AN ORDINANCE 71312

AMENDING ORDINANCE NO. 60110, DATED JANUARY 17, 1985, SO AS TO ADOPT A NEW "GENERAL CONDITIONS" SECTION IN 100% LOCAL FUNDED CITY PUBLIC WORKS CONSTRUCTION CONTRACTS AS SET OUT IN THE REVISED CITY WAGE AND LABOR STANDARD PROVISIONS.

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WHEREAS, the City Council wishes to establish the general prevailing rate of per diem wages in the form of a sum certain for each of two destinct categories of wages described as "minimum hourly base pay" and "minimum hourly fringe benefit contribution" for all 100% Locally Funded city construction contracts; and

WHEREAS, there is a new United States Department of Labor Wage Determination Decision for Bexar County, Texas, published in the Federal Register, that applies to such 100% Locally Funded contracts; and

WHEREAS, any 100% Locally Funded City Public Works Construction Contractor/Subcontractor is strictly prohibited from paying the various classification of laborers, workmen, and mechanics any amount less than the "minimum hourly base pay" by the accounting process of adding the reduction in "minimum hourly base pay" to the "minimum hourly fringe benefit contribution" so as to net a combined total of the two categories of the wage; and

WHEREAS, it is the intent of the City Council to allow various classification of laborers, workmen, and mechanics the minimum hourly "cash equivalent" of the appropriate "minimum hourly fringe benefit contribution" listed in a wage determination decision in lieu of benefits contributed to a permissible fringe benefit plan; and

WHEREAS, the city staff has prepared new "General Conditions", governing wages and labor standards and practices, which are set forth in Attachment I and incorporated herein by reference for all purposes, and which are to be made part of all future 100% Locally Funded City Public Works Construction Contracts; NOW THEREFORE

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

SECTION 1. Ordinance No. 60110, pass on January 17, 1985, is hereby amended to replace the 100 % Locally Funded City Public Works Construction Contract "General Conditions" document attached thereto with the new updated "General Conditions" document attached hereto and labled "Attachment I".

PASSED AND APPROVED THIS 29th day of March 1990.

Lila Cockrell
M A Y O R

ATTEST:
City Clerk

APPROVED AS TO FORM: Tom Finlay
City Attorney

AN ORDINANCE 60110

REPEALING ORDINANCE NO. 49318 OF APRIL 27, 1978 AND REPLACING SAME WITH THIS ORDINANCE, AND AUTHORIZING THE CITY MANAGER TO INSTRUCT THE DIRECTOR OF PUBLIC WORKS TO INSERT NEW GENERAL CONDITIONS GOVERNING WAGE AND LABOR STANDARDS AND PRACTICES IN ALL FUTURE 100% LOCALLY FUNDED CITY PUBLIC WORKS CONSTRUCTION CONTRACTS.

* * * * *

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

SECTION 1. Ordinance No. 49318 of April 27, 1978 is hereby formally repealed.

SECTION 2. In accordance with Article 5159a, Revised Civil Statutes of Texas, as amended, the City Council hereby adopts the most current United States Department of Labor Wage Determination Decisions for Bexar County, Texas (wage determination decision in effect ten (10) days prior to bid opening) as periodically published in the Federal Register as the local general prevailing rate of per diem wages to be paid to various classifications of laborers, workmen, and mechanics employed in either building construction trades or heavy/highway construction trades in constructing 100% Locally Funded City Public Works Construction projects.

Furthermore, it is hereby the expressed intent of the City Council of the City of San Antonio to clearly establish the general prevailing rate of per diem wages to be a sum certain, in dollars and cents, for each of two distinct categories of wage being, "minimum hourly base pay" and "minimum hourly fringe benefit contribution." The contractor/subcontractor is strictly prohibited from paying the various classifications of laborers, workmen, and mechanics any amount less than the "minimum hourly base pay" and then adding the reduction in "minimum hourly base pay" to the "minimum hourly fringe benefit contribution" so as to "net" a combined total of the two intended distinct categories of the wage on 100% Locally Funded City Public Works Construction contracts.

It is recognized by the City Council that certain job classifications are not entitled to receive any "minimum hourly fringe benefits" by virtue of adopting the United States Department of Labor Wage Determination Decisions for Bexar County, Texas and that result is the express intent of the City Council.

