



**CITY OF SAN ANTONIO, TEXAS  
CONSTRUCTION MANAGER AT RISK CONTRACT**

**Project Name**

**PROJECT NUMBER: 000000000**

This Construction Manager at Risk Contract (hereafter referred to as “Agreement”) is entered into by and between the City of San Antonio, Texas, a Texas Municipal Corporation and home-rule City (hereafter referred to as “City” or “Owner”) by and through its City Manager, pursuant to Ordinance Number **20XX-XX-XX-XXX** passed and approved by the San Antonio City Council on **MONTH DAY, 2023** and **Selected Vendor Name** corporation authorized to do business in the State of Texas (hereafter referred to as “CMAR” or “Contractor”) with its primary business location at **1234 Commerce, San Antonio, TX 78205**. City and Contractor individually shall be referred to herein as “a Party” and collectively referred to herein as “the Parties”.

**RECITALS**

- A. The City Manager of the City of San Antonio, Texas, is authorized and empowered to execute agreements for professional and construction services.
- B. City intends to construct the **Project Name** as described in **Exhibit B** (Project Definition) attached hereto and made a part hereof (hereafter referred to as the “Project”).
- C. To undertake the design of said Project, City has entered into a contract with the Design Consultant.
- D. Contractor has represented to City the ability to provide pre-construction services and construction phase services for the Project and, based on this representation, City engages Contractor to provide pre-construction services and construction phase services for the Project. As part of the construction phase services, Contractor may construct a portion of the Project if qualified and selected for construction.
- E. Based on this representation, City intends to enter into this Agreement with Contractor for the Pre-Construction Phase Services and the Construction Phase Services identified in this Agreement.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between City and Contractor as follows:

Contractor, to further the interests of City, shall perform the services required by this Agreement and in accordance with this Agreement, to the satisfaction of the Director of the Public Works Department (hereafter referred to as “Director”), its terms and conditions in a good and workmanlike manner exercising the degree of care, skill and judgment a professional contractor performing the same or similar services would exercise at such time and under similar conditions. Contractor shall, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.

Attached hereto and incorporated herein by reference, as if fully set out herein, are this Agreement’s Exhibits:

**EXHIBIT A –PAYMENT AND PERFORMANCE BOND FORMS**

**EXHIBIT B – PROJECT DEFINITION**

**EXHIBIT C – CONTRACTOR’S HOURLY RATE SCHEDULE AND SCHEDULE  
OF VALUES FOR PRE-CONSTRUCTION SERVICES**

**EXHIBIT D – SUBMITTAL REQUIREMENTS FOR THE GMP**

**EXHIBIT E – SUBMITTAL REQUIREMENTS FOR A FIXED PRICE PROPOSAL**

**EXHIBIT F – APPROVED FIXED PRICE PROPOSAL FORM**

**EXHIBIT G – GENERAL CONDITIONS FOR CITY OF SAN ANTONIO  
CONSTRUCTION CONTRACTS**

**EXHIBIT H – APPROVED GMP PROPOSAL FORM**

**EXHIBIT I – TECHNICAL SPECIFICATIONS**

**EXHIBIT J – CONSTRUCTION DRAWINGS**

**EXHIBIT K – SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN**

**EXHIBIT L – CONTRACTOR DESCRIPTION OF GENERAL CONDITIONS  
COSTS**

**EXHIBIT M – FORM 1295**

**EXHIBIT N – ADDENDA**

## EXHIBIT O – RFQ SUBMITTAL AND PROPOSAL COMMITMENTS

### EXHIBIT P – INSURANCE REQUIREMENTS

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named on the date and year first above written.

Contractor agrees this Agreement, as awarded, is for the stated Work, as defined herein. Contractor understands, accepts and agrees payments for Work performed will be made by City on the basis of the indicated amount(s) and percentage(s), per the terms and conditions of the Agreement. See also **Exhibit H, Approved GMP Proposal Form**.

#### Pre-Construction Fee: (\$XXX,XXX)

Pre-Construction Fee shall include all personnel, material and equipment expenses, as well as Contractor's additional Overhead and Profit through the Design Phase portion of the Project.

#### Construction Fee: [X.XX]%

Construction Fee shall be paid by applying this percentage to the actual Costs of the Work incurred and approved by City, calculated and applied on each of Contractor's submitted Payment Applications.

#### Other Related Fees, to Include Builder's Risk, General Liability Insurance, Pollution Liability, Umbrella Liability, and Payment and Performance Bond Premiums.

Related Fees are an estimated value, based on the Project's and Contractor's projected GMP (\$XX,000,000.00). The final construction cost is subject to adjustment, based on Change Orders issued throughout the Project's duration. The actual value paid by City for related fees shall be the straight pass-through cost incurred by Contractor without markup charged by Contractor.

#### General Conditions Cost: [X.XX]%

General Conditions Cost shall be paid by applying this percentage to the actual Cost of the Work incurred and approved by City, calculated and applied on each of Contractor's submitted Payment Applications. General Conditions Costs include, but are not necessarily limited to, the items listed on **EXHIBIT L – Contractor DESCRIPTION OF GENERAL CONDITIONS COSTS**, attached hereto and made a part of this Agreement by reference.

**CITY OF SAN ANTONIO  
CONSTRUCTION MANAGER-AT-RISK AGREEMENT**

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## ARTICLE 1. TERMS AND DEFINITIONS

- 1.1 Addenda – Written or graphic instruments issued after the submittal of the Guaranteed Maximum Price (hereafter referred to as “GMP”) Proposal, which clarify, correct or change the GMP Proposal requirements and/or incorporated as part of this contract.
- 1.2 Approved Fixed Price Proposal – The offer or proposal of Contractor submitted on the prescribed form, setting forth the prices for the entire Work or portions of the Work to be performed during the construction phase which has been approved by City and incorporated herein as part of **Exhibit F**.
- 1.3 Contract Sum – The total maximum not-to-exceed amount payable by City to Contractor for performance of the Work under the Contract Documents, which is equal to (a) during the Pre-Construction Phase, the sum of the payments for Pre-Construction Phase Services calculated in accordance with Section 8.1.1 plus the costs of required bonds and insurance premiums without any markup, plus (b) if a Guaranteed Maximum Price Proposal is accepted by City, the Guaranteed Maximum Price plus the costs of bond and insurance premiums required during the Construction Phase without any markup, plus (c) any authorized adjustments.
- 1.4 Construction Cost Limitation (CCL) – The maximum monetary amount budgeted or otherwise allocated by City for all Construction Phase services, materials, labor and other work required for completion of the Work, in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work and the Construction Fee. City will provide the CCL to Contractor during the Pre-construction Phase of the Project. City may adjust the CCL before or after the acceptance of the GMP Proposal based on changes to Project funding, Project characteristics or other factors. The CCL does not include Contractor’s Pre-Construction Phase Fee.
- 1.5 Construction Documents – Include this Agreement, City’s General Conditions, City’s Supplementary and Special Conditions, the Drawings/Plans, Specifications, details and other documents prepared by the Design Consultant and its Sub-Consultants and by City’s other consultants that are accepted by City and describe the scope and quality of the materials, supplies, equipment, systems and other elements that are required for construction of the Project.
- 1.6 Construction Fee – A set percentage of the total cost of work, to include Contractor’s administrative costs, direct and indirect costs and Contractor’s home office overhead and profit, whether at Contractor’s principal or branch offices.
- 1.7 Contract Time – The number of calendar days or the dates related to the construction phase within which Contractor is to achieve Substantial Completion of the Work.
- 1.8 Contractor’s Representative – The person(s) designated by Contractor in writing with decision-making authority on behalf of Contractor.

- 1.9 Contingency – A fund to cover cost increases during the Project, to be used at the discretion of City, to address such costs that result from City directed changes, unanticipated project circumstances, unforeseen site conditions or related unanticipated costs. The City will set the amount of the Contingency which will be in addition to the Project costs included in Contractor’s GMP and FPP packages.
- 1.10 Contract Documents – As defined in the General Conditions to include GMP Plans and Specifications and Fixed Price Proposals (hereafter referred to as “FPPs”).
- 1.11 Cost of the Work – The direct costs incurred by Contractor in the proper performance of the Work. The Cost of the Work shall include, but is not necessarily limited to, direct labor costs, Subcontractor costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, building permit fees (if not paid for by City pursuant to the terms of the Contract), materials testing (if not paid and/or provided by City pursuant to the terms of the Contract) and related items. The Cost of the Work shall not include Contractor’s Construction Fee, General Conditions Cost, bond and insurance costs or taxes.
- 1.12 Critical Path Schedule/Method – The sequence of necessary and required activities from the start of the Work to the Substantial Completion of the Project, the delay in the completion of which may extend the Substantial Completion date.
- 1.13 Day – Means a calendar day, unless otherwise specifically noted in the Contract Documents. A calendar day is a day of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated.
- 1.14 Deliverables – The work products prepared by Contractor in performing the scope of Work described in this Contract.
- 1.15 Design Consultant – The licensed architect, engineer, or other qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project. If the employment of a Design Consultant is terminated, City shall employ a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant.
- 1.16 Design Services Phase – See Pre-Construction Phase Services herein.
- 1.17 Director – The Public Works Department Director or his/her identified designee.
- 1.18 Drawings or Plans – Documents which visually represent the scope, extent and character of the Work to be furnished and performed by Contractor during the construction phase and which have been prepared or approved by the Design Consultant and City. These include Drawings that have reached a sufficient stage of completion and released by the Design Consultant solely for the purposes of review and/or use in performing constructability or bid-ability reviews and in preparing cost estimates (e.g. conceptual



design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but “*not for construction*”. Shop Drawings are not Drawings included in this definition.

- 1.19** Fixed Price Proposal (FPP) - The offer or proposal of Contractor submitted on the prescribed form setting forth the proposed prices for the entire Work or portions of the Work to be performed during the construction phase.
- 1.20** Float - The number of Days by which the completion of an activity or logically connected sequence of activities can be delayed without lengthening the Critical Path and extending the Substantial Completion date. Float is generally identified on the Project Schedule as the difference between the early completion times and late completion times for activities.
- 1.21** General Conditions Costs – Includes but is not limited to the types of costs for Contractor during the construction phase as defined in Exhibit L (Contractor Description of General Conditions Cost).
- 1.22** Guaranteed Maximum Price (GMP) – The sum of the maximum cost of the entire Work to be performed during the Construction Phase, including Contractor’s Construction Fee, General Conditions Costs and sales tax(es) (if any).
- 1.23** GMP Plans and Specifications – The three sets of Design Development Documents Plans and Specifications provided, as defined in **Article 2** herein, upon which the Guaranteed Maximum Price Proposal is based.
- 1.24** Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of Contractor, submitted on the prescribed form, setting forth the GMP prices for the entire Work to be performed during the construction phase.
- 1.25** Notice to Proceed (NTP) – A written notice given by City to Contractor fixing the date on which Contractor will start to perform one of the following as applicable:
- (a) Contractor’s obligations under this Agreement which will also constitute the start of the Pre-construction Phase and will set forth the date for Substantial Completion of the Work;
  - (b) Contractor’s initial start of construction Work under the Contract; and
  - (c) Contractor’s work under any FFP package
- 1.26** Party or Parties – Party shall mean City or Contractor individually. Parties shall mean City and Contractor collectively.
- 1.27** Pre-Construction Services – Services provided by Contractor as defined in **Article 3** herein.



- 1.28 Preliminary Budget – The total estimated cost of the Project, including design, construction, and other associated costs and services, which is established by City prior to the commencement of design.
- 1.29 Project – The services and work to be completed by Contractor, Subcontractors and/or Sub-Consultants pursuant to this Agreement as set forth in the Contract Documents.
- 1.30 Project Team – The Design Consultant, Contractor, City and any others designated by City who are responsible for making decisions regarding the programming, design and construction of the Project. The members of the Project Team may be modified from time to time by City.
- 1.31 Schedule of Values (SOV) – Document specified in the General Conditions which divides the Approved Fixed Price Proposals into pay items, such that the sum of all pay items equals the Approved Fixed Price Proposal for the construction phase Work or for any portion of the Work having a separate specified Approved Fixed Price Proposal. City, at its discretion, may require that the SOV be output from the Progress Schedule.
- 1.32 Sub-Consultant – A person, firm or corporation having a contract with Contractor to furnish services required as its independent professional associate or consultant, with respect to the Project.
- 1.33 Subcontractor – An individual or firm having a direct contract with Contractor or any other individual or firm having a contract with an individual or firm having a direct contract with Contractor at any tier, who/which undertakes to perform a part of the Construction Phase Work at the site for which Contractor is responsible. Subcontractors shall be selected through the Subcontractor bid process described in this Agreement.
- 1.34 Substantial Completion – As defined in the General Conditions. The substantial completion date for each FPP will be listed in each FPP Notice to Proceed Letter.
- 1.35 Value Engineering – Alternatives for design, means and methods or other scope considerations that are evaluated by City and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.
- 1.36 Work – All of the work, services and obligations which Contractor is, or may be, required to do to comply with its obligations under this Agreement in relation to the construction of the Project.
- 1.37 Work Packages – One or more packages (individually, referred to as a "Work Package") which identify a specific scope of Work and which will be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work.

