

**CITY OF SAN ANTONIO**

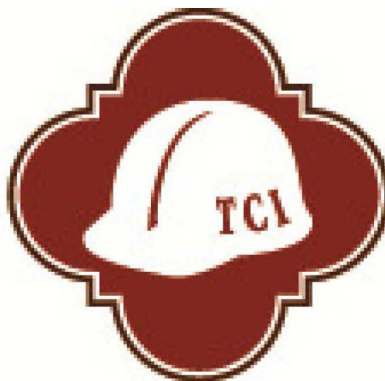
**DESIGN-BUILD CONTRACT**

**for Horizontal Projects**

for

**PRUE ROAD – BABCOCK ROAD TO LAUREATE DRIVE PROJECT**

**23-01603**



**STATE OF TEXAS  
COUNTY OF BEXAR  
CITY OF SAN ANTONIO**

**DESIGN-BUILD CONTRACT**

**ARCHITECTURAL AND ENGINEERING**

**DESIGN AND CONSTRUCTION SERVICES**

**FOR THE**

**PRUE ROAD – BABCOCK ROAD TO LAUREATE DRIVE PROJECT**

**PROJECT NUMBER: 23-01603**

This **DESIGN-BUILD CONTRACT** (hereafter referred to as “Contract”) is made and entered into by and between the City of San Antonio, a Texas municipal corporation (hereafter referred to as “City” or “City”) and **J.D. ABRAMS, L.P.**, with its principal place of business at **5811 TRADE CENTER DRIVE, AUSTIN, TEXAS 78744** (hereafter referred to as “Design-Builder”). (City and Design-Builder individually are referenced to herein as “a Party” and collectively referenced to herein as “the Parties”.)

This Contract for the engineering, construction and related services of a project identified as the: **PRUE ROAD – BABCOCK ROAD TO LAUREATE DRIVE PROJECT, No. 23-01603**, in the City of San Antonio, County of Bexar, Texas (hereafter referred to as “the Project”) is being executed by City, pursuant to City Charter, Ordinances, and Resolutions of the San Antonio City Council, and by Design-Builder.

Article I.	Definitions .....	4
Article II.	Regulatory Guidelines, Requirements, and Standards.....	11
Article III.	Preliminary Consultation and Project Analysis .....	15
Article IV.	Construction Documents .....	18
Article V.	Construction Services .....	20
Article VI.	Time for Construction: The Contract Time .....	21
Article VII.	Additional Duties and Responsibilities of Design-Builder.....	25
Article VIII.	Contract Price .....	29
Article IX.	Payment of the Contract Price .....	42
Article X.	City’s Duties, Obligations, And Responsibilities .....	48
Article XI.	Project Documentation .....	51
Article XII.	Ownership of Project Documents and Copyrights .....	52
Article XIII.	Indemnity Requirements.....	54
Article XIV.	Insurance Requirements.....	55
Article XV.	Small Business Economic Development Advocacy (SBEDA) Program.....	56
Article XVI.	Designated Representatives of Parties.....	57
Article XVII.	Miscellaneous Provisions .....	58
	Design-Build Contract Signature page .....	62
Exhibit A	Programming Documents .....	63
Exhibit B	Design-Builder’s Fee Proposal .....	64
Exhibit C	General Conditions for City of San Antonio Design/Build Contracts.....	65
Exhibit D	SBEDA Plan .....	66
Exhibit E	Payment and Performance Bond Forms .....	67
Exhibit F	Design-Builder’s Design Schedule and Design Fee Schedule .....	72
Exhibit G	Design-Builder’s Baseline Pre-Construction and Construction Schedules .....	73
Exhibit H	Design-Build Scope of Services and Hourly Rate with Schedule of Values.....	74
Exhibit I	Design Tasks and Deliverables for Horizontal Projects .....	75
Exhibit J	Construction Tasks and Deliverables for Horizontal Projects.....	76
Exhibit K	Project Management Tasks and Deliverables.....	82
Exhibit L	Schedule of Values .....	91
Exhibit M	GMP Summary and GMP Proposal.....	92
Exhibit N	Description of Design-Builder’s General Condition costs .....	93

## **ARTICLE I. DEFINITIONS**

As used in this Design-Build Contract, the following terms shall have meanings as set out below:

### **I.1 APPROVED FIXED PRICE PROPOSAL OR AFPP.**

Fixed Price Proposal approved by City, which shall include the cost of construction and all other construction-related costs to be incurred by the Design-Builder, including all related General Conditions costs, unless otherwise established in the Guaranteed Maximum Price (as defined below) or a specific Work Package (as defined below), and shall be the maximum price paid by City for all work necessary to deliver the defined Work Package, as required by City, within Design-Builder's Baseline Construction Schedule, attached hereto, incorporated herein by reference and labeled as **EXHIBIT G: DESIGN-BUILDER'S BASELINE PRE-CONSTRUCTION AND CONSTRUCTION SCHEDULES** and within the Project Budget, and shall be subject to City's approval.

### **I.2 ARCHITECT/ENGINEER OF RECORD.**

Design-Build team member registered as an Architect or Engineer, pursuant to Texas Occupations Code Ann., Chapter 1051 (Architect) or Chapter 1001, (Engineer), and which/who will provide professional architectural/engineering services, have direct responsibility for compliance with the design and supervision of the architectural/engineering work associated with the Project, will perform certain contract administration responsibilities, as set forth in the Contract and shall perform all other applicable requirements of the relevant and applicable Texas Occupations Code Annotated.

### **I.3 CERTIFICATE OF SUBSTANTIAL COMPLETION.**

Document issued by Design-Builder, issued only with City's consent, at the stage in the progress of the work when the work, or designated portion of the work defined by City, is sufficiently complete in accordance with the Contract so that City may occupy or use the work for its intended use. Said Certificate of Substantial Completion Form is attached hereto, incorporated herein by reference and marked as **EXHIBIT L: SCHEDULE OF VALUES; SUMMARY SPREADSHEET AND BACKUP DOCUMENTS; CERTIFICATE OF SUBSTANTIAL COMPLETION.**

### **I.4 CITY.**

Defined as The City of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County and identified as "CITY" in the Contract and these General Conditions, is referred to throughout the Contract Documents as if singular in number.

**I.5 CITY DESIGNATED REPRESENTATIVE (CDR).**

Person(s) designated by City to act for City.

**I.6 CITY'S PROJECT CRITERIA.**

All program elements, drawings, standards, schedules, reports, surveys, specifications and systems and product descriptions, which are created by Design Criteria Consultant and approved by City, used to prepare the Fixed Price Proposal(s) or GMP, as applicable, and Construction Documents.

**I.7 CLAIM.**

Demand or assertion by one of the Parties seeking, as a matter of right, an adjustment or interpretation of the Contract terms, payment of money, extension of time or other relief, with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between City and Design-Builder arising out of or relating to the Contract. Claims must be initiated by written notice, signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Design-Builder by his/her signature) of Design-Builder, verifying the truth and accuracy of the Claim.

**I.8 COMPENSATION.**

Amounts paid by City to Design-Builder for completed services under this Design-Build Contract.

**I.9 CONTRACT DRAWINGS AND SPECIFICATIONS.**

All the design documents provided by Design-Builder and approved by City pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work and the rendering of the Project fully operational, signed and sealed detailed plans, drawings, specifications, manuals, and related materials prepared by the Architect/Engineer of Record.

**I.10 CONTRACTOR.**

Entity having entered into a contract with City for construction services.

**I.11 CONSTRUCTION WORK.**

Shall mean whatever is done by or required of Design-Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation:

- I.11.1** construction of the whole and all parts of the Project in full and strict conformity with this Contract;
- I.11.2** prompt payment of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;
- I.11.3** the procurement and furnishing of all necessary permits required for the construction of the Project;
- I.11.4** the creation and submission to City of detailed, as-built drawings depicting all as-built construction in required format;
- I.11.5** the furnishing of Design-Build Construction surety bonds and all insurance documents as required by the Contract;
- I.11.6** the furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design-Builder and/or standard in the industry; and
- I.11.7** the furnishing of all other services and things required, or—reasonably inferable from by the Contract Documents, including the provisions of **ARTICLE VII** below.

**I.12 COST OF THE CONSTRUCTION WORK.**

Costs necessarily incurred in the performance of the Construction Work during the Construction Phase, for items specific to the Project and the Contract requirements, and paid or payable by Design-Builder, and not included in the Management Fee, as set forth herein. Cost of the Construction Work is further defined in **ARTICLE VIII**.

**I.13 DESIGN-BUILDER.**

Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative(s).

Design-Builder is a person registered and licensed as an Architect as defined pursuant to Texas Occupations Code Ann., Chapter 1051, a person registered and licensed as a Landscape Architect as defined pursuant to Texas Occupations Code, Chapter 1052, a person registered and licensed as a professional Engineer pursuant to Texas Occupations Code, Chapter 1001, and/or a firm employed by City to provide professional Architectural or Engineering services, exercising overall responsibility

for the design of a Project, or a significant portion thereof, performing certain contract administration responsibilities as set forth in the Contract and responsible for the construction of the Project pursuant to City's acceptance of the design. If the employment of Design-Builder is terminated, City may employ a new Design-Builder whose status under the Contract Documents shall be that of the former Design-Builder

**I.14 DESIGN CRITERIA CONSULTANT.**

Also known as **CITY'S CONSULTANT.**

City's independent Architectural/Engineering consultant which/who may prepare/did prepare the Programming Documents and will provide peer review or other services on this Project.

**I.15 DESIGN DOCUMENTS.**

Documents and drawings which shall describe with specificity all City requested elements, details, components, materials and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes

**I.16 DESIGN SERVICES.**

Any and all architectural/engineering design services required to be performed by Design-Builder, pursuant to the Contract, along with all labor, materials, supervision, equipment, computers, documents and all other things necessary for the performance of such services.

**I.17 DIRECTOR.**

Director of City's Transportation & Capital Improvements Department (hereafter referred to as "TCI"), to include the designated Project Manager identified in the Notice to Proceed issued by City.

**I.18 FINAL COMPENSATION/PAYMENT**

Final amounts paid by City to Design-Builder for completed Design Services and Construction Work under this Contract.

**I.19 FINAL COMPLETION.**

Completion of ~~all~~ Design Services and ~~all~~ Construction Work required by, and in strict compliance with, the Contract, including Design-Builder's provision to City of all documents and things required to be provided by the Contract, as stated herein and

as an addition to **ARTICLE XI** of **CITY'S GENERAL CONDITIONS FOR DESIGN/BUILD CONTRACTS**.

**I.20 FIXED PRICE PROPOSAL (FPP).**

Design-Builder's proposed maximum price, which shall include the cost of construction and all other construction-related costs to be incurred by Design-Builder, including all related General Conditions costs and preconstruction services costs, unless otherwise established in the Guaranteed Maximum Price (as defined herein below) or a specific Work Package (as defined herein below), and shall be the maximum price paid by City for all work necessary to deliver the defined Work Package, as required by City, within the Baseline Construction Schedule and the Project Budget, and shall be subject to City's approval.

**I.21 GUARANTEED MAXIMUM PRICE (GMP).**

Guaranteed maximum price for which all Construction Work will be completed within the Baseline Construction Schedule and the Project Budget. The GMP shall be comprised of the cost for Construction Work, preconstruction services, Design-Builder's Management Fee and any/all AFPPs, as defined in **ARTICLE VIII**.

**I.22 MANAGEMENT FEE.**

Shall be composed of Design-Builder's combined overhead and profit at the agreed upon rate as shown in Design Builder's Fee Schedule, attached hereto, made a part hereof by reference and labeled as **EXHIBIT B: DESIGN-BUILDER'S FEE PROPOSAL**.

**I.23 PARTY.**

City or Design-Builder individually herein.

**I.24 PARTIES.**

City and Design-Builder collectively herein.

**I.25 PASS THROUGH COSTS.**

Those costs incurred by Design-Builder that City agrees shall be paid by City, upon invoice of Design-Builder to City, that shall have no mark-up or fee applied to, or included in, the submitted invoice.

**I.26 PROGRAMMING DOCUMENTS.**

Documents provided by City to Design-Builder defining the Project's general goals and requirements. Typically, Programming Documents shall provide information



such as the Project's estimated square footage of each usage type and other such elements that achieve the Project's goals.

**I.27 PROJECT DOCUMENTS.**

All design documents, schedules, reports, surveys, specifications and systems and product descriptions, which are created by Design Builder and approved by City, used to prepare a Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable.

**I.28 PROJECT.**

Services to be provided by Design-Builder pursuant to this Design-Build Contract for the design and construction of the **PRUE ROAD – BABCOCK ROAD TO LAUREATE DRIVE PROJECT, #23-01603**, in San Antonio, Texas, as further set out in the Scope of Services attached hereto, incorporated by reference and labeled as **EXHIBIT H: DESIGN-BUILD SCOPE OF SERVICES AND HOURLY RATE WITH SCHEDULE OF VALUES.**

**I.29 PROJECT MILESTONE.**

Established date by which a defined scope of work, as more fully defined in Article **VI.4**, shall be completed by Design-Builder. If Design-Builder does not meet the agreed upon Project Milestone date established, Design-Builder shall be assessed the agreed upon Liquidated Damages for each day the defined Project Milestone scope of work remains unfinished.

**I.30 SAMSA.**

San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised of Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson.

**I.31 SCHEDULE OF VALUES.**

Values allocated to materials and various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as City may require.

**I.32 SUB-CONSULTANT.**

Any person or entity performing Architectural/Engineering or other professional services on behalf of Design-Builder.

**I.33 SUBCONTRACTOR.**

Person or entity contracting with the Design-Builder or representative to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout

the Contract Documents as if singular in number and means a Subcontractor, Sub-Consultant or an authorized representative of Subcontractor or Sub-Consultant.

For purposes of the Contract, Subcontractors also shall include those furnishing specially fabricated equipment and materials for the Project.

**I.34 SUBSTANTIAL COMPLETION.**

As stated herein and as an addition to **ARTICLE XI.7 of CITY GENERAL CONDITIONS FOR CITY OF SAN ANTONIO DESIGN/BUILD CONTRACTS:**

**I.35 SUPPLIER.**

Entity manufacturer, fabricator, Supplier, distributor, material man or vendor having a direct contract with Design-Builder, or with any Subcontractor, to furnish or provide materials or equipment to be incorporated in the construction phase for the performance of the Construction Work.

**I.36 WORK PACKAGES.**

Portion of the construction work within the Project addressed by a Fixed Price Proposal (“FPP”) or an Approved Fixed Price Proposal (“AFPP”).

**END OF ARTICLE I**

## **ARTICLE II. REGULATORY GUIDELINES, REQUIREMENTS, AND STANDARDS**

- II.1** Design-Builder shall perform all Design Services described in, contemplated by, inferable from or necessary to achieve the objectives stated in the Programming Documents and the Contract, including all Design Services necessary for the Project to be properly constructed by Design-Builder and used, operated and maintained by City in accordance with all applicable laws, regulations, guidelines, requirements and standards. The Design Services shall be performed within the time provided by the Design Schedule for the performance of Design-Builder's Design Services, as provided in **ARTICLE III** of this Contract.
- II.2** Design-Builder shall be responsible for registering the Project with the Department of Licensing & Regulation, Architectural Barriers, and obtaining all reviews, inspections and approvals of Construction Documents required for compliance with all state and federal handicapped and Americans with Disabilities Act (hereafter referred to as "ADA") requirements. Design-Builder also shall be responsible for ensuring that all facilities constructed in accordance with the Construction Documents created under this Contract comply with all state and federal handicapped and ADA requirements.
- II.3** Design-Builder guarantees that the Project will be executed and constructed in strict compliance with City-approved Construction Documents. Design-Builder further agrees to keep City informed about the progress and quality of the portion of the Work completed, and to endeavor to guard City against defects in the Work.
- II.4 CITY'S REVIEW OF DESIGN SERVICES.**

Subject to **ARTICLE X.1.7**, Design-Builder shall submit all documents produced as part of the Design Services to City for review and approval in accordance with the terms of the Contract. However, any review or approval by City shall not relieve Design-Builder of or otherwise diminish its obligations under the Contract. City may direct Design-Builder to make changes to any Construction Documents to conform the documents to City's objectives. Any changes by Design-Builder ordered by City shall not relieve Design-Builder of its obligations under this Contract unless, and only to the extent, Design-Builder notifies City in writing, within ~~five (5)~~ calendar days after receipt of City's directive to make changes, concerning any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements or other adverse impact that may result from the directed changes. Failure of Design-Builder to submit its notice within the ~~five (5)~~ calendar day period constitutes a waiver by Design-Builder of any claim for an adjustment to the Design Schedule or the Contract Time.

## **II.5 PREPARATION OF SITE INFORMATION.**

Design-Builder shall prepare and provide to City, as necessary, surveys, geotechnical surveys and topographic information including aerial photographs needed to establish line and grade of utilities, location of property lines and easements. Utility easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines. **City expressly does not warrant any information provided by it to Design-Builder, in connection with preparation of the above-mentioned information;** Design-Builder, however, reasonably may rely on information provided by City to the extent the information has been prepared by City or an independent consultant hired by City to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors, and omissions that a reasonable and prudent professional Architect and/or Engineer should or would detect and inquire about.

## **II.6 RETENTION OF GEOTECHNICAL CONSULTANTS.**

Design-Builder is responsible to perform any and all necessary geotechnical work as it relates to the Project. In preparing the Construction Documents, Design-Builder shall retain an experienced qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. If City so chooses, City may retain a separate geotechnical consultant to review Design-Builder's evaluations. Design-Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of the geotechnical consultant. **City expressly does not warrant any geotechnical information provided by it, if any, to Design-Builder for use in connection with preparation of the Construction Documents.**

## **II.7 QUALITY OF DESIGN SERVICES.**

Design-Builder shall be responsible for the professional quality, completeness, accuracy and coordination of Construction Documents. Design-Builder shall provide Design Services that shall result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology. Design-Builder shall provide for all quality control reviews required by sound professional architectural/engineering design practices and by governmental authorities having jurisdiction over the Project.

## **II.8 COMPLIANCE WITH LAWS AND REGULATORY REQUIREMENTS.**

In providing Design Services, Design-Builder shall comply with the applicable federal, state, and local laws, rules and regulations and the authorities having lawful jurisdiction over the Project. Design-Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project including, without limitation, environmental standards, fire and safety regulations and requirements and compliance with all other applicable standards and codes. Design-Builder shall be responsible to perform any and all necessary environmental work as it relates to the Project. In preparation of the Construction Documents, Design-Builder shall retain an experienced and qualified environmental consultant to evaluate all environmental considerations relating to the design and construction of the Project. If City so chooses, City may retain a separate environmental consultant to review Design-Builder's evaluations. **City expressly does not warrant any environmental information provided by it, if any, to Design-Builder for use in connection with preparation of the Construction Documents.** Design-Builder accepts and agrees it shall be responsible for designing the Project in accordance with and in compliance with applicable federal, state and local environmental laws and regulations.

**II.9** The Design-Builder warrants that Services provided by Design-Builder and all of its Sub-Consultants and Subcontractors under this Contract will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession or trade currently practicing under similar circumstances in Bexar County, Texas.

## **II.10 DUTY TO CORRECT ERRORS.**

Design-Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Construction Documents.

**II.11** Design-Builder acknowledges and agrees that the Architect/Engineer of Record shall be responsible for all material aspects of the practice of architecture/engineering and shall have direct supervision of the architectural/engineering work associated with the Project. The Architect of Record shall have responsibility for compliance with the requirements of the Texas Occupations Code Ann. Chapter 1051. The Engineer of Record shall have responsibility for compliance with the requirements of the Texas Occupations Code Ann., Chapter 1001.

**II.12** Design-Builder shall be represented by a registered professional Architect and/or Engineer, licensed to practice in the State of Texas, at meetings of any official nature concerning the Project including, but not limited to, scope meetings, review meetings, pre-construction meetings and other meetings as required by City.

- II.13** Design-Builder acknowledges and agrees that the Engineering Representative shall be responsible for compliance with the engineering design requirements and shall have direct supervision of the engineering work associated with the Project. The Engineer of Record shall have responsibility for compliance with the engineering requirements of the Texas Occupations Code Ann., Chapter 1001.
- II.14** Design-Builder acknowledges and agrees that the Architectural Representative shall be responsible for compliance with the architectural design requirements and shall have direct supervision of the architectural work associated with the Project. The Architect of Record shall have responsibility for compliance with the architectural requirements of the Texas Occupations Code Ann., Chapter 1051.
- II.15** Design-Builder certifies that each individual or business entity which is an Architect or Engineer chosen to be a member of the Deigns-Build team was selected only on the basis of demonstrated competence and qualifications.
- II.16** Acceptance of the final Construction Documents by City shall not constitute nor be deemed a release of the responsibility and liability of Design-Builder, its employees, associates, agents, Sub-Consultants or Subcontractors for the accuracy and competency of their designs, drawings, specifications or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, working drawings, specifications or other documents and Work prepared by said Design-Builder, its employees, Sub-Consultants, Subcontractors and agents.
- II.17** The Design-Builder warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Design-Builder to solicit or secure this Contract and that it has not, for the purpose of soliciting or securing this Contract, paid or agreed to pay any company or person a commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For breach of this warranty, City shall have the right to terminate this Contract under the provisions of **ARTICLE XV.3** of **GENERAL CONDITIONS FOR CITY OF SAN ANTONIO DESIGN/BUILD CONTRACTS**.

**END OF ARTICLE II**

## **ARTICLE III. PRELIMINARY CONSULTATION AND PROJECT ANALYSIS**

### **III.1 DETERMINING THE PROJECT OBJECTIVES.**

Prior to the preparation of the Design Documents, as required by **ARTICLE IV**, Design-Builder first shall consult in detail with City and carefully shall analyze any information furnished by City concerning requirements of the Project including, but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations and objectives, as well as the Design scope specification. Should the goals of the Project subsequently change, either Design-Builder or City may request a review of the anticipated Services, with an appropriate adjustment in compensation.

### **III.2 REPORT ON PROJECT REQUIREMENTS AND OBJECTIVES.**

Based on its study and analysis, and no later than fifteen (15) days after the effective date of the Contract, Design-Builder shall prepare and submit to City a written report detailing Design-Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational or other problems which may result from said requirements. The written report of Design-Builder also shall include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design-Builder shall review such report with City and shall implement such changes as City may require.

### **III.3 SCHEDULE OF DESIGN SERVICES.**

Design-Builder shall, within twenty (20) calendar days after award of the Contract and prior to City's issuance of a written Notice to Proceed, submit for City's approval the baseline Design Schedule, addressing each stage of design shown in **EXHIBIT I: DESIGN TASKS AND DELIVERABLES FOR HORIZONTAL PROJECTS**, attached hereto and incorporated herein by reference, for the performance of Design-Builder's Design Services, which shall include allowance for ten (10) calendar days for City's review of submissions and for approvals of authorities having jurisdiction over the Project. This Schedule shall, upon approval by City, be considered incorporated and made a part of this Contract, attached hereto, incorporated herein by reference and labeled as **EXHIBIT F: DESIGN-BUILDER'S DESIGN SCHEDULE AND DESIGN FEE SCHEDULE**.

The Design Schedule, when approved by City, shall not, except for good cause, be exceeded by Design-Builder. Should Design-Builder at any time during the course of performing the Contract, have reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall notify City in writing as soon as practical, but no later than 3 business days stating the reason for the delay, the party responsible for the delay (if any) and the steps being taken to remedy or minimize the impact of the delay. Failure of Design-Builder to submit such

notification shall constitute a waiver by Design-Builder of any claim Design-Builder may have for an adjustment to the Contract Price, the Design Schedule or the Contract Time. All extensions of time shall be governed by **ARTICLE X** of City's General Conditions for Design/Build Contracts. Subject to the provisions of **ARTICLE X.2** of said General Conditions, City shall review and approve, where appropriate, the Design Schedule or any portion thereof.