It is also the intent of the City Council to allow the contractor/subcontractor to pay various classifications of laborers, workmen, and mechanics the minimum hourly "cash equivalent" of the appropriate "minimum hourly fringe benefit contribution" listed in a wage determination decision in lieu of benefits contributed to a permissible fringe benefit plan.

SECTION 3. The City Manager is hereby directed to instruct the Director of Public Works to insert into all future 100% Locally Funded City Public Works construction contracts, new "General Conditions" (as set forth in Attachment I, which is incorporated herein by reference for all purposes) governing wage and labor standards and practices.

The City Manager, in consultation with the Director of Public Works, is hereby authorized by City Council to periodically amend such "General Conditions" administratively to reflect needed improvements in the document as required, except that only the City Council shall be authorized to amend legislative matters specifically addressing the prevailing rate of minimum per diem wages, holiday pay, etc.

PASSED AND APPROVED this 17th day of January, 1985.

Henry Cisneros
MAYOR

ATTEST: Norma S. Rodriguez
City Clerk

APPROVED AS TO FORM: for Tom Finlay
City Attorney

85-04

GENERAL CONDITIONS

WAGE AND LABOR STANDARD PROVISIONS-100% LOCALLY FUNDED CONSTRUCTION

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1. GENERAL STATEMENT

This is a 100% locally funded Public Works Contract and Article 5159a, Revised Civil Statutes of Texas, as amended, requires that not less than the general prevailing wage rates (minimum hourly base pay and minimum hourly fringe benefit contribution) for work of similar character be paid to contractor and subcontractor employees. These wage rates are derived from the most current applicable federal prevailing wage rates as published by the United States Department of Labor, Dallas, Texas and authority of Ordinance No. 60110 as amended and passed by the City Council of the City of San Antonio. Copies of both the current Ordinance as amended and the wage rates are contained in the Special Conditions, and are included instruments of this contract and full compliance with same shall be required.

Any deviation from Wage and Labor Standard Provisions compliance may be cause for City's withholding either periodic interim or final payment to the contractor until such deviations are properly corrected.

2. WAGE & HOUR OFFICE, PUBLIC WORKS, RESPONSIBILITIES

The Wage & Hour Office, Public Works Department, City of San Antonio, is primarily responsible for all Wage and Labor Standard Provisions investigation and enforcement and will monitor contractor/subcontractor practices to assure the Director of Public Works that:

a. Appropriate weekly compliance statements and payroll records are submitted to the City by the contractor/subcontractors and that such are reviewed for compliance with the Wage and Labor Standard Provisions.

b. Apprentices/trainees working on the project are properly identified by the contractor/subcontractor on payroll records and documented as being included in programs currently sanctioned by appropriate federal or state regulatory agencies.

c. Applicable Wage Determination Decisions, including any applicable modifications, and related statements are posted at the work-site by the contractor and that proper job classifications and commensurate minimum hourly base and fringe wage rates are paid.

d. Employees are periodically interviewed (at random) on each project as required.

e. That no person employed by contractor/subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.

f. That any and all periodic administrative directives to the Wage & Hour Office from the Director of Public Works are being implemented.

3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES

Claims and disputes not promptly and routinely settled by the contractor/subcontractor and employee pertaining to wage rates, or to job classifications of labor employed upon the work covered by this contract, shall be reported by the employee in writing, within sixty (60) calendar days of employee's receipt of any allegedly incorrect classification, wage or benefit report, to the Wage & Hour Office, City of San Antonio for further investigation. Claims and disputes not reported by the employee to the City's Wage & Hour Office in writing within the sixty (60) calendar day period shall be deemed waived by the employee for the purposes of the City administering and enforcing the City's contract rights against the contractor on behalf of the employee. Waiver by the employee of this City intervention shall not constitute waiver by the City to independently pursue contractual rights it has against the contractor/subcontractor for breach of contract and other sanctions available to enforce the Wage and Labor Standard Provisions.