## **ARTICLE 2. GENERAL PROVISIONS**

### **2.1 CONTRACT DOCUMENTS**

**2.1.1** Contract Documents are listed in this Section 2.1.1. The most recently issued document takes precedence over previous issues of the same document. In the event of a conflict among the Contract Documents, the following order of precedence shall govern the interpretation of such documents, with the highest authority listed herein. Contract Documents include this Agreement as "a" and its Exhibits in descending order:

- (a) Modifications to the Contract signed by Contractor, City Design Consultant;
- (b) Contract, including Exhibits;
- (c) Addenda, with those of later date(s) having precedence over those with earlier date(s);
- (d) Special Conditions;
- (e) General Conditions for City of San Antonio Construction Contracts, (Exhibit G);
- (f) Technical Specifications, (Exhibit I); and
- (g) Construction Drawings (Exhibit J).

Each of the Contract Documents is an essential part of the agreement between the Parties, and/ a requirement occurring in one is as binding as though occurring in all. Contract Documents, by reference, are made a part of this Agreement to the same extent as if set forth herein in full.

### **2.1.2 CORRELATION AND INTENT.**

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

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

2.1.2.3 Unless otherwise stated in the Contract Documents, words having well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Where the phrases

"directed by", "ordered by" or "to the satisfaction of" City, Design Consultant or City's Resident Inspector or other specified designation occur, it is understood the directions, orders or instructions to which they relate are those within the scope of and authorized by the Contract Documents.

- 2.1.2.4 Reference to manufacturer's instructions, standard specifications, manuals or codes of any technical society, organization or association, laws or regulations of any governmental authority, or to any other documents, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Contractor's Proposal, except as otherwise may be specifically stated or where a particular issue is indicated. Municipal and utility standards shall govern except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent shall govern.
- 2.1.2.5 In case of differences between small and large-scale drawings, the large-scale drawings shall govern. On drawings, given dimensions shall take precedence over scaled measurements. Schedules on drawings shall take precedence over conflicting notations on such drawings. In the event of discrepancy between any drawings and the figures written thereon, the figures, unless otherwise indicated, shall govern over scaled dimensions. Should the Drawings and Specifications be inconsistent, contract pricing shall be based on the better quality and greater quantity of work indicated. In the event of the above-mentioned inconsistency, City shall determine the resolution of the inconsistency.
- 2.1.2.6 Notwithstanding the order of precedence in Section 2.1.1, in the event of a conflict among any standard or specification applicable to the Project established by reference contained in the Contract Documents to a described publication, law or regulation, or of a conflict among documents with equal priority, the more stringent requirement applies regardless of the order of precedence that would otherwise apply, unless the Parties otherwise agree. Contractor shall notify City of any perceived conflict and request City's determination respecting the order of precedence among such perceived conflicting provisions promptly upon becoming aware of any such perceived conflict. City shall have the right to determine which standard or specification is more stringent in the event of ambiguity.
- 2.1.2.7 In the Drawings and Specifications, where certain products, manufacturer's trade names or catalog numbers are given, such information is given for the sole and express purpose of establishing a standard of function, dimension, appearance and quality of design in harmony with the Work and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such a substitution has been specifically accepted for use on this Project by City and Design Consultant.

- 2.1.2.8 When the work is governed by reference to standards, building codes, manufacturer's instructions or other documents, unless otherwise specified, the edition currently in place as of the date of the submission of the bid shall apply.
- 2.1.2.9 In the event of a conflict among the standards, criteria, requirements, conditions, procedures, specifications or other provisions of the Contract Documents and those established by reference to a manual or publication, the Contract Documents shall prevail.
- 2.1.2.10 If the Contract Documents contain differing provisions on the same subject matter and within the same order of precedence pursuant to Section 1.3.7, the provisions that provide greater detail or establish a higher quality, manner or method of performing the Work or use more stringent standards shall prevail.
- 2.1.2.11 Additional details in a lower priority Contract Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Contract Document.
- 2.1.2.12 Omission of details of the Work from the Contract Documents or the mis-description of details of Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Contractor from performing such omitted Work, or the mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder.
- 2.1.2.13 The headings used in this Agreement or any other Contract Documents are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision or shall not be referenced in resolving questions of interpretation or construction.
- 2.1.2.14 The Contract Documents form the entire agreement between City and Contractor and, by incorporation herein, are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

### **2.1.3 INTERPRETATION**

The following rules of interpretation apply when interpreting the Contract Documents:

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

- 2.1.3.3 references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to;
- 2.1.3.4 the words “including,” “includes,” and “include” shall be deemed to be followed by the words “without limitation” and shall not be considered to set forth an exhaustive list;
- 2.1.3.5 words such as “herein,” “hereby,” “hereof,” “hereto,” and “hereunder” and words of similar import refer to the entire document in which they are contained and not to any particular provision or section;
- 2.1.3.6 words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
- 2.1.3.7 references to Persons include their respective permitted successors and assigns and, in the case of Governmental Entities, Persons succeeding to their respective functions and capacities;
- 2.1.3.8 words of any gender used herein shall include each other gender where appropriate;
- 2.1.3.9 unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive;
- 2.1.3.10 the word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances;
- 2.1.3.11 unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified, or supplemented from time to time in accordance with its terms;
- 2.1.3.12 the division of the Contract Documents into parts, sections, and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of the Contract Document and the headings in these Contract Documents are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of the Contract Documents; and
- 2.1.3.13 whenever the Contract Documents require or provide for any notice, approval, consent, acceptance, determination, decision, certificate, order, response, waiver, explanation, policy, information, or the like, the same and any request for any of the foregoing must be in writing (unless otherwise waived in writing by the other Party).
- 2.1.4 CHANGES IN TERMS AND CONDITIONS. The terms and conditions of the Contract Documents may be changed only by a Field Work Directive, Change

Order or Amendment.

## **2.2 PAYMENT AND PERFORMANCE BONDS**

2.2.1 On or prior to execution of this Contract, Contractor must provide Payment and Performance Bonds to City each in the penal sum of \$\_\_\_\_\_ and in the forms provided in Exhibit A (Payment and Performance Bond Forms). The penal sums of the Payment and Performance Bonds are subject to increase as described herein. The bonds shall each be in accordance with the provisions of Chapter 2253, Texas Government Code.

2.2.2 Each surety bond shall be signed by Contractor, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of this Section 2.2 and approved by City. The surety bonds shall be accompanied by an appropriate Power-of-Authority clearly establishing the extent and limitations of the authority of each signer to so sign.

The required Performance Bond shall guarantee the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of City. The Performance Bond also shall provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by City, or lesser or longer periods as otherwise may be designated in the Contract Documents.

The required Payment Bond shall guarantee the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.

2.2.3 Upon City's acceptance of each Fixed Price Proposal and the Guaranteed Maximum Price Proposal (GMP), Contractor shall provide riders to the Payment and Performance Bonds on forms prescribed by City [and in accordance with the requirements set forth in the General Conditions for the City of San Antonio Construction Contracts] to increase the penal sum of the bonds. Upon City's acceptance of each Fixed Price Proposal, the riders shall specify that the penal sum of the bonds shall be increased by the amount of Fixed Price Proposal. Upon City's acceptance of the GMP, the riders shall set the penal sum of the bonds at 100% of the GMP amount. No construction shall commence on any Fixed Price Proposal or under the accepted GMP until the adequate Payment and Performance Bonds are and riders are delivered to City.

2.2.4 No surety shall be accepted by City that is in default, delinquent on any bonds or that is a party to any litigation against City. All bonds shall be approved by City and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States



Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to City. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Bexar County, Texas. Each surety shall designate an agent resident in Bexar County, Texas to which any requisite statutory notices may be delivered to City and on which service of process may be had in matters arising out of the suretyship.

## **2.3 CONSULTATION AND COORDINATION**

- 2.3.1 Program Evaluation: As a participating member of the Project Team, Contractor shall provide to City and Design Consultant a written evaluation of City's Project Program and Project Budget, with recommendations as to the appropriateness of each within thirty (30) days of City issuing a Notice to Proceed to Contractor, unless the parties otherwise mutually agree in writing.
- 2.3.2 Project Meetings: Contractor will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- 2.3.3 Contractor, when requested by City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings germane to the Project. Contractor will provide drawings, schedule diagrams, budget charts and other materials describing the Project when their use is required or appropriate in any such public agency meetings.
- 2.3.4 Contractor will provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters arising during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by City and shall be updated, at minimum, monthly during the Pre-construction Phase of the Project.

## **2.4 PROJECT SCHEDULE**

- 2.4.1 As approved by City, the purpose of the Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members. The Project Team then will utilize that Deliverable as a basis for managing and monitoring all members' compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. Contractor shall develop and maintain the Project Schedule on behalf of and to be used by the Project Team, based on input from the other Project Team members. The Project Schedule shall use the Critical Path Method (hereafter referred to as "CPM") technique, unless required otherwise in writing by City. Contractor shall use scheduling software to develop the Project Schedule acceptable to City. If Project phasing, as described



below, is required, the Project Schedule shall indicate milestone dates for the phases once those milestones are determined.

- 2.4.2 The Project Schedule shall include a CPM diagram schedule showing the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 2.4.3 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities and total Float times for all activities, except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 2.4.4 The CPM diagram schedule shall indicate all relationships between activities.
- 2.4.5 The activities making up the schedule shall be sufficient detail to assure adequate planning has been conducted to ensure proper execution of the Work and provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 2.4.6 The CPM diagram schedule shall be based upon activities which coincide with the Schedule of Values.
- 2.4.7 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 2.4.8 The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture, when those activities are interrelated with Contractor activities.
- 2.4.9 The schedule shall include anticipated rain delays during the performance of the contract for items of critical path activity. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service based out of San Antonio International Airport or other approved source.
- 2.4.10 The Project Schedule shall be updated and maintained by Contractor throughout the Pre-Construction Phase, such that it shall not require major changes at the start of the Construction Phase Services to incorporate Contractor's plan for the performance of the Construction Phase Work. Contractor shall provide updates and/or revisions to the Project Schedule for use by the Project Team whenever required, but no less often than at the monthly Project Team meetings. Contractor shall include with such submittals a narrative describing its analysis of the progress achieved to date versus progress planned, any concerns regarding delays or potential delays and any recommendations regarding mitigating actions.
- 2.4.11 If phased construction is deemed appropriate and City and Design Consultant approve, Contractor shall review the design and shall make recommendations regarding the phased issuance of Construction Documents, to facilitate phased construction of the Work, with the objective of reducing the Project Schedule

and/or Cost of the Work. Contractor shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability and any other factors pertinent to saving time and cost.

**2.5 PHASES OF SERVICES AND THE WORK** The services and the Work to be performed by or through Contractor shall be divided into the Pre-Construction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Pre-Construction Phase is completed. However, no Work shall commence under the Construction Phase until City has issued a Notice to Proceed for such Work in accordance with the terms of the Contract.

**2.6 DATE OF COMMENCEMENT.** The Pre-Construction Phase Services shall commence after this Agreement has been executed fully by the Parties the City has issued a Notice to Proceed.

### **ARTICLE 3. CONTRACTOR'S PRE-CONSTRUCTION SERVICES AND RESPONSIBILITIES**

Contractor's Pre-Construction Services Phase shall be deemed to commence upon the date specified in the Notice to Proceed with Pre-Construction Services, issued by City, and shall continue through completion of the Construction Documents or upon the delivery to City of a Guaranteed Maximum Price proposal. The Construction Phase Work shall commence upon City's issuance of a Notice to Proceed with the specific scope of the Work stated therein and shall continue through Final Completion. The duties of Contractor include those set forth in this **Article 3.**

#### **3.1 GENERAL RESPONSIBILITIES**

3.1.1 Contractor shall have overall responsibility for and shall provide complete Pre-Construction Services in accordance with this Agreement. Contractor shall cooperate with the Design Consultant and endeavor to further the interests of City and the Project. Contractor shall furnish Pre-Construction Services in accordance with the Project Schedule in an expeditious and economical manner, consistent with the interests of City as set forth in this Agreement.

3.1.2 Contractor shall identify for City the employees and other personnel it shall assign to the Pre-Construction Services Phase and provide the hourly loaded salary rate, the amount paid for each and the number of hours each employee or other personnel is projected to work. Contractor also shall identify any Sub-Consultants that will be performing services during the Pre-Construction Services Phase. After execution of this Agreement by City, Contractor shall not remove or replace the persons or entities assigned to the Project except with City's written consent, which consent shall not be unreasonably withheld, and Contractor shall provide a written explanation to City for the requested removal or replacement of a person

or entity. Contractor shall not assign any person or entity to the Project or contract with any person or entity to which City has a reasonable objection. Upon receiving City's reasonable objection of any person or entity and direction, Contractor promptly shall remove and replace the objected person or entity. Following receipt of City's written consent or direction to remove or replace a person or entity, Contractor promptly shall update the list of persons and consultants no later than fifteen (15) calendar days after the change is made during the Pre-Construction Services Phase.