#### **III.4 SCHEDULING.**

Based upon Design-Builder's recommendation that the Project schedule should be "fast tracked" for the Design Phase, City agrees promptly to review the proposed plan of action. The proposed schedule should include sufficient budget allowances in anticipation of currently unknown refinements of budgets that may become necessary and in order to control Project costs.

**III.5** The Design-Builder shall abide by and shall include in any contract or Design-Builder team member agreement with a professional Architect and/or Engineer the following provisions:

**III.5.1** The Architect and/or Engineer, whose work product and services are the subject of this Contract for professional services in connection with the Design-Build Contract for The Project with the City of San Antonio, Texas, agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS against any and all claims by third parties, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or be occasioned or caused by Architect's/Engineer's negligent act, error or omission, or the negligent act or omission of any agent, officer, director, representative, employee, or Sub-Architect/Sub-Engineer of Architect/Engineer and its respective officers, agents, employees, directors and representatives while in the exercise of performance of the services, rights or duties in connection with The Project under this Contract. The indemnity provided for in this **ARTICLE III.5** shall not apply to any liability resulting from the negligence of City, its officers, agents or employees, in instances where such negligence causes personal injury, death or property damage. In the event Architect/Engineer and City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of 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; and

**III.5.2** The professional Architect/Engineer shall add City as an additional insured in all insurance policies required for the Project, excluding professional liability coverage(s). In insurance, an act of God is defined as any accident or event not influenced by man. They are accidents caused by nature. Hurricanes, floods, hail, tsunamis, wildfires, earthquakes and tornados are all considered acts of God.

**END OF ARTICLE III**

## **ARTICLE IV. CONSTRUCTION DOCUMENTS**

### **IV.1 TIME FOR PREPARATION.**

Not later than the date called for in the Design Schedule attached hereto, made a part of this Contract by reference and labeled as **EXHIBIT F: DESIGN-BUILDER'S DESIGN SCHEDULE AND DESIGN FEE SCHEDULE**, after City has authorized Design-Builder to commence with the completion of the Construction Documents, Design-Builder shall prepare Construction Documents consisting of Drawings and Specifications and submit them to the City for approval at 40%, 70%, and 100% of design completion as defined in the City of San Antonio Design Guidance Manual and agreed upon by City and Design-Builder in scoping meeting. The Construction Documents shall be based on the approved Programming Documents, any further adjustments to the facility program, the GMP or Fixed Price Proposal(s), as applicable, and shall be provided not later than the date called for in the design schedule.

### **IV.2 THE CONSTRUCTION DOCUMENTS.**

The Construction Documents shall include all Design Documents and any other necessary documentation to complete all Construction Work for its intended use. The Construction Documents shall include satisfaction of all testing, commissioning, permitting, qualifications, certifications, validations and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of **ARTICLE X.1.7**, City shall review and approve, where appropriate, the Construction Documents, or any portion thereof. If City has not submitted comments to Design-Builder within twenty (20) calendar days following receipt of the Construction Documents, Design-Builder shall verify City has no comments on the submitted Construction Documents.

### **IV.3 GUARANTEED MAXIMUM PRICE/FIXED PRICE PROPOSAL(S) INCLUDES CONSTRUCTION DOCUMENTS.**

The Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable and as set forth in **ARTICLE VIII**, shall include the cost of constructing the Project in strict accordance with the requirements of the Construction Documents. It is anticipated, as of the execution date of this Agreement, City will require a GMP proposal from Design-Builder during the Construction Document phase at TBD percent (TBD%) of design completion, but City reserves the right to request a GMP from Design-Builder.

### **IV.4** Design-Builder shall submit the Design Documents to City and obtain City's acceptance and approval of the Design Documents at the percentage of completion levels stated **ARTICLE IV.1**. Design-Builder shall submit Zero(0) full size and Seven(7) half size sets of the Design Documents and two (2) sets of any accompanying any reports to City. All

models and other documents also shall be provided to City in electronic format to be determined by City.

**IV.5** Upon acceptance, review and final approval of said Design Documents, Design-Builder shall provide and submit to City the following:

**IV.5.1** Design-Builder shall submit Zero(0) full size and Seven(7) half size sets of the Design Documents and Seven sets (7) set(s) of the approved Specifications and any reports to City's designated representative, for use by City. All models and documents also shall be provided to City in electronic format, to be determined by City.

**IV.5.2** The Design-Builder shall submit the Permit Application, signed and sealed Construction Document Drawings, Specifications, Special Inspection letter and copies of the site survey, geotechnical report, Environmental Clean Letter, and any other documents required, to City of San Antonio Planning and Development Services Department for the building permit. Design-Builder shall respond to questions from the Planning and Development Services Department and shall be responsible for obtaining all required permits. Building permit fees shall be paid by City. Subcontractor and/or Sub-Consultant required trade permits are and remain the responsibility of Design-Builder. Any additional review fees required due to improper submittal will be the responsibility of Design-Builder.

**END OF ARTICLE IV**

## ARTICLE V. CONSTRUCTION SERVICES

### V.1 GENERAL INTENT.

Design-Builder shall perform all Construction Work necessary to construct the Project in accordance with this Contract and to render the Project and all its components operational and functionally and legally usable for their intended purpose, incorporating all of the construction tasks and deliverables contained in **EXHIBIT J: CONSTRUCTION TASKS AND DELIVERABLES FOR HORIZONTAL PROJECTS**, attached hereto and incorporated herein by reference.

V.2 Design-Builder shall ensure that the Architect and/or Engineer of Record, or Design-Builder's architecture/engineering representative, shall make periodic visits (at minimum every seven (7) calendar days throughout the duration of construction) to the Project site to ensure that all facilities are being and have been constructed in strict compliance with the Construction Documents and endeavor to guard City against defects in the work. Within five (5) calendar days of each periodic visit, Design-Builder shall forward City the report generated from that visit electronically, in a format to be determined by City.

END OF ARTICLE V

## ARTICLE VI. TIME FOR CONSTRUCTION: THE CONTRACT TIME

### VI.1 BASELINE CONSTRUCTION SCHEDULE.

Design-Builder shall submit Design-Builder's Baseline Construction Schedule for the Construction Work no later than ten (10) calendar days prior to City's issuance of the initial Notice to Proceed for construction. The Baseline Construction Schedule must be approved by City. Design-Builder accepts and agrees the Project Milestone date shall be NA, the Substantial Completion date of the Project shall be June 30, 2021 and Design-Builder accepts and agrees the Final Completion date of the Project shall be July 31, 2021. The Baseline Construction Schedule shall, upon approval by City, be considered incorporated by reference and made a part of this Contract, attached hereto and labeled as **EXHIBIT G: DESIGN-BUILDER'S BASELINE PRE-CONSTRUCTION AND CONSTRUCTION SCHEDULES**. Any changes to the Baseline Construction Schedule, the Project Milestone Date, the Substantial Completion Date and/or the Final Completion date only may be made in writing with the written approval of the City.

### VI.2 NOTICE TO PROCEED.

After City has approved the Construction Documents, City shall issue a Notice to Proceed for the Construction Work, directing Design-Builder to proceed with the Work on the specified date indicated in the Notice to Proceed (hereafter referred to as the "**Commencement Date**").

### VI.3 TIME FOR COMPLETION.

Design-Builder shall commence Work on the Commencement Date and the Work shall be carried out regularly and without interruption. Design-Builder shall substantially complete the Construction Work, to include the Project Milestone, per the schedule provided for this Project, which the schedule shall become part of **EXHIBIT G: DESIGN-BUILDER'S BASELINE PRE-CONSTRUCTION AND CONSTRUCTION SCHEDULES** hereto, or such other date as later may be designated by Change Order (hereafter referred to as the "**Scheduled Substantial Completion Date**"). The number of calendar days between the effective date of the Contract and the Scheduled Substantial Completion Date is defined as the "Contract Time." Design-Builder shall achieve Final Completion of the Construction Work no later than **thirty (30)** calendar days after achieving Substantial Completion. Depending on the length of the punch list, City may consider extending the Final Completion period.

### VI.4 PROJECT MILESTONES.

Prior to Design-Builder reaching the established Project Milestone date, City and Design-Builder shall negotiate the terms and conditions of City taking partial occupancy of the defined core scope items if City so elects to take partial occupancy. Such partial occupancy or use may commence upon City and Design-Builder accepting in writing the responsibilities assigned to each for security, maintenance, damage to the Work and insurance. City and Design-Builder shall agree in writing the period for correction of the Project Milestone Work and the commencement of warranties, if any. When Design-Builder considers this Project Milestone portion of the Work to be complete, Design-Builder shall prepare and submit a list of items to be completed or corrected of the core scope items making up the Project Milestone and submit such list to City. Upon receipt of Design-Builder's list of items, City then shall determine if Design-Builder has met the requirements of the Project Milestone.

**VI.4.1** Consent of Design-Builder to any partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between City and Design-Builder.

**VI.4.2** Immediately prior to such partial occupancy or use by City, City and Design-Builder shall inspect the Project Milestone area in order to determine and record the condition of the Work.

**VI.4.3** Unless expressly agreed upon in writing, City's partial occupancy or City's use of a portion of or portions of the Project Milestone Work shall not constitute City's acceptance of Work not complying with the requirements of the Contract Documents.

**VI.4.4** Upon Design-Builder meeting the Project Milestone completion date and City taking partial occupancy or use of the area of the Project comprising the Project Milestone, City may assume responsibility for maintenance, security and insuring that portion of the Work put into use and accepted by City through notification of such responsibility in writing to Design-Builder.

**VI.4.5** Partial occupancy or use by City does not constitute Substantial Completion and said partial occupancy or use by City starts only those warranty period(s) accepted in writing by City.

## **VI.5 LIQUIDATED DAMAGES FOR DELAY IN SUBSTANTIAL COMPLETION.**

Design-Builder acknowledges and agrees that City would be damaged by a delay in substantial completion and that such damages are uncertain and difficult to ascertain. If Design-Builder fails to achieve Substantial Completion by the Substantial Completion Date, the Parties further agree that the stipulated amount of **TWO THOUSAND DOLLARS and ZERO/100 Dollars (\$2,000.00)**, per day for each and

every calendar day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date is a reasonable stipulated amount. Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as Liquidated Damages representing an estimate of delay damages, estimated at the time of executing this Contract. Such Liquidated Damages shall apply regardless of whether Design-Builder has been terminated by City prior to Substantial Completion, so long as Design-Builder's actions or inactions contributed to the delay. Such Liquidated Damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design-Builder's performance hereunder for matters other than delays in Substantial Completion. When City reasonably believes that Substantial Completion will be inexcusably delayed, City shall be entitled but not required to withhold from any amounts otherwise due to Design-Builder an amount then believed by City to be adequate to recover Liquidated Damages applicable to such delays. If and when Design-Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which City has withheld payment, City shall promptly release to Design-Builder those funds withheld, but no longer applicable as Liquidated Damages. In the event Design-Builder fails to meet the established or revised date for Substantial Completion for the Project, beginning on the next pay application submitted to City, Design-Builder shall include a specific line item on each subsequently submitted pay application, following the date established for Substantial Completion, deduction the Liquidated Damages accrued each month from the amount due Design-Builder for Work performed until Design-Builder is granted Substantial Completion on the Project.

#### **VI.6 LIQUIDATED DAMAGES FOR DELAY IN FINAL COMPLETION.**

Design-Builder acknowledges and agrees that City would be damaged by a delay in final completion and that such damages are uncertain and difficult to ascertain. If Design-Builder fails to achieve Final Completion within Thirty (30) calendar days after the date of Substantial Completion, the Parties further agree that the stipulated amount of **SEVEN HUNDRED FIFTY DOLLARS and ZERO/100 Dollars (\$750.00)**, per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work is a reasonable stipulated amount. Any sums due and payable hereunder by Design-Builder shall be payable, not as a penalty, but as Liquidated Damages representing an estimate of delay damages, estimated at the time of executing this Contract. Liquidated Damages shall apply, regardless of whether Design-Builder has been terminated by City prior to Final Completion, so long as Design-Builder's actions or inactions contributed to the delay. Such Liquidated Damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design-Builder's performance hereunder for matters other than delays in Final Completion. When City reasonably believes that Final Completion will be inexcusably delayed, City shall be entitled, but not required, to withhold from any

amounts otherwise due to Design-Builder an amount then believed by City to be adequate to recover Liquidated Damages applicable to such delays. In the event Design-Builder fails to meet the established or revised date for Final Completion for the Project, beginning on the next pay application submitted to City, Design-Builder shall include a specific line item on each subsequently submitted pay application, following the date established for Final Completion, deduction the Liquidated Damages accrued each month from the amount due Design-Builder for Work performed until Design-Builder is granted Substantial Completion on the Project.

**VI.7** If and when Design-Builder overcomes the delay in achieving Final Completion, or any part thereof, for which City has withheld payment, City shall promptly release to Design-Builder those funds withheld, but no longer applicable as Liquidated Damages.

**VI.8 TIME IS OF THE ESSENCE.**

All limitations of time set forth in this Contract are material and time is of the essence.

**END OF ARTICLE VI**



**ARTICLE VII. ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN-BUILDER**

**VII.1 DESIGN-BUILDER TO PERFORM ALL WORK REQUIRED BY THE CONTRACT.**

The intent of this Contract is to require complete, correct and timely execution of the Design Services and the Construction Work. Any and all Design Services that are required, reasonably implied or reasonably inferred by the Contract or any part of it, as necessary to produce the intended result, shall be provided by Design-Builder for the Design Services Fee as provided in **ARTICLE IX**. In addition, any and all Construction Work that may be required reasonably implied or reasonably inferred by the Contract or any part of it, as necessary to produce the intended result shall be provided by Design-Builder for the Guaranteed Maximum Price or Fixed Price Proposal(s), as applicable, as provided in **ARTICLE VIII**.

**VII.2 STRICT COMPLIANCE WITH THE CONTRACT DOCUMENTS.**

All Construction Work performed by Design-Builder shall be in strict compliance with this Contract. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with the Contract is defective.

**VII.3 DESIGN-BUILDER'S BASELINE CONSTRUCTION SCHEDULE.**

Pursuant to **ARTICLE II.5** of City's General Conditions for Design/Build Contracts, Design-Builder, within ten (10) days prior to City's issuance of the initial Notice to Proceed for construction, shall submit to City its Baseline Construction Schedule, Preliminary Schedule of Shop Drawing and Sample Submittals and its Preliminary/Baseline Schedule of Values for all of the Work, which shall constitute Design-Builder's schedule for completing the Construction Work by the Scheduled Completion Date. The Baseline Construction Schedule shall reflect the performance of all Construction Work on weekdays and non-holidays. The Baseline Construction Schedule shall be a detailed critical path management ("CPM") schedule in a form acceptable to City. Per **ARTICLE V.10** of City's General Conditions for Design/Build Contracts, and **EXHIBIT K: PROJECT MANAGEMENT TASKS AND DELIVERABLES**, the Work Progress Schedule and successive updates shall be revised at minimum monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such Work Progress Schedule revision shall be furnished to City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design-Builder, and failure to strictly materially comply with said requirements shall constitute a material breach of the Contract. City, without Design-Builder's concurrence and at City's option, may withhold any payment to Design-Builder for any fees due and owing Design-Builder until Design-Builder submits its monthly Work Progress Schedule. No claim for an

increase in the GMP or Fixed Price Proposal, as applicable, shall be allowed as a result of Design-Builder basing the GMP/Fixed Price Proposal upon an early completion schedule or as a result of delays and costs attributable to completion later than the planned early completion date.

#### **VII.4 REVIEW AND APPROVAL OF SUBMITTALS.**

Design-Builder shall review, study, approve or take other necessary action upon all Shop Drawings, Product Data, Samples and other Submittals, to ensure that the Project will be constructed in a timely fashion in strict compliance with the Contract. No deviation from, substitution for or other modification from the Contract Documents shall be allowed by Design-Builder in a shop drawing or submittal without written approval, from City. Design-Builder shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Baseline Construction Schedule. Design-Builder shall use its best independent professional judgment in its review to determine compliance with the Contract Documents.

#### **VII.5 CITY'S OPTION TO REVIEW SUBMITTALS.**

City shall, in its discretion, have the right to review and approve Submittals and if City so elects, Design-Builder shall not perform any portion of the Construction Work of which City has required submittal and review until such Submittal has been submitted to and approved by City. Approval by the City, however, shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Design-Builder of any of its responsibilities or warranties under the Contract. Design-Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any re-submittal, the date of any approval or rejection and the reason for any approval or rejection. Design-Builder shall have the duty carefully to review, inspect and examine any and all Submittals before submission of same to City. Shop Drawings and other Submittals from Design-Builder do not constitute a part of this Contract.

#### **VII.6 PROCUREMENT OF OPERATIONS AND MAINTENANCE DOCUMENTATION.**

Design-Builder shall prepare or procure and shall transmit to City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

#### **VII.7 AS-BUILT DRAWINGS.**

Design-Builder shall use 3D Modeling Software, in the latest revision and version designated by and acceptable to City, to prepare and provide to City the final as-build deliverable, which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of

this Contract. The model shall follow, at minimum, the AIA E202 Protocol. The Level of Development (hereafter referred to as “**LOD**”) shall utilize Model Elements at progressive detailed levels of completeness, as mutually agreed to between Design-Builder and City, by executing the Model Element Table to establish the LOD for the Project. Design-Builder electronically shall attach all close-out documents to the model for delivery to City on a flash drive.

#### **VII.8 COMPLIANCE WITH LABOR LAWS.**

Per this **ARTICLE VII.8** and **ARTICLE V.4** of the **CITY’S GENERAL CONDITIONS FOR DESIGN/BUILD CONTRACTS**, Design-Builder shall assume all labor responsibility for all personnel assigned to or contracted with for the performance of the Construction Work and agrees strictly to comply with all its obligations as employer, with respect to said personnel under all applicable labor laws.

#### **VII.9 TESTING, INSPECTIONS, AND APPROVALS.**

City shall be responsible for procuring the services of special inspections and material testing, as required by IBC 2009 Chapter 17, including, but not limited, to construction materials testing. Excepting the inspections, testing and approvals required per IBC 2009 Chapter 17, if the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work specifically to be inspected or approved to complete the Construction Work, Design-Builder shall assume full responsibility therefore, pay all costs in connection therewith and furnish to City the required certificates of inspection or approval. These inspections shall be exclusive of and not relieve Design-Builder of the responsibility to provide independent Quality Control processes and procedures, to ensure the required quality standards are met.

#### **VII.10 CITY'S REGULATIONS AND APPLICABLE LAWS.**

Design-Builder shall, during the course of the Construction Work, comply with any regulations or guidelines contained in the Contract or as mutually agreed upon in writing by the Parties. Design-Builder warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract including, without limitation, those relating to the terms and conditions of the employment of any person by Design-Builder in connection with the Construction Work to be performed under the Contract.

#### **VII.11 COMPLIANCE WITH CONSTRUCTION REGULATIONS.**

Design-Builder shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Design-Builder shall be notified by City of any fine or penalty known to City which may be imposed as consequence of any violation

of this provision, any fine or penalty shall be paid by Design-Builder **AND DESIGN-BUILDER FULLY SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ALL LOSS, DAMAGE AND EXPENSE, INCLUDING ATTORNEY'S FEES, RESULTING FROM ANY SUCH VIOLATION OR ALLEGED VIOLATION OF CODES, LAWS, ORDINANCES, OR REGULATIONS.**

**VII.12 CONDITIONS TO SITE ACCESS.**

While on City's property, all Design-Builder's employees, Sub-Consultants and Subcontractors shall confine themselves to areas designated by City and will be subject to City's badge and pass requirements, if any, in effect at the site of the Construction Work.

**VII.13 REPAIR OF COLLATERAL DAMAGE.**

Unless otherwise instructed by City, Design-Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities and pre-existing site features affected by Design-Builder's performance of the Construction Work.

**END OF ARTICLE VII**

## **ARTICLE VIII. CONTRACT PRICE**

### **VIII.1 PRECONSTRUCTION SERVICES.**

**VIII.1.1** The Preconstruction Services phase of this Project shall be completed as described in **EXHIBIT B: DESIGN-BUILDER'S FEE PROPOSAL**. The cost/price to City for Design-Builder's Preconstruction Services shall include all labor and material costs related to the Design Phase services not already addressed under Design-Builder's Design Fee including, but not limited to:

- a. Compliance with all contractual requirements during the design phase;
- b. Coordination of all Sub-Consultants and Subcontractors;
- c. Attendance at all Project meetings;
- d. Project management, assessment and engineering/architecture;
- e. Project scheduling;
- f. Constructability and bid-ability reviews of the design documents;
- g. Feasibility and practicability of any proposed means and methods;
- h. Assessment of the availability of labor, materials and equipment;
- i. Building system analysis (to include alternate systems design);
- j. Identification of equipment or material requiring extended delivery time; and
- k. Review and recommendation for cost-sensitive aspects of the design and other facts that may impact the Project's cost estimate.

**VIII.1.2** Preconstruction Services also may include the creation of the GMP, creation of Fixed Price Proposal(s), the advertisement and distribution of Plan sets and bid packages, the bidding of construction work and all outreach and diversity efforts. Design-Builder's Preconstruction Services costs and all associated costs shall clearly be defined and negotiated with City as a stand-alone Project cost, included and listed in the Project's GMP.

**VIII.1.3** If City increases the Project's scope of Work during the Preconstruction Services phase of the Project, any increase in Design-Builder fees shall be based solely upon the submitted and approved hourly design rates and the time necessary to complete the increased design Work. Design-Builder accepts and agrees it will not mark up the increase Work with fees, overhead and profit. Any reduction in the scope of Work shall be credited back to City based on the savings of time/hours, based on the submitted and approved hourly design rates.

### ***FIXED PRICE PROPOSAL OPTION***

#### **VIII.2 CONTRACT PRICE.**

The Contract Price is the total of the Design Services Fee, Pre-Construction Services Fee, and the sum of all of the approved Fixed Price Proposal(s) for Construction work. The quantities of the various elements of the Work to be done and material to be furnished are determined by Design-Builder. It expressly is understood and agreed by City and Design-Builder that the Contract Sum, including authorized adjustments, is the total amount payable by City to Design-Builder and shall cover the cost for all design and Work required to complete the Project in accordance with the Contract Documents, regardless of what the final measurement of quantities is measured to be.

**VIII.3** The approved Fixed Price Proposal(s) (hereafter referred to as "FPP") and the Contract Documents are intended to address all items for the performance of all Construction Work required by the Contract, and the performance of all other requirements of this Contract, to include assumptions, costs, City-controlled contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the Fixed Price. Design-Builder shall provide a fully functional and operational facility as intended in the approved FPP.

**VIII.4** Approved Fixed Price Proposal(s) collectively shall consist of the Cost of the Construction Work, as defined in the Contract, plus Design-Builder's Management Fee (not to include Preconstruction Services costs), which collectively shall be incorporated into the Not-to-Exceed amount of ***THIRTY-ONE MILLION SEVEN-HUNDRED THOUSAND AND ZERO/100 Dollars (\$31,700,000.00)***. City agrees to perform its responsibilities so as to assist Design-Builder to facilitate the completion of the Construction Work. City represents to Design-Builder that there will be sufficient funds available to pay Design-Builder up to the approved Fixed Price of the Not-to-Exceed amount of ***THIRTY-ONE MILLION SEVEN-HUNDRED THOUSAND AND ZERO/100 Dollars (\$31,700,000.00)***, as adjusted by any Change Order(s). **The cumulative Fixed Price Proposal(s), unless changed by Amendment, Change Order or otherwise adjusted pursuant to the terms of this Contract, represents the**

**absolute limit of obligation or liability that City ever may have, insofar as the cost for full and final completion of the Construction Work as designed and the total of all payments to Design-Builder, its Sub-Consultants or its Subcontractors are concerned.** Should additional amounts be required to be expended, over and above the approved Fixed Price Proposal(s), to achieve completion of the Construction Work, including Project construction and payment to Design-Builder, as designed and in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of Design-Builder and its Contract Surety herein, and City never shall be liable for same. Design-Builder's absolute responsibility for the completion of the Project, in accordance with the Contract Documents/Plans/Specifications, within the agreed cost constraints, as well as Design-Builder's Contract to bear all costs in excess of the approved Fixed Price without recourse to City if such excess costs are necessary for the completion of the Construction Work, shall be incontrovertible and undisputable, and shall take precedence over all other terms and provisions of this Contract and the Exhibits hereto, no part of which shall be deemed to alter, diminish or waive such obligations.

