum by a Written Change Order as specified in Article 6.1. For purpose of clarity, Owner will only pay overhead and profit under this section for work actually performed on the Project. The following tables provide further explanation of the application of the provisions in this Article.
- .2 Maximum Markup Percentage Allowable on Self-Performed Work: With respect to pricing Change Orders, the maximum markup percentage fee to be paid to any Contractor (regardless of tier) on self-performed Work shall be a single markup percentage not-to-exceed twenty percent (20%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the Change Order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work as shown in the tables below.
- .3 Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors: With respect to pricing the portion of Change Order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Prime Contractor supervising the lower tier contractor's work shall not exceed five percent (5%) of the net of all approved Change Order work performed by all subcontractors combined for any particular Change Order proposal as shown in the tables below.
- .4 No Markup on Bonds and Liability Insurance Costs or Permit Cost: Change Order cost adjustments due to increases or decreases in bond or insurance or cost to obtain permits (if applicable) shall not be subject to any Markup Percentage Fee.
- .5 Direct and Indirect Costs Covered by Markup Percentages: As a further clarification, the agreed upon Markup Percentage Fee as shown in the table

below is intended to cover the Contractor's overhead and profit and all direct/indirect costs associated with the Change Order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: Home office expenses, branch office and field office overhead expense of any kind, extended field presence, project management, superintendents, general foremen, estimating, engineering, coordinating, expediting, purchasing, detailing, legal, accounting, data processing or other administrative expenses, consumables, shop drawings, permits, auto insurance and umbrella insurance, pick-up truck costs, and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase or lease cost of less than \$750.

- .6 No separate allowances for warranty expense will be allowed as a direct cost of a Change Order. Costs attributed to warranty expenses will be considered to be covered by the Markup Percentages as outlined in paragraph 6.5.5 of this Article.

ALLOWABLE MARK UPS	Work performed by PC		Work performed by Sub A		Work performed by Sub B	
	O & P	Comm.	O & P	Comm.	O & P	Comm.
Prime Contractor (PC)	20%	---	---	5%	---	5%
Subcontractor A (Sub A)	---	---	20%	---	---	5%
Subcontractor B (Sub B)	---	---	---	---	20%	---
Subcontractor C (Sub C)	SAWS Does Not Allow Mark Up On Sub C					

DEFINITIONS	
Prime Contractor	Owns the contract with SAWS
Subcontractor A	Works directly for Prime Contractor
Subcontractor B	Works directly for Subcontractor A
Subcontractor C	Works directly for Subcontractor B
O & P	Overhead & Profit
Comm.	Commission

EXAMPLE	Sub B change order for \$1,000		
	Work performed by Sub B		
	O & P	Comm.	
Prime Contractor	---	\$63.00	
Subcontractor A	---	\$60.00	
Subcontractor B	\$200.00	---	
Subcontractor C	---	---	
Summary	CO	Mark Up	CO Total
	\$ 1,000.00	\$323.00	\$1,323.00

6.6 DELETION OF WORK - The Owner may, pursuant to Texas Local Government Code, Chapter 252, or as otherwise may be provide by law, order the Contractor to omit up to twenty five percent (25%) of the original Contract Sum and associated Work, as specified in Article 6.4, without the consent of the Contractor.

6.7 CLAIMS FOR ADDITIONAL COSTS -

- .1 If the Contractor pursues a claim for an increase in the Contract Sum and or time prior to final acceptance, it shall give the Owner written notice thereof with a

simultaneous information copy to the Consultant, within thirty (30) days after the Contractor knows, or should have known, of the events giving rise to such Contractor claim. This notice shall be presented in writing to the Owner and Consultant by the Contractor and Contractor shall not proceed with Work until directed by Owner, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Article 5.28.4. No such Contractor claim shall be valid unless the Contractor follows the notice procedure outlined herein, and failure to follow the notice procedure provided above shall cause the Contractor to waive and forever forfeit the right to seek additional amounts on the Contract in regards to the claim. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, if any, it shall be determined by administrative procedures as provided to Article X. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

- .2 If the Contractor claims that additional cost will be incurred because of: (1) any written Owner or Consultant interpretation of the Contract Documents, (2) any order by the Owner to stop the Work pursuant to Article 4.7 where the Contractor was not at fault, or (3) any written order involving a perceived minor change in the Work issued pursuant to Article 6.2.2, the Contractor shall make such claim as provided in Article 6.7.1.

6.8 NO DAMAGES FOR DELAY CLAUSE - Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Article 6., shall be the sole remedy of the Contractor for any (i) delay in commencement, prosecution, or completion of Work, (ii) hindrance, interference, suspension or obstruction in the performance of Work, (iii) loss of productivity, or (iv) other similar claims (items (i) through (iv) herein collectively referred to in this Article 6.8 as “Delays”) whether or not such Delays are foreseeable, unless a Delay is caused by the acts of the Owner constituting intentional interference with Contractor’s performance of the Work, and only to the extent such act continues after the Contractor furnishes Owner with written notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remunerations. For purposes of interpreting this provision, the Owner’s exercise of any of its rights or remedies under the Contract Documents (including without limitation, ordering changes in Work, or directing suspension, rescheduling, or correction of the Work), regardless of the frequency of the Owner’s exercise of such rights or remedies, shall not be construed as intentional interference with the Contractor’s performance of the Work.