- 3.1.3 The Pre-Construction Services Phase of the Project shall commence upon the date specified in City-issued Notice to Proceed with Pre-Construction Services for the Project and, unless otherwise agreed, shall continue through 100% completion of the Construction Documents or the delivery of a Guaranteed Maximum Price proposal to City. If, however, it is deemed by the Director or his designee to be in the best interest of City, and upon written approval by City, the Construction Services Phase of the Project may commence before the Design Services Phase has been completed, in which case the direction to do so shall be documented in writing and both phases shall proceed concurrently.
- 3.1.4 Contractor shall visit the site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions.
- 3.1.5 Contractor shall provide Pre-Construction Services described herein in a proactive manner and consistent with the most current Drawings and Specifications. Contractor promptly shall notify City in writing whenever Contractor determines any Drawing(s) or Specification(s) is/are inappropriate for the Project and/or cause(s) changes in the Scope of Work requiring an adjustment in the Project Schedule and/or in the Contract Time for the Work, to the extent such are established.
- 3.1.6 Contractor shall provide evaluations, recommendations and information to the Project Team regarding: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of Contractor and City's separate Contractors, if any; cost factors, including costs of alternative materials, systems or designs, Preliminary Budgets and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to complete the Project in accordance with the Project Schedule and GMP.
- 3.1.7 The recommendations and advice of Contractor concerning design alternatives shall be subject to the review and approval of City and City's Consultants. It is not Contractor's responsibility to ascertain the Drawings and Specifications are in accordance with applicable laws, statutes and ordinances, building codes, rules

and regulations. However, if Contractor has actual knowledge portions of the Drawings and Specifications are at variance therewith, Contractor promptly shall notify the Design Consultant and City in writing.

3.1.8 Contractor shall be responsible for reporting and assisting in remedying all discrepancies, errors and omissions in the Contract Documents of which Contractor has actual knowledge. In such case, Contractor's responsibilities include the review, coordination and recommendation of a resolution of strategies (within budget constraints) but do not establish a liability for design.

3.1.9 Contractor's services shall be provided in conjunction with the services of a Design Consultant. The terms of the Agreement between City and the Design Consultant shall be available for inspection by Contractor upon request.

### **3.2 DESIGN DOCUMENT REVIEWS**

3.2.1 Contractor periodically shall evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design and other factors impacting the cost estimate, GMP Proposals, Fixed Price Proposals and/or the Project Schedule.

3.2.2 Contractor shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations, in its opinion, required to provide the reasonably necessary information for Contractor to construct the Project. Before Contractor's receipt of Notice to Proceed for Construction, Contractor may request additional investigations to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.

3.2.3 Contractor shall meet with the Project Team as required to review designs during their development. Contractor shall familiarize itself with the evolving documents through the construction document phase. Contractor proactively shall advise the Project Team and make recommendations on factors related to construction costs, including quantity calculations to verify quantities specified by the Design Consultant, and any concerns pertaining to the feasibility and practicality of any proposed means and methods, packaging of the Work, selected materials, equipment and building systems and, labor and material availability. Contractor shall advise the Project Team on proposed site improvements and excavation and foundation considerations, as well as concerns with respect to coordination of the Drawings and Specifications. Where appropriate, Contractor shall recommend cost effective alternatives to Design Consultant and City.

3.2.4 Contractor routinely shall conduct constructability and bid-ability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency and coordination of Work of Subcontractors, Sub-Consultants and Suppliers.

- 3.2.5 Constructability Reviews: Contractor shall implement and conduct a constructability review to identify and document Project cost and schedule savings opportunities. Whenever the term “value engineering” is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license.
- 3.2.6 Contractor shall prepare a “Constructability Report” identifying items that, in Contractor’s opinion, negatively may impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications and details and shall identify known discrepancies that may generate Change Orders or claims once Construction Phase Services commence. Contractor shall evaluate whether:
- (a) the Drawings and Specifications are configured to enable efficient construction;
  - (b) design elements are standardized;
  - (c) construction efficiency is properly considered in the Drawings and Specifications;
  - (d) module/preassembly design are prepared to facilitate fabrication, transport and installation;
  - (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions;
  - (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable; and
  - (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 3.2.7 Contractor shall identify equipment or material requiring extended delivery times and advise City on the need for expedited procurement of those items.
- 3.2.8 Bid-ability Reviews: Contractor shall check cross-references and complementary drawings and sections within the Specifications and, in general, evaluate whether:
- (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies;
  - (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations;



- (c) Specifications include alternatives in the event a requirement cannot be met in the field; and
  - (d) in its exercise of good judgment as the Project's Contractor, the Project is likely to be subject to differing site conditions.
- 3.2.9 The results of the reviews shall be provided to City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with accompanying notations and recommendations made on the Drawings, Specifications and other documents. If requested by City, Contractor shall meet with City and Design Consultant to discuss any findings and review reports.
- 3.2.10 Contractor's reviews shall be written from a Contractor's perspective and though it shall seek to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Consultant and not Contractor.
- 3.2.11 Notification of Variance or Deficiency: Contractor agrees to assist the Design Consultant in its efforts to ascertain whether the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If Contractor has actual knowledge portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it promptly shall notify the Design Consultant and City in writing, describing the apparent variance or deficiency. Notwithstanding the foregoing, the responsibility for ensuring compliance with applicable laws, statutes, ordinances, building codes, rules and regulations rests solely with the Design Consultant.
- 3.2.12 Alternate Systems Evaluations: The Project Team routinely shall identify and evaluate, using value engineering principles, any alternate systems, approaches and design changes having the potential to reduce Project costs while still delivering a quality and functional product. The recommendations and advice of Contractor concerning design alternatives shall be subject to the review and approval of City and City's Consultants. If the Project Team agrees, Contractor, in cooperation with the Design Consultant, shall perform a cost/benefit analysis of the alternatives and submit such analysis in writing to the Project Team. The Project Team shall decide, at the Project Team's sole discretion, which alternatives if any shall be incorporated into the Project. The Design Consultant shall have full responsibility for the incorporation of City's decided upon alternatives into the Drawings and Specifications. Contractor shall include the cost of the alternatives into the cost estimate and any GMP Proposals.

### **3.3 COST ESTIMATES**

- 3.3.1 Unless otherwise agreed upon by both parties, within fourteen (14) days after receipt of all documents for the various phases of design, Contractor shall provide

a complete and detailed cost projection estimate and a written review of the documents. The cost estimate shall include all cost categories except Contingency to be included in the GMP Summary identified in **Exhibit C** hereto. The Design Consultant and Contractor shall work to reconcile any disagreements on Contractor's estimate, to arrive at an agreed upon cost projection. If no consensus is reached by the Design Consultant and Contractor, City shall make the final determination.

- 3.3.2 If any estimate submitted to City exceeds previously accepted Construction Cost Limitation (hereafter referred to as "CCL"), Contractor, City and/or Design Consultant shall make appropriate recommendations on methods and materials each Party believes shall bring the Project back into the CCL.
- 3.3.3 In between the designated milestone estimates, issued by the Design Consultant at designated phases of the design, Contractor periodically shall provide a tracking report identifying the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of Contractor to keep City and Design Consultant informed as to the major trend changes in costs, relative to City's budget.
- 3.3.4 Contractor shall prepare a preliminary "cash flow" projection, based upon historical records of similar type projects, to assist City in the financing process.
- 3.3.5 Arrival at Net Reconciled Estimate. When requested by City, Contractor shall prepare and submit a Construction Manager Estimate (hereafter referred to as "CME") of the Cost of the Work and a Project Schedule for the Project. This CME shall be compared and reconciled with the Design Consultant Estimate (hereafter referred to as "DPE") for the Project, which shall be prepared by the Design Consultant. Through a process of negotiation and consultation between City, the Design Consultant and Contractor, the CME and the DPE shall be reconciled to arrive at an agreed Cost and Schedule for the Project (hereafter referred to as "Net Reconciled Estimate").

3.3.6 Bidding of Project.

3.3.6.1 Upon completion of the Construction Documents, or applicable "Bid Package" portion thereof, by the Design Consultant, Contractor publically shall advertise, as prescribed for a governmental entity under the Texas Local Government Code, and receive sealed bids or proposals from trade Contractors and/or Subcontractors for the performance of all major elements of the Work, other than the minor work that may be included in its General Conditions Costs. Contractor shall comply with City's SBEDA Ordinance and Procurement Program policies and procedures in evaluating the impact of each Subcontractor selection. Contractor shall follow this process in the development of each construction trades package for each Work Package. Contractor shall submit Contractor's standard form of subcontract for the Project to City for review and approval, in



order to verify it contains provisions required by the Contract Documents protective of the interests of City and conforms to the requirements of the Contract Documents. Subcontracts shall not be awarded solely on the basis of cost of the work plus a fee without the prior written consent of City.

3.3.6.2 Contractor may perform portions of the Work itself if Contractor submits its bid or proposal for those portions of the Work in the same manner as other trade Contractors and/or Subcontractors and if City determines Contractor's bid or proposal provides the best value for City. If Contractor intends to submit a proposal for such Work, it shall notify City prior to soliciting proposals and all such bids and/or sealed proposals shall be submitted directly to City or its designated representative.

3.3.6.3 Contractor shall instruct interested Subcontractors to review the Project Plans and Specifications from the approved list of plan review locations or purchase a copy from the Design Consultant.

3.3.6.4 Contractor shall include specific notices of the following statutory requirements in the information to bidders:

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

3.3.6.4.2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258.

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

3.3.6.4.4 Other notices required, as set out in City's General Conditions or Special Conditions.

3.3.6.4.5 Nothing herein shall prevent Contractor from including other notices required or allowed by law.

3.3.6.5 Upon receipt of bids/proposals, Contractor and City (and/or its representative) jointly shall open and review all trade Contractor or Subcontractor bids or proposals, taking into consideration the criteria listed in Texas Local Government Code. Following this review, Contractor shall prepare, for City's review, a notebook to include all bids/proposals received and a summary of all bids and/or proposals received. After discussion with City, Contractor shall recommend to City the bidders/proposers offering the best value to City and with whom Contractor desires to enter into a subcontract. At all times, City retains right to accept and/or reject all Subcontractors.

- 3.3.6.6 The bid/proposal review shall be handled in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by Contractor, the Design Consultant, the Project Management Team or City.
- 3.3.6.7 All bids or proposals shall be made public after the award of the contract or not later than the seven (7) days after the date of final selection of bids or proposals, whichever is later.
- 3.3.6.8 If a specific bidder among those whose bids are delivered by Contractor to City and Design Consultant
- (1) is recommended to City by Contractor;
  - (2) is qualified to perform that portion of the Work;
  - (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but City requires another bid be accepted, then City shall compensate Contractor for the increased change in price, time or Guarantee Maximum Cost for any additional cost and risk Contractor may incur related directly to City's requirement another bid or proposal be accepted.
- 3.3.7 Contractor agrees, at its own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement, free and clear of all claims, liens and charges whatsoever in the manner and under the conditions specified within the time or times stated in the accepted GMP Proposal.
- 3.3.8 The Contract Price shall include the approved Guaranteed Maximum Price Proposal, to be attached hereto, incorporated herein and labeled as **Exhibit H**, and shall include Contingency in an amount which shall be determined and controlled by City upon the acceptance of the GMP, along with Contractor's Pre-Construction Services Fee.
- 3.3.9 Contractor is at risk to cover any additional Project costs in the performance of the Work in excess of GMP (less any contingency listed). Any amounts in excess of the actual Cost of the Work shall be paid by Contractor.
- 3.3.10 The General Conditions Costs and the Construction Fee may be fixed percentages applied to the actual Cost of the Work, as evidenced by the approved GMP, the FPPs and Payment Applications, but are subject to adjustments as permitted in the Contract Documents.