**VIII.5** Approved Fixed Price Proposals and the Contract Documents are intended to address all items necessary for the performance of all construction work required by a specific Work Package issued, pursuant to this Contract, and the performance of all other requirements of this Contract related to that Work Package, including all assumptions, costs, contingencies, schedules and other matters necessary and relevant for the proper execution and completion of the Work Packages for the AFPP. AFPP(s) approved prior to the establishment of the GMP shall include all costs related to the Work Package(s) except those already accounted for in the Preconstruction Services. All AFPPs shall be included as part of the GMP.

### ***GUARANTEED MAXIMUM PRICE OPTION***

#### **VIII.6 CONTRACT PRICE.**

The Contract Price is the Not-to-Exceed amount of **THIRTY-ONE MILLION SEVEN-HUNDRED THOUSAND AND ZERO/100 Dollars (\$31,700,000.00)**, shall consist of the Design Services Fee, Pre-Construction Services Fee, and the Guaranteed Maximum Price (GMP) for Construction work, which shall include the Design Services Fee, which shall be adjusted once GMP is established, as set out herein. The quantities of the various elements of the Work to be done and material to be furnished are determined by Design-Builder. It is expressly understood and agreed by City and Design-Builder that the Contract Price, including authorized adjustments, is the total amount payable by City to Design-Builder and shall cover the cost for all design, as listed in Article **VIII.1.1**, and all Work required to complete the Project in

accordance with the Contract Documents, regardless of what the final measurement of quantities is determined to be.

**VIII.7** The GMP is intended to address all items for the performance of all design and Construction Work required by the Contract, and the performance of all other requirements of this Contract, to include preconstruction services fees, design costs, General Conditions costs, Pass Through costs, assumptions, City-controlled contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the GMP. Design-Builder shall provide a fully functional and operational facility as intended in the GMP.

**VIII.8** The GMP shall incorporate all of the terms and conditions of this Contract and all other documents that comprise the Contract between the City and Design-Builder. Any exceptions to or modifications of such terms and conditions proposed by Design-Builder in the GMP shall not be effective unless they are expressly stated and conspicuously identified in the GMP and specifically are accepted and approved by City. Upon approval by City, the GMP shall become a part of Contract.

**VIII.8.1** The GMP shall consist of Design-Builder's Preconstruction Fee, the Project's Design Services Fee, AFFP (if any) and the Cost of the Construction Work, as defined in **EXHIBIT M: GMP SUMMARY AND GMP PROPOSAL** the Contract, plus Design-Builder's Management Fee. City agrees to perform its responsibilities so as to assist Design-Builder to facilitate the completion of the Construction Work and represents to Design-Builder that there will be sufficient funds available to pay Design-Builder up to the **GMP's not to exceed amount of THIRTY-ONE MILLION SEVEN-HUNDRED THOUSAND AND ZERO/100 Dollars (\$31,700,000.00)**, as adjusted by any Change Order. The GMP, unless changed by amendment or Change Order, represents the absolute limit of obligation or liability that City may ever have, insofar as the cost for design and full and final completion of the Construction Work and the total of all payments to Design-Builder or its Subcontractors are concerned. Should additional amounts be required to be expended over and above the GMP, to achieve completion of the Construction Work, including Project construction and payment to Design-Builder, in accordance with this Contract, liability for and payment of such additional amounts shall solely be the responsibility of Design-Builder and its Contract Surety herein, and City never shall be liable for same. Should the final Cost of the design, the Construction Work and Design-Builder's compensation total less than the GMP, or any approved revision thereof, the difference shall inure to the benefit of City and no claim for all or any portion of said difference shall be valid against or payable by City. City's limitation of obligation or liability set out in this **ARTICLE VIII.1.1** shall be incontrovertible and unequivocal; any term or provision



of this Contract, the Exhibits, attachments or provisions incorporated by reference in or to this Contract or of any Subcontract executed in furtherance of the anticipated Construction Work under the Contract shall not be construed or deemed to alter or waive this absolute condition. Likewise, Design-Builder's absolute responsibility for the completion of the Project in accordance with the Contract Documents, including the Plans and Specifications and within the agreed cost constraints, as well as Design-Builder's Contract to bear all costs in excess of the GMP without recourse to City, if such excess costs are necessary for the completion of the Construction Work, shall be incontrovertible, undisputable and shall take precedence over all other terms and provisions of this Contract and the Exhibits hereto, no part of which shall be deemed to alter, diminish or waive such obligations.

**VIII.8.2** Should the final cost of Construction Work, Design-Builder's Management Fee, General Conditions, insurance, and all associated fees total less than the GMP or any revisions thereof, the difference in cost (savings) shall inure to the benefit of City and no claim for any portion or all of said difference shall be valid against or payable by City.

### ***FIXED PRICE PROPOSAL AND GMP***

#### **VIII.9 MANAGEMENT OF CONSTRUCTION WORK.**

In addition to the Construction Work Design-Builder shall perform, it also will provide all the usual and necessary traditional construction management services incidental to construction projects of the nature and scope of this Project, for which the Management Fee described in **ARTICLE IX.7** is paid. The services required are not intended in any manner to diminish the overall responsibility of Design-Builder for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract. **Note: Main/Home Office/Corporate overhead shall not be approved as a cost of work and shall be accounted for by Design-Builder under its management fee, as described in ARTICLE IX.7.**

#### **VIII.10 COST OF CONSTRUCTION WORK.**

City agrees to pay Design-Builder for the Cost of the Construction Work, as defined herein, inclusive of Design-Builder's General Conditions costs, subject to submission by Design-Builder of all backup substantiation as may be reasonably required by City, to include, but not limited to, invoices for labor and materials and any other receipts City may request. Such payment shall be in addition to Design-Builder's Management Fee specified above. However, in no event shall the sum of payments

for Preconstruction Services, the Cost of the Construction Work, AAFP(s), Design-Builder's Management Fee, Design-Builder's General Conditions costs, bonds, insurance and any other compensation paid by City to Design-Builder exceed the GMP or Fixed Price Proposal, as applicable, as adjusted by Change Order(s).

In addition, Design-Builder shall be responsible for enforcing warranties and for obtaining correction and/or replacement of all defective Construction Work not constructed or installed in accordance with the Contract Documents. All such corrective or remedial Construction Work required by the Contract Documents shall be performed by responsible Subcontractors under the terms of their Subcontracts, without additional cost to the City. Costs incurred by Design-Builder to correct or remedy Construction Work performed by Design-Builder's own forces, or where the responsible Subcontractor fails to perform, shall **NOT** be a Cost of the Construction Work and shall be Design-Builder's sole responsibility, at no additional cost to City; provided, however, Design-Builder shall be entitled to the proceeds of any Subcontractor maintenance bond, where such Subcontractor has defaulted in this regard.

The following items are considered to be part of the Cost of the Construction Work:

- VIII.10.1** Wages paid for labor in the direct employ of Design-Builder in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by City and Design-Builder, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard rate of pay in the locality of the Construction Work except with prior consent of the City and shall include the items set forth below in this **ARTICLE VIII**. The reasonable cost of drug testing for all of Design-Builder's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Construction Work.
- VIII.10.2** Salaries of Design-Builder's employees at or below the level of Project Design-Builder, when engaged on the Construction Work and stationed at the field office, in whatever capacity employed. Employees engaged, at shops or on the road in expediting the production or transportation of materials or equipment shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Construction Work.
- VIII.10.3** Cost of reasonable and customary pension contributions, hospitalization insurance, medical insurance, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to

employees of Design-Builder and included in the Cost of the Construction Work under **ARTICLE XI** of the **GENERAL CONDITIONS FOR CITY OF SAN ANTONIO DESIGN/BUILD CONTRACTS**.

- VIII.10.4** Only with City's prior written approval, the proportion of reasonable travel and hotel expenses incurred outside of the City of San Antonio metropolitan area by Design-Builder's officers or employees in discharge of duties directly connected with the Construction Work.
- VIII.10.5** Cost of all materials, supplies and equipment incorporated in the Construction Work, including costs of transportation thereof.
- VIII.10.6** Payments made by Design-Builder to Sub-Consultants and Subcontractors for Construction Work performed pursuant to a Subcontract entered into in the performance of this Contract.
- VIII.10.7** Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Construction Work, and cost less salvage value of such items used but not consumed which remain the property of Design-Builder.
- VIII.10.8** In connection with the Construction Work and Management Fee and only with City's prior written approval, rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Construction Work, whether rented from Design-Builder or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those shown in the then current EquipmentWatch rental rates. Provided further that, with respect to equipment and machinery rented from Design-Builder, the rental rate shall not exceed 75% of the current EquipmentWatch charges, and shall in no event cumulatively exceed the value of such equipment or machinery at the commencement of the rental period. Should rental charges reach such value, for the equipment and machinery rented from Design-Builder, the equipment and machinery thereafter shall belong to Owner, to be disposed of in accordance with **Article VIII**. Design-Builder shall furnish Owner with a list, to be updated monthly, of all equipment furnished for the Project for which Owner reimburses Design-Builder as a part of the Cost of the Construction Work. Equipment and machinery rented, which becomes property of Owner pursuant to this **Article VIII.10.8**, shall be delivered to Owner upon final completion and acceptance by Owner of all Construction Work under the Project.

- VIII.10.9** Minor expenses, such as long-distance telephone calls, telephone service at the site, expressage, courier services and similar petty cash items in connection with and for the benefit of the Construction Work.
- VIII.10.10** Cost of removal of debris. Removal of debris left by other contractors hired by the City is not a part of this Contract.
- VIII.10.11** Cost incurred due to an emergency affecting the safety of persons and property.
- VIII.10.12** Other costs incurred in the performance of the Construction Work, if and to the extent approved in advance in writing by City.
- VIII.10.13** The reasonable and actual direct cost of data processing services, as required for the Project. Such costs shall be specifically documented as having been done for the Project.
- VIII.10.14** Legal costs growing out of prosecution of the Construction Work for City only will be reimbursable if such legal costs were incurred for the direct benefit of City and with prior written approval of City. In no event shall City reimburse any legal costs incurred by Design-Builder resulting from or associated with any action against City to include Claims filed in accordance with the procedures outlined in the Contract Documents.
- VIII.10.15** Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs or digital records.
- VIII.10.16** All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, printing, furniture, fixtures, office equipment, etc.
- VIII.10.17** Costs incurred by Design-Builder in preparing and maintaining progress schedules, budgets and reports required hereby.
- VIII.10.18** The reasonable, actual direct cost of computer services, including jobsite and main office terminal, for purposes of field payroll preparation and control. Such costs specifically shall be documented as having been done for the Project.
- VIII.10.19** Salaries of Design-Builder's personnel, not included in the cost of General Conditions, earned after the date of approval and funding of the GMP, whether stationed at the field office or at the main office of

Design-Builder, for that portion of their time spent on this Construction Work.

**VIII.10.20** Where not otherwise included in the Cost of the Construction Work, the cost of central accounting services in connection with the Construction Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting and preparation of other reports.

The following, while considered as a Cost of Work, only shall be paid by City to Design-Builder at the actual costs incurred, as a direct pass through cost, without any Design-Builder fee or markup applied and only upon the prior written approval of City:

- a. Cost of the premiums for all Design-Builder's bonds and insurance coverage required by this Contract, or deemed necessary by Design-Builder, in the normal pursuit of the Construction Work. Premiums for company-wide coverage will be pro-rated on the basis of value of Construction Work on this Project completed during the premium period. The cost of (or payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon Design-Builder's negligence, under any insurance furnished by City, or under insurance policies required by this Contract or deemed necessary by Design-Builder in the normal pursuit of the Construction Work. City retains the option of paying Design-Builder the cost for Design-Builder's bonds and insurance in either a lump sum payment at the beginning of the Project, on a monthly basis, on an "as-billed" basis or as City so determines.
- b. Taxes, if any, related to the Work. However, as City qualifies for exemption under Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, Design-Builder shall alert all Sub-Consultants and Subcontractors to prevent erroneous payment of taxes covered by City's exemption. City will provide exemption certificates to confirm this exemption upon request.
- c. Project required Permit fees, Project-specific licenses, tests, royalties and deposits lost for causes other than Design-Builder's negligence.
- d. Costs associated with related business meetings approved with prior written approval by City.

**VIII.11 COSTS NOT INCLUDED AS PART OF THE CONSTRUCTION WORK AND SERVICES.**

The following items of cost and expense are not included as part of the Cost of the Construction Work to be paid by City to Design-Builder:

- VIII.11.1** Except as specifically provided above, salaries, wages, and other compensation of Design-Builder personnel stationed at Design-Builder's principal office or offices.
- VIII.11.2** Design-Builder's home office overhead including, but not limited to, any and all expenses associated with Design-Builder's principal office and offices other than at the Project site.
- VIII.11.3** Design-Builder's capital costs and expenses, including interest on capital utilized in the performance of this Contract.
- VIII.11.4** Rental cost for machinery or equipment, except as expressly provided herein.
- VIII.11.5** Cost and expense incurred by Design-Builder, its Subcontractors, Sub-Consultants, Suppliers or anyone directly or indirectly employed by any of the entities when such costs or expenses are the result of their negligence or failure to perform any required contractual duty.

**VIII.12 REIMBURSABLE EXPENSES.**

Only when authorized by City in writing, prior to being incurred, Design-Builder shall be entitled to reimbursement at actual incurred cost (no markup) for services and related expenses for the following items:

- a. Travel outside SAMSA. Reimbursement for travel costs shall be limited to costs directly associated with Design-Builder's performance under the Contract. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Design-Builder shall provide detailed receipts for all reimbursable charges. City does not pay for Design-Builder's travel within SAMSA.
- b. Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under **EXHIBIT H: DESIGN-BUILD SCOPE OF SERVICES AND HOURLY RATE WITH SCHEDULE OF VALUES** of this Contract. These costs, if any, shall not exceed the amount noted in Exhibit H herein, without further approval of City. Design-Builder shall bear these costs unless agreed to, in writing, by City.

- c. Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under **EXHIBIT H: DESIGN-BUILD SCOPE OF SERVICES AND HOURLY RATE WITH SCHEDULE OF VALUES** of this Contract. These costs shall not exceed the amount noted in Exhibit H herein without further approval of City. Design-Builder shall bear these costs unless agreed to, in writing, by City.
- d. City does not allow a markup on any of the above cited reimbursable items in this **ARTICLE VIII.12** and only will reimburse approved hard costs incurred.
- e. Any and all cost or expense not specifically allowed pursuant to **ARTICLE VIII.**

**VIII.13** Any and all cash discounts, rebates, or refunds relating to payments made by Design-Builder shall accrue to City and shall be credited or paid to City at its election.

**VIII.14** City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Design-Builder, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

**VIII.15 CONTRACT SAVINGS, ALLOWANCES, REBATES AND REFUNDS.**

**VIII.15.1** If the allowable, final, verified, audited amount for the cost of Design-Builder's General Conditions, Cost of Work, Allowance items and any extended contingency is less than the amount established for each of those itemized categories in the approved GMP, the entire difference shall be credited to the City as savings and the final Design-Build contract amount shall be adjusted accordingly. When buyout of the Project is at least eighty five percent (85%) complete, City may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

**VIII.15.2** Items to be provided for through City's Allowances under the GMP shall clearly be identified in the Construction Documents and the GMP. The Cost of Work included in the Allowances shall be determined through negotiation between City and Design-Builder. Any claim by the Design-Builder for an adjustment to an Allowance amount included in the GMP, based on the cost of Allowance work, shall be made within a reasonable time after the issuance of the Construction Documents for the Allowance item(s). Design-Builder shall not be entitled to any increase in its cost of

Construction Workforce increases to Allowance amounts that initially were based on estimates provided by Design-Builder. City shall be entitled to retain one hundred percent (100%) of the balance of any unused Allowance amount.

**VIII.15.3** City shall be entitled to deduct amounts for the following items from any of Design-Builder's Application for Payment or from Design-Builder's Request for Final Payment:

- a. 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, Design-Builder shall either credit City for the fair market value (as approved by City) for all surplus tools, construction equipment and materials retained by Design-Builder or, at City's sole option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to City;
- b. Discounts earned by Design-Builder through advance or prompt payments funded by City. Design-Builder shall endeavor to obtain all possible trade and item discounts on bills for materials furnished and shall endeavor to pay bills within the highest discount periods. Design-Builder shall purchase Project materials in quantities that provide the most advantageous prices to;
- c. Rebates, discounts or commissions obtained by Design-Builder from material suppliers, Sub-Consultants and/or Subcontractors, together with all other refunds, returns or credits received for materials, bond premiums, insurance and sales taxes;
- d. Deposits made by City and forfeited due to the fault of Design-Builder; and
- e. Balances remaining on any/all Project Allowances, any balance remaining on the Project contingency or the balance on any other identified Contract savings are and remain the sole property of City.

**VIII.16 SUBCONTRACTOR MARKUP.**

Overhead and profit from Subcontractor Change Orders shall be calculated as follows: the maximum that will be allowed for combined overhead and profit, expressed as a percentage of the actual cost of the Change Order, shall be as set forth in **ARTICLE VIII.15**. However, the percentage of the Management Fee and Design



Fee allowed to Design-Builder by City, which shall be set at or below the Management Fee and Design Fee percentages as negotiated in the GMP, depending on the nature, extent or complexity of the change.

**VIII.16.1** For the Subcontractor, for Work performed by the Subcontractor's own forces, **five percent (5%)** of the cost is the maximum overhead and profit that shall be allowed to be charged City for a Change Order;

**VIII.16.2** For the Subcontractor, for Work performed by the Subcontractor's Sub-Subcontractor, **five percent (5%)** of the amount of the direct cost of the Work is due to the Sub-Subcontractor is the maximum overhead and profit that shall be allowed to be charged City for a Change Order.

**VIII.16.3** For each Sub-Subcontractor involved, for Work performed by that Sub-Subcontractor's own forces, **five percent (5%)** of the cost is the maximum overhead and profit that shall be allowed to be charged City for a Change Order.

**VIII.16.4** For each Sub-Subcontractor, for Work performed by the Sub-Subcontractor's Sub-Subcontractor, **five percent (5%)** of the direct cost of the Work is due to the Sub-Subcontractor is the maximum overhead and profit that shall be allowed to be charged City for a Change Order.

**END OF ARTICLE VIII**

## **ARTICLE IX. PAYMENT OF THE CONTRACT PRICE**

### **IX.1 PAYMENT PROCEDURE.**

City shall pay the Contract Price to Design-Builder in accordance with the procedures set forth in this **ARTICLE IX** and, for purposes of the Construction Work, the applicable provisions of **ARTICLE XI** of **CITY'S GENERAL CONDITIONS FOR DESIGN/BUILD CONTRACTS** to the extent they do not conflict with this **ARTICLE IX**.

### **IX.2 PROJECT CONTINGENCY.**

With City's written approval, Project contingency shall be used:

- IX.2.1** for a City-requested increase in Project scope, resulting in an increase in the cost of work.
- IX.2.2** for unforeseen site conditions which may occur on the Project.
- IX.2.3** or any other reason City deems necessary.

### **IX.3 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS.**

City shall administer its Project design and construction management through an Internet-Based Project Management System (**the "System"**). As such, Design-Builder agrees that it shall conduct communication through this medium and perform all Project-related functions utilizing this Internet-Based Project Management System, to include correspondence, submittals, requests for information, vouchers, payment requests and processing, amendments, change orders and other administrative activities Design-Builder has with City. City shall administer the software to Design-Builder to access and operate the System, provide training to Project Team Members and make the software accessible via the Internet to all Project Team Members.

### **IX.4 REQUESTS FOR PAYMENT THROUGH THE PROGRAM MANAGEMENT SYSTEM.**

All requests for payment shall be submitted through City's Project Management System. Prior to submittal of the first draw, Design-Builder shall submit a schedule of values for payment to be approved by City, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the System.

#### **IX.5 REQUEST FOR PAYMENT FOR DESIGN SERVICES.**

As the Design Services progress, Design-Builder shall submit statements, at minimum, on a monthly basis for Design Services rendered, based upon a percentage of completion of the Design Services, as determined by the City-approved Design Schedule and based upon the total cost for Design Services reflected in Design-Builder's Schedule of Values. If special services or City-approved reimbursable expenses are included as part of the Design Services Fee, such services shall be paid on the basis of the hourly rates or actual cost, as applicable, for those items as needed or required by City. City shall make monthly payments for Design Services in the amount shown by Design-Builder's approved monthly statements and other required documentation submitted within thirty (30) days after receipt by City of properly prepared and certified requests for payment for Design Services. Nothing contained in this **ARTICLE IX.5** shall require City to pay for any Design Services which are unsatisfactory, as determined by City, or which are not submitted in compliance with the terms of this Contract and payment may be withheld until the Design Services at issue are corrected or compliance is achieved. Progress payments for Design Services under this Contract shall be up to but shall not exceed 95% of the total Design Services Fee; upon final completion and acceptance of the Construction Work, the balance of the Design Services Fee will be paid, along with any final payment for the Construction Work.

#### **IX.6 REQUEST FOR PAYMENT FOR CONSTRUCTION WORK.**

Payments for Construction Work shall be made in accordance with **ARTICLE XI of CITY'S GENERAL CONDITIONS FOR DESIGN/BUILD CONTRACTS.**

#### **IX.7 PAYMENT OF THE MANAGEMENT FEE.**

In addition to the payment of the Cost of the Construction Work and related services, as set forth herein, City shall pay Design-Builder its Management Fee monthly during performance of Construction Work, based upon the percentage of Construction Work completed in accordance with the Contract. Design-Builder shall submit pay applications to City, at minimum, monthly during the performance of Construction Work. From each scheduled Management Fee payment, City shall withhold retainage in the amount of five percent (5%).

#### **IX.8 RIGHT TO AUDIT.**

City shall be entitled to rely upon the accuracy and completeness of the information furnished by Design-Builder in connection with any request for payment under this Contract. City reserves the right to audit, at City's election, all of Design-Builder's records and billings relating to the performance of Design Services, Pre-Construction Services or Construction Work under this Contract. Design-Builder agrees to retain

its Project records for a minimum of four (4) years following completion of all Services under this Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute. City agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Contractor under this Contract. City is granted the right to audit, at City's election, all of Contractor's records and billings relating to the performance of this Contract. Contractor agrees to retain such records for a minimum of four (4) years following completion of this Contract, unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute. Any payment, settlement, satisfaction or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this subsection. In the event City determines that Design-Builder has been paid any sums not due or earned by Design-Builder, same shall be reimbursed by Design-Builder to City within forty-eight (48) hours of demand by City.

#### **IX.9 CONDITION PRECEDENT TO FINAL PAYMENT.**

Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design-Builder until Design-Builder fully has performed all of its obligations under the Contract and the Design Services and the Construction Work fully are complete.

#### **IX.10 CITY'S REVIEW OF PAY REQUESTS.**

City shall have the right to review all pay requests for the Design Services and the Construction Work to determine whether the quantity and quality of the Design Services and the Construction Work is as represented in the pay request and as required by the Contract.

#### **IX.11 CONDITIONS PRECEDENT TO PAYMENT.**

In addition to all other conditions precedent contained in this Contract and in City's General Conditions for Design/Build Contracts, including, but not limited to, the provisions of **ARTICLES VI.3** and **IX.9**, it shall be a condition precedent to payment of any pay request under this Contract that Design-Builder has submitted properly updated or revised schedules for the performance of its Design Services and Construction Work, as required by this Contract.