6.9 STANDBY/IDLE EQUIPMENT CLAUSE – Under certain circumstances, for example (but not limited to) during forced or legal standby, contractors may be entitled to payments for their equipment on standby. These payments are meant to reimburse the contractor for fixed costs such as depreciation, cost of facilities capital, and indirect equipment costs. The Rate Element Table as noted in the Blue Book will be used to calculate standby rates. The percentages for depreciation, overhaul, and cost of facilities capital, indirect costs, and fuel will be used for each type of equipment. Owner will add the percentages for depreciation, cost of facilities capital, and indirect

costs in order to obtain a total percentage of the Blue Book rate applicable for standby allowance. A calculation example is as follows:

A Caterpillar 216B Series 3 has a monthly ownership rate of \$2,380.00. The depreciation percentage is 23% of the monthly rate, the cost of facilities capital (CFC) is 3% of the monthly rate, and the indirect costs are 8% of the monthly rate.

$\$2,380 \times (.23+.03+.08) = \809.20 monthly standby rate.

Should the Blue Book rate already list an hourly standby rate, the lesser of the two (2) calculation as noted above or hourly standby rate shall be used.

The addition of overhead and profit markup will not be allowed.

6.10 SUBCONTRACTOR PASS-THROUGH CLAIMS - In the event that any Subcontractor of Contractor asserts a claim to Contractor that Contractor seeks to pass through to Owner under the Contract Documents, any entitlement to submit and assert the claim as to Owner shall be subject to:

- .1 The requirements herein of these General Conditions; and
- .2 The following additional three (3) requirements listed below, all three (3) of said additional requirements shall be conditions precedent to the entitlement of Contractor to seek and assert such Claim against Owner:
 - (1) Contractor shall:
 - (a) have direct legal liability as a matter of Contract, common law, or statutory law to Subcontractor for the claim that Subcontractor is asserting; or
 - (b) have entered into a written liquidating agreement with Subcontractor, prior to the Claim's occurrence, under which Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such Claim against Owner under said Contract and for paying to Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The relationship, liability or responsibilities shall be identified in writing by Contractor to Owner at the time such Claim is submitted to Owner and a copy of any liquidating agreement shall be included by Contractor in the Claim submittal materials.
 - (2) Contractor shall have reviewed the Claim of the Subcontractor prior to its submittal to Owner and independently shall have evaluated such Claim in good faith to determine the extent to which the Claim is believed in good faith to be valid. Contractor shall inform Owner that Contractor has made a review, evaluation, and determination that the Claim is made in good faith and is believed to be valid.

(3) Subcontractor making the Claim to Contractor shall certify to both Contractor and Owner that it has compiled, reviewed and evaluated the merits of such Claim and that the Claim is believed in good faith by Subcontractor to be valid. A copy of the certification by Subcontractor shall be included by Contractor in the Claim submittal materials.

.3 Any failure of Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.

6.11 TIME REQUIRED TO PROCESS CHANGE ORDERS - All Change Orders require written approval by either Owner or Owner's Representative. The approval process requires a minimum of forty-five (45) calendar days **after submission** to Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by Owner. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Contractor will proceed with the Work under a pending Change Order only if directed in writing to do so by Owner.

ARTICLE VII. CONTRACT PAYMENTS:

7.1 INTERNET-BASED PROJECT MANAGEMENT SYSTEM - (If applicable). SAWS shall administer its Capital Improvement Project (CIP) construction services through an Internet-Based Project Management System (hereafter referred to as "CPMS"). In such case, Contractor shall conduct communication through CPMS and perform all Project-related functions utilizing CPMS, with the exception of Subcontractor payment monitoring activities, which shall be through the Subcontracting Payment and Utilization Reporting ("S.P.U.R.") system. This includes any and all correspondence, submittals, requests for information, requests for proposals, contractor invoice processing, amendment, change orders and other administrative activities as may be required in the Contract. SAWS shall administer the CPMS software, shall provide CPMS training to Project team members and shall make the software accessible via the Internet to all necessary Project team members. All Contractor invoices shall be submitted through the CPMS.