- 3.3.11 Contingency are funds to be used at the discretion of City to cover any increases in Project costs resulting from City-directed changes, unforeseen site conditions or related unanticipated project costs. Contingency is not available for items or costs that (a) arise as a result of Contractor's negligence or Contractor errors, (b) are covered by other payments to which Contractor is entitled under the Contract, or (c) are otherwise recoverable from an insurance company, Subcontractor or Sub-Consultant, or bonding company. Contingency shall be a separate line item and shall be in addition to the GMP amount provided by Contractor, the sum of which shall be the full contract price for construction. If City approves the use of Contingency for any item upon which the Construction Fee is payable under the terms of the Contract, the amount of the Contingency requested by Contractor may include the Construction Fee. Any unused Contingency amounts at the end of the term of the Contract shall belong to City.
- 3.3.12 During the Pre-construction Phase, City reserves the right to establish a contingency fund in addition to the fund described in Section 3.3.11 to provide greater flexibility in the use of contingency funding. Similar to the fund described in Section 3.3.10, use of such funds would be at City's discretion. However, the second fund would require less administrative approvals and documentation to utilize the contingency funding (e.g., access would not require a Change Order).
- 3.3.13 Approved Fixed Price Proposals are cumulative and the sum total of all Approved Fixed Price Proposals and the remaining costs to complete Work not addressed in Fixed Price Proposals shall not exceed the GMP total (less City's contingency). The amount of City-controlled Contingency for each Approved Fixed Price Proposal shall be negotiated separately. Though determined separately, the Contingency amounts for any Fixed Price Proposal shall be cumulative with other identified contingency amounts and not exclusive for use with a particular element of the Work.
- 3.3.14 If the GMP requires an adjustment due to changes in the Work or other causes, as allowed in the Contract Documents, the cost of such changes is determined subject to the General Conditions. Any markups allowed on such changes shall be captured by City's payment of the Construction Fee. There shall not be any additional markups for work by Sub-Consultants or Subcontractors..
- 3.3.15 Prior to submitting its GMP Proposal, Contractor acknowledges it has been provided unrestricted access to the existing improvements and conditions on the Project Site and it thoroughly has investigated those conditions, to the extent reasonably possible. Contractor confirms its investigation of the Project Site was instrumental in preparing its GMP Proposal for the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time, the GMP, Pre-construction Phase Services or for Construction Phase Services arising from Project conditions Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

**3.4 GMP PROPOSAL REQUIREMENTS** The GMP Proposal shall be consistent with the Guidelines to Prepare the GMP Proposal, attached hereto as **Exhibit D**, unless the Parties mutually agree in writing otherwise.

3.4.1 A proposed GMP for the Work, shall be the sum of:

- (i.) Contractor's Cost of Work; and
- (ii.) Indirect Costs, as defined in **Exhibit H – Approved GMP proposal** hereto.

3.4.2 Negotiation of GMP Proposal. After submission of its GMP Proposal for the entire Work, Contractor and City promptly shall meet to discuss and review the Proposal. To the extent the estimated Cost of the Work component of a GMP Proposal exceeds the Construction Cost Limitation, as established herein, Contractor shall exercise its best efforts (as measured by its applicable standard of care under the Contract) to propose Value Engineering solutions and other cost-cutting measures to bring such construction costs within the applicable Limit. In the event the estimated Cost of the Work component exceeds the applicable Construction Cost Limitation and such cost increase is not due to a change in the scope of the Work, Contractor shall not be entitled to any reimbursement for the time or expenses required to bring such construction costs within the applicable Limit. If City has any comments regarding the respective Proposal or finds any inconsistencies or inaccuracies in the information presented, it promptly shall give written notice to Contractor of such comments or findings. If appropriate, Contractor shall, upon receipt of City's notice, make appropriate adjustments to the respective Proposal. Contractor agrees, to the best of its knowledge, the GMP Supporting Documents at the time of the approval of the GMP are sufficient to enable it to determine the GMP for all the Work covered by such Contract Documents and such Work can be completed in accordance with the Contract Documents for the GMP. By agreeing to a GMP, Contractor agrees with City the Work required by the Contract Documents for the Work including, without limitation, construction means, methods, procedures, and techniques necessary to perform the Work, shall be consistent with:

- (i) good and sound practices within the construction industry;
- (ii) generally prevailing and accepted industry standards applicable to the Work; and
- (iii) requirements of any warranties applicable to the Work.

3.4.3 Following approval of a GMP Proposal by City, City shall authorize and cause the Design Consultant to revise the Drawings and Specifications for the Project to the extent necessary, to reflect the agreed-upon assumptions

and clarifications contained in Contractor Construction Phase Contract for the Project. Such Drawings and Specifications shall be furnished to Contractor in accordance with the schedules agreed upon by City, Design Consultant and Contractor. Contractor promptly shall notify the Design Consultant and City if it has actual knowledge the revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

- 3.4.4 Following written approval of the GMP Proposal by City, Contractor without reimbursement shall pay any costs or expenses causing the GMP for applicable Project to be exceeded, except as otherwise provided by the Contract Documents.
- 3.4.5 At the end of the Project, GMP savings resulting from a lower actual project cost than anticipated by Contractor shall revert to City.
- 3.4.6 The GMP is subject to adjustments made in accordance with those allowed by this Agreement and by GMP amendments to this Agreement.
- 3.4.7 GMP amendments are inclusive of prior GMP amounts. The amount of Contingency for each GMP amendment shall be determined separately. Though determined separately, the Contingency amounts for any GMP amendments shall be cumulative with other identified Contingency amounts and not exclusive for use with a particular element of the Work.
- 3.4.8 If the GMP requires an adjustment due to City-requested changes in the Scope of Work or other causes, as allowed in the Contract Documents, the cost of such changes is determined subject to the General Conditions. The markups allowed on such changes shall be captured by City's payment of the Construction Fee. There shall not be any additional markups for work by Sub-Consultants or Subcontractors.

**3.5 FIXED PRICE PROPOSAL REQUIREMENTS** If Contractor elects and to utilize Fixed Price Proposal(s), and City accepts Contractor's utilization of Fixed Price Proposal(s), Contractor shall provide:

- 3.5.1 Contractor's Fixed Price Proposal shall be an amount including Contractor's Costs of the Work and all City-proposed allowances, if any, a detailed and itemized statement of the Cost of the Work organized by trade categories, a list of all of City's allowances, if any, and a detailed and itemized statement of those allowances' basis.
- 3.5.2 The date of Substantial Completion, upon which the requested Fixed Price Proposal is based;
- 3.5.3 The Not-To-Exceed Construction Phase Fee, based on the agreed upon percentage;

- 3.5.4 The Not-To-Exceed General Conditions Costs and shall include bonds and insurance premiums, based on the Cost of The Work for construction (Note: City does not pay any fee or markup for the cost for Contractor's bonds and insurance, as these are straight past-through costs at Contractor's actual incurred costs);
  - 3.5.5 A schedule for Construction Documents issuance dates, upon which the date of Substantial Completion is based;
  - 3.5.6 A complete Schedule of Values with line item breakdowns of the calculations apportioned for the various divisions or phases of the Work. If City has agreed to accept one or more portions of the Work separately, there shall be a separate Schedule of Values for each separate portion of the Project;
  - 3.5.7 A list of the Drawings and Specifications, including all addenda thereto, and the Supporting Documents, which were used in preparation of the Fixed Price Proposal;
  - 3.5.8 A list of the clarifications and assumptions made by Contractor in the preparation of the Fixed Price Proposal to supplement the information contained in the Supporting Documents;
  - 3.5.9 A list of the trade packages supported by certified bids;
  - 3.5.10 Contractor's SBEDA submittals documentation, to the extent required for the specific Project for which the Fixed Price is proposed; and
  - 3.5.11 Any other Project information reasonably requested by City.
  - 3.5.12 The Fixed Price Proposal(s) shall include no amount for sales or use taxes, for which City is exempt. Upon request by Contractor, City timely shall provide to Contractor an appropriate tax exemption certificate or other required verification of City's tax exempt status. Such taxes shall not be reimbursable costs.
- 3.6** The Fixed Price Proposal shall adopt and incorporate all of the terms and conditions of and all of the attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement clearly and conspicuously must be identified to City in writing and specifically accepted in writing by City. In the event of a conflict between any term of the Fixed Price Proposal not clearly and conspicuously identified and approved by City, the terms of this Agreement and its attachments shall control.
- 3.7** Contractor shall not withdraw its Fixed Price Proposal for the Project for ninety (90) days, following submission to City.
- 3.8** Fixed Price Proposal(s) Review and Approval: Contractor shall meet with City and Design Consultant to review the Fixed Price Proposal(s) and the written statement of its basis. As part of the statement of its basis, Contractor shall identify and justify any costs



significantly different than the latest cost estimate provided by Contractor. In the event City or Design Consultant discovers inconsistencies or inaccuracies in the information presented, Contractor shall make adjustments as necessary to the GMP Proposal, its basis or both.

- 3.9** If Contractor's Fixed Price Proposal is greater than the independent third party or Design Consultant's estimate, City may require Contractor to reconfirm its Fixed Price Proposal. Contractor shall accept the independent third party's or Design Consultant's estimate for the Cost of Work as part of his Fixed Price Proposal or present a report to City within seven (7) days of a written request by City identifying, explaining and substantiating the differences. Contractor may be requested to, or at its own discretion may, submit a revised Fixed Price Proposal for consideration by City. At that time, City may accept Contractor original or revised Fixed Price Proposal, if it is within City's budget and Contractor's GMP, without comment.
- 3.10** City may accept or reject Contractor's Fixed Price Proposal or negotiate its terms with Contractor. The Fixed Price Proposal shall not be effective without written approval by City, documenting the agreement of the Parties to a Fixed Price Proposal
- 3.11** Prior to written approval of the Fixed Price Proposal by City, Contractor shall not incur any cost to be reimbursed as part of the Cost of Work for the Construction Phase Services of the Project, except as City may specifically authorize in writing.

#### **ARTICLE 4. AMENDMENTS FOR UNANTICIPATED PRE-CONSTRUCTION SERVICES**

##### **4.1 CHANGE IN SCOPE**

Before any altered or modified work begins, a Task Order, Change Order, Amendment or Modification shall be negotiated, approved and executed by City and Contractor. The compensation paid to Contractor may be adjusted by mutual agreement of the Parties, based on the hourly rates agreed to under this contract.

##### **4.2 CLAIMS FOR EXTRA WORK**

No claim for extra work performed and/or materials furnished by Contractor shall be allowed by City except as provided herein, nor shall Contractor do any work or furnish any material(s) not covered by this Contract, unless such work or material first is authorized in writing by City. Pre-construction Services or material(s) furnished by Contractor without such prior written authorization shall be at Contractor's sole jeopardy, cost and expense. Contractor hereby agrees, without prior written authorization from City, no claim for compensation for such work and/or materials furnished shall be made.



## **ARTICLE 5. CONTRACTOR'S CONSTRUCTION SERVICES AND RESPONSIBILITIES**

### **5.1 GENERAL RESPONSIBILITIES**

- 5.1.1 The Work to be performed under the Construction Phase may commence before the Preconstruction Phase is completed. Contractor shall commence the Construction Phase on the date specified in the Notice to Proceed with Construction issued by City and shall continue until Final Completion of all Work on the Project. In implementation of the responsibilities and duties of Contractor for Construction Phase, Contractor shall provide the services described in this **Article 5**.
- 5.1.2 Contractor shall construct the Work in strict accordance with the Construction Documents and as required by City's General Conditions, Supplementary General Conditions (if any) and City's Specifications within the time required in and by the Project Schedule approved by City.

### **5.2 ADMINISTRATION**

Contractor shall award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the Work. Contractor shall self-perform only General Conditions Work and other Project Work which has been awarded to Contractor in accordance with the requirements of Texas Government Code and this Agreement or which Contractor may perform pursuant to the Texas Government Code after Subcontractor default. City reserves the right to perform work related to the Project and to award separate contracts for work related to the Project.

### **5.3 CONTROL OF THE WORK**

- 5.3.1 Contractor shall keep City informed of the progress and quality of the Project Work.
- 5.3.2 In accordance with City's General Conditions and Supplementary Conditions, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and all other facilities and services necessary for the proper execution and completion of the Work, in strict accordance with the requirements of the Construction Documents.
- 5.3.3 Contractor shall coordinate delivery and installation of any and all City-procured material and equipment.
- 5.3.4 Where the Contract Documents require a particular product be installed and/or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.
- 5.3.5 Contractor shall take field measurements and verify field conditions and carefully

shall compare such field measurements, conditions and other information known to Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered immediately shall be reported to City.

- 5.3.6 Before ordering materials or doing Work, Contractor and each Subcontractor shall verify measurements at the Site and each shall be responsible for the correctness of such measurements. No increase to the approved GMP shall be allowed because of differences between actual dimensions and the dimensions indicated in the Design and/or Contract Documents. Dimension differences, which may be found, shall be submitted to City for resolution before proceeding with the Work.
- 5.3.7 Contractor solely shall be responsible for quality control throughout duration of project, to ensure compliance with plans, specifications, good workmanship and construction management.

#### **5.4 CONTROL OF THE WORK SITE**

- 5.4.1 Contractor shall provide a traffic control plan for approval by City, if required by City for execution of the work.
- 5.4.2 Contractor shall take all reasonable steps, procedures and means to prevent any dust nuisance on Site, due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of City and in accordance with all legal requirements.
- 5.4.3 Contractor shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge and emergency exit paths of travel. Contractor shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

#### **5.5 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- 5.5.1 Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by City's and Design Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals, unless Contractor specifically has informed City in writing of such deviation at the time of submittal and City has given written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by City's approval thereof.
- 5.5.2 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by City or Design Consultant on previous submittals.
- 5.5.3 Informational submittals, upon which City is not expected to take responsive action, shall be identified in the Contract Documents.