#### **IX.12 PASSAGE OF TITLE TO CONSTRUCTION WORK.**

Notwithstanding progress payments made by City under this Contract, title to Construction Work under this Contract does not pass to City until final completion of the Project, at which point title to all Construction Work is deemed to pass

immediately to City. The risk of loss regarding completed Construction Work that is paid for by City prior to final completion remains with Design-Builder.

**IX.13 DESIGN-BUILDER'S USE OF PROGRESS PAYMENTS.**

Upon receipt of any payment from City, Design-Builder promptly shall pay all Sub-Consultants, Subcontractors, laborers and Suppliers such amounts as they are entitled for the Construction Work covered by such payment. Design-Builder also shall comply with the requirements of City's General Conditions for Design/Build Contracts relating to payments to Sub-Consultants and Subcontractors.

**IX.14 USE OF JOINT CHECKS.**

If City becomes informed that Design-Builder has not paid a Sub-Consultant, Subcontractor, materialman, laborer or Supplier as provided herein, City shall have the right but not the duty to issue checks and payment then or thereafter otherwise due to Design-Builder naming Design-Builder and any such Sub-Consultant, Subcontractor, materialman, laborer or Supplier as joint payees. Such joint check procedure, if employed by City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit City to repeat the procedure in the future nor to create any contractual or other relationship of any kind between City and such person or entity.

**IX.15 PAYMENT NOT A WAIVER OR ACCEPTANCE.**

No payment to Design-Builder, nor any use or occupancy of the Project by City, shall be interpreted or construed to constitute acceptance of any Construction Work not in strict compliance with the Contract, and Design-Builder expressly accepts the risk that defective Construction Work may not be detected:

**IX.15.1** during any inspection by City;

**IX.15.2** prior to making of any payment to Design-Builder; or

**IX.15.3** before City's occupancy of the Project.

**IX.16 WITHHOLDING OF PAYMENT.**

City shall have the right to refuse to make payment for Design Services and/or Construction Work and, if necessary, may demand the return of a portion or the entire amount previously paid to Design-Builder in an amount then believed by City to be adequate to cover the penalties, damages and potential losses resulting or likely to result from:

- IX.16.1** the quality of a portion, or all, of Design-Builder's Design Services and/or Construction Work not being in accordance with the requirements of this Contract;
- IX.16.2** the quantity of Design-Builder's Design Services and/or Construction Work not being as represented in Design-Builder's pay request, or otherwise;
- IX.16.3** Design-Builder's rate of progress being such that, in City's opinion, the Project Milestone, Substantial Completion and/or Final Completion or any of the three may inexcusably be delayed;
- IX.16.4** Design-Builder's failure to use Contract funds, previously paid to Design-Builder by City, to pay Design-Builder's Project-related obligations including, but not limited to, Sub-Consultants, Subcontractors, laborers and material and equipment Suppliers;
- IX.16.5** evidence that the balance of the Construction Work cannot be completed, in accordance with the Contract, for the unpaid balance of the Contract Price;
- IX.16.6** claims made against City or its property;
- IX.16.7** loss or damage caused by Design-Builder;
- IX.16.8** Design-Builder's failure or refusal to perform any material obligations to City; or
- IX.16.9** any other basis for withholding of payment specified in the General Conditions.

In the event that City makes written demand upon Design-Builder for amounts previously paid by City, as contemplated in this **ARTICLE IX.16**, Design-Builder promptly shall comply with such demand.

#### **IX.17 LIMITATION ON DUTY TO PAY.**

In addition to the grounds for withholding payment, as set forth in **ARTICLE IX.16**, City and Design-Builder further agree as follows:

- IX.17.1** Prior to beginning Design Services on the Project, Design-Builder shall submit to City a Design Services Schedule of Values, allocating Design-Builder's allocated percentage of the Not-To-Exceed Contract Price to the design phase of the Project. During the Design Services phase, Design-Builder shall invoice, at minimum, monthly to City and each submitted invoice shall reflect the percentage of completion of Design Services. Upon completion of Design Services, Design-Builder shall include its allocated Design Services total costs in Design-Builder's Guaranteed Maximum Price Proposal.

- IX.17.2** Prior to City's approval of the Guaranteed Maximum Price or Fixed Price Proposal, as applicable, Design-Builder shall submit to City a Schedule of Values allocating the Guaranteed Maximum Price or Fixed Price Proposal, as applicable, to the various portions of the Construction Work and the Design Services fee addressed in **ARTICLE IX.17.1**. Such Schedule of Values shall be prepared in such form, with such detail and supported by such data as City may require substantiating its accuracy. Design-Builder shall not imbalance nor artificially inflate any element of its Schedule of Values. The violation of this provision by Design-Builder shall constitute a material breach of this Contract. The Schedule of Values only shall be utilized as a basis for evaluating Design-Builder's request(s) for payment and only shall constitute such basis after it has been acknowledged in writing by City.
- IX.17.3** Each request for payment for Construction Work shall include a certification by Design-Builder of the percentage of Work completion, as of the date of such request for payment, of those portions of the Construction Work as identified in the Schedule of Values. Design-Builder shall furnish to City such documentation or other supporting data as City may reasonably request in order to verify the percentage of completion certified by Design-Builder.
- IX.17.4** City shall have no obligation to make payment to Design-Builder for any Design Services or Construction Work where the amount, for which such payment is requested, is in excess of the amount allocated in the Schedule of Values for Construction Work based upon the percentage of completion as of the date of the request for payment.

**IX.18 UNEXCUSED FAILURE TO PAY.**

If City, without cause or basis, fails to pay Design-Builder any amounts due and payable under this Contract to Design-Builder within thirty (30) days after the date established in this Contract for payment of such amounts, then the payment shall bear interest in accordance with the Texas Prompt Payment Act, as amended. Provided, however, that City shall not be liable for interest due on any late or delayed progress payment or final payment caused by any good faith claim or dispute, any discrepancy in quantities, any failure to provide reasonable supporting documentation or other information required with the request for payment or as a precondition to payment under the Contract Documents, or due to any payment City has a right to withhold or not certify under the Contract Documents.

**END OF ARTICLE IX**

## **ARTICLE X. CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

**X.1** In addition to payment, City shall undertake to perform the following:

**X.1.1 PROVIDE PROJECT INFORMATION.**

City shall provide Design-Builder with information regarding City's requirements for the Project, including any desired or required design or construction schedule.

**X.1.2 REVIEW OF DOCUMENTS.**

City shall review any documents submitted by Design-Builder requiring City's decision and shall render any required decisions pertaining thereto.

**X.1.3 PROVIDE NOTICE OF DEFECTS.**

In the event City knows of any material fault or defect in the Construction Work, nonconformance with the Contract or of any errors, omissions or inconsistencies in the Construction Documents, City shall give prompt notice thereof in writing to Design-Builder.

**X.1.4 ACCESS TO THE SITE AND THE CONSTRUCTION WORK.**

City shall provide Design-Builder access to the site and to the Construction Work and shall provide Design-Builder with such information, existing and reasonably available, necessary to Design-Builder's performance of the Contract as Design-Builder may request.

**X.1.5 COOPERATION TO SECURE PERMITS, LICENSES, APPROVALS AND AUTHORIZATIONS.**

City shall cooperate with Design-Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

**X.1.6 TIMELY PERFORMANCE.**

City shall perform the duties set forth in this **ARTICLE X** in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design-Builder's Design Services and of the Construction Work.



**X.1.7 CITY'S REVIEWS, INSPECTIONS, APPROVALS, AND PAYMENTS NOT A WAIVER.**

City's review, inspection or approval of any Construction Work, Design Documents, Submittals or pay requests by Design-Builder solely shall be for the purpose of determining whether such Construction Work and such documents are generally consistent with City's construction program and requirements. No review, inspection or approval by City of the Construction Work or documents shall relieve Design-Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents or Contract Documents shall not relieve Design-Builder of responsibility for the strict performance of its obligations under the Contract. Payment by City, pursuant to the Contract, shall not constitute a waiver of any of City's rights under the Contract or at law and Design-Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by City.

**X.1.8 DELAY OR FORBEARANCE NOT A WAIVER.**

City's agreement not to exercise any right under the Contract, City's delay or failure to exercise any right under the Contract or City requiring strict compliance with any obligation of Design-Builder under the Contract shall not be a waiver of City's right to exercise such right or to insist on such compliance at any other time or on any other occasion.

**X.1.9 DOCUMENTS REQUESTED BY DESIGN-BUILDER.**

City shall furnish to Design-Builder, prior to the execution of this Contract, any and all written and tangible material available and knowingly in City's possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design-Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, City does not represent, warrant or guarantee its accuracy or completeness, either in whole or in part. **City expressly does not warrant any geotechnical or site information provided by it for use in connection with preparation of the Construction Documents;** Design-Builder, however, may reasonably rely on geotechnical information provided by City to the extent the information has been prepared by City or an independent consultant hired by City to prepare the information specifically for this Project,

without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors and/or omissions that a reasonable and prudent professional Architect and/or Engineer should or would detect and inquire about. If Design-Builder requests it in writing, if in existence and if in City's possession, City also shall furnish surveys, legal limitations, utility locations (if known) and a legal description of the Project site.

**X.1.10 APPROVALS AND EASEMENTS.**

Design-Builder shall obtain any and all easements required and City shall pay, as a pass-through cost, the necessary assessments and charges required for use and occupancy of the Construction site that are outside of the General Condition Costs. City shall render such assistance as Design-Builder may require in obtaining such easements, certificates of occupancy, and the like.

**X.1.11 RIGHT TO STOP CONSTRUCTION WORK.**

In the event Design-Builder fails or refuses to perform the Construction Work in strict accordance with the Contract, or otherwise is in breach of this Contract in any way, City may, at its option, direct Design-Builder to stop the Work, in accordance with **ARTICLE V.2.6 of CITY'S GENERAL CONDITIONS FOR DESIGN/BUILD CONTRACTS**, and/or direct Design-Builder to carry out the Work in accordance **ARTICLE V.2.7 of CITY'S GENERAL CONDITIONS FOR DESIGN/BUILD CONTRACTS** and Design-Builder warrants that it will comply with any direction given by City under this **ARTICLE X.1.11**.

**X.1.12 QUALITY ASSURANCE.**

While City and Design-Builder accept and acknowledge that the Project's quality control is the sole responsibility of Design-Builder, City may provide quality assurance, at City's discretion, throughout the duration of the Project, which in no way shall alleviate the Design-Builder's responsibility for the quality of the project.

**END OF ARTICLE X**

## **ARTICLE XI. PROJECT DOCUMENTATION**

### **XI.1 MAINTENANCE OF PROJECT-RELATED RECORDS.**

Design-Builder shall maintain and protect all records relating in any manner whatsoever to the Project (hereafter referred to as the "Project Records") for no less than four (4) years after Final Completion of the Project, unless there is an ongoing dispute under the Contract, then, such retention period by Design-Builder shall extend until final resolution of the dispute and for any longer period of time as may be required by City, law or good management practice.

### **XI.2 AVAILABILITY OF PROJECT-RELATED RECORDS TO CITY.**

All Project Records in the possession of Design-Builder, Design-Builders Sub-Consultants and/or Subcontractors shall be made available to City for inspection and copying upon City's request at any time during normal business hours. Additionally, such records shall be made available upon request by City to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, Plans, Specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings or other writings or things which document the Project, its design or its construction. Said records include those documents reflecting the cost of design and construction to Design-Builder.

**XI.2.1** Design-Builder must notify City immediately if Design-Builder receives a request for documents from a third party. City must be given the opportunity to assert any proprietary interest it may have.

**XI.2.2** Design-Builder must impose on its Sub-Consultants and its Subcontractors, if any, all record retention obligations of this Contract.

**END OF ARTICLE XI**

## **ARTICLE XII. OWNERSHIP OF PROJECT DOCUMENTS AND COPYRIGHTS**

- XII.1** All work products (electronically or manually generated) including, but not limited to, cost estimates, studies, design analyses, original drawings, Computer Aided Drafting and Design (CADD) electronic files and other related documents prepared specifically in the performance of this Contract (hereafter collectively referred to as “Project Documents”) are to be and remain the property of the City and are to be delivered to the City before final payment is made to Design-Builder. In the event the Projects Documents are altered, modified or adapted with or without the written consent of Design-Builder, Design-Builder will not unreasonably withhold the delivery of the Project Documents to City.
- XII.2** When applicable and required by state law, all completed documents submitted by Design-Builder, its Sub-Consultants and its Subcontractors for final approval or issuance of a permit shall bear the seal with signature and the date adjacent thereto of a Texas registered professional Architect and/or Engineer for all plans, Work and Deliverables prepared by them for this Contract.
- XII.3** All previously owned documents, including drawings, estimates, specifications, and all other documents and data not related to this Project will remain the property of Design-Builder as instruments of service. However, Design-Builder understands and agrees that City shall have free access to all such information with the right to make and retain copies of previously owned Project-related drawings, estimates, specifications and all other documents and data. Any reuse of Design-Builder’s previously owned documents without specific written verification or adaptation by Design-Builder will be at City’s sole risk and without liability or legal exposure to Design-Builder.
- XII.4** Design-Builder acknowledges and agrees that, 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 Contract and shall be used as City desires and documents. All said information, including 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 Contract without restriction on City’s future use. However, any reuse by City without specific written verification or adaptation by Design-Builder will be at City’s sole risk and without liability or legal exposure to Design-Builder.
- XII.5** Design-Builder agrees and covenants to protect any and all proprietary rights of City in any materials provided to Design-Builder. Such protection of proprietary rights by Design-Builder 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 Design-Builder by City shall not be released to any third party without the written consent of City, with the exception of the Design-Builder’s subcontractors and sub-consultants having a need to know, and shall be returned intact to City upon termination or completion of this Contract or if instructed to do so by City.

**XII.6 DESIGN-BUILDER HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS CONTRACT TO CITY, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS PRODUCED IN WHOLE OR IN PART BY THIS CONTRACT SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY DESIGN-BUILDER. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS CONTRACT SHALL BECOME THE PROPERTY OF CITY (EXCLUDING ANY PRIOR OWNED INSTRUMENT OF SERVICES, UNLESS OTHERWISE SPECIFIED HEREIN). DESIGN-BUILDER SHALL, AT ITS EXPENSE, INDEMNIFY CITY 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 THAT MATERIALS OR WORK PROVIDED UNDER THIS CONTRACT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

**XII.7** Design-Builder may make copies of any and all documents and items for its files. Design-Builder shall have no liability for changes made to or use of the drawings, specifications and other documents made by Engineers or persons other than Design-Builder. Design-Builder appropriately shall mark all changes or modifications on all drawings, specifications and other documents made by Architects, Engineers and/or persons other than Design-Builder, including electronic copies.

**XII.8** Copies of documents that may be relied upon by City are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by Design-Builder. Files in editable electronic media format of text, data, graphics or other types, that are furnished by Design-Builder to City only are for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. However, any reuse without specific written verification or adaptation by Design-Builder will be at City's sole risk and without liability or legal exposure to Design-Builder.

**XII.9** Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Design-Builder including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Design-Builder or its Suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Design-Builder 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 Design-Builder or its Suppliers.

**END OF ARTICLE XII**

## **ARTICLE XIII. INDEMNITY REQUIREMENTS**

### **XIII.1 CPS INDEMNIFICATION: DESIGN-BUILDER RESPONSIBLE FOR DAMAGE CLAIMS.**

**Design-Builder agrees to indemnify and save harmless CPS Energy, its agents, and employees from all suits, action or claims and from all liability and damages for any and all injuries or damages sustained by any person or property of any character in consequence of any neglect in the performance of the contract by Design-Builder and from any claims or amounts arising or recovered under the "Workers' Compensation Laws"; Chapter 101, Texas Civil Practice and Remedies Code (Texas Tort Claims Act), or any other laws. Design-Builder further shall so indemnify and be responsible for all damages or injury to property of any character occurring during the prosecution of the work, to the extent resulting in whole or in part from any act, omission, neglect or misconduct on its part in the manner or method of executing the work; or from failure to properly execute the work; or from defective work or materials purchased by Design-Builder, except those claims for damages caused solely by the negligence of CPS Energy. Design-Builder shall not be released from these responsibilities until all claims have been settled and suitable evidence to the effect furnished to CPS Energy. The indemnification provided herein shall survive the termination of this Contract. Notwithstanding the foregoing, in the event Design-Builder, CPS and/or City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to parties under Texas law and without waiving any defenses of the parties under Texas law**

**XIII.2 Design-Builder shall comply with the Indemnification provision in ARTICLE V.18 of the GENERAL CONDITIONS FOR CITY OF SAN ANTONIO DESIGN/BUILD CONTRACTS.**

**XIII.3 Design-Builder shall add City as an additional insured on all insurance required of Design-Builder by this Project and cause City to be added as an additional insured on all insurance policies required of Design-Builder's Sub-Consultants and Subcontractors.**

**END OF ARTICLE XIII**

## **ARTICLE XIV. INSURANCE REQUIREMENTS**

**XIV.1** Prior to the commencement of any work under this Project, Design-Builder shall purchase and maintain insurance, as set forth in **ARTICLE XIII** of **CITY'S GENERAL CONDITIONS FOR DESIGN/BUILD CONTRACTS**, and any Supplementary General Conditions or Special Conditions, if applicable.

**XIV.1.1** Design-Builder shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's TCI/Contract Services Department, which clearly shall be labeled "**PRUE ROAD – BABCOCK ROAD TO LAUREATE DRIVE PROJECT**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) shall be signed by the Authorized Representative of the insurance carrier and shall include the agent's original signature and the phone number. The Certificate(s) shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform its obligations under this Contract until such Certificate(s) and endorsements have been received and approved by City's TCI Department. No officer or employee, other than the City of San Antonio's Risk Manager, shall have authority to waive this requirement.

**XIV.1.2** City reserves the right to review the insurance requirements of **ARTICLE XIII** of **CITY'S GENERAL CONDITIONS FOR DESIGN/BUILD CONTRACTS** during the effective period of this Contract and to modify insurance coverage and limits when deemed necessary and prudent by the City of San Antonio's Risk Manager based upon changes in statutory law, court decisions or circumstances surrounding this Contract. In no instance will City allow modification whereby City may incur increased risk.

**END OF ARTICLE XIV**

**ARTICLE XV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY  
(SBEDA) PROGRAM**

The applicable Small Business Economic Development Advocacy (hereafter referred to as “SBEDA”) Program for this project is attached hereto, made a part of this Contract by reference and labeled as **EXHIBIT D: SBEDA PLAN.**

**END OF ARTICLE XV**



**ARTICLE XVI. DESIGNATED REPRESENTATIVES OF PARTIES**

**XVI.1 CITY'S DESIGNATED REPRESENTATIVE.**

City designates the individual listed below as its City's Designated Project Management Representative (CDR), said individual having the authority and responsibility for day-to-day Project management activities as set forth in this Design-Build Contract.

**RICHARD GROCHOWSKI, P.E.**

**XVI.2 DESIGN-BUILDER'S DESIGNATED REPRESENTATIVES:**

**XVI.2.1 DESIGN-BUILDER'S DESIGNATED SENIOR REPRESENTATIVE**

Design-Builder designates the individual listed below as its Senior Representative (hereafter referred to as "**Design-Builder's Senior Designated Representative**"), said individual having the authority and responsibility for avoiding and resolving disputes under the provisions of this Design-Build Contract:

**XVI.2.2 DESIGN-BUILDER'S DESIGNATED REPRESENTATIVE.**

Design-Builder designates the individual listed below as its Representative (hereafter referred to as "**Design-Builder's Representative**"), said individual having the authority and responsibility for day-to-day project management activities as set forth in this Design-Build Contract:

**END OF ARTICLE XVI**

## **ARTICLE XVII. MISCELLANEOUS PROVISIONS**

### **XVII.1 DISPUTE RESOLUTION.**

All disputes against City that arise from this Contract or any Project shall be resolved in accordance with the procedures and limitations of Texas Local Government Code Subchapter I, Chapter 271.151 et. seq., and City's General Conditions for Design/Build Contracts. City designates the Director or his department designee as its officer(s) for examining, negotiating and resolving claims and counterclaims.

**XVII.2** Records of expenses pertaining to additional services and 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.

### **XVII.3 TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION.**

Pursuant to Section 231.006, Texas Family Code, Design-Builder certifies that it is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

### **XVII.4 FRANCHISE TAX CERTIFICATION.**

If it is a corporation or limited liability company, Design-Builder certifies:

**XVII.4.1** it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code; or

**XVII.4.2** that the corporation or limited liability company is exempt from the payment of such taxes; or

**XVII.4.3** that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

### **XVII.5 PAYMENT OF DEBT OR DELINQUENCY TO CITY.**

It is the policy of City that any person or entity doing business with City shall, at all times, remain in financial good standing with all City Departments. In that regard, Design-Builder warrants that it has no outstanding obligations to any City of San Antonio Department at the time of the execution of this Contract, and hereby covenants that it timely will pay, as they come due, any and all taxes, fees, fines or

any other charges assessed by any City of San Antonio Department whether imposed by statute, ordinance or contract, without regard to whether these charges are associated with this Contract or Design-Builder's operation under this Contract.

**XVII.6 CONTRACT DOCUMENTS; MERGER.**

The Contract Documents form the entire and integrated Contract between City and Design-Builder and supersede all prior negotiations, representations or agreements, either written or oral. This Contract 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 Design-Builder and City.

**XVII.7 CAPTIONS.**

The captions of sections in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

**XVII.8 NOTICES.**

In addition to the written Notice Provision in **ARTICLE XIV.4** of the **GENERAL CONDITIONS FOR CITY OF SAN ANTONIO DESIGN/BUILD CONTRACTS**, 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:

- XVII.8.1** delivered in person to the designated representative of Design-Builder or City for whom it is intended; or
- XVII.8.2** sent by U. S. Mail, registered or certified mail, postage prepaid, return receipt requested, to the last known business address of the designated representative; or
- XVII.8.3** delivery by reputable express courier service with charges prepaid; or
- XVII.8.4** transmitted by fax machine to the last known business fax number of the designated representative.
- XVII.8.5** E-mails transmitted to the web address supplied by each respective Party hereto for its designated representative listed in **ARTICLE XVI.1**.

Notices are deemed effective upon:

- i. Personal delivery; or
- ii. For mail notices, upon receipt or on the third business day after the date of mailing, whichever is sooner

- iii. for express courier services on the second business day following the date of mailing by express courier service or upon actual receipt of such mailing, whichever shall first occur, or
- iv. Fax notices are deemed effective upon delivery by facsimile, with accurate confirmation generated by the transmitting facsimile machine, at the address or number designated by the parties (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received); or
- v. E-mail notices are deemed effective upon confirmation the e-mail was received by the intended recipient.

Notices of claims or disputes or other legal notices required by this Contract 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:

If to Design-Builder:

**City of San Antonio**

**J.D. Abrams, L.P.**

**Transportation & Capital**

**Attn: Amadeo Saenz, Jr. P.E.**

**Improvements Attention: Mike Frisbie,**

**Director of Project Development**

**P.E., Director P. O. Box 839966**

**5811 Trade Center Drive, Bldg. 1**

**San Antonio, Texas 78283-3966**

**Austin, Texas 78744**

**XVII.9 SEVERABILITY.**

Should any term or provision of this Contract be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Contract shall be construed as if the invalid or unenforceable term or provision had never been included.

**XVII.10 ILLEGAL DUMPING.**

Design-Builder shall ensure that 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.