.1 On a monthly basis, the Contractor and the SAWS COI will meet and agree on all quantities installed and/or schedule of values completed during the past billing cycle, as well as the ending count of materials on hand – if applicable. Upon agreement, the Contractor will enter the agreed upon quantities and/or values into CPMS on the "Contractor's Scratch Sheet" report, as well as the ending count of materials on hand – if applicable. The quantities and/or values entered by the Contractor will be validated and approved in CPMS by the SAWS COI and Supervisor, and the Design Engineer (external or internal). Revisions can occur based upon the review of the quantities and/or values by each party. Once all parties have approved the "Contractor's Scratch Sheet", CPMS will notify the

Contractor via email that the Contractor's invoice has been created by CPMS and is ready for submission to SAWS Contracting Department via CPMS.

- .2 Prior to the Contractor submitting the CPMS generated Contractor invoice, the Contractor has the ability to insert the dollar value of "material on hand" for the billing period. The Contractor must submit in CPMS a copy of all invoices that support, to the satisfaction of SAWS, the unit cost of the items in the "material on hand" amount.
- .3 The Contractor must start the "workflow" within CPMS to submit the Contractor's invoice to SAWS Contracting personnel for further review and payment by SAWS. Failure of the Contractor to follow the process for payments may delay the Contractor's payment for that period. Monthly payments for Work performed shall be reviewed by SAWS upon Contractor entering itemized invoices, with all required back-up, within CPMS. The invoice shall indicate the value of the Work performed to date.

7.2 ESTIMATED QUANTITIES AND MEASUREMENT - The estimated quantities of the various elements of Work to be done and material to be furnished are approximate only and are provided by Consultant and Owner as a basis for Owner comparison of proposals and award of Contract. It is expressly understood and agreed by Owner and Contractor that the actual amounts of Work to be done and material to be furnished may differ somewhat from these estimated quantities. The quantities and/or values of Work actually performed by Contractor will be computed on the basis of measurements taken by the SAWS COI and entered into CPMS by the Contractor on the monthly "Contractor Scratch Sheet" and approved by the Owner's Representatives, and these measurements shall be final and binding on Contractor.

- .1 Project Retainage within CPMS: Contracts totaling four hundred thousand (\$400,000.00) dollars or less, based upon the original contract award, the contract payments will be subject to a ten percent (10%) retainage, to be held by SAWS until the Final Payment. Where the original contract award exceeds four hundred thousand dollars (\$400,000.00), the contract payments will be subject to at five percent (5%) retainage, to be held by SAWS until the Final Payment.

7.3 NON-CIP PROJECT PROGRESS PAYMENTS - During the latter part of each month, as the Work progresses on all SAWS Non-CIP Contracts regardless of Contract Sum, said Owner, or its designated representatives and Contractor shall determine either the cost of the labor and materials or the quantities and/or values incorporated into the Work during that month and if applicable, the actual invoiced cost of Contractor acquired materials stored on the Project Site, and/or within off site local storage facilities either owned or leased by the Contractor.

- .1 ESTIMATED QUANTITIES AND MEASUREMENT - The estimated quantities of the various elements of Work to be done and material to be furnished are approximate only and are provided by Consultant and Owner as a basis for Owner comparison of proposals and award of Contract. It is expressly understood and agreed by Owner and Contractor that the actual amounts of Work to be done and material to be furnished may differ somewhat from these estimated quantities.

The quantities and/or values of Work actually performed by Contractor will be computed on the basis of measurements taken by the SAWS COI and approved by the Owner's Representatives, and these measurements shall be final and binding on Contractor.

- .2 Project Retainage: Contracts totaling four hundred thousand (\$400,000.00) dollars or less, based upon the original contract award, the contract payments will be subject to a ten percent (10%) retainage, to be held by SAWS until the Final Payment. Where the original contract award exceeds four hundred thousand dollars (\$400,000.00), the contract payments will be subject to a five percent (5%) retainage, to be held by SAWS until the Final Payment.
- .3 Upon receipt of a complete and mathematically accurate Construction Payment Estimate Form from the Contractor, SAWS shall make payment to Contractor within thirty (30) calendar days of receipt. Contracts totaling four hundred thousand dollar (\$400,000.00) or less, based upon such cost determination and at the Contract unit prices in a sum equivalent to ninety percent (90%) of each such invoice. The remaining ten percent (10%) retainage shall be held by SAWS until the Final Payment. However, where the Contract amount exceeds four hundred thousand dollars (\$400,000.00), installments shall be paid to Contractor at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of Owner receipt of an approved and mathematically accurate Construction Payment Estimate Form from the Contractor, and the retainage held until Final Payment shall be five percent (5%). In either case, should the Construction Payment Estimate Form submitted by the Contractor be incorrect, the Construction Payment Estimate Form will be rejected and returned to the Contractor for correction. The Contractor shall change the date of the re-submitted Construction Payment Estimate Form to reflect the latest revision date. Upon receipt of the corrected Construction Payment Estimate form, the timeline stated above for payment will apply.

7.4 CONTRACTOR PAYMENT to SUB-CONTRACTORS: The Contractor will be required to report actual payments to all Subcontractors, (whether SMWVB certified or not) utilizing the S.P.U.R. System, in the time intervals and format prescribed by SAWS. This information will be utilized for Subcontractor participation tracking purposes. Any unjustified failure to comply with the committed SMWVB levels may be considered breach of Contract.