- 5.5.4 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## **5.6 QUALITY CONTROL, INDEPENDENT MATERIALS TESTING AND INSPECTION**

- 5.6.1 In compliance with Texas Government Code, City shall retain, independent of Contractor, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the facility by City. Such consultants shall be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of those independent consultants shall be described in the Agreements between City and those consultants. The provision of inspection services by City shall not reduce or lessen Contractor's responsibility for the Work or its duty to establish and implement a program to monitor and control the quality of construction, to guard City against defects and deficiencies in the Work, required by the Contract Documents. Contractor fully and solely is responsible for constructing the Project in strict accordance with the Construction Documents. When the first and subsequent tests indicate noncompliance with the Contract Documents, all associated costs associated with that noncompliance shall be paid by and are the responsibility of Contractor, including all costs for re-testing. Project Contingency shall not be utilized for the cost of re-testing.
- 5.6.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the original testing agency.
- 5.6.3 Contractor shall cooperate and coordinate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide all access to the Work at all times.
- 5.6.4 At the option of City, materials may be approved at the source of supply before delivery is started.
- 5.6.5 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by Contractor as a cost of the work, unless otherwise provided in the Contract Documents.
- 5.6.6 Contractor's convenience and quality control testing and inspections shall be the sole responsibility of Contractor and paid by Contractor.

## **5.7 PROJECT RECORD DOCUMENTS**

- 5.7.1 At all times during the construction period, Contractor shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.
- 5.7.2 Contractor shall mark these drawings to indicate the actual installation, where the installation varies from the original Construction Documents, and give particular attention to information on concealed elements, which would be difficult to identify or measure and record at a later date. If applicable, items required to be marked include, but are not limited to:
- Dimensional changes to the drawings.
  - Revisions to details shown on drawings
  - Depths of foundations below first floor
  - Locations and depths of underground utilities
  - Revisions to routing of piping and conduits.
  - Revisions to electrical circuitry.
  - Actual equipment locations.
  - Duct size and routing.
  - Locations of concealed internal utilities.
  - Changes made by Change Order.
  - Details not on original Contract Drawings.
- 5.7.3 Contractor shall, with red erasable colored pencil, mark completely and accurately the Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, Contractor shall show cross-references on the Construction Documents location.
- 5.7.4 Contractor shall note on the drawings RFI Numbers, ASI Numbers and Change Order numbers, etc., as required, identifying the source of the change to the Construction Documents.
- 5.7.5 Contractor shall, as a condition of Substantial Completion, submit Project Record Drawing and Shop Drawing prints to City or its representative for review and comment.
- 5.7.6 Upon receipt of the reviewed Project Record Drawings from City, Contractor shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to City within fourteen (14) Calendar Days:
- 5.7.6.1 Contractor shall, as a condition of Substantial Completion, submit to City or its representative a complete set of electronic Project Record Drawings prepared in a 3D Modeling format or in a format designated by City compatible with City technology. The Design Consultant shall provide files of the original Construction

Documents to Contractor for its use in preparing these final Project Record Drawings or Contractor may contract with the Design Consultant to revise and update the electronic drawing files. Each drawing shall be clearly marked with “As-Built Document.”

- 5.7.6.2 The original copy of the Project Record Drawings (redline mark-ups) shall be retained by City.

## **5.8 PROJECT SAFETY**

The requirements in this Section are in addition to the **Article X** of City’s General Conditions.

- 5.8.1 Contractor shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Contractor’s Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project, in addition to safety.
- 5.8.2 The Safety Representative shall make routine daily inspections of the Site and shall hold, at minimum, weekly safety meetings with Contractor’s personnel, Subcontractors and others, as applicable.
- 5.8.3 Contractor immediately shall report in writing any safety-related injury, loss, damage or accident arising from the Work to City’s Representative and, to the extent mandated by legal requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 5.8.4 Contractor shall submit a project safety plan to City for approval, prior to initiating construction work.

## **ARTICLE 6. CITY’S SERVICES AND RESPONSIBILITIES**

### **6.1 DUTY TO COOPERATE**

- 6.1.1 City shall, throughout the performance of the Work, cooperate with Contractor and perform its responsibilities, obligations and services in a timely manner, to facilitate Contractor’s timely and efficient performance of the Work and so as not to delay or interfere with Contractor’s performance of its obligations under the Contract Documents.
- 6.1.2 City shall furnish, at Contractor’s request and at no cost to Contractor, if in City’s possession, a file of Construction Documents it possesses in a format compatible with City of San Antonio technology.

## **6.2 CITY'S DESIGNATED REPRESENTATIVE**

The requirements in this Section are in addition to **Article II** of City's General Conditions.

- 6.2.1 City's Representative shall be responsible for providing City-supplied and/or City-requested information and approvals in a timely manner to permit Contractor to fulfill its obligations under the Contract Documents.
- 6.2.2 City's Representative also shall provide Contractor with prompt notice if he/she observes any failure on the part of Contractor to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents, specifying in such detail as is necessary to enable Contractor's prompt correction of same as required by the Contract Documents.
- 6.2.3 On or before issuing its Notice(s) to Proceed, City shall designate in writing to Contractor a representative who shall have express authority to bind City with respect to all matters requiring City's approval or authorization, other than matters requiring the approval of the San Antonio City Council. To the extent permitted by law, City's representative shall have the authority to make decisions on behalf of City concerning estimates and schedules, construction budgets and changes in the Work and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of Contractor.
- 6.2.4 City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner, to permit Contractor to fulfill its obligations under the Contract Documents.
- 6.2.5 City's Representative also shall provide Contractor with prompt notice if he/she observes any failure on the part of Contractor to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.

## **6.3 INFORMATION AND SERVICES**

- 6.3.1 City, to the best of its abilities, shall provide full and accurate information within seven (7) calendar days of when a request is submitted in PRIMELink, regarding the requirements of the Project, including information which sets forth City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements.
- 6.3.2 City shall provide a Preliminary Budget and general schedule information for the Project to Contractor in a timely manner. The Preliminary Budget shall include the anticipated construction cost, any City-controlled contingency for City-requested changes in the Work during construction and/or all other costs that are the responsibility of City. City shall set forth City's plan for milestone dates (if any) and the completion of the Project.



6.3.3 Structural and Environmental Tests, Surveys and Reports. In the Pre-Construction Phase, City shall furnish the following with reasonable promptness, **if in City's possession**, so as not to delay Contractor's performance of its services and/or Work, at City's expense:

6.3.3.1 Reports, surveys, drawings and tests accurately identifying the conditions at the Site which are required by law.

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

6.3.3.3 The services of competent Geotechnical Engineers, when such services reasonably are requested by Contractor and City concurs such services are needed. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

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

6.4 **LEGAL REQUIREMENTS** If known by City, City shall advise the Design Consultant and Contractor of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project.

6.5 **CORRECTION OF DEFECTIVE WORK** City shall have the right to reject any and all defective Work on the Project. Should Contractor refuse or neglect to correct any such defective Work within a reasonable time after its receipt of notice and a reasonable opportunity to cure, City may have the Work corrected and shall recover all reasonable and necessary expenses incurred from Contractor. If Contractor refuses to make a direct payment to City for the cost to correct defective work, Contractor grants City the authority to withhold or deduct such payments from Contractor's payment applications and/or Project retainage.

## 6.6 **SEPARATE CONTRACTS**

6.6.1 City may perform other work related to the Project with its employees, separate Contractors or vendors under its control. If City is performing other work with its employees, separate Contractors or vendors under its control, Contractor agrees to



cooperate and coordinate its work with the work of City's employees, separate Contractors or vendors and City agrees to coordinate the work of City's separate Contractors or vendors with Contractor, so the Project may be completed in an orderly and coordinated manner reasonably free of significant disruption to any party.

- 6.6.2 If the proper execution or results of any part of Contractor's work depends on work performed by City's employees, separate Contractors, vendors or employees, Contractor shall inspect such other work and promptly report to City and the Design Consultant in writing any patent defects or deficiencies in such other work rendering it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's work, except with regard to latent or non- apparent defects and deficiencies in the other work.
- 6.6.3 Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts of Work come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering the others' work and shall only cut or alter others' work with the written consent of City and Design Consultant and the other party or parties whose work shall be affected.

## **ARTICLE 7. CONTRACT TIME**

### **7.1 GENERAL**

- 7.1.1 Work Packages. It is anticipated the Construction Phase Work may be divided into one or more packages (individually, a "Work Package") which, through a Fixed Price Proposal, identify a specific scope of Work and which may be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work.
- 7.1.2 Work Authorization. When the parties have identified the Work to be performed in a Work Package and have agreed on any applicable Contract Time requirements for that Work Package and such other terms and conditions relating to that Work Package including, but not limited to, a Fixed Price Proposal for the Work Package, Contractor shall receive a Notice to Proceed from City and the Approved Fixed Price Proposal shall be incorporated as part of this Agreement. However, no Work shall commence under a Work Package or Fixed Price Proposal until a Notice to Proceed with regard to such Work has been issued in writing by City to Contractor in accordance with the terms of the Contract Documents.
- 7.1.3 Each Work Package established through an Approved Fixed Price Proposal may establish a separate commencement date and a date of Substantial Completion and a performance period. The performance periods are not required to be sequential and may run concurrently.

- 7.1.4 Contractor agrees it shall commence performance of the Work upon receipt of Notice to Proceed and shall achieve the performance periods and Contract Time.
- 7.1.5 All of the times set forth in this **Article 7** shall be subject to adjustment in accordance with the General Conditions.

## **7.2 LIQUIDATED DAMAGES**

- 7.2.1 Contractor understands if Substantial Completion is not attained by the defined Contract Time date, as adjusted, City shall suffer financial damages, which are difficult to determine and accurately specify. Contractor hereby accepts and agrees if Substantial Completion of the Project is not attained within the specified Contract Time, as adjusted, Contractor shall pay City **(\$X,XXX.00)** as liquidated damages for each Day Substantial Completion extends beyond the defined Contract Time date, as adjusted.
- 7.2.2 Contractor and Contractor's surety shall be liable for and shall pay to City the sums stipulated in the Agreement as liquidated damages for each calendar day of delay until Contractor attains and City grants Substantial Completion.
- 7.2.3 Upon attaining Substantial Completion Contractor shall be given Thirty (30) calendar days to achieve Final Completion of the Project. Contractor accepts and agrees if Final Completion of the Project is not achieved within Thirty (30) calendar days from the date of Substantial Completion, Contractor shall pay City **(\$X,XXX.00)** as liquidated damages for each day Final Completion extends beyond Thirty (30) calendar days from the date of Contractor achieving Substantial Completion.
- 7.2.4 If Contractor incurs liquidated damages for either not achieving Substantial Completion by the defined contract date, as adjusted, or not achieving Final Completion within the stated time period, as defined in **Section 7.2.3 herein**, Contractor accepts and agrees City shall be entitled to deduct, from any sums due Contractor, any or all liquidated damages due and owed to City on this Project. In such an instance, Contractor shall include a line item on all submitted pay application requests, tracking the number of days of liquidated damages from the contractual date for either Substantial Completion or Final Completion forward, computing the number of days of liquidated damages incurred for that pay period and deducting the amount of accrued liquidated damages associated with that submitted pay application submittal.
- 7.2.5 Contractor acknowledges and agrees that the foregoing damages have been set based on an evaluation by City of damages which it will incur in the event of late completion of the defined aspects of the Work, including additional administrative costs. Contractor and City agree that the amount of such damages is impossible to ascertain as of the effective date of this Contract and the Parties have agreed to such liquidated damages in order to fix Contractor's costs and to avoid later disputes over which items are properly chargeable to Contractor. It is understood and agreed by Contractor that any liquidated damages payable in accordance with

this Section 7.2 are in the nature of liquidated damages and not a penalty and that such sums are not manifestly unreasonable under the circumstances existing as of the effective date of this Contract.

## **ARTICLE 8. PROCEDURE FOR PAYMENT**

### **8.1. CONTRACT PRICE**

#### **8.1.1 PAYMENTS FOR PRE-CONSTRUCTION PHASE SERVICES**

8.1.1.1 Payments for Pre-construction Phase Services shall be made monthly, following presentation of Contractor's Application for Payment and the Schedule of Values, which is included herein labeled as "**Exhibit C**" and made a part of this Agreement, including all required attachments, and shall be in proportion to services performed. Retainage shall not be withheld from payments for Pre-construction Phase Services. The scope and quantity of the services provided shall be dependent upon services actually performed and authorized by City. Charges shall be assessed only for actual services rendered.

8.1.1.2 Payment for services negotiated as an amount not-to-exceed shall be made in accordance with the percentage of work completed during the preceding month.

8.1.1.3 The fees for Contractor and any Sub-Consultants shall be based upon the hourly rate schedule included as **Exhibit C** hereto, attached and presented with the Payment Application.

8.1.1.4 Payments from City are due and payable thirty (30) days from the date Contractor's accurate and complete Application for Payment invoice is received by City.

8.1.1.5 Contractor shall pay all sums due Sub-Consultants for services and reimbursable expenses within ten (10) calendar days after Contractor has received payment for those services from City.