**XVII.11      EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION.**

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

**END OF ARTICLE XVII**

**DESIGN-BUILD CONTRACT SIGNATURE PAGE**


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


**City**

**Design-Builder**

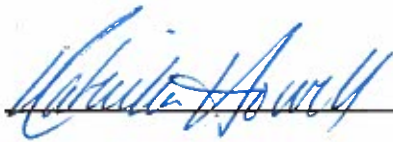
**CITY OF SAN ANTONIO, TEXAS**

**J.D. ABRAMS, L.P.**

By:   
for **PETER ZANONI**  
DEPUTY CITY MANAGER

By:   
**AMADEO SAENZ, Jr. PE**  
DIRECTOR OF PROJECT DEVELOPMENT

APPROVED AS TO FORM:

By:   
for **City Attorney**

**END OF DESIGN-BUILD CONTRACT SIGNATURE PAGE**

**EXHIBIT A PROGRAMMING DOCUMENTS**

**PREPARED BY:** \_\_\_\_\_

**AND DATED:** \_\_\_\_\_

**AND PROVIDED TO Design-Builder AS PART OF THE RFP**

**DATED:** \_\_\_\_\_

**EXHIBIT B DESIGN-BUILDER'S FEE PROPOSAL**



## EXHIBIT B

The information requested below shall be delivered to the Office of the City Clerk, in a sealed package no later than 3:00 P.M. on Friday, February 23, 2018, clearly labeled as "Design Build Services for Prue Road, Phase 2" at the following address:

Office of the City Clerk, Attn: Transportation and Capital Improvements Department  
100 Military Plaza  
City Hall, 1<sup>st</sup> Floor  
San Antonio, Texas 78205

Submittals sent by facsimile, e-mails and late submittals shall not be accepted and shall be deemed non-responsive.

### E. Proposed Fees for General Conditions/Overhead & Profit (20 points):

The estimated project cost is \$23,900,000.00. Provide your teams' proposed fees for fulfilling General Conditions, to include overhead and profit, and your team's Design Builder with a GMP fee:

Proposed Design Builder with a GMP Fee: \_\_\_\_\_ 12.0 \_\_\_\_\_ %

Proposed General Conditions Fee: \_\_\_\_\_ 9.78 \_\_\_\_\_ %

Submitted by J. D. Abrams, L. P.

*Amades Sa*  
2/23/2018

**EXHIBIT C GENERAL CONDITIONS FOR CITY OF SAN ANTONIO  
DESIGN/BUILD CONTRACTS**

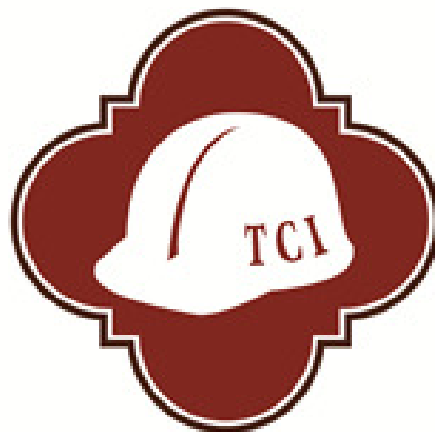
**CITY OF SAN ANTONIO**

**DESIGN-BUILD GENERAL CONDITIONS**

for

**PRUE ROAD – BABCOCK ROAD TO LAUREATE DRIVE PROJECT**

**23-01603**



## GENERAL CONDITIONS TABLE OF CONTENTS

<b>Article I. Contract Definitions .....</b>	<b>7</b>
I.1 Act of God. ....	7
I.2 Alternate. ....	7
I.3 Amendment. ....	7
I.4 Application for Payment. ....	7
I.5 Base Bid.....	7
I.6 Change Order.....	7
I.7 City. ....	8
I.8 City Council.....	8
I.9 City Designated Representative (CDR). ....	8
I.10 City Holiday. ....	8
I.11 Claim. ....	8
I.12 Construction Observer/Inspector (COI).....	8
I.13 Contract. ....	8
I.14 Contract Documents .....	9
I.15 Contract Sum. ....	9
I.16 Contract Time. ....	9
I.17 Contract Times.....	9
I.18 Contractor. ....	9
I.19 Day. ....	10
I.20 Department. ....	10
I.21 Design-Builder.....	10
I.22 Design consultant.....	10
I.23 Drawings.....	11
I.24 Federally Assisted Contract. ....	11
I.25 Field Work Directives.....	11
I.26 Flood.....	11
I.27 Hazardous Substance. ....	11
I.28 Liquidated Damages. ....	12
I.29 Notice to Proceed (NTP).....	12
I.30 Parties. ....	12
I.31 Party.....	12
I.32 Plans.....	12

I.33	Product Data.....	12
I.34	Project.....	13
I.35	Project Management team.....	13
I.36	Request for Information.....	13
I.37	Quality Assurance.....	13
I.38	Quality Control.....	13
I.39	Samples.....	13
I.40	Shop Drawings.....	13
I.41	Site.....	13
I.42	Special Conditions.....	14
I.43	Specifications.....	14
I.44	Subcontractor.....	14
I.45	Substantial Completion.....	14
I.46	Substitution.....	14
I.47	Temporary Bench Marks (TBM).....	14
I.48	The 3D Model.....	15
I.49	Time Impact Analysis.....	15
I.50	Transportation and Capital Improvements Department (TCI).....	15
I.51	Weather.....	15
I.52	Work.....	15
I.53	Written Notice.....	15
I.54	Other Definitions.....	16
<b>Article II.</b>	<b>Preliminary Matters.....</b>	<b>17</b>
II.1	Ordinance and Issuance.....	17
II.2	Delivery of Contract and Bonds.....	17
II.3	Delivery of Evidence of Insurance.....	17
II.4	Notice to Proceed and Commencement of Contract Times.....	17
II.5	Submission of Project Schedule(s).....	18
II.6	Preconstruction Meeting.....	18
II.7	Payments.....	18
II.8	Internet-Based Project Management Systems.....	18
<b>Article III.</b>	<b>Contract Documents.....</b>	<b>19</b>
III.1	Execution of Contract Documents.....	19
III.2	Ownership and Use of Drawings, Specifications and Other Instruments of Service.....	19
III.3	Correlation and Intent.....	20
III.4	Interpretation.....	22

<b>Article IV. City</b> .....	<b>23</b>
IV.1 General.....	23
IV.2 Information and Services to be Provided by City.....	23
<b>Article V. Design-Builder</b> .....	<b>26</b>
V.1 General.....	26
V.2 Review of Contract Documents and Field Conditions by Design-Builder.....	26
V.3 Supervision and Construction Procedures.....	27
V.4 Labor and Materials.....	28
V.5 Building Envelope.....	31
V.6 Warranty.....	32
V.7 Taxes.....	37
V.8 Permits, Fees, and Notices.....	37
V.9 Allowances.....	38
V.10 Superintendent/Key Personnel.....	38
V.11 Contractor’s Project Schedules.....	39
V.12 Documents and Samples at the Site.....	51
V.13 Shop Drawings, Product Data, and Samples.....	51
V.14 Use of Site.....	53
V.15 Cutting and Patching.....	54
V.16 Cleaning Up.....	54
V.17 Access to Work.....	55
V.18 Patent Fees and Royalties.....	55
V.19 Indemnity Provisions.....	55
V.20 Representations and Warranties.....	58
V.21 Business Standards.....	59
<b>Article VI. Administration of the Contract</b> .....	<b>60</b>
VI.1 Roles in Administration of the Contract.....	60
VI.2 Internet-Based Project Management Systems.....	61
VI.3 Claims and Disputes.....	62
VI.4 Resolution of Claims and Disputes.....	69
VI.5 Alternative Dispute Resolution.....	70
<b>Article VII. Subcontractors</b> .....	<b>72</b>
VII.1 Award of Subcontracts and Other Contracts for Portions of the Work.....	72
VII.2 Sub-Consultant/Sub-Contractual Relations.....	73
VII.3 Contingent Assignment of Subcontracts.....	74
<b>Article VIII. Construction by City or by Separate Contracts</b> .....	<b>75</b>

VIII.1	City’s Right to Perform Construction and to Award Separate Contracts.....	75
VIII.2	Mutual Responsibility.....	75
VIII.3	City’s Right to Clean Up. ....	76
<b>Article IX.</b>	<b>Changes in the Work .....</b>	<b>77</b>
IX.1	General.....	77
IX.2	Change Orders. ....	77
IX.3	Field Work Directives.....	78
IX.4	Minor Changes to the Work.....	80
IX.5	Time Required to Process Change Orders. ....	80
<b>Article X.</b>	<b>Time .....</b>	<b>82</b>
X.1	Progress and Completion. ....	82
X.2	Delays and Extensions of Time. ....	82
<b>Article XI.</b>	<b>Payments and Completion .....</b>	<b>84</b>
XI.1	Contract Sum. ....	84
XI.2	Schedule of Values. ....	84
XI.3	Applications for Payment. ....	84
XI.4	Pay Application Approval. ....	85
XI.5	Decisions to Reject Application for Payment. ....	86
XI.6	Progress Payments. ....	87
XI.7	Substantial Completion.....	88
XI.8	Partial Occupancy or Use/Project Milestones.....	90
XI.9	Final Completion and Final Payment. ....	91
XI.10	Additional Inspections.....	92
<b>Article XII.</b>	<b>Protection of Persons and Property .....</b>	<b>93</b>
XII.1	Safety Precautions and Programs.....	93
XII.2	Safety of Persons and Property.....	94
XII.3	Emergencies.....	96
XII.4	Public Convenience and Safety. ....	96
XII.5	Barricades, Lights, and Watchmen. ....	98
XII.6	Public Utilities and Other Properties to be Changed. ....	98
XII.7	Temporary Storm Sewer and Drain Connections. ....	99
XII.8	Additional Utility Arrangements and Charges.....	99
XII.9	Use of Fire Hydrants.....	100
XII.10	Environmental Compliance. ....	100
<b>Article XIII.</b>	<b>Insurance and Bonds .....</b>	<b>102</b>

XIII.1	Design-Builder’s Liability Insurance.....	102
XIII.2	Builder’s Risk Coverage.....	106
XIII.3	Property Insurance.....	106
XIII.4	Performance Bond and Payment Bonds.....	107
XIII.5	Umbrella Liability Insurance.....	109
XIII.6	Policy Endorsements and Special Conditions.....	110
<b>Article XIV.</b>	<b>Inspecting, Uncovering, and Correcting of Work.....</b>	<b>113</b>
XIV.1	Inspecting Work.....	113
XIV.2	Uncovering Work.....	113
XIV.3	Correcting Work.....	113
XIV.4	Acceptance Of Nonconforming Work.....	115
<b>Article XV.</b>	<b>Completion of the Contract / Termination / Temporary Suspension.....</b>	<b>116</b>
XV.1	Final Completion of Contract.....	116
XV.2	Warranty Fulfillment.....	116
XV.3	Termination by City for Cause.....	116
XV.4	Temporary Suspension of the Work.....	119
<b>Article XVI.</b>	<b>Miscellaneous Provisions.....</b>	<b>121</b>
XVI.1	Small Business Economic Development Advocacy (SBEDA).....	121
XVI.2	Governing Law; Compliance with Laws and Regulations.....	121
XVI.3	Successors and Assigns.....	121
XVI.4	Written Notice.....	121
XVI.5	Rights and Remedies; No Waiver of Rights by Design-Builder or City.....	122
XVI.6	Interest.....	122
XVI.7	Independent Materials Testing and Inspection.....	122
XVI.8	Financial Interest.....	122
XVI.9	Venue.....	123
XVI.10	Independent Design-Builder.....	123
XVI.11	Non-Discrimination.....	123
XVI.12	Benefits to Public Servants.....	124
<b>Article XVII.</b>	<b>Audit.....</b>	<b>125</b>
XVII.1	Right to Audit Design-Builder’s Records.....	125
<b>Article XVIII.</b>	<b>Attorney Fees.....</b>	<b>126</b>
	<b>Special Conditions for Design-Build Horizontal Projects.....</b>	<b>127</b>



## **ARTICLE I. CONTRACT DEFINITIONS**

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

### **I.1 ACT OF GOD.**

Any accident or event not influenced by man. They are accidents caused by nature. Hurricanes, floods, hail, tsunamis, wildfires, earthquakes and tornados are all considered acts of God.

### **I.2 ALTERNATE.**

Variation in the Work in which City requires a price separate from the Base Bid. If an Alternate is accepted by City, the variation will become a part of the Contract through award of the Contract and the Base Bid will be adjusted to include the amount quoted as stated in the Notice of Award to Design-Builder. If an Alternate is accepted by CITY, and later deleted, City will be entitled to a credit in the full value of the Alternate as priced in Design-Builder's Bid Proposal, as long as a Notice of Proceed has not been issued and no work has been initiated.

### **I.3 AMENDMENT.**

Written modification of the Contract prepared by City and signed by City and Design-Builder, (and approved by the San Antonio City Council, if required) which authorizes an addition, deletion or revision in the Work (specifically the services) or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.

### **I.4 APPLICATION FOR PAYMENT.**

Electronic requests for payment submitted by Design-Builder to City electronically, at a minimum of every thirty (30) days throughout the duration of the Project to include all data substantiating Design-Builder's right to payment and reflecting a deduction for Liquidated Damages, if applicable.

### **I.5 BASE BID.**

Price quoted for the Work before Alternates are considered.

### **I.6 CHANGE ORDER.**

Written modification of the Contract signed by both City and Design-Builder (and approved by the City Council, if required) that authorizes an addition, deletion or

revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Contract.

**I.7 CITY.**

Defined as The City of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County and identified as “CITY” in the Contract and these General Conditions, is referred to throughout the Contract Documents as if singular in number.

**I.8 CITY COUNCIL.**

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

**I.9 CITY DESIGNATED REPRESENTATIVE (CDR).**

Person(s) designated by City to act for City.

**I.10 CITY HOLIDAY.**

An observed holiday by the City of San Antonio that is counted as a Day for contract time purposes but wherein work is not permissible unless approved at least 48 hours in advance by the City. City Holidays shall be accounted for in Design-Builder Schedules.

**I.11 CLAIM.**

Demand or assertion by one of the Parties seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief, with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between City and Design-Builder arising out of or relating to the Contract. Claims must be initiated by written notice.

**I.12 CONSTRUCTION OBSERVER/INSPECTOR (COI).**

Authorized representative of the Director of the Transportation & Capital Improvements Department (TCI), or its designee department, assigned by City to observe and inspect any or all parts of the Project and the materials to be used therein.

**I.13 CONTRACT.**

Contract Documents which represent the entire and integrated agreement between City and Design-Builder and supersede all prior negotiations, representations or agreements, either written or oral. Contract Documents.

## **I.14 CONTRACT DOCUMENTS**

Construction Contract between City and Design-Builder, which consists of, but is not limited to, the solicitation documents, the Notice of Award, an enabling City of San Antonio Ordinance, and all other contract-related documents, which include:

**I.14.1** General Conditions;

**I.14.2** *Vertical* and/or *Horizontal* specific General Conditions and Special Conditions included by Special Provisions or addenda;

**I.14.3** Drawings;

**I.14.4** Specifications;

**I.14.5** Addenda issued prior to the close of the solicitation period;

**I.14.6** Other documents listed in the Contract, including Field Work Directives, Change Orders and/or Amendments;

**I.14.7** A written order for a minor change in the Work issued by and/or City, as described in [ARTICLE IX](#) herein.

**I.14.8** The geotechnical and subsurface reports, which City may have provided to Design-Builder, specifically are excluded from the Contract Documents.

## **I.15 CONTRACT SUM.**

The total maximum not-to-exceed amount payable by City to Design-Builder for performance of the Work under the Contract Documents.

## **I.16 CONTRACT TIME.**

Period of time, unless otherwise provided, including any authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

The plural (CONTRACT TIMES) refers to milestones designated in the schedule.

## **I.17 CONTRACT TIMES.**

Milestones designated in the schedule.

The singular (CONTRACT TIME) refers to the time allotted for Substantial Completion of Work.

## **I.18 CONTRACTOR.**

Entity entering into a Contract with City to complete the Work.

**I.19 DAY.**

Calendar Day, unless otherwise specifically defined.

A Calendar Day is a day of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated.

**I.20 DEPARTMENT.**

Department of **Transportation & Capital Improvements Department (TCI)**, City of San Antonio, Texas or Director of **TCI**.

**I.21 DESIGN-BUILDER.**

Design-Builder is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative(s).

Design-Builder include a person registered and licensed as an Architect as defined pursuant to Texas Occupations Code Ann., Chapter 1051, a person registered and licensed as a Landscape Architect as defined pursuant to Texas Occupations Code, Chapter 1052, a person registered and licensed as a professional Engineer pursuant to Texas Occupations Code, Chapter 1001, and/or a firm employed by City to provide professional Architectural or Engineering services, exercising overall responsibility for the design of a Project or a significant portion thereof, performing certain contract administration responsibilities as set forth in the Contract and responsible for the construction of the Project pursuant to City’s acceptance of the design. If the employment of Design-Builder is terminated, City may employ a new Design-Builder whose status under the Contract Documents shall be that of the former Design-Builder.

**I.22 DESIGN CONSULTANT.**

Person or firm registered as an Architect pursuant to Tex. Occupations Code Ann., Chapter 1051, a Landscape Architect pursuant to Texas Occupations Code, Chapter 1052, and/or a person licensed as a professional Engineer pursuant to Texas Occupations Code, Chapter 1001, or a firm employed by City to provide professional architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in its Contract and these General Conditions.

**I.23 DRAWINGS.**

Also known as **PLANS**.

Graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of Work, generally including elevations, sections, details, schedules and diagrams.

**I.24 FEDERALLY ASSISTED CONTRACT.**

Any contract financed in whole or in part with federal funds.

**I.25 FIELD WORK DIRECTIVES.**

Also known as **FORCE ACCOUNT**.

Written order signed by City directing a change in the Work prior to agreement or an adjustment, if any, in the Contract Sum and/or Contract, as further defined in [ARTICLE IX.3](#) herein.

**I.26 FLOOD.**

Overflowing of a large amount of water beyond its normal confines, especially over what is normally dry land.

**I.27 HAZARDOUS SUBSTANCE.**

Defined to include the following:

**I.27.1** any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;

**I.27.2** any polychlorinated biphenyls (PCBs), or PCB-containing materials, or fluids;

**I.27.3** radon;

**I.27.4** any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

**I.27.5** any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

**I.27.6** any underground storage tanks, as defined in 42 U.S.C. Section 6991 (1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.;

**I.27.7** the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

**I.27.8** any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

**I.28 LIQUIDATED DAMAGES.**

The reasonable stipulated amount, agreed to by the parties, to be paid to City by Design-Builder in case of Design-Builder's breach because actual damages for breach are uncertain and difficult to ascertain.

**I.29 NOTICE TO PROCEED (NTP).**

Written notice given by City to Design-Builder establishing the date on which the Contract Time shall commence to run and the date on which Design-Builder may begin performance of its contractual obligations.

**I.30 PARTIES.**

City and Design-Builder collectively herein.

**I.31 PARTY.**

City or Design-Builder individually herein.

**I.32 PLANS.**

See Drawings.

**I.33 PRODUCT DATA.**

Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Design-Builder to illustrate materials or equipment for some portion of the Work.

**I.34 PROJECT.**

All design services and construction Work performed by Design-Builder pursuant to the Contract Documents and any related construction by City which may be performed by a separate contractor or another Design-Builder. All references in these General Conditions to or concerning the Work or the Site of the Work will use the term “Project,” notwithstanding that the Work Design-Builder is performing may only be a part of the Project.

**I.35 PROJECT MANAGEMENT TEAM.**

Comprised of City, City’s program manager (if any), its representatives, and Design Consultant for this work.

**I.36 REQUEST FOR INFORMATION**

Formal notification from Contractor, after Contract has been awarded, utilizing City’s web-based project management system, that there is a question on the project that needs to be addressed.

**I.37 QUALITY ASSURANCE.**

Those actions taken by the City to determine the requirements of the contract have been met to include: inspection, sampling, texting, and other activities.

**I.38 QUALITY CONTROL.**

Sampling, testing, and other process control activities conducted by Design-Builder to ensure that the services are performed according to the terms and conditions of the contract.

**I.39 SAMPLES.**

Physical samples of materials, equipment or workmanship representative of some portion of the Work, furnished by the Design-Builder to City, to assist City and Design-Builder in the establishment of workmanship and quality standards by which the Work shall be judged.

**I.40 SHOP DRAWINGS.**

Drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared and furnished by Design-Builder or its agents, manufacturers, suppliers or distributors and which illustrate and detail some portion of the Work.

**I.41 SITE.**

Land(s) or area(s) (as indicated in the Contract Documents) furnished by City, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of Design-Builder.

**I.42 SPECIAL CONDITIONS.**

Terms and conditions to a contractual agreement that supplement and are superior to General Conditions which grant greater authority or impose greater restrictions upon Design-Builder, beyond those granted or imposed in these General Conditions. If applicable, City's *Horizontal Special Conditions* shall be attached hereto, made a part of these General Conditions.

**I.43 SPECIFICATIONS.**

Portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.

**I.44 SUBCONTRACTOR.**

Person or entity that has a direct contract with the Design-Builder, or such lower tiered person or entity that has a subcontract, to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor, Sub-Consultant or an authorized representative of Subcontractor or Sub-Consultant.

**I.45 SUBSTANTIAL COMPLETION.**

Stage in the progress of the Work when the Work – or a designated portion thereof, which City agrees to accept separately – sufficiently is complete, in accordance with the Contract Documents, so City may occupy or utilize the Work or a designated portion thereof for its intended use with no inconvenience to City.

**I.46 SUBSTITUTION**

A change proposed by the Contractor to products, materials, equipment, methods of construction or point of origin that differ from those required by the Contract Documents and that maintain equal value. Value, as defined, is the ratio of function to cost.

**I.47 TEMPORARY BENCH MARKS (TBM).**

Temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.



**I.48 THE 3D MODEL.**

Building Information Model prepared by Design-Builder in the format designated, approved and acceptable to City with databases of materials, products and systems that can be used by Design-Builder to prepare schedules for cost estimating, product and materials placement schedules and evaluations of crash incidences. The 3D Model, if available, may be used as a tool, however all information taken from the 3D Model is the responsibility of Design-Builder and not City.

**I.49 TIME IMPACT ANALYSIS.**

Evaluation of the effects of changes in the construction sequence, contract, Plans or site conditions on Design-Builder's plan for constructing the Project, as represented by the schedule. The purpose of the Time Impact Analysis is to determine if the overall Project has been delayed and, if necessary, to provide Design-Builder and City a basis for making adjustments to the Contract.

**I.50 TRANSPORTATION AND CAPITAL IMPROVEMENTS DEPARTMENT (TCI).**

City department which has been authorized by the City to manage the Project.

**I.51 WEATHER.**

Adverse or destructive atmospheric conditions, such as heavy rain, rising water, wind-driven water, ice, hail, snow, drought, lightning, or high winds.

**I.52 WORK.**

Design and construction services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Design-Builder, or any other entities Design-Builder utilizes or contracts with to fulfill Design-Builder's obligations under this Contract.

**I.53 WRITTEN NOTICE.**

Any notice, payment, statement or demand required or permitted to be given under this Contract by either Party to the other shall be in writing to an officer, management level employee or other designated representative of the other Party at such address, telephone number or electronic mail address as such party shall have specified most recently by written notice. Such notice, payment, statement or demand may be effected by i) personal delivery, ii) registered or certified mail, return receipt requested, postage prepaid, iii) delivery by reputable air courier service with charges prepaid, (iv) transmitted by telegram, or facsimile, or v) electronic mail. A notice given under this Contract will be effective (i) upon hand delivery, (ii) delivery by

facsimile, with accurate confirmation generated by the transmitting facsimile machine, at the address or number designated by the parties (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received), (iii) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur, or (iv) upon confirmation of receipt of email by sender.

**I.54 OTHER DEFINITIONS.**

As used in the Contract Documents, the following additional terms have the following meanings:

**I.54.1 PROVIDE.**

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

**I.54.2 SHALL.**

Mandatory action of the party of which reference is being made;

**I.54.3 AS REQUIRED.**

As prescribed in the Contract Documents; and

**I.54.4 AS NECESSARY.**

All action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes and regulations.