- .1 Web Submittal of Subcontractor Payment Reports: The Contractor is required to electronically submit monthly subcontractor payment information utilizing the S.P.U.R. System, beginning with the first SAWS payment for services under the Contract, and with every payment thereafter (for the duration of the Contract).
- .2 Electronic submittal of monthly subcontractor payment information will be accessed through a link on SAWS' "Business Center" web page. The Contractor and all Subcontractors will be provided a unique log-in credential and password to access the S.P.U.R. System. The link may also be accessed through the following internet address: <https://saws.smwbe.com/>

- .3 Training on the use of the S.P.U.R. System will be provided by SAWS. After the prime receives payment from SAWS, electronic submittals will require data entry of the amount paid to each Subcontractor listed on the Contractor's Good Faith Effort Plan.
- .4 Owner's payment of installments shall not in any way be deemed to be a final acceptance of any part of the Work by Owner, and will not prejudice Owner in the final settlement of Contract account nor relieve the Contractor from completion of the Work as herein provided.

7.5 WITHHOLDING OF PAYMENT - In the event that the Owner discovers evidence of Contractor and/or Work noncompliance with the Contract Documents, the Owner may withhold monies to protect the Owner from loss on account of:

- .1 Defective Work.
- .2 Persistent and uncured Contractor noncompliance with the administrative provisions of the Contract Documents including, but not limited to, failure to electronically submit monthly subcontractor payment information utilizing the S.P.U.R. System and failure to submit a current schedule of value or work progress schedule.
- .3 Damage to Work of another contractor.
- .4 Liquidated Damages assessed by Owner for Contractor failure to maintain scheduled progress in accordance with the most recent applicable Work Progress Schedule, if any are specified in the Contract Documents, and/or Contractor failure to meet the Final Completion date.
- .5 Receipt of written notice by the Owner of Contractor's unpaid bills, as stipulated in Chapter 53, Texas Property Code, if the Contractor has not provided a Payment Bond and only if the Contract Sum does not exceed \$25,000.00. Any funds so withheld by Owner shall be released to the Contractor if he furnishes either a special indemnity bond to Owner securing release of lien as provided in Chapter 53, Texas Property Code, or Contractor proof of payment of disputed bills.
- .6 "Indemnification" as provided for in Article 2.3.
- .7 Cost for additional COI expense as provided in Article 8.3.
- .8 SAWS shall not be deemed in default by reason of withholding payment or exercising its right to require correction of any defect or deficiency in the Work as a condition of any acceptance of the Project, or any of its applicable facilities.

Owner's right to withhold shall survive termination of the Contract for cause or for convenience.

7.6 RETAINAGE RELEASE PAYMENT - Contractor shall not be entitled to receive

payment of any sum in excess of the cumulative amounts paid upon such monthly invoices as outlined above until after the Owner transmittal of the Letter of Conditional Approval and in accordance with Article 9 and not before all the stipulations, requirements and provisions of this Contract are faithfully performed and complied with by Contractor, and unless and until said structures, Work and improvements shall be entirely completed, and delivered to, and accepted by the SAWS in accordance with the Contract Documents. Completion, delivery and acceptance of the Work is evidenced by the Final Certificate of Acceptance issued in accordance to Article 9.1. After issuance of the Final Certificate of Acceptance, the Owner shall release the retainage payment. However, the Owner may deduct from the amount of such retainage payment any and all sums which are to be deducted that are owed by Contractor to SAWS, or which are to be retained by Owner for reasons stemming from any/all fines, fees, liquidated damages, or penalties, in addition to those previously stated in Article 7.5.

- .1 CONTRACTOR'S NOTARIZED AFFIDAVIT - Before and as a condition precedent to retainage release payment for the Work by the Owner, the Contractor shall submit to the Owner a notarized affidavit stating under oath that all Subcontractors, vendors, and other persons or firms who have furnished or performed labor or furnished materials for the Work have been fully paid or satisfactorily secured.
- .2 SURETY COMPANY NOTARIZED CONSENT - Such affidavit shall bear or be accompanied by a statement, signed and notarized by the Surety who provided the Payment Bond for the Work, to the effect that said Surety consents to Final Payment to the Contractor being made by the Owner.

7.7 OWNER TO FINALLY DETERMINE ALL AMOUNTS PAYABLE OR CHARGEABLE

- .1 It is expressly understood and agreed by Contractor that subject only to the prices, terms and provisions specifically set forth in the Contract Documents including Change Orders, the written estimates and certificates of the Owner shall be final in fixing and determining amounts payable or chargeable hereunder to Contractor by SAWS as required by the other terms and conditions hereof. Also, in case of controversy, the monthly construction estimates and the Final Certificate of Acceptance shall be final in fixing and determining all sums to be deducted and retained by SAWS for reasons as stated in Article 7.5, out of any funds otherwise estimated as payable to Contractor by SAWS.