4. BREACH OF WAGE AND LABOR STANDARD PROVISIONS

The City of San Antonio reserves the right to terminate this contract for cause if the contractor/subcontractors shall knowingly and continuously breach, without timely restitution or cure, any of these governing Wage and Labor Standard Provisions. A knowing and unremedied proven violation of these Wage and Labor Standard Provisions may also be grounds for debarment of the contractor/subcontractor from future City of San Antonio contracts for lack of responsibility, as determined by the City of San Antonio. Recurrent violations, whether remedied or not, will be considered by the Director of Public Works when assessing the responsibility history of a potential contractor/subcontractor prior to competitive award of future Public Works projects. The general remedies stated in this paragraph 4. above, are not exhaustive and not cumulative for the City reserves legal and contractual rights to other specific remedies outlined herein below and in other parts of this contract and as are allowed by applicable City of San Antonio ordinances, state and federal statutes.

5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION

In the event that a contractor/subcontractor discovers that construction of a particular work element requires a certain employee classification and skill that is not listed in the wage determination decision contained in the original contract documents, contractor/subcontractors will make prompt inquiry (before bidding, if possible) to the Wage and Hour Office identifying that class of laborers/mechanics not listed in the wage determination decision who are intended to be employed, or who are being employed, under the contract. Using his best judgment and information resources available to him at the time, and any similar prior decisions, the Director of Public Works, City of San Antonio shall classify said laborers/mechanics by issuing a special local wage determination decision to the contractor/subcontractor which shall be enforced by the Wage and Hour Office.

6. MINIMUM WAGE

All laborers/mechanics employed to construct the work governed by this contract shall be paid not less than weekly the full amount of wages due (minimum hourly base pay and minimum hourly fringe benefit contribution for all hours worked, including overtime) for the immediately preceding pay period computed at wage and fringe rates not less than those contained in the wage determination decision included in this contract. Only payroll deductions as are mandated by state or federal law and those legal deductions previously approved in writing by the employee, or as are otherwise permitted by state or federal law, may be withheld by the contractor/subcontractor.

Should the contractor/subcontractor subscribe to fringe benefit programs for employees, such programs shall be fully approved by the City in adopting a previous U.S. Department of Labor decision on such fringe benefit programs or by applying DOL criteria in rendering a local decision on the adequacy of the fringe benefit programs. The approved programs shall be in place at the time of City contract execution and provisions thereof disclosed to the Wage and Hour Office, City of San Antonio, for legal review prior to project commencement.

Regular contractor/subcontractor contributions made to, or costs incurred for, approved fringe benefit plans, funds or other benefit programs that cover periods of time greater than the one week payroll period (e.g. monthly or quarterly, etc.) shall be prorated by the contractor/sub-contractor on weekly payroll records to reflect the equivalent value of the hourly and weekly summary of fringe benefits per employee.

7. OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS

No contractor/subcontractor contracting for any part of the non-federally funded contract work (except for worksite related security guard services) which may require or involve the employment of laborers/mechanics shall require or permit any laborer/mechanic in any seven (7) calendar day work period in which he,she is employed on such work to work in excess of 40 hours in such work period unless said laborer/mechanic receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of 40 hours in a seven (7) calendar day work period. Fringe benefits must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

The contractor/subcontractor is allowed to pay a minimum hourly cash equivalent of minimum hourly fringe benefits listed in the wage determination decision in lieu of the contribution of benefits to a permissible fringe benefit plan for all hours worked including overtime as described in paragraph 6. above. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the wage determination decision.

9. WORK CONDUCTED ON HOLIDAYS-NON-FEDERALLY FUNDED PROJECTS

If a laborer/mechanic is employed in the normal course and scope of his or her work on the jobsite on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King Day or the calendar days observed as such in any given year, work performed shall be paid for at no less than one and one half (1 $^1/_2$) times the regular minimum hourly base pay regardless of the total number of hours the laborer/mechanic has accumulated during the pay period.

10. UNDERPAYMENT OF WAGES OR SALARIES

a. When a "full investigation" (as called for in and as construed under Article 5159a, Sec. 2 and as further generally described in an administrative directive to the City's Wage & Hour Office from the City's Director of Public Works entitled "Conducting Wage and Labor Standards Investigations on 100% Locally Funded City Construction Projects," as may be amended) evidences underpayment of wages by contractor/sub-contractor to laborers/mechanics employed upon the work covered by this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or this contract, shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, so much thereof as the City of San Antonio may consider necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages required by this contract plus possible penalty (See b. below). The amount so withheld, excluding any possible penalty to be retained by City, may be disbursed at an appropriate time after "full investigation" by the City of San Antonio, for and on behalf of the contractor/subcontractor (as may be appropriate), to the respective laborers/mechanics to whom the same is due or on their behalf to fringe benefit plans, funds, or programs for any type of minimum fringe benefits prescribed in the applicable wage determination decision.