**END OF ARTICLE I**

## **ARTICLE II. PRELIMINARY MATTERS.**

### **II.1 ORDINANCE AND ISSUANCE**

Upon the San Antonio City Council’s passing of an Ordinance authorizing the issuance of a contract, a notice of award letter shall be sent to Design-Builder by **TCI Contract Services**, notifying Design-Builder of the award of a contract. In its notice of award letter, Design-Builder shall be informed of a date certain by which Design-Builder’s bond(s) and evidence of insurance shall be delivered to **TCI Contract Services**.

### **II.2 DELIVERY OF CONTRACT AND BONDS.**

Not later than the pre-construction meeting and prior to the commencement of any Work on the Project, Design-Builder shall deliver a fully executed Contract to City, along with such bonds as Design-Builder may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in the Contract Documents and these General Conditions and a required performance bond in the form and amount specified in the Contract Documents and these General Conditions.

### **II.3 DELIVERY OF EVIDENCE OF INSURANCE.**

Not later than the pre-construction meeting, and prior to the commencement of any Work under this Contract, Design-Builder shall deliver evidence of insurance to City. Design-Builder shall furnish an original completed certificate of insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the **TCI Contract Services Division**, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Design-Builder shall be prohibited from commencing the Work and City shall have no duty to pay or perform under this Contract until such evidence of insurance is delivered to City. No officer or employee, other than City’s Risk Manager, shall have authority to waive this requirement.

### **II.4 NOTICE TO PROCEED AND COMMENCEMENT OF CONTRACT TIMES.**

Unless otherwise stated on the Notice to Proceed, the Contract Time will commence to run on the date stated on the Notice to Proceed. No Work shall commence any earlier than the date stated on Notice to Proceed and no Work shall be performed by Design-Builder or any subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Design-Builder receiving a Notice to Proceed is performed at Design-Builder’s risk.

## **II.5 SUBMISSION OF PROJECT SCHEDULE(S).**

Prior to comment of Work (unless otherwise specified elsewhere in the Contract Documents), Design-Builder shall submit to the Director of TCI or his/her designee the Baseline Construction Schedule, as described in [ARTICLE V.11](#) herein, a minimum of ten (10) calendar days prior to City’s issuance of the initial Notice to Proceed for construction.

## **II.6 PRECONSTRUCTION MEETING.**

Before Design-Builder commences any Work on the Project, a preconstruction meeting attended by City, Design-Builder, City’s Designated Representative and others, as appropriate, will be held to establish a working understanding among the parties as to the Work and discuss, at a minimum: the Project Schedule(s) referenced in this [ARTICLE II.5](#); the procedures for handling Shop Drawings and other submittals; the processing of Applications for Payment; and Design-Builder maintaining required records. The Notice to Proceed may be issued at the preconstruction meeting or issued by City at any time at City’s discretion. The issuance of the Notice to Proceed will not unreasonably be withheld by City.

## **II.7 PAYMENTS**

Payments for services, work, equipment and materials are contingent upon and subject to the availability and appropriation of funds and the sale of future City of San Antonio Certificates of Obligation and/or General Obligation Bonds in accordance with adopted budgets. In the event funds are not available, appropriated or encumbered to fund a Project, then, at City’s discretion, this Agreement may be terminated immediately with no additional liability to City.

## **II.8 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS.**

At its option, City may administer its design and construction management through an Internet-based Project Management system (also referred to as “PRIMELink”). In such cases, Contractor shall conduct communication through this medium and perform all Project-related functions utilizing this management system, to include all correspondences, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders and other administrative activities. When such a management system is employed, City shall administer the software, provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

**END OF ARTICLE II**

## **ARTICLE III. CONTRACT DOCUMENTS.**

### **III.1 EXECUTION OF CONTRACT DOCUMENTS.**

Execution of the Contract by Design-Builder is a representation Design-Builder has been provided unrestricted access to the existing improvements and conditions on the Project Site, Design-Builder thoroughly has investigated the visible conditions at the Site and the general local conditions affecting the Work, and that Design-Builder's investigation was instrumental in preparing its bid or proposal submitted to City to perform the Work. Design-Builder shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum arising from conditions which Design-Builder discovered or, in the exercise of reasonable care, should have discovered in Design-Builder's investigation.

### **III.2 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.**

The Drawings, Specifications and other documents, including those in electronic form prepared by Design-Builder, City or City's consultants retained for the Project, which describe the Work to be executed by Design-Builder (collectively referred to as the "Construction Documents") are and will remain the property of City, whether the Project for which they are made is executed or not. Design-Builder shall be permitted to retain one record set. Neither Design-Builder nor any sub-consultant, Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Design-Builder, City or City's consultants. All copies of Construction Documents, except Design-Builder's record set, shall be returned or suitably accounted for to City, on request, upon completion of the Work or earlier termination of the Contract. The Drawings, Specifications and other documents prepared by Design-Builder, City or City's consultants, and any copies thereof furnished to Design-Builder, are for use solely with respect to this Project. The drawings, specifications or other documents are not to be used by Design-Builder or any sub-consultant, Subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the City. Design-Builder, sub-consultants, Subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by Design-Builder, City or City's consultants appropriate to and for use in the execution of Design-Builder's Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by Design-Builder, City or City's consultants. Submittal or distribution to meet official regulatory requirements, or for other purposes in connection with this Project, is not to be construed as publication.

**III.2.1** All of Design-Builder’s non-proprietary, documentary Work product, including reports and correspondence to City, prepared pursuant to this Contract shall be the property of City and, upon completion of this Contract, or earlier termination, and upon written request by City, promptly shall be delivered to City in a reasonably organized form, without restriction on its future use by City. For the avoidance of doubt, documentary Work product does not include privileged communications, proprietary information and documents used to prepare Design-Builder’s Bid Proposal.

**III.2.2** Design-Builder may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially-significant Work product lost or destroyed by Design-Builder shall be replaced or reproduced at Design-Builder’s non-reimbursable, sole cost. In addition, City shall have access during normal business hours, to all Design-Builder’s records and documents covering reimbursable expenses, actual base hourly rates, time cards and annual salary escalation records maintained in connection with this Contract for purposes of auditing same at the sole cost of City. The purpose of any such audit shall be for the verification of such costs. Design-Builder shall not be required to keep records of, or provide access to, the makeup of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers with the exception of records required to verify Design-Builder is paying its employees in accordance with the Prevailing Wage Rates as required by this Contract. Nothing herein shall deny Design-Builder the right to retain duplicates. If, during the duration of this Contract or during the four (4) years after the final completion of the Work, a dispute between any parties to this Project exists, Design-Builder shall retain all its records for four (4) years after final resolution of all disputes related to this Project. Refusal by Design-Builder to comply with the provisions hereof shall entitle City to withhold any payment(s) to Design-Builder until compliance is obtained.

**III.2.3** All Design-Builder’s documentary Work product shall be maintained within Design-Builder’s San Antonio offices, unless otherwise authorized by City. After expiration of this Contract, Design-Builder’s documents may be archived in the Design-Builder’s central record storage facility but shall remain accessible to City for the four (4) year period cited in [ARTICLE III.2](#) herein.

### **III.3 CORRELATION AND INTENT.**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Design-Builder. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by Design-Builder 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.

**III.3.1** In cases of discrepancy between any drawing and the dimension figures written thereon:

**III.3.2** the dimension figures shall govern over scaled dimensions;

- a. Detailed Drawings and accompanying notations shall govern over general Drawings;
- b. Specifications shall govern over Drawings, subject to [ARTICLE III.3.8](#);
- c. General Conditions and Supplemental Conditions
- d. Special Conditions shall govern over Specifications, Drawings and General/Supplemental Conditions; and
- e. Negotiated Special Conditions shall govern over Special Conditions.

The most recent revision of Plans shall control over older revisions.

**III.3.3** Organization of the Specifications into divisions, sections, articles, and the arrangement of Drawings shall not control Design-Builder in dividing the Work among subcontractors or establishing the extent of Work to be performed by any trade.

**III.3.4** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Where the phrases "directed by", "ordered by" or "to the satisfaction of" City or City's COI or other specific designation occur, it is to be understood that the directions, orders or instructions to which they relate are those within the scope of and authorized by the Contract Documents.

**III.3.5** 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 Design-Builder's Bid 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.

**III.3.6** The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows, with the highest authority listed as "**a**" and in descending order:

- a. Modifications to the Project Contract signed by Design-Builder and City;
- b. Addenda, with those of later date(s) having precedence over those with earlier date(s);
- c. Special Conditions;
- d. Specifications;
- e. Detailed Drawings;
- f. Drawings

**III.3.7** 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.

**III.3.8** 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.

**III.3.9** 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.

**III.3.10** Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

#### **III.4 INTERPRETATION.**

In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

#### **End of Article III**



## ARTICLE IV. CITY

### IV.1 GENERAL.

**IV.1.1** City shall designate in writing to Design-Builder a representative (CDR) who shall have express authority to bind City with respect to all matters concerning this Contract requiring City's approval or authorization. Whenever the term "City" or "City" is found in this Contract or the Contract Documents, such term shall include the City's agents, elected officials, employees, officers, directors, volunteers, representatives, successors and assigns.

**IV.1.2** Design-Builder acknowledges that no lien rights exist with respect to public property.

### IV.2 INFORMATION AND SERVICES TO BE PROVIDED BY CITY.

**IV.2.1** City shall provide and maintain the preliminary budget and general schedule, if any for the Project. The preliminary budget shall include the anticipated design cost, construction cost, contingencies for changes in the Work during construction and other costs that are the responsibility of City. The general schedule will set forth City's plan for milestone dates and Substantial Completion and Final Completion of the Project.

**IV.2.2** If in existence and if in City's possession, City shall furnish surveys describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Design-Builder of any of its duties under the Contract Documents to include these General Conditions. Information or services required of City by the Contract Documents shall be furnished by City with reasonable promptness following actual receipt of a written request from Design-Builder. It is incumbent upon Design-Builder to identify, establish and maintain a current schedule of latest dates for submittal and approval by City, as required in [ARTICLE V.11](#), including when such information or services must be delivered. If City delivers the information or services to Design-Builder as scheduled and Design-Builder is not prepared to accept or act on such information or services, then Design-Builder shall reimburse City for all extra costs incurred by holding, storage, retention or performance, including redeliveries by City to comply with the current schedule.

**IV.2.3** Unless otherwise provided in the Contract Documents, Design-Builder shall furnish, free of charge, up to three (3) complete sets of the Plans and Specifications to City. Additional complete sets of Plans and Specifications, if requested by City, shall be furnished to City at Design-Builder's reproduction cost without markup.

**IV.2.4** City's personnel may, but are not required to, be present at the construction site during progress of the Work to verify Design-Builder's record of the number of

workers employed on the Work site, the workers' occupational classification, the time each worker is engaged in the Work and the equipment used by the workers in the performance of the Work, for purpose of verification of Design-Builder's Applications for Payment and payroll records.

**IV.2.5** City shall reimburse Design-Builder for the necessary project-related approvals, fees and required permits with no markup paid to Design-Builder for these necessary Project-related approvals, fees and required permit costs, unless said costs are stipulated in the Contract Documents as part of Design-Builder's cost of Work.

**IV.2.6 CITY'S RIGHT TO STOP THE WORK.**

If Design-Builder fails to correct Work deemed by City not in accordance with the requirements of the Contract Documents, as required by [ARTICLE XIV.3](#) herein, fails to carry out Work in accordance with the Contract Documents, or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, City may issue a written order to Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of City to stop the Work shall not give rise to any duty on the part of City to exercise this right for the benefit of the Design-Builder or any other person or entity. This right shall be in addition to, and not in restriction of, City's rights pursuant to [ARTICLE XIV.3](#) herein. City's issuance of an order to Design-Builder to stop the Work shall not give rise to any claim by Design-Builder for additional time, cost or general conditions costs.

**IV.2.7 CITY'S RIGHT TO CARRY OUT THE WORK.**

If Design-Builder defaults, neglects or fails to carry out the Work in accordance with the Contract Documents and fails, within a three (3) work-day period after receipt of written notice from City, to commence and continue correction of such default, neglect or failure with diligence and promptness, City may, without prejudice to other remedies City may have, correct such deficiencies, neglect or failure. In such case, an appropriate Change Order may be issued deducting from payments then or thereafter due Design-Builder the reasonable cost of correcting such deficiencies, neglect or failure, including all of City's incurred expenses and compensation for City's additional services made necessary by such default, neglect or failure. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts for the Work performed, Design-Builder shall pay the difference to City.

**END OF ARTICLE IV**

## **ARTICLE V. DESIGN-BUILDER**

### **V.1 GENERAL.**

**V.1.1** Design-Builder shall perform the Work in a good and workmanlike manner, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

**V.1.2** Design-Builder shall not be relieved of its obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents either by any activities or duties of City in City's administration of the Contract or by tests, inspections or approvals required or performed by City or any person other than the Design-Builder.

### **V.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN-BUILDER.**

#### **V.2.1 DESIGN-BUILDER SHALL:**

- a. Carefully verify Contract Documents and any error, inconsistencies or omissions discovered by Design-Builder shall be reported promptly to City via a Request for Information in such form as the City may require; and
- b. study and compare the various Drawings and other Contract Documents relative to that portion of the Work and the information furnished by City.

#### **V.2.2 BEFORE STARTING EACH PORTION OF THE WORK, DESIGN-BUILDER SHALL:**

- a. At the site, observe any conditions effecting the Work and take field measurements for said conditions;
- b. Because the exactness of existing grades, elevations, dimensions or locations given on any Drawings issued by City, or the work installed by City's other contractors, is not guaranteed by City, Design-Builder shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations; and
- c. In all cases of interconnection of its Work with existing conditions or with work performed by others, Design-Builder shall verify at the site all dimensions relating to such existing or other work. Any errors due to Design-Builder's failure to so verify all such grades, elevations, dimensions or locations promptly shall be rectified by Design-Builder without any additional cost to City.

**V.2.3** If Design-Builder believes additional cost or time is involved because of clarifications or instructions issued by City in response to the Design-Builder's Notices or Requests for Information, Design-Builder shall make Claims as provided in [ARTICLE VI.3.6](#) and [ARTICLE VI.3.7](#) herein. If Design-Builder fails to perform the obligations of [ARTICLE V.2.1](#) and [ARTICLE V.2.3](#), Design-Builder shall pay such costs and damages to City as would have been avoided if Design-Builder had performed such obligations.

### **V.3 SUPERVISION AND CONSTRUCTION PROCEDURES.**

**V.3.1** Design-Builder shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a reasonably prudent Design-Builder, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Design-Builder solely shall be responsible for the means, methods, techniques, sequences, procedures and coordination of all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods and/or techniques, Design-Builder then shall evaluate the jobsite safety thereof and, except as stated herein below, shall fully and solely be responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If, upon its evaluation, Design-Builder determines such means, methods, techniques, sequences or procedures may not be safe, Design-Builder shall give timely written notice to City and Design-Builder shall not proceed with that portion of the Work without further written instructions from City. Sequencing and procedures shall be coordinated and agreed upon by City and Design-Builder.

**V.3.2** Design-Builder shall be responsible to City for the acts and omissions of Design-Builder's agents and employees, sub-consultants, Subcontractors and their respective agents and employees and all other persons or entities performing portions of the Work for or on behalf of Design-Builder or any of its sub-consultants and/or Subcontractors.

**V.3.3** Design-Builder shall be responsible for inspection of portions of Work already performed, to determine which such portion are in proper condition to receive subsequent Work.

**V.3.4** Design-Builder shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq, as such may amended or modified in the future.

**V.3.5** It is understood and agreed the relationship of Design-Builder to City shall be of an independent contractor. Nothing contained herein or inferable in the Contract

Documents shall be read, deemed or construed to make Design-Builder the agent, servant or employee of City or create any partnership, joint venture or other association between City and Design-Builder. Any direction or instruction by City, in respect of the Work, shall relate to the results the City desires to obtain from the Work, and shall in no way affect Design-Builder's independent contractor status, as described herein.

**V.3.6** Design-Builder shall review its Subcontractor(s) written safety programs, procedures and precautions in connection with performance of the Work. However, Design-Builder's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom Design-Builder does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations and ordinances, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards.

#### **V.4 LABOR AND MATERIALS.**

**V.4.1** Unless otherwise stipulated in the Contract Documents or required, Design-Builder shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

#### **V.4.2 PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.**

The Provisions of Chapter 2258 of the Texas Government Code, and the “Wage and Labor Standard Provisions” contained in City of San Antonio Ordinance 2008-11-20-1045, expressly are made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this contract shall be obtained by Design-Builder from the City of San Antonio’s Labor Compliance Office and included in Design-Builder’s Project bid package and Plans & Specifications, prior to Design-Builder bidding of the Project and such schedule shall become a part hereof. Design-Builder shall forfeit, as a penalty to City, sixty dollars (\$60.00) for each laborer, worker or mechanic employed for each calendar day, or portion thereof, in which such laborer, worker or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Design-Builder or any Sub-Consultant and/or Subcontractor employed on the Project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the

Texas Government Code, shall not be construed to relieve Design-Builder from its obligation under any federal or state law, regarding the wages to be paid to or hours worked by laborers, workers or mechanics, insofar as applicable to the work to be performed hereunder. Design-Builder, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Design-Builder agrees it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This Contract provision shall be included in its entirety in all Subcontractor agreement entered into by the Design-Builder or any Subcontractor employed on the project.

#### **V.4.3 SUBSTITUTIONS.**

- a. Substitutions and alternates may be rejected by City without explanation and shall be considered by City only under one or more of the following conditions:
  - i. the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing;
  - ii. specified products are unavailable through no fault of Design-Builder; and
  - iii. when, in the judgment of City, a substitution substantially would be in City's best interests in terms of cost, time or other considerations.
- b. Contractor shall submit to City:
  - i. a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures and other like information necessary for a complete evaluation of the substitution;
  - ii. a written explanation of the reasons the substitution is necessary, including the benefits to the City and to the Work, in the event the substitution is acceptable to City;
  - iii. the adjustment, if any, in the Contract Sum;
  - iv. the adjustment, if any, in the time of completion of the Contract and the construction schedule; and

- v. in the event of a substitution under this [ARTICLE V.4.3](#):
- the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and requirements shown on the Drawings; and
  - Design-Builder accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by City.

Proposals for substitutions shall be submitted to City in sufficient time to allow City no less than ten (10) calendar days for review. No substitutions shall be considered or allowed without Design-Builder's submittal of complete substantiating data and information.

- c. In the event of substitution submittal under [ARTICLE V.4.3A](#), and whether or not any such proposed substitution is accepted by City, Design-Builder shall reimburse City, at City's reasonable discretion, for any fees charged by City or City's representatives for evaluating each proposed substitute.
- d. Except as otherwise stipulated in the Contract Documents or required for safety or protection of persons or the Work or property at the Site or adjacent thereto, no Work shall be allowed by City from sundown to sunrise of the following calendar day, unless directed by the CDR or requested in writing by Design-Builder and approved by City.

**V.4.4** Design-Builder shall, at all times, enforce strict discipline and good order among persons working on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the assigned work. Design-Builder shall be liable for and responsible to City for all acts and omissions of its employees, all tiers of its Sub-Consultants and Subcontractors, material suppliers, anyone who Design-Builder may allow to perform any Work on the Project, and their respective officers, agents, employees, and any consultants Design-Builder may allow to come on the job site, with the exception of City, the CDR or City's consultants. City, at any time, for any reason or for no reason, may direct Design-Builder to remove any employee, Subcontractor, Sub-Consultant, material supplier or anyone else from the Project and Design-Builder promptly shall comply with City's direction. In addition, if Design-Builder receives written notice from City complaining about any Subcontractor, Sub-consultant, employee or anyone who is a hindrance to proper or timely execution of the Work, Design-Builder shall remedy such complaint without delay to the Project and at no additional cost to City. This provision shall be included in all contracts between the Design-Builder and all subcontractors of all tiers.



**V.4.5** Design-Builder recognizes and acknowledges that the Project Site is a public facility representing the City of San Antonio. As such, Design-Builder shall prohibit the possession or use of alcohol, controlled substances, tobacco and any prohibited weapons on the Project Site and shall require appropriate dress of Design-Builder's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Design-Builder, employees of City or any visitor to the site by employees of Design-Builder strictly is forbidden. Any employee of Design-Builder who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Design-Builder, including removal from the Project Site.

**V.4.6** Design-Builder shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

**V.4.7** All materials and installed equipment shall be as specified in the Contract Documents, and if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by City, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. Design-Builder may make substitutions only with the consent of City, after Design-Builder's compliance with [ARTICLE V.4.3](#) herein.

**V.4.8** All materials shall be shipped, stored and handled in a manner which will protect and ensure their condition at the time of incorporation in the Work. After installation, all materials shall be properly protected against damage to ensure they are in the condition as required by [ARTICLE V.6.1](#) herein when the Work is Substantially Completed or City takes over use and occupancy, whichever is earlier.

**V.4.9** During construction of the Work and for four (4) years after final completion, or if there is an ongoing dispute under this Contract such retention period shall extend longer until final resolution of said dispute, as described in [ARTICLE III.2.2](#) herein, Design-Builder shall retain and shall require all subcontractors to retain for inspection and audit by City all books, accounts, reports, files, time cards, material invoices, payrolls and evidence of all other direct or indirect costs related to the bidding and performance of this Work. Upon request by City, a legible copy or the original of any or all such records shall be produced by Design-Builder at the administrative office of City. To the extent that it requests copies of such documents, City will reimburse Design-Builder and its subcontractors for copying costs. Design-Builder shall not be required to keep records of or provide access to the makeup of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers.

## **V.5 BUILDING ENVELOPE**

When Design-Builder is constructing a building, the building shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building by external forces beyond Design-Builder's control. Design-Builder, immediately upon notification by the City of water penetration, shall determine the source of water penetration and perform any work necessary to make the building watertight. Design-Builder also shall repair or replace any damaged material, finishes and/or fixtures damaged as a result of any water penetration, returning the building to original condition. The costs of such determination and repair shall be borne by Design-Builder only to the extent that the leak(s) are attributable to design errors, faulty workmanship, Design Builder's negligence, or unauthorized or defective materials

## **V.6 WARRANTY.**

**V.6.1** Design-Builder warrants to City materials and equipment furnished and installed under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents, and the Work will be free from defects not inherent in the quality required or permitted and the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by City's failure to promptly notify Design-Builder. If required by City, Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**V.6.2** A right of action by City for any breach of Design-Builder's express warranty herein shall be in addition to, and not in lieu of, any other remedies City may have under this Contract at law or in equity, regarding any defective Work.

**V.6.3** The warranty provided shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Such warranty shall be interpreted to require Design-Builder, upon written timely demand by City, to replace defective materials and equipment and re-execute any defective Work disclosed to the Design-Builder by the City within a period of one (1) year after Substantial Completion of the applicable Work or, in the event of a latent defect, within one (1) year after discovery thereof by City at no cost to City. The warranty period may begin if a Project milestone has been met and City agrees in writing that warranties involving that Project milestone scope of Work are to begin upon City's acceptance of the Project milestone Work.