7.8 CLAIMS BY THIRD PARTIES FOR LABOR OR MATERIALS

- .1 Contractor hereby agrees to promptly pay all persons supplying labor, services and materials in the prosecution of the Work provided for in this Contract and any and all duly authorized modifications or Change Orders of said Contract that may hereafter be made, and shall fully indemnify and hold harmless SAWS and its agents against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished such Contractor during the prosecution of the Work herein undertaken.

Contractor shall execute a Payment Bond in accordance with other sections governing same herein for this purpose.

- .2 Suppliers, any Subcontractors, and persons claiming to have performed any labor, or to have supplied any equipment and materials toward the performance of this Contract, and who claim not to have received proper compensation from the Contractor or Subcontractors for same, shall be instructed by Owner and Contractor that written and documented claims must be sent directly to the Contractor and its Surety in accordance with Chapter 2253, Texas Government Code. The Owner will furnish to claimants, in accordance with such Chapter 2253, Texas Government Code, a copy of the Contractor's Payment Bond and Contract as provided therein upon claimant's written request. **The Owner shall further furnish a statement to claimants that claimants are cautioned that no legal or equitable lien exists on the SAWS funds yet unpaid to the Contractor, and that reliance on notices sent only to the Owner may result in loss of claimant's rights to timely perfect recovery against the Contractor and/or its Surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any unauthorized representation by any agent or employee of Owner to the contrary.**

ARTICLE VIII. CONTRACT COMPLETION TIME:

- 8.1 **COMMENCEMENT OF WORK** - The Work called for in this Contract shall commence on the date indicated in the SAWS written Authorization to Proceed. Under no circumstances shall the Work commence prior to the Contractor's receipt of SAWS issued, written Authorization to Proceed.
- 8.2 **COMPLETION OF WORK** - After commencement of Work as outlined in Article 8.1, the Contractor shall prosecute the Work continuously, diligently and uninterrupted throughout the Contract Time period, during which period of time Contractor, all Subcontractors and suppliers are bound and obligated at all times to employ sufficient Work force and supervisory diligence to complete said structures, Work and improvements, and to deliver same over to SAWS in a timely, acceptable, completed, undamaged and clean condition. **THE TIME OF BEGINNING, RATE OF PROGRESS AND TIME OF COMPLETION OF SAID WORK ARE HEREBY DECLARED BY OWNER AND UNDERSTOOD BY CONTRACTOR TO BE "OF THE ESSENCE" TO THIS CONTRACT.** By executing this Contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work. Any other provision contained herein notwithstanding, the Owner may suspend said Work either partially or totally as provided for in Article 4.7.
- 8.3 **CALENDAR DAY CONTRACT** – Unless otherwise specifically provided in Supplemental or Special Conditions to the Contract, all Contracts shall be Calendar Day Contracts and “Day” as used in the Contract Documents shall mean a calendar day which are days of 24 hours each from midnight to the next consecutive midnight. Work on Sundays or SAWS Designated Holidays will not be permitted except in cases of extreme emergency, and then only with the written permission of the Owner. If Sunday or SAWS Designated Holiday Work is permitted, the COI's average salary costs at time

and one half will be charged to the Contractor. This amount shall be deducted from Contractor's monthly payment application by Owner. Nothing in this Paragraph shall be construed as prohibiting the Contractor from working on Saturdays if so desired provided they give Owner at least the prerequisite forty-eight (48) hours written notice (and receive subsequent approval by the Owner) of intent to perform Work on Saturday so that Owner's representatives may be scheduled to observe/inspect said Work.

8.4 FAILURE TO COMPLETE WORK ON TIME - If the Contractor fails to complete the Contract in the time specified by Owner in the Contract Documents and agreed to by Contractor through execution of this Contract, Contract Time charges will continue to be made for each Calendar Day thereafter. THE TIME SET FORTH IN THE CONTRACT FOR THE COMPLETION OF THE WORK IS AN ESSENTIAL ELEMENT OF THE CONTRACT. For each Calendar Day that any Work shall not be complete, after the expiration of the Calendar Days specified in the Contract, (to include Calendar Days charged for correction of Contractor deficiencies found during the final inspection), plus, any extended days allowed by Owner, the amount of liquidated damages assessed per day as stipulated in the Contract will be deducted from the money owed or to become due to the Contractor, not as a penalty but as liquidated damages owed to SAWS for extended expenses, loss and public inconvenience resulting from Contractor's failure to complete said Work within the Contract Time that the Contractor agreed to by execution of this Contract. Contractor and SAWS agree that such liquidated damages as are set prior to the Contract execution are for projected reasonable costs that are otherwise difficult for either Party to forecast and will be incurred by SAWS due to Contractor completion beyond the number of Calendar Days calculated herein by SAWS.