#### **8.1.2 GUARANTEED MAXIMUM PRICE AND APPROVED FIXED PRICE PROPOSALS**

8.1.2.1 This article shall be read and interpreted to complement the General Conditions not as a replacement to them.

8.1.2.2 For and in consideration of the faithful performance of the Work herein, as set forth in the Contract Documents and in accordance with the directions of City and to its satisfaction, City agrees to pay Contractor the actual Cost of the Work and any applicable General Conditions Costs, the costs for insurance and bonding without markup or fee and

Contractor's Construction Fee, but in no event shall City pay Contractor more than the GMP, as adjusted by any Change Orders. Payment for the specific Work under this Agreement shall be made in accordance with payment provisions detailed herein below. To the extent the Construction Phase consists of multiple Work Packages, each such Work Package shall be subject to a Firm Fixed Price Proposal, as defined herein. The sum of the Firm Fixed Price Proposals for all Work Packages shall not exceed the Guaranteed Maximum Price for the Construction Phase.

- 8.1.2.3 At the Pre-Construction Conference prescribed in the General Conditions, Contractor shall submit for City's review and approval a Schedule of Values. The Schedule of Values shall serve as the basis for monthly progress payments made to Contractor throughout the Work, in accordance with the General Conditions. Any Schedule of Values developed by Contractor for the Project, whether the Schedule of Values described in this section or otherwise, is subject to City approval.
- 8.1.2.4 At least five (5) working days prior to the date established for a Payment Application, Contractor shall submit an updated Project Schedule and meet with City's Representative to review the progress of the Work as it shall be reflected on the Payment Application.
- 8.1.2.5 The Payment Application shall constitute Contractor's representation the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Application and all Work shall pass to City free and clear of all claims, liens, encumbrances and security interests upon the incorporation of the Work into the Project and payment therefore.
- 8.1.2.6 The Payment Application may request payment for stored equipment and materials if: (1) construction progress is in reasonable conformance with the approved Project Schedule and (2) said store equipment and materials have been verified by City in writing.
- 8.1.2.7 For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment therefore.
- 8.1.2.8 For materials and equipment stored off the Site and included in Payment Application, City must approve the storage in writing. The material and equipment must be stored within Bexar County, must be separated, tagged or labeled and secured, and be accessible for City's inspection. Contractor must protect City's interest and shall include applicable insurance, bonding, storage and transportation to the Site. Contractor must obtain a negotiable warehouse (or similar) receipt, endorsed over to

City for materials and equipment stored off the Site. City will not make payments for materials and equipment stored off the Site until Contractor has delivered the endorsed receipt(s) and other information verifying compliance with this section.

- 8.1.2.9 All bonds and insurance required for stored materials shall name City as the loss payee, to the extent of its interest in the stored materials. Full title to the materials and equipment shall vest in City free and clear of all liens and encumbrances at the earlier of time of payment or delivery to the Site or off-Site storage, provided that payment or delivery does not indicate acceptance or determination of suitability of the materials and equipment by City.
- 8.1.2.10 Contractor shall submit mathematically accurate Payment Applications for construction services to City electronically at minimum monthly, beginning with the first month after the construction Notice to Proceed.
- 8.1.2.11 Payment of Approved Pay Estimates - Payment for certified and approved Work shall be made by City no later than thirty (30) calendar days after the accurate Payment Application is received, but in each case less the total of payments previously made and less amounts properly retained under this **Section 8**.
- 8.1.2.12 City shall pay Contractor all amounts properly due. If City determines Contractor is not entitled to all or part of a Payment Application, it shall reject the Payment Application within seven (7) calendar days after the date Payment Application is received by City. City shall provide specific reasons and basis of rejection and the specific measures Contractor must take to rectify City's concerns. If the parties cannot resolve such concerns, Contractor may pursue its rights under the Contract Documents.
- 8.1.2.13 Retention on GMP or FPP - City shall retain ten percent (10%) of each Payment Application amount provided on contracts valued at \$400,000 or less. City shall retain five percent (5%) of each Payment Application amount provided on contracts valued at greater than \$400,000.

## **8.2 CITY MONETARY OBLIGATIONS**

Contractor accepts and agrees that all monetary obligations hereunder, including payments pursuant to this Contract, are subject to the availability and appropriation of funds by the San Antonio City Council, notwithstanding any contrary provisions of the Contract Documents. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any Party to this Contract

## **ARTICLE 9. CONTRACT SAVINGS, ALLOWANCES, REBATES AND REFUNDS**



## **9.1 CREDITS**

If the allowable amount of the cost of Cost of Work and General Conditions is less than the amount established for each of those line items in the originally approved GMP Proposal, the entire difference shall be credited to City as savings and the GMP amount shall be adjusted accordingly, including Contractor Fees.

## **9.2 DEDUCTIONS**

City shall be entitled to request Contractor to deduct amounts for the following items from any Payment Application or from the request for Final Payment submitted by Contractor:

9.2.1 The fair market value of all tools, surplus materials, construction equipment and temporary structures charged to the Work (other than rental items) but were not consumed during construction or retained by City. Upon completion of the Work or when no longer required, Contractor either shall credit City for the fair market value (as approved by City) for all surplus tools, construction equipment and materials retained by Contractor, at City's option or use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest price and credit the proceeds to City's account.

9.2.2 **Discounts earned by Contractor through advance or prompt payments funded by City** - Contractor shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. Contractor shall purchase materials for the Project in quantities providing the most advantageous prices to City.

9.2.3. Rebates, discounts or commissions obtained by Contractor from material Suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

9.2.4 Deposits made by City and forfeited due to the fault of Contractor.

9.2.5 Balances remaining on any Allowances or any other identified contract savings.

9.2.6 Any markup or fee applied to bond or insurance costs.

## **9.3 RECOVERY OF SAVINGS**

City shall be entitled to recognize and recover one hundred percent (100%) of any savings identified by cost review or audit at any time, before or after final payment.

## **ARTICLE 10. PRE-EXISTING CONDITIONS & DESIGN ERRORS & OMISSIONS**

This **Article 10** shall be read and interpreted as a complement City's General Conditions, not to replace them.



**10.1 Contractor ACCESS TO PRE-EXISTING CONDITIONS** Contractor acknowledges it has been provided unrestricted access to the existing improvements and conditions on the Project site and it thoroughly has investigated those conditions. Contractor's investigation was instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction or Construction Phase Services arising from Project conditions Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

**10.2 Contractor'S ACKNOWLEDGEMENT OF ITS PARTICIPATION IN CONSTRUCTION DOCUMENT PHASE** Contractor acknowledges, as part of its Pre-construction Phase Services, it participated in the review of the Construction Documents. Contractor shall review the drawings, specifications and other Construction Documents and notify City of any errors, omissions or discrepancies in the documents or any issue City should be aware. Contractor shall not make or be entitled to any claim for adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's Pre-construction Phase design review process that Contractor did not bring to the attention of City and the Design Consultant in a timely manner.

## **ARTICLE 11. OWNERSHIP OF DOCUMENTS**

### **11.1 PROJECT DOCUMENTS AND COPYRIGHTS**

11.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including, but not limited to, cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes and other related documents prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of City and are to be delivered to the Project Manager before final payment is made to Contractor. Nonetheless, these Projects Documents may altered, modified or adapted by City with or without the written consent of Contractor, which consent Contractor shall not unreasonably withhold.

11.1.2 Documents to Bear Seal: When applicable and if required by state law, Contractor and its Sub-Consultants shall endorse, by a Texas professional seal, all plans, works and Deliverables prepared by the Contractor or its Sub-Consultants for this Contract.

11.1.3 All previously owned documents, including the estimates, specifications and all other documents and data, shall remain the property of Contractor as instruments of service. However, Contractor understands and agrees City shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates specifications and all other documents and data. Any reuse

without specific written verification or adaptation by Contractor shall be at City's sole risk and without liability or legal exposure to Contractor.

- 11.1.4 Contractor acknowledges and agrees, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement and shall be used by City as City desires. Documents, including the original drawings, estimates, specifications and all other documents and data, shall be delivered to City at no additional cost to City upon request, termination or completion of this Agreement without restriction on future use. However, any reuse without specific written verification or adaptation by Contractor shall be at City's sole risk and without liability or legal exposure to Contractor.
- 11.1.5 Contractor agrees and covenants to protect any and all proprietary rights of City in any materials provided to Contractor. Such protection of proprietary rights by Contractor shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Contractor by City shall not be released to any third party without the written consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by the Director.
- 11.1.6 Contractor HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO CITY OF ANY COPYRIGHTABLE WORK, IN PART OR IN WHOLE, PRODUCED FROM THIS AGREEMENT, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY Contractor. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF CITY AND JOINT UTILITIES (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). Contractor SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND JOINT UTILITIES AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST CITY, INsofar AS THE SAME ARE BASED ON ANY CLAIM MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.
- 11.1.7 Contractor may make copies of any and all documents and items for its files. Contractor shall have no liability for changes made to or use of the drawings, specifications and other documents by other Architects, Engineers or other persons, subsequent to the completion of the Project. Contractor appropriately shall mark all changes or modifications made on all drawings, specifications and other documents

by other Architects, Engineers or other persons, including electronic copies, subsequent to the completion of the Project.

11.1.8 Copies of documents for this Work that may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions submitted by Contractor. Files in editable electronic media format of text, data, graphics or other types, (such as DGN) furnished by Contractor to City only are for convenience of City or a utility. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk. However, any reuse without specific written verification or adaptation by Contractor shall be at City's sole risk and without liability or legal exposure to Contractor.

11.1.9 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Contractor including but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Contractor or its Suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Contractor to provide the services or protect deliverables to City including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Contractor or its Suppliers.

## **ARTICLE 12. INSURANCE**

Contractor shall purchase and maintain in effect, or cause to be procured and kept in effect with the Contractor as a named insured, as appropriate, the insurance policies required in accordance with this Article 12, **Exhibit Q**, or elsewhere in the Contract Documents.

## **ARTICLE 13. INDEMNIFICATION**

**13.1 CONTRACTOR SHALL FULLY RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS, CONSULTANTS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, DEMANDS, LOSSES, DAMAGES, LIABILITIES AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, IN EACH CASE IF ASSERTED OR INCURRED OR AWARDED TO ANY THIRD PARTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RELATING TO OR RESULTING FROM:**

- (a) THE BREACH OR ALLEGED BREACH OF ANY OF THE CONTRACT DOCUMENTS BY CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR;**

- (b) **THE FAILURE OR ALLEGED FAILURE BY CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR TO COMPLY WITH APPLICABLE LAW;**
- (c) **ANY ALLEGED INTELLECTUAL PROPERTY INFRINGEMENT, OR PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT TO THE EXTENT RESULTING FROM CITY'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO CITY BY CONTRACTOR;**
- (d) **THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH, INTENTIONAL TORT, OR MISCONDUCT OF CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR IN OR ASSOCIATED WITH PERFORMANCE OF THE WORK;**
- (e) **ANY AND ALL CLAIMS BY ANY GOVERNMENTAL OR TAXING AUTHORITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR WITH RESPECT TO ANY PAYMENT FOR THE WORK MADE TO OR EARNED BY CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR;**
- (f) **ANY AND ALL STOP NOTICES AND LIENS FILED IN CONNECTION WITH THE WORK, INCLUDING ALL EXPENSES AND ATTORNEYS', ACCOUNTANTS', AND EXPERT WITNESS FEES AND COSTS INCURRED IN DISCHARGING ANY STOP NOTICE OR LIEN, AND ANY OTHER LIABILITY TO SUB-CONSULTANTS, SUBCONTRACTORS OR SUPPLIERS FOR FAILURE TO PAY ASUMS DUE FOR THEIR WORK OR SERVICES, PROVIDED THAT CITY HAS PAID ALL UNDISPUTED AMOUNTS OWING TO CONTRACTOR WITH RESPECT TO SUCH WORK;**
- (g) **ANY ACTUAL OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY CONTRACTOR OR ANY SUB-CONSULTANT, OR SUBCONTRACTOR;**
- (h) **THE CLAIM OR ASSERTION BY ANY OTHER (i) CONTRACTOR THAT CONTRACTOR OR ANY SUB-CONSULTANT OR SUBCONTRACTOR INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR, OR FAILED TO COOPERATE REASONABLY WITH SUCH OTHER CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY, OR LOSS, EXCEPT**

**WHERE CONTRACTOR OR ITS SUB-CONSULTANT OR SUBCONTRACTOR WAS NOT IN ANY MANNER ENGAGED IN PERFORMANCE OF THE WORK OR (ii) CONTRACTOR THAT CONTRACTOR OR ITS SUB-CONSULTANT OR SUBCONTRACTOR INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER CONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY, OR LOSS, TO THE EXTENT SUCH CLAIM ARISES OUT OF THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH, OR MISCONDUCT OF CONTRACTOR OR ANY OF ITS SUB-CONSULTANTS OR SUBCONTRACTORS;**