b. Article 5159a, Revised Civil Statutes of Texas, as amended, states that the contractor shall forfeit as a penalty to the City of San Antonio the sum of sixty dollars ($60.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the said stipulated rate for any work done under this contract, whether by the contractor himself or by any subcontractor working under him. Pursuant to and supplemental to this statutory authority, the City of San Antonio and the contractor/subcontractor contractually acknowledge and agree that said sixty dollar ($60.00) statutory penalty shall be construed by and between the City of San Antonio and the contractor/subcontractor as liquidated damages and will apply to any violations of paragraphs 6, 7, or 9 herein, resulting from contractor/subcontractor underpayment violations.

c. If unpaid or underpaid workers cannot be located by the Contractor or the City after diligent efforts to accomplish same, unpaid or underpaid wages shall be reserved by the City in a special "unfound worker's account" established by the City of San Antonio, for such

employees. If after one (1) year from the final acceptance of the project by the City, workers still cannot be located, in order that the City can make effective interim re-use of the money, such wages and any associated liquidated damages may be used to defray actual costs incurred by the City in attempting to locate said workers and any remaining monies may then revert back to the City's original funding source for the project. However, unpaid or underpaid workers for which money was originally reserved are eligible to claim recovery from the City for a period of not-to-exceed three (3) years from the final acceptance of the project by the City. Recovery after expiration of the three year period is prohibited.

11. DISPLAYING WAGE DETERMINATION DECISIONS/AND NOTICE TO LABORERS/MECHANICS STATEMENT

The applicable wage determination decision as described in the "General Statement" (and as specifically included in each project contract), outlining the various worker classifications and mandatory minimum wages and minimum hourly fringe benefit deductions, if any, of laborers/ mechanics employed and to be employed upon the work covered by this contract, shall be displayed by the contractor/subcontractor at the site of work in a conspicuous and prominent public place readily and routinely accessible to workmen for the duration of the project. In addition, the contractor/subcontractor agrees with the contents of the following statement, and shall display same, in English and Spanish, near the display of the wage determination decision:

NOTICE TO LABORERS/MECHANICS

Both the City of San Antonio and the contractor/subcontractor agree that you must be compensated with not less than the minimum hourly base pay and minimum hourly fringe benefit contribution in accordance with the wage rates publicly posted at this jobsite and as are applicable to the classification of work you perform.

Additionally, you must be paid not less than one and one-half times your basic hourly rate of pay for any hours worked over 40 in any seven (7) calendar day work period, and for any work conducted on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and Martin Luther King Day or the calendar days observed as such in any given year.

Apprentice and trainee hourly wage rates and ratios apply only to apprentices and trainees recognized under approved Federal, or State, apprenticeship training programs registered with the Bureau of Apprenticeship and Training, U.S. Dept. of Labor.

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must make direct inquiry to the employer and inquire in writing, within sixty (60) calendar days of your receipt of any allegedly incorrect wage or benefit check or report, to the City of San Antonio Wage & Hour Office, Public Works Division, P.O. Box 839966, San Antonio, Texas 78283-3966. It is mandatory that you

promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the City of San Antonio, Wage & Hour Office within the sixty (60) calendar day period so that you do not waive your potential right of recovery under the provisions of the City of San Antonio Public Works contract that governs this project.

Both the City of San Antonio and the contractor/subcontractor agree that no laborer/mechanic who files a complaint or inquiry concerning alleged underpayment of wages or benefits shall be discharged by the employer or in any other manner be discriminated against by the employer for filing such complaint or inquiry.