- .1 The Contract Time may only be changed by a Change Order duly executed by both Contractor and Owner.
- .2 Except for reasons stated in Article 8.4.1, should the Work Progress Schedule of the Work fall behind so that the project is not scheduled to be completed within the Contract Time, the Contractor shall within ten (10) days submit at the request of Owner or Authorized Representative an updated Work Progress Schedule to Owner or Authorized Representative for approval. Such updated Work Progress Schedule shall show a recovery schedule indicating the specific measures taken and/or planned to be taken to increase the rates of progress of Work on the Project. Contractor shall include an estimate as to the date of scheduled full progress recovery and an updated Work Progress Schedule, illustrating Contractor's plan for achieving timely completion of the Project Milestones and the Project's Substantial Completion. Contractor shall at their own expense take any and all action necessary to restore progress to complete the Project within the Contract Time including but not limited to providing additional equipment, increasing their work force, and by working the hours, and lawful overtime operations as necessary to achieve Contract Time. Should the Owner deem the Contractor's plan of action inadequate to achieve the desired acceleration to bring the Work back on the Work Progress Schedule and achieve Substantial Completion on time, the Owner shall have the right to order Contractor, at Contractor's sole expense, to take any corrective measures the Owner deems necessary to expedite the progress of Work including, without limitations: (1) increasing work forces

and hours, to include Contractor working additional shifts of overtime; (2) supplying additional manpower, equipment and facilities; (3) re-sequencing the Work; (4) expediting the fabrication and supply of materials; and/or (5) other measures Owner may direct (hereafter (1)-(5) above collectively referred to as “Extraordinary Measures”). The Owner’s right to require Extraordinary Measures solely is for the purpose of ensuring Project Milestones and Substantial Completion of the Work is achieved within the Contract Time. Contractor shall not be entitled to an adjustment in the Contract sum in connection with Extraordinary Measures required by Owner under or pursuant to this 8.4.2., except as may be provided under the provisions of Article VI. The Owner may exercise the rights furnished pursuant to 8.4.2 as frequently as the Owner deems necessary to ensure the Contractor’s performance of the Work is in compliance with any milestone date or completion date(s) set forth in the Contract Documents. If reasonably required by Owner, Contractor shall prepare and furnish Project cash flow projections, manning data for critical activities and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof. Contractor shall recommend to Owner and Consultant a schedule for procurement of long-lead time items, which shall constitute part of the Work as required meeting the Work Progress Schedule.

8.5 WEATHER DELAY CLAUSE - SAWS includes weather delay days when determining the total number of days allowed for each Contract. Any additional days beyond those specified in Article 8.5.3 must be formally requested in writing with the next monthly payment invoice and justified by the Contractor with daily logs or NO ADDITIONAL DAYS WILL BE GRANTED.

- .1 Pursuant to the Contract, Contractor 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 the Project location. However, the Contractor will not be granted an extension of time for “Normal Rainfall”, as described in Article 8.5.3.
- .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, as determined by the COI, to prevent Contractor from performing work on the “critical path” as defined in the “CPM” Work Progress Schedule. If rain is the basis for the Unusual Inclement Weather event it must at a minimum exceed the Normal Rainfall as defined herein.
- .3 Baseline Rain Day Determination. “Normal Rainfall”, based on data obtained from the nearest (as agreed upon at the beginning of the Project by SAWS, Owner’s Representative and Contractor) National Oceanic and Atmospheric Administration (NOAA) weather recording station, 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..... 2 days
 February..... 3 days

March.....	4 days
April.....	3 days
May.....	4 days
June.....	6 days
July.....	3 days
August.....	4 days
September.....	5 days
October.....	5 days
November.....	5 days
December.....	3 days

“Rain Days” in addition to the baseline “Rain Day” determination described above will be measured (with the COI’s and Owner’s Representative’s approval) at the jobsite or at a location as agreed in writing by the parties.

.4 Contractor 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 Article 8.5.1 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.

8.6 Liquidated Damages for Failure to Complete on Time – The Contractor agrees that **Time Is Of Essence** of this Contract and that for each day of delay beyond the number of days herein agreed upon for the completion of Work herein specified and contracted for, after due allowance for such extension of time as is provided for under the provisions herein, the Owner may withhold permanently for the Contractor's total compensation, not as a penalty but as liquidated damages, the sum per day in accordance to the Supplemental Conditions of the Contract.

ARTICLE IX. PROJECT COMPLETION AND ACCEPTANCE:

9.1 FINAL ACCEPTANCE of the Project will be considered only after all stipulations, requirements and provisions of this Contract are faithfully completed and the Project is delivered to SAWS by Contractor in an acceptable condition for the intended use by Owner. In the event that all major Contract pay items are complete and only minor clean-up operations remain for Contract completion, the Owner has the discretionary authority to issue a Conditional Letter of Acceptance. Should the Owner’s Conditional Letter of Acceptance contain conditions for the Final Certificate of Acceptance of the Work, Contract Time will continue to be charged against the Contractor until such conditions have been corrected to the satisfaction of the Owner.