- (i) CONTRACTOR'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT, OR ANY DISPUTE BETWEEN CONTRACTOR AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT;**
- (j) CONTRACTOR OR ANY OF ITS SUB-CONSULTANTS OR SUBCONTRACTOR'S BREACH OF OR FAILURE TO PERFORM AN OBLIGATION THAT CITY OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER LAW OR UNDER ANY AGREEMENT BETWEEN CITY AND A THIRD PERSON, WHERE CITY HAS DELEGATED PERFORMANCE OF THE OBLIGATION TO CONTRACT OR UNDER THE CONTRACT DOCUMENTS OR (ii) THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS SUB-CONSULTANTS OR SUBCONTRACTORS THAT RENDER CITY UNABLE TO PERFORM OR ABIDE BY AN OBLIGATION THAT CITY OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER ANY AGREEMENT BETWEEN CITY AND A THIRD PERSON WHERE THE AGREEMENT WAS EXPRESSLY DISCLOSED TO CONTRACTOR;**
- (k) THE FRAUD, BAD FAITH, ARBITRARY OR CAPRICIOUS ACTS, OR VIOLATION OF LAW BY ANY CONTRACTOR OR ANY OF ITS SUB-CONSULTANTS OR SUBCONTRACTORS IN OR ASSOCIATED WITH THE PERFORMANCE OF THE WORK;**
- (l) ERRORS, INCONSISTENCIES, OR OTHER DEFECTS IN THE DESIGN OR CONSTRUCTION OF THE PROJECT OR OF UTILITY ADJUSTMENTS INCLUDED IN THE WORK; AND**
- (m) ANY CLAIM BY SUB-CONSULTANT OR SUBCONTRACTOR TO CONTRACTOR ARISING OUT OF, RELATING TO, OR RESULTING FROM THE PERFORMANCE BY CITY OF MATERIAL INSPECTION AND TESTING SERVICES.**



- 13.2** CONTRACTOR'S INDEMNIFICATION OBLIGATION IN SECTION 13.1 SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS CONTRACTOR AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- 13.3** The indemnification obligations under this Article 13 shall not be limited in any way by the limits of any insurance coverage or any limitation on the amount or type of damages, compensation or benefits payable by, for or to Contractor or any Sub-Consultant, Subcontractor, supplier or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.
- 13.4** The indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to City, its agents, consultants and/or representatives or Design Consultant pursuant to State of Texas statutes for the safety of workers and, in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workers. It is agreed that the primary obligation of Contractor is to comply with these statutes in the performance by Contractor of the Work and the obligations of City, its agents, consultants and representatives under said statutes are secondary to that of Contractor.
- 13.5** For purposes of this Article 13, "third party" means any person or entity other than an Indemnatee and Contractor, except that a "third party" includes any Indemnatee's employee, agent or contractor who asserts a claim against an Indemnatee that is within the scope of the indemnities and that is not covered by the Indemnatee's worker's compensation program.
- 13.6** The provisions of this Article 13 solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall advise City in writing within twenty four (24) hours of any claim or demand against City or Contractor known to Contractor related to or arising out of Contractor's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Contractor's sole cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this Article 13.



## ARTICLE 14. NOTICES

### 14.1 REPRESENTATIVES OF THE PARTIES

#### 14.1.1 City's Designated Representative

City designates the individual listed below or his/her designee as its Senior Representative (hereafter referred to as "City's Senior Designated Representative"), which has the authority and responsibility for avoiding and resolving disputes under the provisions of this Agreement.

Name, Director  
XXXXXX Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

#### 14.1.2 Contractor's Designated Representative

Contractor designates the individual listed below as its Senior Representative ("Contractor's Senior Representative"), which has the authority and responsibility for avoiding and resolving disputes under the provisions of this Agreement:

Name: POC Name  
Firm Name: Selected Contractor  
Address: 1234 Commerce  
San Antonio, TX, 78205

## ARTICLE 15. TERMINATION AND SUSPENSION

### 15.1 TERMINATION WITHOUT CAUSE

15.1.1 This Agreement may be terminated by City at any time after issuance of the Notice to Proceed for Pre-Construction Services or the Notice to Proceed for Construction Services, either for City's convenience or because of Contractor's failure to fulfill the contract obligations. Upon receipt of such notice, Contractor's services immediately shall be discontinued (unless the termination notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, shall be delivered to City.

15.1.2 If this Agreement is terminated for the convenience of City, following City's inspection and acceptance of Contractor's services properly performed prior to the effective date of termination, City promptly shall pay Contractor for all services properly performed and all liabilities incurred up to the time of such termination. Contractor shall not, however, be entitled to any lost or anticipated profit or to any

payment on unperformed services, should City choose to exercise this option to terminate, nor shall Contractor be entitled to compensation for any unnecessary or unapproved Work performed during the time between Contractor's receipt of City's Notice of Termination and the actual termination date.

15.1.3 If this Agreement's termination is due to Contractor's failure to fulfill its obligations, City may take over the work and prosecute the same to completion by contract or otherwise. In such event, Contractor shall be liable to City for any and all additional costs reasonably and necessarily occasioned to City thereby.

15.1.4 The rights and remedies of City provided in this **Section 15** are in addition to any other rights and remedies provided by law or under this contract.

15.1.5 **DEFAULTS WITH OPPORTUNITY FOR CURE:** Should Contractor fail to satisfactorily perform the Pre-Construction Services set out in **Article 3** herein, or comply with any covenant required by the Contract Documents, such failure shall be considered an Event of Default. In such Event of Default, City shall deliver written notice of said default in accordance with the notice provisions contained in this Agreement, specifying the specific Event(s) of Default and the action necessary to cure such defaults. Contractor shall have a reasonable period of time of not more than seven (7) calendar days after receipt of the written notice to cure such default. Contractor shall continue working during the seven (7) days to cure such default. If Contractor fails to cure the default within such seven-day cure period or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part, as City deems appropriate, and to contract with another Contractor or other party to complete the work required by this Agreement. City also shall have the right to offset the cost of said new agreement with a new Contractor or other party against Contractor's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses. The Party not in default of this Agreement must issue a signed, written notice of default and termination (citing this **Section 15.2**) to the other Party declaring the other Party to be in default and stating the reason(s) why it is in default. Upon receipt of such written notice of default and termination, the Party in receipt shall have a period of not more than seven (7) days to cure any failure to perform under this Agreement. Upon the completion of such seven-day period, commencing upon receipt of notice of default termination, if such Party has not cured any failure to perform, such termination shall become effective without further written notice.

**15.2 CONTRACTOR TERMINATION FOR CAUSE** Upon the occurrence of any of the events listed in **Article 13** of General Conditions for City of San Antonio Construction Contracts or one or more of the following events, and following written notice to Contractor given in accordance with the notice provisions contained in this Agreement, City immediately may terminate this Agreement, in whole or in part, "for cause":

15.2.1 Contractor, either directly or indirectly through its employees or representatives, makes any material misrepresentation or provides any materially misleading

information to City in connection with this Agreement or its performance hereunder; or

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

15.2.3 Contractor fails to cure or initiate steps reasonably calculated to cure a default listed in **Section 9.3** herein, within the time period required for cure; or

15.2.4 Contractor materially violates any rule, regulation or law to which Contractor is bound or shall be bound under the terms of this Agreement; or

15.2.5 Contractor attempts the sale, transfer, pledge, conveyance or assignment of this Agreement, contrary to the terms of this Agreement; or

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

**15.3 TERMINATION BY LAW** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

**15.4 ORDERLY TRANSFER FOLLOWING TERMINATION** Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as City may designate. However, if such termination is due to Contractor's default, such transfer shall be performed by Contractor at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor, or any of its Subcontractors pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports and any other materials or information produced or provided to Contractor, in connection with the services rendered by Contractor under this Agreement, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date at no additional cost to City, if the termination is due to Contractor's default. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents.

15.4.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or Contractor immediately takes

action to cure a failure to perform under the cure period set out hereinabove, Contractor immediately shall begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) calendar days after receipt of such Notice of Termination (unless Contractor successfully has cured a failure to perform) Contractor shall submit a statement showing in detail the services performed under this Agreement, prior to the effective date of termination. City shall have the option to grant an extension to the time period for submittal of such statement.

15.4.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits prepared under this Agreement prior to the effective date of termination shall be delivered to City, in the form requested by City as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in these Contract Documents.

15.4.3 Upon the above conditions being met, City promptly shall pay Contractor that proportion of the prescribed fee which the Work and/or services actually performed under this Agreement bear to the total Work and/or services called for under this Agreement, less any and all previous payments of the fee.

15.4.4 City, as a public entity, has a duty to document the expenditure of public funds. Contractor acknowledges this duty on the part of City. To this end, Contractor understands the failure of Contractor to comply with the submittal of the statement and documents, as required above, shall constitute evidence of a waiver by Contractor of any and all rights or claims to payment for services performed by Contractor under this Agreement.

15.4.5 Failure of Contractor to comply with the submittal of the statement and documents as required herein shall constitute evidence of a waiver by Contractor of any and all rights or claims to collect monies to which Contractor may otherwise be entitled for services performed under this Agreement.

## **15.5 ASSIGNMENT OF INTEREST IN SUBCONTRACTS AND PURCHASE ORDERS**

In further assurance of the orderly transfer of Work, Contractor hereby conditionally assigns to City and its assigns all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by Contractor for performance of the payment for any part of the Work, which assignment shall be effective upon acceptance by City in writing and only as to those subcontracts and purchase orders which City designates in writing after Contractor's termination. It is agreed and understood City may accept said assignment at any time during the course of the Construction Phase prior to Final Completion. It further is agreed all subcontracts and purchase orders shall provide all subcontracts and purchase orders freely are assignable by Contractor to City and its assigns. It further is understood such assignment is part of the consideration to City for entering into this Agreement with Contractor and may not be withdrawn prior to completion.

- 15.6 CLAIMS FOR OUTSTANDING COMPENSATION** Within forty-five (45) calendar days of the effective date of completion, termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for any monies owed by City to Contractor for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall constitute evidence of a Waiver by Contractor of any and all right or claims to collect monies Contractor rightfully may otherwise be entitled to for services performed pursuant to this Agreement.
- 15.7 TERMINATION NOT SOLE REMEDY** In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity City's right to seek damages from or otherwise pursue Contractor for any default hereunder or any other action.
- 15.8 SUSPENSION** The Work may be suspended by City, as provided in City's General Conditions. In such case of suspension, the compensation, as established by this Agreement, may be increased, as provided in the General Conditions. In such instances, the term "Cost of Performance of the Contract" in the General Conditions shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Phase Fee.
- 15.8.1 Upon receipt of written Notice of Suspension, which date shall also be the effective date of the suspension, Contractor shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed promptly to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.
- 15.8.2 Contractor shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.
- 15.8.3 Copies of all completed or partially completed design, plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to City and shall be retained by Contractor until such time as Contractor may exercise the right to terminate as defined herein.
- 15.8.4 If a Notice of Suspension is issued by City, Contractor may exercise its right to terminate this Agreement as outlined in **Section 15.9.8** herein. If Contractor elects to terminate this Agreement and notifies City in writing of its intent via a Notice of Termination, within thirty (30) days after receipt by City of Contractor's Notice of Termination, Contractor promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.



- 15.8.5 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.
- 15.8.6 Upon the above conditions being met, City promptly shall pay Contractor that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee, together with all liabilities incurred by Contractor as a result of such suspension or termination.
- 15.8.7 City reserves the right to suspend this Agreement at the end of any phase for the convenience of City by issuing a signed, written Notice of Suspension citing this **Section 15.8**, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall in no way shall guarantee what the total number of days the suspension shall occur. Such suspension shall take effect immediately upon receipt of said Notice of Suspension by Contractor.
- 15.8.8 Contractor hereby is given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) days. Contractor may exercise this right to terminate by issuing a signed, written Notice of Termination, citing this **Section 15.8.8**, to City after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination under this paragraph shall become effective immediately upon receipt of said written notice by City. In such event, City promptly shall pay Contractor that proportion of the prescribed fee which the Work and/or services actually performed under this Agreement bear to the total Work and/or services called for under this Agreement, less previous payments of the fee, together with all liabilities incurred by Contractor as a result of such suspension or termination.

## **ARTICLE 16. MISCELLANEOUS PROVISIONS**

- 16.1 DISPUTE RESOLUTION** All disputes against City arising from this Agreement, as well as those arising on any other City Project, shall be resolved in accordance with the procedures and limitations of Texas Local Government Code Subchapter I, Chapter 271.151et.seq., and City's General Conditions. City designates the Director of Capital Improvements Management Services or his/her designee as its officer(s) for examining, negotiating and resolving claims and counterclaims. City hereby waives sovereign immunity only in accordance with Section 271.152 of the Local Government Code for its obligations to Contractor arising under this Agreement.
- 16.2 GOVERNMENTAL IMMUNITY** Nothing in this Contract shall be construed to waive City's governmental immunity from a lawsuit, which immunity is expressly retained.
- 16.3 ASSIGNMENT** This Agreement is a personal service contract for the services of Contractor, and Contractor shall not assign, transfer or convey its interest in this Agreement, duties hereunder, fees due and/or rights in the Contract, in part or as a whole,



without the written consent of City. If Contractor attempts to make an assignment, transfer or conveyance without City's written consent, Contractor nevertheless shall remain legally responsible for all obligations under the Contract Documents. City shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of Contractor, except where assignment is compelled by court order, other operation of law or the terms of the Contract Documents..