12. PAYROLLS & BASIC PAYROLL RECORDS

a. The contractor and each subcontractor shall prepare payroll reports in accordance with the "General Guideline" instructions furnished by the Wage & Hour Office of the City of San Antonio. Such payroll submittals shall contain the name and address of each such employee, his correct labor classification, rate of pay, daily and weekly number of hours worked, any deductions made, and actual basic hourly and fringe benefits paid. The contractor shall submit payroll records each week, and no later than seven (7) working days following completion of the workweek being processed, to the Wage & Hour Office, City of San Antonio. These payroll records shall include certified copies of all payrolls of the contractor and of his subcontractors, it being understood that the contractor shall be responsible for the submission and general mathematical accuracy of payrolls from all his subcontractors. Each such payroll submittal shall be on forms deemed satisfactory to the City's Wage & Hour Office and shall contain a "Weekly Statement of Compliance", as called for by the contract documents. Such payrolls will be forwarded to Public Works, Wage & Hour Office, City of San Antonio, P. O. Box 839966, San Antonio, Texas 78283-3966.

b. Copies of payroll submittals and basic supporting payroll records of the contractor/subcontractors accounting for all laborers/mechanics employed under the work covered by this contract shall be maintained during the course of the work and preserved for a period of three (3) years after completion of the project. The contractors/subcontractors shall maintain records which demonstrate: any contractor commitment to provide fringe benefits to employees as may be mandated by the applicable wage determination decision, that the plan or program is adjudged financially responsible by the appropriate approving authority, (i.e. U. S. Department of Labor, U. S. Department of Treasury, etc.), and that the provisions, policies, certificates, and description of benefits of the plan or program as may be periodically amended, have been clearly communicated in a timely manner and in writing, to the laborers/mechanics affected prior to their performing work on the project.

c. The contractor/subcontractor shall make the above records available for inspection, copying, or transcribing by authorized representatives of the City of San Antonio at reasonable times and locations for purposes of monitoring compliance with this contract.

13. LABOR DISPUTES

The contractor/subcontractor shall immediately notify the Director of Public Works or his designated representative of any actual or impending contractor/subcontractor labor dispute which may affect, or is affecting, the schedule of the contractor's, or any other contractor's/ subcontractor's work. In addition, the contractor/subcontractor shall consider all appropriate measures to eliminate or minimize the effect of such labor disputes on the schedule, including but not limited to such measures as: promptly seeking injunctive relief if appropriate; seeking appropriate legal or equitable actions or remedies; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; and any other measures that may be appropriately utilized to mitigate or eliminate the jobsite and scheduling effects of the labor dispute.

14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

No laborers/mechanics to whom the wage, salary, or other labor standard provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor/subcontractors because such employee has filed any formal inquiry or complaint or instituted, or caused to be instituted, any legal or equitable proceeding or has testified, or is about to testify, in any such proceeding under or relating to the wage and labor standards applicable under this contract.

15. EMPLOYEE INTERVIEWS TO ASSURE WAGE AND LABOR STANDARD COMPLIANCE

Contractor/subcontractors shall allow expeditious jobsite entry of City of San Antonio Wage & Hour representatives displaying and presenting proper identification credentials to the jobsite superintendent or his representative. While on the jobsite, the Wage & Hour representatives shall observe all jobsite rules and regulations concerning safety, internal security and fire prevention. Contractor/subcontractors shall allow project employees to be separately and confidentially interviewed at random for a reasonable duration by the Wage & Hour representatives to facilitate compliance determinations regarding adherence by the contractor/subcontractor to these Wage and Labor Standard Provisions.

16. "ANTI-KICKBACK" PROVISION

No person employed in the construction or repair of any City of San Antonio public work shall be induced, by any means, to give up to any contractor/subcontractor or public official or employee any part of the hourly and/or fringe benefit compensation to which he is otherwise entitled.

17. "FALSE OR DECEPTIVE INFORMATION" PROVISION

Any person employed by the contractor/subcontractor in the construction or repair of any City of San Antonio public work, who is proven to have knowingly and willfully falsified, concealed or covered up by any deceptive trick, scheme, or device a material fact, or made any false, fictitious or fraudulent statement or representation, or made or used any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be permanently removed from the jobsite by contractor/subcontractor. The City of San Antonio reserves the right to terminate this contract for cause as a result of serious and uncured violations of this provision.