.1 Retainage Release Payment - Contractor shall be entitled to receive payment of all retainage within forty-five (45) calendar days of completion, receipt and acceptance of all required "completion items" as stipulated below:

.1 The “Final Pay Request” indicating that no additional monthly invoices will be submitted by the Contractor for payment.

- .2 The “Conditional Letter of Acceptance” with all “Punch List Items” completed indicating that Owner is approving the Retainage Release Payment.
- .3 The “Contractor Certification” provided for herein indicating that all subcontractors and suppliers have been paid.
- .4 The “Surety Company Notarized Consent” provided for herein indicating the Surety’s approval to remit all retainage directly to the Contractor.
- .5 When applicable, the “TWDB Certificate of Approval & Release of Retainage” letter indicating Texas Water Development Board’s approval to remit all retainage directly to the Contractor.

9.2 PARTIAL ACCEPTANCE by Owner for beneficial occupancy of any completed part of the Work, which has specifically been identified in the Contract Documents as being eligible for early Owner Acceptance, or which Owner, Engineer and/or Consultant and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner without significant interference with Contractor's performance of the remainder of the Work, may be accomplished prior to completion of the total Work identified in the Contract Documents, subject to the following:

- .1 Owner may at any time request from the Contractor in writing to permit Owner to beneficially occupy any such part of the Work which Owner believes to be ready for its intended use. If Contractor agrees, Contractor will certify to Owner and Consultant that said part of the Work is substantially complete and request the Owner to issue a Conditional Letter of Acceptance, for only that part of the Work. Within a reasonable time after such request, Owner, Contractor, Engineer and/or Consultant shall make an inspection of the said part of the Work to determine its status of completion. Warranties (as provided under Article 9.3) on that part of the Work beneficially occupied by Owner will commence upon issuance of the Conditional Letter of Acceptance. Any Work items remaining to be completed as defined in the Conditional Letter of Acceptance for the said part of the Work will have warranty commencement upon completion and Final Acceptance by Owner.
- .2 Work Order Contracts. For these types of contracts Owner will issue a substantial completion field acceptance to include a Conditional Letter noting Warranty date for the completed work. Upon finalization of the pending administrative issues Owner will notify Contractor in letter form that all issues have been addressed and Work Order is now ready for closure.
- .3 Owner may at any time request from the Contractor in writing to permit Owner to take over operation of any such part of the Work although it is not Substantially Complete. A copy of such request will be sent to the Engineer and within a reasonable time thereafter, Owner, Contractor, and Engineer and/or Consultant, shall make an inspection of that part of the Work affected by the request to determine its status of completion and will jointly prepare a list of the items

remaining to be completed or corrected issuance of a Conditional Letter of Acceptance. If Contractor does not agree that said part of the Work is ready for separate operation by Owner or that separate operation by Owner will not significantly interfere with Contractor's remaining operations, the Contractor must submit their objections and appropriate justifications in writing to the Owner and Engineer and/or Consultant within 5 days of the request by the Owner. Once any objections have been addressed or if there are no objections, the Owner will finalize a list of items to be completed or corrected and will deliver such list to Contractor together with a written recommendation as to the division of responsibilities pending issuance of the Conditional Letter of Acceptance with respect to security, operation, safety, maintenance, warranties, utilities, insurance, and retainage for that part of the Work taken over for operation by Owner. During such operation, Owner shall allow Contractor reasonable access to complete or correct items on said list and to complete other related Work.

- 9.3 CORRECTION PERIOD/WARRANTY - During a period of twenty four (24) months from and after the date of the Conditional Letter of Acceptance, or Termination for any reason, the Contractor shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgment of the Owner shall become necessary during such period. The Owner shall notify and submit a "Performance Claim Form", which will be completed by the Owner and details the location and nature of needed repairs, to the Contractor. The Contractor shall submit a schedule for inspection and completion of said repairs within three (3) days after the notification of the warranty repairs to be approved by the Owner. If within three (3) days after the receipt of a notice in writing from the Owner, the Contractor shall neglect to make or to undertake with due diligence the aforesaid repairs, the Owner is hereby authorized to make demand of performance from the company issuing the Performance Bond. If the Contractor fails to complete the repairs within the approved schedule, the Owner is hereby authorized to make demand of performance from the company issuing the Performance Bond. In case of an emergency where, in the judgment of the Owner, delay would cause a serious loss or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

ARTICLE X. DISPUTES:

- 10.1 GENERAL - Prior to any anticipated litigation between the Owner and the Contractor, both hereby agree that disputed matters shall first be submitted to Owner administrative appellate procedures as described below:

- .1 Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by mutual agreement shall be initially decided by the Owner (as represented by the decision of the Owner) who shall reduce its decision to writing and promptly mail or otherwise furnish a copy thereof to the Contractor. The decision of the Owner shall be final and conclusive unless within thirty (30) calendar days from the date of issuance of such decision by Owner the Contractor mails or otherwise furnishes to the Owner a written notice of appeal addressed to the SAWS President/C.E.O., whose appellate decision on behalf of the SAWS shall be the final and conclusive SAWS decision. In connection with any appeal under this Article, the Contractor shall

be afforded an opportunity to be heard and to offer evidence in support of the appeal to persons to be promptly appointed by the SAWS President/C.E.O. to review such disputed matters. The SAWS department sponsoring the Project or any other Owner's representative will also be allowed to present information supporting Owner's position.