**V.6.4** All warranties shall be assignable by City. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

- V.6.5** Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law or by manufacturer, all warranties shall be at minimum for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to City. City and Design-Builder acknowledge that the Project may involve construction work on more than one (1) building or section of infrastructure of City's. While the entire Project will have a Single date for Substantial Completion of the Work, each building, section of infrastructure or approved phase of each section of infrastructure may have its own separate and independent date of substantial completion or final completion.
- V.6.6** If separate dates for Substantial Completion and Final completion are established and granted by City, at City's sole discretion and as a result of City electing partially to occupy areas prior to the Project's overall date for Substantial Completion, Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion and, if City accepts partial occupancy of those completed areas, the dates upon which the one (1) year warranty on each building, phase or section of infrastructure granted Substantial Completion shall expire. If separate dates are granted, Contractor agrees to provide notice of the warranty expiration date(s) to City and Design Consultant at least one (1) month prior to the expiration of the one (1) year warranty period on each building, section of infrastructure or each phase of the section of infrastructure which has achieved Substantial Completion.
- V.6.7** Prior to expiration of any one (1) year warranty period, Contractor shall accompany City and Design Consultant on re-inspection of the building, section of infrastructure or phase of the section of infrastructure and be responsible for correcting any reasonable additional deficiencies not caused by City or by the use of the building, section of infrastructure or phase of the section of infrastructure observed and/or reported during the re-inspection.
- V.6.8** For extended warranties required by the Contract Documents, City shall notify Contractor of deficiencies and Contractor shall start remedying these defects within seven (7) calendar days of initial notification from City or other time mutually agreed to in writing. Contractor shall prosecute the work without interruption until accepted by City and Design Consultant, even though such prosecution may extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date and conduct the required walk through with City, Contractor's warranty obligations described in [ARTICLE V.6.5](#) shall continue until such inspection is conducted and any deficiencies found in the inspection is corrected.
- V.6.9** Warranties shall become effective on a date established by City in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion or Project milestone dates approved by the Parties, except for Work to be

completed or corrected after the date of Substantial Completion and prior to final payment and those occurrences addressed in [ARTICLE V.6.5](#) herein. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final completion shall become effective on the later of the date the Work is completed or corrected and accepted by City for the date of final completion of the Work.

**V.6.10** Neither final payment nor compliance by Design-Builder with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve Design-Builder or its sureties of liability, with respect to any warranties or responsibility for faulty materials and workmanship. Design-Builder warrants that the Work will conform to the requirements of the Contract Documents.

**V.6.11** Design-Builder agrees to assign to City, at the time of final completion of the Work, any and all manufacturer's warranties and Operation & Maintenance manuals relating to equipment, materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties, provided that such assignment shall contain a reservation of Design-Builder's right also to enforce the manufacturer's warranties. As a condition precedent to final payment.

**V.6.12** As a condition precedent to Final Completion, the Contractor shall organize and compile operation and maintenance manual information into suitable sets of manageable size and bind into individual binders properly tabbed and indexed.

- a. Manuals shall include emergency instructions, spare parts list, warranties, wiring diagrams, inspection procedures, shop drawings, product data, and similar information. Material and equipment data is intended to include all data necessary for the proper installation, removal, normal operation, emergency operation, start up, shutdown, maintenance, cleaning, adjustment, calibration, assembly, disassembly, repair, inspection, trouble shooting, and service of the equipment or materials.
- b. Equipment shall include Part Number, Quantity, Spec Paragraph Reference, Source- (Manufacturer's name and address and supplier's name and address), Serial Number, Location- (State the name of system and/or subsystem and state physical location of each like item of equipment by room name and number and column gridline as shown on plans), Parts List, Recommended Spare Parts, Special Tools & Equipment, System Drawings, Warranties, and Documentation of Training of Owner Personnel.

- c. Warranties: Include within the tabbed section for each system, equipment item, or material, an executed copy of the specified warranty covering that particular system, equipment items or material. This is to include both the manufacturer’s warranty and the installing contractor’s guarantee for workmanship and system operation. This copy is in addition to original signature copies of all project warranties/guarantees bound together separately into a Warranty Binder to be transmitted to the Owner upon Final Completion.
  
- d. O&M Manuals shall be consolidated to include all specification divisions in numerical order and each package of data shall be numbered according to the specification section governing that particular system.
  
- e. Manuals shall include a Table of Contents with the following information itemized within each specification division: Tab Number, Specification Number, Description, Subcontractor, Contact Name and Phone Number.
  
- f. Manuals shall be bound in heavy duty, 3 ring vinyl covered binders including pocket folders for folded sheet information. Binders shall have proper identification including volume number on front and spine of each binder.
  
- g. 2 complete sets of each bound O&M Manual are required and shall be color coded separately for each set. Contractor shall also provide 1 electronic copy on flash drive.
  
- h. Contractor shall submit a draft format of proposed Table of Contents and packaging of O&M documentation into binders for Architect and Owner’s review and approval.

- i. Contractor shall provide a preliminary copy of all O&M Manuals in an approved format to the Architect and Owner for review prior to Substantial Completion inspection.

**V.6.13** The Contractor’s final submission of these manuals is a precondition for Final Completion.

**V.6.14** In Addition and as a condition precedent to Final Completion, the Contractor shall organize and compile a separate warranty reference into suitable sets of manageable size and bind into individual binders properly tabbed in similar fashion as the Opeation & Maintenance Binders

- a. Provide a tabbed binder to include all project warranties and guarantees as required by various specification sections and other conditions to the Contract. This is to include all specific warranties on manufactured items and installed systems as noted above, in addition to General Contractor’s project Warranty and applicable guarantees from all Subcontractors and suppliers covering defects in workmanship and manufacturer.
- b. Warranty Binder shall include a Table of Contents with the following information itemized within each specification division: Tab Number, Specification Number, Description, Subcontractor, Contact Name / Phone Number, and Warranty Period
- c. 2 complete sets of each bound Warranty Binder are required and shall be color coded separately for each set. Contractor shall also provide 1 electronic copy on flash drive.
- d. Contractor shall submit a draft format of proposed Table of Contents and packaging of Warranty documentation into binders for Architect and Owner’s review and approval.
- e. Contractor shall provide a preliminary copy of all Warranty Binders in an approved format to the Architect and Owner for review prior to Substantial Completion inspection.

**V.6.15** **DESIGN-BUILDER SHALL PROCURE AND FURNISH TO CITY ALL GUARANTEES, WARRANTIES, SPARES AND MAINTENANCE MANUALS CALLED FOR BY THE SPECIFICATIONS OR WHICH NORMALLY ARE PROVIDED BY A MANUFACTURER. THE MAINTENANCE MANUAL SHALL INCLUDE A CATALOG FOR ANY EQUIPMENT, MATERIALS, SUPPLIES OR PARTS USED IN THE INSPECTION, CALIBRATION,**

**MAINTENANCE OR REPAIR OF THE EQUIPMENT AND ITEMS IN THE CATALOG SHALL BE READILY AVAILABLE FOR PURCHASE.**

**V.6.16**

**V.7 TAXES.**

Contractor will not include in the Contract Sum or any modification thereto any amount for sales, use or similar taxes for which City is exempt and City has provided Design-Builder with a tax exemption certificate or other documentation necessary to establish City's exemption from such taxes.

**V.8 PERMITS, FEES, AND NOTICES.**

**V.8.1 PERMITS.**

Unless otherwise provided in the Contract Documents or by City, as per [ARTICLE IV.2.2](#) herein, Design-Builder shall secure all permits, licenses and inspections. City may assist Design-Builder, when necessary, in obtaining such permits, licenses and inspections necessary for the proper execution and completion of the work. If required, City shall prepare and submit the necessary paperwork to satisfy Texas Pollutant Discharge Elimination System (TPDES), regulations of the Texas Commission on Environmental Quality.

**V.8.2 CONTRACTOR SHALL COMPLY WITH AND GIVE ALL NOTICES REQUIRED BY LAW, ORDINANCE, RULE, REGULATIONS AND LAWFUL ORDERS OF PUBLIC AUTHORITIES APPLICABLE TO PERFORMANCE OF THE WORK.**

**V.8.3** If Design-Builder performs Work contrary to laws, statutes, ordinances, building codes and rules and regulations and City design guidelines and standards. Design-Builder shall assume sole responsibility for performing such Work and shall bear all costs attributable to correct such Work.

**V.8.4** Design-Builder also shall assist City in obtaining all permits and approvals and, at City's request, pay all fees and expenses, if any, associated with TPDES regulations of the Texas Commission on Environmental Quality, as well as local authorities, if applicable, which require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for a Project. Design-Builder's obligations under this [ARTICLE V.8.3](#) require it to perform all necessary engineering services during the pre-construction phase to prepare proper drainage for the Project Site. Any drainage alterations made by Design-Builder during the construction process, which require the issuance of a permit, shall be at Design-Builder's sole cost. It will be Design-Builder's responsibility to prepare and submit the permit approval documentation provided by the regulatory agencies prior to beginning any Work.

## **V.9 ALLOWANCES.**

**V.9.1** Design-Builder shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as City may direct, but Design-Builder shall not be required to employ persons or entities to whom Design-Builder has reasonable objection.

### **V.9.2 UNLESS OTHERWISE PROVIDED IN THE CONTRACT DOCUMENTS:**

- a. Allowances shall cover the cost to Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- b. Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses, contemplated for stated allowance, shall be included in the allowances;
- c. Whenever actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect both the difference between actual costs and the allowances and all changes in Design-Builder's costs..
- d. All expenditures shall be in pre-coordination with the City representative.

**V.9.3** Materials and equipment under an allowance shall be selected by City within such time as is reasonably specified by Design-Builder as necessary to avoid any delay in the Work.

## **V.10 SUPERINTENDENT/KEY PERSONNEL.**

**V.10.1** At all times during the progress of the Work, Design-Builder shall assign a competent resident superintendent who is able to communicate fluently in English, along with any necessary assistant(s) who is/are satisfactory to City. Any superintendent designee shall be identified in writing to City promptly after City issues a written Notice to Proceed. The superintendent shall represent Design-Builder at all time and all directions given to the superintendent shall be binding on Design-Builder. The designated superintendent shall not be replaced without written notice to City and the approval of the Director or his/her designee, which approval will not be unreasonably withheld, except with good reason (including any termination or disability of the superintendent) or under extraordinary circumstances. The superintendent may not be employed on any other project, prior to final completion of



the Work, without the approval of City, which approval will not be unreasonably withheld.

**V.10.2** Design-Builder shall furnish a list to City of all Architects, Engineers, consultants, Sub-Consultants, job-site superintendents, Subcontractors and suppliers involved in construction.

- a. City, upon the showing of good and reasonable cause, may reject or require removal of any architect, engineer, consultant, sub-consultant, job superintendent, employee of the Design-Builder, Subcontractor of any tier and/or supplier involved in the Project.
- b. Design-Builder shall provide an adequate staff for the proper coordination and expedition of the Work. City reserves the right to require Design-Builder to dismiss from the Project any employee(s) City, at its sole discretion, deems incompetent, careless, insubordinate or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors and their employees.
- c. City reserves the right to utilize one or more of its employees to function in the capacity of City’s Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines and verification of the storage of supplies and materials.
- d. Design-Builder shall not change any key personnel, key Subcontractors or key sub-consultants without the prior written consent of City, which consent shall not be unreasonably withheld. In the event key personnel leaves Design-Builder’s employment, such key personnel’s replacement shall be subject to City’s reasonable approval.

## **V.11 CONTRACTOR’S PROJECT SCHEDULES.**

### **V.11.1 PROJECT SCHEDULE METHOD.**

Design-Builder shall create, maintain, and at all times keep current a Critical Path Method (hereafter referred to as “CPM”) Project Schedule, showing the manner of execution of Work which Design-Builder intends to follow, to complete the Project within the allotted time. The Project Schedule shall employ computerized CPM for the planning, scheduling and reporting of Work. Design-Builder shall create and maintain the Project Schedule using project management scheduling software compatible with City’s project management scheduling software. The observance of the requirements herein is an essential part of the Work to

be performed under the Contract and failure to keep a current CPM Project Schedule shall be considered a material breach of this Contract.

#### **V.11.2 SCHEDULING PERSONNEL.**

Unless otherwise indicated in writing by City, Design-Builder shall provide an individual, who shall be referred to hereafter as Scheduler, to create and maintain the Project Schedule. Scheduler shall be proficient in CPM analysis, possess sufficient experience to be able to perform required tasks on the specified software and able to prepare and interpret reports from the software. Scheduler shall be made available for discussion or meetings when requested by City.

#### **V.11.3 PROJECT SCHEDULE SUBMISSION.**

- a. Unless indicated otherwise, Design-Builder shall submit Project Schedule(s) for the Work in relation to the entire Project to City at least fourteen (14) calendar days prior to the pre-construction meeting.
- b. All Project Schedule submittals shall be in the electronic form to include PDF plots of the schedule, a PDF plot defining the Critical Path and two week look-ahead, and include the native compatible scheduling file format. Design-Builder shall submit the schedule to City via electronic mail, or electronic format acceptable to City.
- c. This initial schedule shall indicate the dates for starting and completing the various aspects/phases required to complete the Work, including mobilization, procurement, installation, testing, inspection and acceptance of all the Work of the Contract, including any contractually mandated milestone dates. The Project Schedule shall not exceed the time limits set forth in the Contract Documents. Design-Builder shall organize the Project Schedule and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- d. The Project Schedule shall show the order in which Design-Builder proposes to carry out the Work in accordance with the final approved phasing plan, if any, and the anticipated start and completion dates of each phase of the Work. The Project Schedule shall be in the form of a time scaled work progress chart, to indicate the percentage of Work scheduled for completion at various critical milestones.

- e. Design-Builder shall maintain a schedule of Shop Drawings and Sample Submittals and each submitted Shop Drawing and Sample Submittal shall list each required submittal and the expected time(s) for submitting, reviewing and processing such submittal.
- f. City shall review the Project Schedule within fourteen (14) calendar days for compliance with the specifications and notify Design-Builder of its acceptability.

#### **V.11.4 PROJECT SCHEDULE SEQUENCING.**

The Project Schedule shall show the sequence and interdependence of activities required for complete performance of the Work. Design-Builder shall be responsible for assuring all Work sequences are logical and show a coordinated plan of Work in accordance with the sequence of work outlined in the plans. The purpose of City requiring the Project Schedule shall be to:

- a. Ensure adequate planning during the execution and progress of the Work in accordance with the allowable number of calendar days and all milestones;
- b. Assure coordination of the efforts of Design-Builder, City, utilities and others that may be involved in the Project and those activities are included in the Schedule highlighting coordination points with others;
- c. Assist Design-Builder and City in monitoring the progress of the Work and evaluating proposed changes to the Contract; and
- d. Assist City in administering the Contract time requirements.

#### **V.11.5 PROJECT SCHEDULE ACTIVITIES.**

Design-Builder shall provide City a legend for all abbreviations. The activities shall be coded so that organized plots of the Project Schedule may be produced. Typical activity coding includes traffic control phase, location and work type. Design-Builder shall show an estimated production rate per working day for each Work activity. Activity durations shall be based on production rates shown. Each activity on the Project Schedule shall include:

- a. An activity number utilizing an alphanumeric designation system that is agreeable to City;

- b. A concise description of the Work represented by the activity; and
- c. Activity durations in whole work days, with a maximum of twenty four (24) work days. Durations greater than twenty four (24) work days may be used for non-construction activities (mobilization, submittal preparation, curing, etc.), and other activities mutually agreeable between City and Design-Builder.

**V.11.6 PROJECT SCHEDULE WORK DURATION AND RESOURCES.**

- a. The Project Schedule layout shall be grouped by Project and then by Work Breakdown Structure (hereafter referred to as “WBS”) for organizational purposes.
- b. The original and remaining Work duration shall be displayed. The grouping band will, by default, report Work days planned. One additional level of effort activity shall be added to the schedule as a “time calculator” with a seven (7) day calendar without holidays. The calculation of days should be reflected in the appropriate duration columns.
- c. Work shall be scheduled based upon Design-Builder’s six (6) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software.
- d. Assign working calendars for the days Design-Builder plans to work. Design-Builder shall designate all twelve (12) City holidays as non-working days (holidays). For dates beyond the then-current calendar year, assume City holidays are the same as the current calendar year.
- e. Seasonal weather conditions shall be considered and included in the Project Schedule for all work influenced by temperature and/or precipitation. Baseline weather conditions shall be incorporated in to the Project Schedule using the table below: When actual inclement weather days do not exceed the cumulative inclement weather days in the table below, there shall not be a basis for a time extension claim.

Table V.11.6e Inclement Weather Days

January: Two (2) days	February: Two (2) days
March: Three (3) days	April: Two (2) days

May: Four (4) days	June: Three (3) days
July: Three (3) days	August: Two (2) days
September: Four (4) days	October: Three (3) days
November: Two (2) days	December Two (2) days
<b>Total Annual Weather Days = 30 days</b>	

- f. The Contractor will take reasonable precautions to prevent loss caused by weather related events, erosion, rising water, or vandalism during the construction period and is the responsibility of the Contractor to rectify such loss or damage to the extent required by City.
- g. City-responsible delays in activities affecting milestone dates or the Contract completion date, as determined by CPM analysis, shall be considered for a time extension by discretion of City.

**V.11.7 PROJECT SCHEDULE OTHER REQUIREMENTS.**

The Project Schedule shall:

- a. have all Work coded and organized by WBS. An example of an acceptable WBS shall be provided, upon written request, by City to Design-Builder;
- b. reflect duration percent complete as the percent complete type;
- c. reflect fixed units as the duration type;
- d. include submittals with a logical tie to what each drives;
- e. add proposed Change Order(s) and those Change Order(s) shall be reflected on the Schedule as proposed Change Order(s). This task shall be linked to the schedule with logical ties and approved by City. Upon approval of a Change Order, a task shall be renamed and shall identify Work performed and Change Order number and resources shall be added to the task;
- f. only have constraints in accordance with the plans;
- g. include activity milestones for material delivery;
- h. disallow default progress; and

- i. include a detailed explanation in the Project narrative, if Work is performed out of sequence.

#### **V.11.8 PROJECT SCHEDULE JOINT REVIEW AND ACCEPTANCE.**

- a. The Project Schedule and successive updates or revisions thereof are for Design-Builder's use in managing the Work. The Project Schedule is for the information of City and to demonstrate that Design-Builder has complied with requirements for planning the Work. City's acceptance of a Schedule and Schedule updates or revisions constitutes City's agreement to coordinate its own activities with Design-Builder's activities, as shown on the schedule.
- b. Within fourteen (14) days of receipt of Design-Builder's proposed Project Schedule, City shall evaluate the Schedule for compliance with this specification and notify Design-Builder of its findings. If City requests a revision or justification, Design-Builder shall provide satisfaction to City within seven (7) calendar days. If Design-Builder submits a Project Schedule for acceptance, based on a sequence of work not shown in the plans, then Design-Builder shall notify City in writing of said sequence of work, separate from the Schedule submittal.
- c. City's review and acceptance of Design-Builder's Project Schedule is only for conformance to the requirements of the Contract Documents. Review and acceptance by City of Design-Builder's Project Schedule does not relieve Design-Builder of any of its responsibility for the Project Schedule, Design-Builder's ability to meet interim milestone dates (if so specified) or meeting the Contract completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of Design-Builder's Project Schedule. In the event Design-Builder fails to define any element of Work, activity or logic and City's review does not detect this omission or error, such omission or error, when discovered by Design-Builder or City, shall be corrected by Design-Builder at the next monthly schedule update and shall not affect the Project or Contract completion date.
- d. Acceptance of the Project Schedule, or update and/or revision thereto, does not indicate any approval of Design-Builder's proposed sequences and duration.

- e. Acceptance by City of the Project Schedule or updated Project Schedule which exceeds contractual time does not alleviate Design-Builder from meeting the contractual completion date.
- f. Acceptance of a Project Schedule update or revision indicating early or late completion does not constitute City’s consent to any changes, alter the terms of the Contract, waive either Design-Builder’s responsibility for timely completion, or waive City’s right to damages for Design-Builder’s failure to do so.
- g. Design-Builder’s scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract Times.
- h. Submittal of a schedule, schedule revision or schedule update constitutes Design-Builder’s representation to City, as of the date of the submittal, of the accurate depiction of all progress to date and that Design-Builder will follow the schedule as submitted in performing the Work.

#### **V.11.9 PROJECT SCHEDULE UPDATES AND REVISIONS.**

- a. The Project Schedule shall be updated monthly, at a minimum, to reflect progress to date and current plans for completing the Work. A paper and an electronic copy of the update shall be submitted to City as directed. The Project Schedule update shall be submitted no later than the date the Application for Payment is submitted. City has no duty to make progress payments to Design-Builder unless Design-Builder’s pa Application for Payment is accompanied by the updated Project Schedule. The anticipated date of Substantial Completion and, if present, the Project milestone date(s) shall show all extensions of time granted through Change Order(s) as of the date of the update.
- b. The Project Schedule update shall be submitted no later than the date the Application for Payment is submitted.
- c. Design-Builder shall meet with City each month, at a scheduled Project Schedule update meeting, to review actual progress made through the date of the schedule update, as determined by City. The review of progress will include dates of activities actually started and/or completed, the percentage of Work completed, the remaining duration of each activity started and/or completed and

the amount of Work to complete, with an analysis of the relationship between the remaining duration of the activity and the quantity of material to install over that given period of time with a citation of past productivity.

- d. The monthly Schedule Update shall include a progress narrative explaining the Project's progress, identifying progress made out of sequence, defining the Critical Path, identification of any potential delays and other relevant data. A Project Schedule Narrative template will be required for the narrative. Upon request, City shall supply said template to Design-Builder.
- e. Each Schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by Design-Builder and City. The Project Schedule layout shall be grouped first by Project then by WBS. The layout shall include the following columns:
  - i. Activity ID
  - ii. Activity description
  - iii. Original durations
  - iv. Remaining durations
    - Early start and early finish dates
    - Late start and late finish dates
    - Total float
    - Performance percent complete
    - Display logic and target bars in the Gantt bar chart view
- f. Each schedule shall include activities representing manufacturing, fabrication or ordering lead time for materials, equipment or other items for which City is required to review submittals, shop drawings, product data or samples.
- g. Each schedule, other than the initial schedule, shall:
  - i. indicate the activities, or portions thereof, which have been completed;



- ii. reflect the actual time for completion of such activities; and
- iii. reflect any changes to the sequence or planned duration of all activities.
- h. If any updated schedule exceeds the time limits set forth in the Contract Documents for a Project milestone and/or Substantial Completion of the Work, Design-Builder shall include with its updated schedule a statement of the reasons for the anticipated delay in achieving the Project milestone and/or Substantial Completion of the Work and Design-Builder's planned course of action for completing the Work within the time limits set forth for each in the Contract Documents. If Design-Builder asserts that the failure of City to provide requested information to Design-Builder as the reason for anticipated delay in completion, Design-Builder also shall specify what information has been requested and is required from City.
- i. Neither City nor Design-Builder shall have exclusive Ownership of float time in the schedule and all float time shall inure to the benefit of the Project.
- j. Submission of any schedule under this Contract constitutes a representation by Design-Builder that, as of the date of the submittal:
  - i. the schedule represents the sequence in which Design-Builder intends to prosecute the remaining Work;
  - ii. the schedule represents the actual sequence and duration used to prosecute the completed Work;
  - iii. to the best of its knowledge and belief, Design-Builder is able to complete the remaining Work in the sequence and time indicated; and
  - iv. that Design-Builder intends to complete the remaining work in the sequence and time indicated.
- k. If Design-Builder desires to make major changes in the Project Schedule, Design-Builder shall notify City in writing and submit the proposed schedule revision. The written notification shall include the reason for the proposed revision, what the revision is composed of and how the revision was incorporated into the schedule. Major changes are hereby defined as those that may

affect compliance with the contract requirements or those that change the critical path. All other Project Schedule changes may be accomplished through the monthly updating process without written notification.

**V.11.10 COMPLETION OF WORK.**

- a. Design-Builder is accountable for substantially completing the Work in the Contract Time or as otherwise amended by Change Order.
- b. If, in the sole judgment of City, the Schedule update reflects Work is behind schedule and the rate of performance of Work is inadequate to regain scheduled progress to insure Design-Builder achieves any Project milestones (including, but not limited to, Substantial Completion) in accordance with the Project Schedule, City may, at its sole option, give written notice to Design-Builder and direct Design-Builder, at Design-Builder's sole expense, to propose a plan to accelerate the Work so that the Work conforms to the Project Schedule and Project milestones previously agreed upon. Design-Builder may, but is not limited to, propose:
  - i. increasing Project work forces;
  - ii. increasing Project equipment or tools;
  - iii. increasing the hours of work or number of shifts per day;
  - iv. expediting the delivery of Project materials;
  - v. changing, with the approval of City, the schedule logic and Work sequences; or
  - vi. taking some other action as Design-Builder may proposes, if acceptable to City.
- c. Within ten (10) calendar days after such notice from City, Design-Builder shall notify City in writing of the specific measures taken and plan to be undertaken to increase the rate of progress of Work on the Project. Design-Builder shall include an estimate as to the date of scheduled full progress recovery and an updated Project Schedule, illustrating Design-Builder's plan for achieving timely completion of the Project milestone's and the Substantial Completion.