- 16.4 TITLE TO WORK** Immediately upon the performance of or payment for any part of the Work, as between Contractor and City, title thereto shall vest in City; provided, however, the vesting of title shall not impose any obligations on City or relieve Contractor of any of its obligations hereunder.
- 16.5 AUDIT RIGHTS** **ARTICLE XV**, in City's General Conditions is superseded by the following provision: Contractor agrees City may review any and all Work performed by Contractor under this Agreement. City is granted the right to audit, at City's election, all of the records and billings related to performance of this Agreement. Contractor agrees to retain such records for a minimum of four (4) years following completion of this Agreement. Any records related to any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to City's audit rights.
- 16.6 The following clause supplements Section III.4 (Labor and Material) of City's General Conditions:** Records of expenses pertaining to services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by City or City's authorized representative on reasonable notice.
- 16.7 TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION** Pursuant to Section 231.006, Texas Family Code, Contractor certifies it is eligible to receive the award of or payments under this Agreement and acknowledges this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 16.8 FRANCHISE TAX CERTIFICATION** As corporation or limited liability company, Contractor certifies:
- (a) it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code; or
  - (b) the corporation or limited liability company is exempt from the payment of such taxes; or
  - (c) the corporation or limited liability company is an out-of-state corporation or limited liability company not subject to the Texas Franchise Tax, whichever is applicable.
- 16.9 PAYMENT OF DEBT OR DELINQUENCY TO CITY** It is the policy of City any person or entity doing business with City shall, at all times, remain in financial good

standing with all City Departments. In that regard, Contractor warrants it has no outstanding obligations to any City Department at the time of the execution of this Agreement and hereby covenants it timely shall pay, as they come due, any and all taxes, fees, fines or any other charges assessed by any City Department, whether imposed by statute, ordinance or contract, without regard to whether these charges are associated with this Agreement, or Contractor's operation under this Agreement.

- 16.10 CONTRACT DOCUMENTS; MERGER** The Contract Documents form the entire and integrated contractual agreement between City and Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and City.
- 16.11 CAPTIONS** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 16.12 GOVERNING LAW AND VENUE** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws and case decisions of the State of Texas without reference to conflict of law or choice of law principles of Texas or of any other state. This Contract is entered into subject to and controlled by, and Contractor shall comply with, the Charter, codes and ordinances of the City of San Antonio and all applicable laws, rules and regulations of the State of Texas and the Government of the United States of America. Bexar County shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which City is a party.
- 16.13 NON-DISCRIMINATION** As a Party to this Contract, Contractor understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, Contractor shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless Contractor is exempted by state or federal law, or as otherwise established. Contractor covenants that it shall take all necessary actions to insure that, in connection with any Work under this Contract, Contractor and its Subcontractor(s) shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, either directly, indirectly or through contractual or other arrangements. Contractor also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended.
- 16.14 WAIVERS** Except as may be specifically agreed in writing by Change Order or amendment, no delay or omission by either Party in exercising any right or power arising from non-compliance or failure of performance by the other Party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either Party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of this Agreement.

- 16.15 RIGHTS AND REMEDIES** The duties and obligations imposed on Contractor by the Contract Documents and the rights and remedies available to City under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or made available by law.
- 16.16 SUCCESSORS AND ASSIGNS** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.
- 16.17 RECORDS** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to City or its authorized representative during normal business hours and shall be retained for four (4) years after final Payment to Contractor or Contractor's termination and/or abandonment of the Project, unless City otherwise instructs Contractor in writing.
- 16.18 NOTICES** In addition to the written Notice Provision in City's General Conditions, all notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of Contractor or City for whom it is intended; or sent by U. S. Mail, certified mail, return receipt requested, to the last known business address of the designated representative; transmitted by fax machine to the last known business fax number of the designated representative or sent via electronic mail (e-mail) to the last known e-mail address. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. E-mail are deemed effective at the time sent. Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations. The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other Party.

**If to City:**

City of San Antonio  
XXXXXXX Department  
Attention: Name, Director  
P. O. Box 839966  
San Antonio, Texas 78283-3966

**If to Contractor:**

Firm Name: Selected Contractor  
Attention POC Name  
Address: 1234 Commerce  
San Antonio, TX, 78205

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

**16.21 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

**16.22 INDEPENDENT CONTRACTOR** It is understood and agreed the relationship of Contractor to City shall be of an independent contractor. Nothing contained or inferable in the Contract Documents shall be read, deemed or construed to (i) make Contractor the agent, servant or employee of City, (ii) create any partnership, joint venture or other association between City and Contractor or (iii) or make Contractor or any of Contractor's employees, agents or servants eligible for fringe benefits, such as retirement, insurance and worker's compensation which City provides to its employees. Contractor shall exercise independent judgment in performing the Work and is solely 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. Any direction or instruction by City, in respect of the Work, shall relate to the results City desires to obtain from the Work and shall in no way affect Contractor's independent contractor status. Contractor accepts and agrees it is and shall remain, throughout the duration of this Project and this Contract, an independent contractor and not an agent of City. Contractor shall be liable to City for the acts and omissions of Contractor, Sub-Consultants, Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of this Agreement with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work, directly or indirectly, under contract with Contractor, including any design professionals and their consultants and subconsultants of any tier, to the extent of its liability for same.

The Contract Documents shall not be construed to create a contractual relationship of any kind between:

- (a) Design Consultant and Contractor;
- (b) Or City and a Subcontractor; or
- (c) Any persons or entities other than City and Contractor.

**16.23 INTEREST ON LATE PAYMENTS** City shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended.

**16.24 BENEFITS TO PUBLIC SERVANTS** City may terminate this Contract immediately if Contractor has offered, conferred or agreed to confer any benefit on a City of San Antonio employee or official that the employee or official is prohibited by law from accepting. Notwithstanding any other legal remedies, City may require Contractor to remove any employee of Contractor, a Subcontractor, a Sub-Consultant or any employee of a Subcontractor or Sub-Consultant from the Project who has violated the restrictions of this Section or any similar State or Federal law and City may obtain reimbursement for any

expenditures made to Contractor as a result of an improper offer, an agreement to confer or the conferring of a benefit to a City of San Antonio employee or official. For purposes of this Section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

#### **16.25 SUB-CONSULTANT AND SUBCONTRACTOR CONTRACT REQUIREMENTS**

In addition to the Sub-Contractual Relations Provision in City's General Conditions, Contractor shall require each Sub-Consultant and Subcontractor, to the extent of the Work to be performed by the Sub-Consultant and Subcontractor, to be bound to Contractor by the terms of the Contract Documents and to assume, toward Contractor, all the obligations and responsibilities the Contractor, by these Documents, assumes toward City. Each sub-consultant and subcontract agreement shall preserve and protect the rights of City under the Contract Documents, with respect to the Work to be performed by the Sub-Consultant and Subcontractor, so that sub-consulting and subcontracting thereof shall not prejudice such rights. Where appropriate, Contractor shall require each Sub-Consultant and Subcontractor to enter into similar agreements with its sub-Sub-Consultants and sub-Subcontractors. Contractor shall make available to each proposed Sub-Consultant and Subcontractor, prior to the execution of a Sub-Consultant and/or Subcontract agreement, copies of the Contract Documents to which the Sub-Consultant and/or Subcontractor shall be bound, and, upon written request of the Sub-Consultant or Subcontractor, identify to the Sub-Consultant and/or Subcontractor terms and conditions of the proposed sub-consultant and subcontract agreement in variance with the Contract Documents. Sub-Consultants and Subcontractors similarly shall make copies of applicable portions of such documents available to their respective proposed sub-Sub-Consultants and sub-Subcontractors. Contractor shall provide City with a copy of each Sub-Consultant and Subcontractor agreement, upon request.

### **ARTICLE 17. INTEREST IN CITY CONTRACTS PROHIBITED**

**17.1** In addition to the **Officers or Employees of City Not to Have Financial Interest in Any Contract of City** provision in City's General Conditions: No officer or employee of City shall have a financial interest, directly or indirectly, in any contract with City, or shall be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City Public Service Board, the SAWS, and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.

**17.2** Contractor acknowledges it is informed the Charter of City and its Ethics Code prohibit a City officer or employee, as those terms are defined in City's Ethics Code, from having a financial interest in any contract with City or any City agency, such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his



parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a Sub-Consultant or Subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 17.3** Contractor warrants and certifies, and this Agreement is made in reliance thereon, it, its officers, employees and agents neither are officers nor employees of City. Contractor further warrants and certifies it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.
- 17.4** Contractor must disclose if it is associated in any manner with a City official or employee in a business venture or business dealings. Failure to do so shall constitute a violation of City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes being in a partnership or joint venture with City official or employee, having a contract with City official or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a City official or employee also owns at least 10%, or having an established business relationship with a City official or employee as client or customer. Any violation of this Article 18 with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with City shall render the Contract voidable by City's City Manager or City Council.

*(Signature Page immediately to follow)*

**BY THEIR SIGNATURES BELOW**, the respective and represented Parties have executed and bound themselves to this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF SAN ANTONIO, TEXAS**

**Selected Contractor**

By: \_\_\_\_\_  
**Name**  
Public Works Department, Director

By: \_\_\_\_\_  
**Company Name**

APPROVED AS TO FORM:



By: \_\_\_\_\_  
City Attorney

DRAFT

**EXHIBIT A - SURETY, PAYMENT AND PERFORMANCE BOND FORMS**

DRAFT

## EXHIBIT B - PROJECT DEFINITION

DRAFT

**EXHIBIT C - CONTRACTOR'S HOURLY RATE SCHEDULE AND SCHEDULE OF  
VALUES FOR PRE-CONSTRUCTION SERVICES**

DRAFT

## EXHIBIT D - SUBMITTAL REQUIREMENTS FOR THE GMP

DRAFT

## EXHIBIT E - SUBMITTAL REQUIREMENTS FOR FIXED PRICE PROPOSALS

DRAFT



**EXHIBIT F – APPROVED FIXED PRICE PROPOSALS**

DRAFT

**EXHIBIT G - GENERAL CONDITIONS FOR CITY OF SAN ANTONIO  
CONSTRUCTION CONTRACTS**

DRAFT

**EXHIBIT H - APPROVED GMP PROPOSAL FORM**

DRAFT

## EXHIBIT I - TECHNICAL SPECIFICATIONS

DRAFT

**EXHIBIT J - CONSTRUCTION DRAWINGS**

DRAFT

**EXHIBIT K - SBEDA SUB CONTRACTOR/SUPPLIER UTILIZATION PLAN FORM**

DRAFT



## EXHIBIT L – CONTRACTOR DESCRIPTION OF GENERAL CONDITIONS COSTS

General Conditions will be negotiated and added as an amendment at a later date. The general conditions anticipated include, but are not limited to:

- Operations manager
- Home office personnel
- Project Manager
- Site superintendent
- Assistant superintendent(s)
- Field engineers
- Secretarial support
- Temporary & contract personnel
- Personnel relocation
- Travel and lodging
- Job office rental
- Project office utilities
- Project office telephone
- Office supplies
- Project office machines
- First aid supplies
- Construction site fire extinguishers
- Trash disposal
- Portable toilets
- Storage trailer rental
- Cellular Telephones
- Postage and Shipping
- Haul and set up trailers
- Pick up truck rental
- Security fencing
- Fuel and maintenance
- Benchmark survey
- Data processing
- Drug Screens
- Progress schedules
- Submittal/Shop drawing printing
- Employee Benefits
- Workers compensation

## EXHIBIT M - CERTIFICATE OF INTERESTED PARTIES (Form 1295)

The Texas Government Code §2252.908 and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 to the City before the City may enter into a contract with that business entity. Form 1295 must be completed online. It is available from the Texas Ethics Commission by accessing the following web address:

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

**Print your completed Form 1295 and the certification of filing. Sign Form 1295 in front of a notary and submit it, along with the certification of filing, with your response to this solicitation. In Box 3 of Form 1295, provide the solicitation number shown on the cover page of this solicitation (e.g. IFB 23-00001234, RFQ 23-100001234 or RFCSP 23-00001234).**

The following definitions found in the statute and Texas Ethics Commission rules may be helpful in completing the required Form 1295.

“Business entity” includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.

“Controlling interest” means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. Subsection (3) of this section does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

“Interested Party” means: (1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or (2) an intermediary.

“Intermediary,” for purposes of this rule, means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person’s participation;
- (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.

**EXHIBIT N – RFQ SUBMITTAL AND PROPOSAL COMMITMENTS**

DRAFT

**EXHIBIT O – CONTRACT ADDENDA**

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## EXHIBIT P – INSURANCE REQUIREMENTS

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