18. EMPLOYMENT OF APPRENTICES/TRAINEES

a. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship & Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor/subcontractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below or is not registered or otherwise employed as stated above, shall be paid the wage rate for the classification of work he actually performs. The contractor/subcontractor is required to furnish to the Wage & Hour Office of the City of San Antonio, a copy of the certification, along with the payroll record that the employee is first listed on. The wage rate paid apprentices shall be not less than the specified rate in the registered program for the apprentice's level of progress expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination decision.

b. Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to an individually registered program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee wage rate who is <u>not</u> registered and participating in a training plan approved

by the Employment and Training Administration shall be paid not less than the wage rate determined by the classification of work he actually performs. The contractor/subcontractor is required to furnish a copy of the trainee program certification, registration of employee-trainees, ratios and wage rates prescribed in the program, along with the payroll record that the employee is first listed on, to the Wage & Hour Office of the City of San Antonio. In the event the Employment and Training Administration withdraws approval of a training program, the contractor/subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved by the Employment and Training Administration.

c. Paragraphs 15.a. and b. above shall not operate to exclude training programs approved by the OFCCP, United States Department of Labor and as adopted by the Associated General Contractors (AGC) of Texas, Highway, Heavy, Utilities and Industrial Branch. Guidelines for these training programs shall be the same as those established for federally funded projects. This sub-paragraph 15.c. shall not apply to those portions of a project deemed to be building construction.

d. RATIOS, APPRENTICE TO JOURNEYMAN:

The Ratio of Apprentice to Journeyman for this project shall be the same as the Ratio permitted under the plan approved by the Employment and Training Administration, Bureau of Apprenticeship and Training, U.S. Department of Labor, by Craft. A copy of the allowable Ratios is included with the applicable Wage Determination Decision in the specifications for this project.

When a "full investigation" (as called for in, and as construed under, Article 5159a, Sec. 2, and as further generally described in an administrative directive to the City's Wage & Hour Office from the City's Director of Public Works entitled "Conducting Wage and Labor Standards Investigations on 100% Locally Funded City Construction Projects", as may be amended) evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for contractor/sub-contractor employees working on this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or other sections of this contract (especially paragraph 10 underpayment of wages), shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, the liquidated damages sum of seventy-five dollars ($75.00) for each calendar day, or portion thereof, for each certified Apprentice or Trainee employee assigned to a Journeyman that exceeds the maximum allowable Apprentice/Trainee to Journeyman ratio stipulated for any work done under this contract, whether by the contractor himself or by any subcontractor working under him.

19. JOBSITE CONDITIONS

Contractors/subcontractors will not allow any person employed for the project to work in surroundings or under construction conditions which are unsanitary, unhealthy, hazardous, or dangerous as governed by industry standards and appropriate local, state and federal statutes, ordinances, and regulatory guidelines.

20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

a. The contractor/subcontractor shall knowingly only employ persons of appropriate ages commensurate with the degree of required skill, strength, maturity and judgment associated with the activity to be engaged in, but not less than the age of fourteen (14) years, as governed by Vernon's Annotated Texas Statutes, especially Article 5181.1 "Child Labor" (as may be amended), and Texas Department of Labor and Standards rulings and interpretations associated with that statute. It is hereby noted that in some circumstances generally governed by this section, a federal statute (see: Fair Labor Standards Act, 29 USCS Section 212; Volume 6A of the Bureau of National Affairs Wage Hour Manual at Paragraph 96:1; "Child Labor Requirements in Nonagricultural Occupations" WH Publication 1330, July 1978 as may be amended), could pre-empt the Texas Statute and therefore be the controlling law on this subject. The contractor/subcontractor should seek clarification from state and federal agencies and legal counsel when hiring adolescent employees for particular job classifications.

b. Prohibited persons not to be employed are also those persons who, at the time of employment for this contract, are serving sentence in a penal or correctional institution except that prior approval by the Director of Public Works is required to employ any person participating in a supervised work release or furlough program that is sanctioned by appropriate state or federal correctional agencies.

c. The Contractor/subcontractors shall be responsible for compliance with the provisions of the "Immigration Reform and Control Act of 1986" Public Law 99-603, and any related State enabling or implementing statutes, especially as they in combination apply to the unlawful employment of aliens and unfair immigration-related employment practices affecting this contract.

21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

The contractor shall cause these Wage and Labor Standard Provisions, or reasonably similar contextual adaptations hereof, and any other appropriate state and federal labor provisions, to be inserted in all subcontracts relative to the work to bind subcontractors to the same Wage and Labor Standards as contained in these terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors or sub-subcontractors and to give the contractor similar, if not greater, general contractual authority over the subcontractor or subcontractors as the City of San Antonio may exercise over the contractor.