- .2 Pending final President/C.E.O. decision after a dispute hearing, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the President/C.E.O. decision. Neither SAWS nor the Contractor is precluded from resorting to litigation or other remedy at law or in equity to perfect a legal filing prior to the expiration of an applicable statute of limitations or after this Owner administrative review process is completed.

10.2 PREVAILING PARTY - In any dispute arising under this Agreement, the following shall apply in the determination of which party is the prevailing party. If a party claiming a right to payment of an amount in dispute is awarded all or substantially all of such disputed amount, then such claiming party shall be the prevailing party. If a party defending against such claim is found to be not liable to pay all or substantially all of the disputed amounts claimed by the claiming party, then the party so defending against such claim shall be the prevailing party. If both Parties prevail with respect to different claims by each of them, then the party who is prevailing with respect to the substantially greater monetary sum shall be deemed the prevailing party; otherwise, if both Parties prevail with respect to monetary sums on different claims, neither of which sums is substantially greater than the other, the tribunal having jurisdiction over the controversy, claims or actions shall in rendering the award determine in its discretion whether and to what extent either party should be entitled to recover any portion of its attorney fees. The Prevailing Party shall be entitled to recover reasonable attorney fees and costs of court.

ARTICLE XI. SUPPLEMENTAL AND SPECIAL CONDITIONS:

11.1 GENERAL - When the Work contemplated by the Owner is of such a character that the foregoing Standard General Conditions of the Contract cannot adequately cover necessary and additional contractual provisions, the Contract Documents may include Supplemental and Special Conditions as described below:

- .1 SUPPLEMENTAL CONDITIONS shall describe any additional procedures and requirements of Contract administration to be followed by the Contractor, Owner, and Owner representatives. Supplemental Conditions may expand upon matters covered by the Standard General Conditions, where necessary.
- .2 SPECIAL CONDITIONS shall relate to terms, conditions and procedures related to a specific project and that are unique to that project.

11.2 ARCHAEOLOGICAL - "Unidentified Archaeological Sites": If the Contractor should encounter archaeological deposits during construction operations, the Contractor must stop excavation immediately and contact the Owner, who will then contact appropriate agencies for an archaeological investigation. The Contractor cannot begin excavation again in this area without written permission from the Owner.

11.3 FUNDED PROJECTS - On State or Federally funded projects, the Owner may waive, suspend, or modify any Article in these General Conditions which conflicts with any State or Federal statute, rule, regulation or procedure, where such waiver, suspension, or modification is essential to receipt by the Owner of such State or Federal funds for the Project. In the case of any Project financed in whole or in part by State or Federal funds, any Contract standards or provisions required by the enabling State or Federal statute, or any State or Federal rules, regulations or procedures adopted pursuant thereto that conflict with, or preempt these local Standard General Conditions, shall be controlling.

ARTICLE XII. RIGHT TO AUDIT CLAUSE:

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

12.2 Records for all contracts, specifically including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time & material contracts with or without a guaranteed maximum (or not-to-exceed amounts) shall upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any Owner's representative or any outside representative engaged by Owner for the purpose of examining such records. The Owner or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after final payment or longer if required by law. Owner's representatives may (without limitation) conduct verifications such as counting employees at the construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, Subcontractors, and vendors.

12.3 Contractor's "records" as referred to herein shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, e-mails, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related

payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with the Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- (a) Compliance with Contract requirements for deliverables.
- (b) Compliance with approved Plans and Specifications.
- (c) Compliance with Owner's business ethics expectations.
- (d) Compliance with Contract provisions regarding the pricing of Change Orders.
- (e) Accuracy of Contractor representations regarding the pricing of invoices.
- (f) Accuracy of Contractor representations related to claims submitted by the Contractor or any of its payees.

12.4 Contractor shall require all payees receiving \$10,000 or more in connection with this Contract (examples of payees include Subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract.

12.5 Owner's authorized representative(s) shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

12.6 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges to the Owner (of any nature) by the Contractor and/or the Contractor's Subcontractors in excess of \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Contractor.

ARTICLE XIII. CHOICE OF LAW AND VENUE:

13.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created herein are to be performed in Bexar County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in the Federal, State, or County Courts in Bexar County, Texas.

- END -