- d. Should City deem Design-Builder’s plan of action inadequate to achieve the desired acceleration to bring the Work back on the Project Schedule, and achieve Substantial Completion on time, City shall have the right to order Design-Builder, at Design-Builder’s sole expense, to take any corrective measures City deems necessary to expedite the progress of Work including, without limitations:
  - i. increasing work forces and hours, to include Design-Builder working additional shifts of overtime;
  - ii. supplying additional manpower, equipment and facilities;
  - iii. re-sequencing the Work;
  - iv. expediting the fabrication and supply of materials; and/or
  - v. other similar measures City may direct. (Hereafter **(i) – (v)** above collectively referred to as “**Extraordinary Measures**”.) Such Extraordinary Measures City directs shall continue until the progress of the Work complies with the milestone required by the Contract Documents.
- e. City’s right to require Extraordinary Measures solely is for the purpose of ensuring Project milestones and Substantial Completion of the Work are achieved within the Contract Time. Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by City under or pursuant to this [ARTICLE V.11](#), except as may be provided under the provisions of [ARTICLE VI.3.12](#) herein.
- f. City may exercise the rights furnished under or pursuant to this [ARTICLE V.11.5](#) as frequently as City deems necessary to ensure Design-Builder’s performance of the Work is in compliance with any milestone date or completion date set forth in the Contract Documents.
- g. If reasonably required by City, Design-Builder also shall prepare and furnish Project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.
- h. Design-Builder shall recommend to City a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the Project Schedule.

**V.11.11 PROJECT SCHEDULE TIME IMPACT ANALYSIS.**

- a. Design-Builder shall notify City through a Time Impact Analysis when an event has occurred which may justify an extension of Contract time or adjustment of milestone dates. Said notice shall be made in accordance with [ARTICLE V.11.11](#). Failure to submit a Time Impact Analysis within the period set out in [ARTICLE V.11.11.d](#) shall bar future consideration of that statement and Design-Builder forfeits its right to subsequently request a time extension or time suspension, unless the circumstances prove Design-Builder could not reasonably have had knowledge of the impact within the time period set out in [ARTICLE V.11.11.d](#).
- b. When changes are initiated or impacts are experienced, Design-Builder shall submit to City a written Time Impact Analysis describing the influence of each change or impact.
- c. A Time Impact Analysis shall consist of one or all of the steps listed below:

**STEP 1** Establish the status of the Project before the impact using the most recent Project Schedule Update prior to the impact occurrence.

**STEP 2** If requested by City, predict the effect of the impact on the most recent Project Schedule Update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.

**STEP 3** Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing and mitigation efforts.

**STEP 4** Compare the status of the work prior to the impact (STEP 1) to the prediction of the effect of the impact (STEP 2), and to the status of the work during and after the effects of the impact are over (STEP 3). Note: if an impact causes a lack of access to a portion of the Project, the effects of the impact may extend to include a reasonable period for remobilization.

- d. The Time Impact Analysis shall be electronically submitted to City. If the Project Schedule is revised after the submittal of a

Time Impact Analysis but prior to its approval, Design-Builder promptly shall indicate in writing to City the need for any modification to its Time Impact Analysis. One (1) copy of each Time Impact Analysis shall be submitted within fourteen (14) calendar days after the completion of an impact. City may require STEP 1 and STEP 2 in the Time Impact Analysis be submitted at the commencement of the impact, if needed to make a decision regarding the suspension of Contract time. Approval or rejection of each Time Impact Analysis by City shall be made within fourteen (14) calendar days after receipt, unless subsequent meetings and negotiations are necessary.

## **V.12 DOCUMENTS AND SAMPLES AT THE SITE.**

**V.12.1** Design-Builder shall maintain, on the Site and for City, one (1) record copy of the Drawings, Specifications, Addenda, Change Orders and other Amendments, in good order and currently marked, to record field changes and selections made during construction, along with one (1) record copy of approved Shop Drawings, Product Data, samples and similar required submittals. These record copies shall be available to City and shall be delivered to City upon completion of the Work.

**V.12.2** Design-Builder shall maintain, at all times, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries and job meeting minutes applicable to the Project. Design-Builder shall make such reports and records available for inspection by City and/or its respective agents during normal business hours upon request by City.

## **V.13 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.**

**V.13.1** Shop Drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittals is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by City is subject to the limitations of [ARTICLE V.13](#) herein. Informational submittals, upon which City is not expected to take responsive action, may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the City without action.

**V.13.2** Design-Builder shall review for compliance with the Contract Documents, approve and submit to City Shop Drawings, Product Data, samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of City or of separate contractors. Submittals which are not marked as reviewed for compliance

with the Contract Documents and approved by Design-Builder may be returned by City without action.

**V.13.3** By approving and submitting Shop Drawings, product data, samples and similar submittals, Design-Builder represents that it has determined and verified materials, field measurements and filed construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**V.13.4** Design-Builder shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, product data, samples or similar submittals until the respective submittal has been reviewed and approved by City. City shall review and return such submittals within ten (10) calendar days or within a reasonable period so as to not delay the project.

**V.13.5** The Work shall be in accordance with approved submittals, except that Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by City's approval of Shop Drawings, product data, samples or similar submittals unless Design-Builder specifically has informed City in writing of such deviation at the time of submittal and:

- a. City has given written approval of the specific deviation as a minor change in the Work; or
- b. Change Order or Field Work Directive has been issued authorizing the deviation. Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, samples or similar submittals by Design-Builder for City's approval.

**V.13.6** Design-Builder 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 on previous submittals. In the absence of such written notice, City's approval of a resubmission shall not apply to such revisions.

**V.13.7** Design-Builder shall be required to provide professional services which constitute the practice of architecture or engineering as required by the Contract Documents for the Work and shall provide such services to carry out Design-Builder's responsibilities for design and construction means, methods, techniques, sequences and procedures. Design-Builder shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment specifically are required of Design-Builder by the Contract Documents, Design-Builder shall cause such services or certifications to be provided by a properly Texas-licensed design professional, whose signature and seal shall appear on all drawings, calculations,

specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to City. City shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. Pursuant to this [ARTICLE V.13.7](#), City will review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Documents. Design-Builder shall be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

#### **V.14 USE OF SITE.**

- V.14.1** Design-Builder shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- V.14.2** Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- V.14.3** Design-Builder will abide by all applicable rules and regulations of City with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by City.
- V.14.4** Design-Builder shall provide access to residents and businesses affected by the construction of this Project to the greatest extent possible, including providing temporary base and asphalt as needed.
- V.14.5** Design-Builder shall erect and maintain on Site a Project Bulletin Board, accessible to all Design-Builder's Sub-Consultant and Subcontractor employees, upon which Design-Builder shall post and maintain, throughout the Project's duration, all employment and safety information required by law and shall include information listing Design-Builder's bonding and insurance agencies/providers, to include agency contact names, address and telephone numbers.
- V.14.6** As applicable, City will have appropriate Temporary Bench Marks (TBM) and baselines (for both *horizontal* and *vertical projects*, as applicable) established. As of the date of the written Notice to Proceed, it is Design-Builder's responsibility to protect, preserve and reestablish (if required) the TBM and/or baselines. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5" as that document may be amended, updated or supplanted.

**V.14.7** As applicable, Design-Builder shall layout its work from established baselines and TBM indicated on the drawings and shall be responsible for all measurements in connection with the layout. Design-Builder shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout any part of the work. Design-Builder shall provide cut sheets to City’s inspector seven (7) calendar days prior to construction of street and drainage work. Design-Builder shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for San Antonio Water System (SAWS) Work, if present. Design-Builder shall provide cut sheets for improvements where Sewer profiles are provided for various phases of the project and cut sheets for Water profiles, if applicable. Design-Builder shall provide staking and preparation of cut sheets after receiving notice to proceed from City. If present, Design-Builder shall provide SAWS with cut sheets (7) calendar days prior to commence of SAWS work. Design-Builder shall be responsible for maintaining and preserving baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, Design-Builder shall replace them at its own expense. At the end of construction of the Project, Design-Builder shall provide City a grade certificate prepared by a Registered Professional Land Surveyor. This certificate shall state that the infrastructure is constructed in accordance to the construction documents or as approved by City and the Engineer of Record, which is noted on the record plan set.

#### **V.15 CUTTING AND PATCHING.**

**V.15.1** Design-Builder shall be responsible for all cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

**V.15.2** Design-Builder shall not damage or endanger a portion of the Work or a fully or partially completed construction by either City or separate contractor by cutting, patching or otherwise altering such construction, or by excavation. Design-Builder shall not cut or otherwise alter such construction by City or a separate contractor except with written consent of City and, if City so designates, of such separate contractor and said consent shall not be unreasonably withheld. Design-Builder unreasonably shall not withhold from City or City’s separate contractor Design-Builder’s consent to cutting or otherwise altering the Work.

**V.15.3** Any part of the finished Work damaged by Design-Builder, either during installation or prior to achieving a Project milestone and/or Substantial Completion of the Work (or such earlier date established in [ARTICLE XI.9](#) herein), shall be repaired by Design-Builder so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this repair cannot be fully accomplished, the damaged item or part shall be replaced by Design-Builder.

#### **V.16 CLEANING UP.**



**V.16.1** During the progress of the Work, Design-Builder shall keep the Project Site and surrounding area including, but not limited to, creeks, drainage channels, easements, private property, free from accumulations of waste materials, rubbish and other debris resulting from the Work. As applicable, Design-Builder shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. If Design-Builder fails to clean up as provided in the Contract Documents, City may do so and all costs incurred by City shall be paid by Design-Builder.

**V.16.2** Prior to Substantial Completion of the Work, Design-Builder shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Site clean and ready for occupancy by City. As applicable, Design-Builder shall clean, sweep, mop, brush and polish, to City's satisfaction, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. Design-Builder shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If Design-Builder fails to clean up the premises as provided in the Contract Documents, City may do so and all costs incurred by City shall be paid by Design-Builder.

**V.17 ACCESS TO WORK.**

Contractor shall provide City and City's representatives access to the Work in preparation and in progress, wherever located.

**V.18 PATENT FEES AND ROYALTIES.**

Design-Builder shall pay all license fees and royalties and assume all costs incident to the use of such patent, copyright or other intellectual property in the performance of the Work or the incorporation therein of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of City its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by City in the Contract Documents.

**V.19 INDEMNITY PROVISIONS.**

**V.19.1 DESIGN-BUILDER COVENANTS AND AGREES TO HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND CITY, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, ACTIONS, LIABILITIES, LIENS, LOSSES, DAMAGES, COSTS AND EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE INCLUDING, BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE WITHOUT LIMITATION BY ENUMERATION THE AMOUNT OF ANY JUDGMENT, PENALTY, INTEREST, COURT COSTS AND REASONABLE LEGAL FEES INCURRED IN CONNECTION WITH THE SAME, OR THE DEFENSE THEREOF, FOR OR IN CONNECTION WITH LOSS OF LIFE OR PERSONAL INJURY (INCLUDING EMPLOYEES OF DESIGN-BUILDER AND OF CITY) DAMAGE TO PROPERTY (OTHER THAN THE WORK ITSELF AND INCLUDING PROPERTY OF DESIGN-BUILDER AND OF CITY), MADE UPON CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DESIGN-BUILDER’S ACTIVITIES UNDER THIS AGREEMENT, DUE TO ANY NEGLIGENT ACTS OR OMISSIONS OF DESIGN-BUILDER, ITS AGENTS, OFFICERS, DIRECTORS, REPRESENTATIVES, SERVANTS, EMPLOYEES, SUB-CONSULTANTS OR ITS SUBCONTRACTORS OF DESIGN-BUILDER AND THEIR RESPECTIVE AGENTS, OFFICERS, DIRECTORS, REPRESENTATIVES, SERVANTS, EMPLOYEES, SUB-CONSULTANTS AND/OR SUBCONTRACTORS IN CONNECTION WITH THE WORK TO BE PERFORMED, SERVICES TO BE RENDERED OR MATERIALS TO BE FURNISHED UNDER THIS CONTRACT. NOTWITHSTANDING ANYTHING TO THE CONTRARY INCLUDED HEREIN, IN NO EVENT SHALL DESIGN-BUILDER BE LIABLE FOR CLAIMS ARISING OUT OF ACCIDENTS RESULTING FROM THE SOLE NEGLIGENCE OF CITY, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**V.19.2** Design-Builder verbally shall notify City within twenty four (24) hours of any Claim, demand or potential claim against City or Design-Builder related to or arising out of Design-Builder’s activities under this Agreement. Design-Builder shall notify City in writing within five (5) calendar days of any Claim, demand or potential claim against City or Design-Builder related to or arising out of Design-Builder’s activities under this Agreement. Design-Builder shall see to the investigation and defense of such Claim or demand at Design-Builder’s cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Design-Builder of any of its obligations under this [ARTICLE V.19](#).

**V.19.3 DEFENSE COUNSEL.**

City shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by Design-Builder in fulfilling its obligation hereunder to defend and indemnify City, unless

such right is expressly waived by City in writing. Design-Builder shall retain City-approved defense counsel within ten (10) calendar days of City's written notice that City is invoking its right to Indemnification under this Contract. If Design-Builder fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf and Design-Builder shall be liable for all costs incurred by City. City also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

#### **V.19.4 INTELLECTUAL PROPERTY INDEMNIFICATION.**

**Design-Builder shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against City, its elected officials, employees, officers, directors, volunteers and representatives of City, individually or collectively, for infringement of any United States Patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement by Design-Builder and its employee or its subcontractors and their agents, servants and employees, based on any deliverable or any other materials furnished hereunder by Design-Builder and used by either City or Design-Builder within the scope of this Agreement (unless said infringement results directly from Design-Builder's compliance with City's written standards or specifications).** Design-Builder does not warrant against infringement by reason of City's or City's design of articles or their use in combination with other materials or in the operation of any process. Design-Builder shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, unless otherwise mutually agreed upon, expressed in writing and signed by the parties hereto. Design-Builder agrees to consult with City's City Attorney during such defense or negotiations and make good faith efforts to avoid any position adverse to the interest of City. City will make available to Design-Builder any deliverables and/or works made for hire by Design-Builder necessary to the defense of Design-Builder against any claim of infringement for the duration of Design-Builder's legal defense.

**V.19.5** If such infringement claim or action has occurred or, in Design-Builder's judgment, is likely to occur, City shall allow Design-Builder, at Design-Builder's option and expense, (unless such infringement results directly from Design-Builder's compliance with City's written standards or specifications or by reason of City's design of articles or their use in combination with other materials or in the operation of any process for which the City shall be liable) to either:

- a. procure for City the right to continue using said deliverable and/or materials;

- b. modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect City's intended use of the deliverable and/or materials as contemplated hereunder);
- c. replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to City; or
- d. if none of the foregoing alternatives is reasonably available to Design-Builder, upon written request, City shall return the deliverable and/or materials in question to Design-Builder and Design-Builder shall refund all monies paid by City, with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this [ARTICLE V.19](#) shall fail to satisfy the third-party claimant, these actions shall not relieve Design-Builder from its defense and indemnity obligations set forth in this [ARTICLE V.19](#).

**V.19.6** The indemnification obligations under this [ARTICLE V.19](#) 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 Design-Builder or any subcontractor, supplier or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.

**V.19.7 WORKER SAFETY.**

The Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to City, its agents, consultants and/or representatives pursuant to State statutes for the safety of workers and, in addition, all Federal statutes and rules existing there under for protection, occupational safety and health to workers. It is agreed that the primary obligation of Design-Builder is to comply with these statutes in the performance by Design-Builder of the Work and that the obligations of City, its agents, consultants and representatives under said statutes are secondary to that of Design-Builder.

**V.19.8** The indemnities contained herein shall survive the termination of this Contract for any reason whatsoever.

**V.19.9** The provisions of this [ARTICLE V.19](#) 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.

**V.20 REPRESENTATIONS AND WARRANTIES.**

Design-Builder represents and warrants to City (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to City to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the final completion of the Work, that Design-Builder:

**V.20.1** is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

**V.20.2** is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

**V.20.3** is authorized to do business in the State of Texas and is properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, over the Work and over the site of the Project;

**V.20.4** is acting within its duly authorized powers to execute this Contract and execute the performance and obligations thereof; and

**V.20.5** its duly authorized representative(s) has visited the Site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

**V.21 BUSINESS STANDARDS.**

Design-Builder, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of City or affiliates. Design-Builder shall review with City, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Design-Builder's employees and agents, sub-consultants, Sub-Contractors and their respective employees and agents in their relations with City's employees, agents, representatives, vendors, subcontractors, other third parties and those relating to the placement and administration of purchase orders and subcontracts.

**END OF ARTICLE V**

## **ARTICLE VI. ADMINISTRATION OF THE CONTRACT**

### **VI.1 ROLES IN ADMINISTRATION OF THE CONTRACT.**

**VI.1.1** City shall provide administration of the Contract as described in the Contract Documents, and City, City’s CDR or consultant will represent City:

- a. During construction;
- b. Until final payment is due; and
- c. From time to time during the one-year period for correction of Work described in [ARTICLE XIV](#).
- d. Only CDR and/or consultant(s) shall have authority to act on behalf of City to the extent provided in the Contract Documents, unless otherwise modified in writing by City in accordance with other provisions of the Contract Documents.

**VI.1.2** City's instruction to Design-Builder may be issued through the CDR or City’s consultant(s) and City reserves the right to issue instructions directly to Design-Builder. Design-Builder understands that City may modify the authority of City’s representatives as provided in the terms of its contractual relationship with City’s representatives and City shall, in such event, be vested with powers formerly exercised by such City’s representatives. Nothing herein shall authorize independent agreements between Design-Builder and such City’s representatives, nor shall City’s representatives be deemed to have a legal relationship with Design-Builder.

**VI.1.3** Neither City nor City’s representatives shall have control over, charge of nor be responsible for the construction means, methods or techniques, or for the safety precautions and programs in connection with the Work, since these are solely Design-Builder’s rights and responsibilities under the Contract Documents. Sequencing and procedures will be coordinated and agreed upon by City and Design-Builder but will remain the responsibility of Design-Builder for implementation.

**VI.1.4** City shall not be responsible for Design-Builder’s failure to perform the Work in accordance with the requirements of the Contract Documents. City will not have control over, charge of and will not be responsible for acts or omissions of Design-Builder, sub-consultants, Subcontractors, their respective agents, employees or any other persons or entities performing portions of the Work.

**VI.1.5** Communications by Design-Builder with City’s consultants shall be through City. Communications by and with Design-Builder’s Subcontractors, sub-consultants and

material suppliers shall be through Design-Builder. All communications by and with City’s separate contractors, if any, shall be through City.

**VI.1.6** City shall review, approve or take other appropriate action upon Design-Builder’s submittals, such as Shop Drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. City will perform these reviews in a timely fashion so as to not delay the Work. City will respond to submittals, such as Shop Drawings, product data and samples, pursuant to the procedures set forth in the Project Specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of Design-Builder as required by the Contract Documents. City’s review of Design-Builder’s submittals shall not relieve the Design-Builder of the obligations under [ARTICLE V.13](#), [ARTICLE V.3](#) and [ARTICLE V.5](#) herein. City’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by City, any construction means, methods, techniques, sequences or procedures. City’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**VI.1.7** Upon written request of Design-Builder, City will issue its interpretation of the requirements of the plans and specifications. City’s response to such requests shall be made in writing within a time limit agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of City shall be furnished in compliance with this [ARTICLE VI.1](#), then no delay will be recognized on account of any failure by City to furnish such interpretations except for actual substantiated delays, for which Design-Builder is not responsible, occurring more than fifteen (15) calendar days after written request is made for the interpretations.

**VI.1.8** Interpretations and decisions of City will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

**VI.1.9** Design-Builder’s decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by City.

**VI.2 INTERNET-BASED PROJECT MANAGEMENT SYSTEMS.**

At its option, City may administer its design and construction management through an Internet-based Project Management system (also referred to as “PRIMELink”). In such cases, Contractor shall conduct communication through this medium and perform all Project-related functions utilizing this management system, to include all correspondences, submittals, Requests for Information, vouchers, payment requests

and processing, Amendments, Change Orders and other administrative activities. When such a management system is employed, City shall administer the software, provide training to project team members and shall make the software accessible via the Internet to all project team members.

### **VI.3 CLAIMS AND DISPUTES.**

**VI.3.1** Except as contemplated by [ARTICLE X.2](#), every Claim of Design-Builder, whether for additional compensation, additional time or other relief including, but not limited to, claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Design-Builder by his/her signature) of Design-Builder, verifying the truth and accuracy of the Claim. The responsibility to substantiate a Claim shall rest with the Party making the Claim.

#### **VI.3.2 TIME LIMIT ON CLAIMS NOTIFICATIONS AND SUBMITTALS.**

Except for those claims resulting from unusually severe weather, addressed in herein, Design-Builder claim notifications must be submitted within seven (7) calendar days after occurrence of the event giving rise to such Claim. Claim notifications by Design-Builder must be submitted by written notice to City. Claims by City must be submitted by written notice to Design-Builder. Failure by Design-Builder to submit written Claim notification within the required time limit shall constitute a waiver of such claim. The complete Claim submittal must be submitted to City fourteen (14) calendar days after the resolution of the claimed impact to the work. Failure by Contractor to submit the complete Claim submittal within the required time limit shall constitute a waiver of such claim.

#### **VI.3.3 CONTINUING CONTRACT PERFORMANCE.**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in [ARTICLE VI.5.1](#), [ARTICLE XI.7](#) and [ARTICLE XVI](#) herein, Design-Builder shall proceed diligently with performance of the Contract and City shall continue to make payments in accordance with the Contract Documents.

#### **VI.3.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS.**

If conditions are encountered at the Site which either are subsurface or otherwise concealed physical conditions which were not known to Design-Builder and which differ materially from those indicated in the Contract Documents or the reports of investigations and tests of subsurface and latent physical conditions provided by City to Design-Builder, prior to the preparation by Design-Builder of its bid and referred to above, or are unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents in the



general vicinity of the Project site, then Design-Builder promptly shall notify City of such conditions before conditions are disturbed and no more than three (3) work days after first observation of the conditions. Upon notification by Design-Builder, City promptly shall investigate such conditions. If City and Design-Builder cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to [ARTICLE VI.5](#) herein.

### **VI.3.5 CLAIMS FOR ADDITIONAL COST.**

If Design-Builder wishes to make a Claim for an increase in the Contract Sum, written notice as provided in this [ARTICLE VI.3.5](#) shall be given and accepted by City before proceeding to execute the Work, provided that prior notice is not required for Claims relating to an emergency endangering life or property. Design-Builder shall file a Claim in accordance with this [ARTICLE VI.3.5](#) if it believes additional cost is involved for reasons including, but not limited to:

- a. a written interpretation from City;
- b. an order by City to stop the Work where Design-Builder was not at fault;
- c. a written order for a minor change in the Work issued by City;
- d. failure of payment by City;
- e. termination of the Contract by City for convenience;
- f. suspension of the Contract by City; or
- g. other reasonable grounds.

### **VI.3.6 CLAIMS FOR ADDITIONAL TIME.**

- a. If Design-Builder wishes to make Claim for an increase in the Contract Time, written notice, as required in this [ARTICLE VI.3.6](#), shall be given to City. Design-Builder's Claim shall include a Time Impact Analysis indicating the estimate of probable impact of delay on progress of the Work in accordance with [ARTICLE V.11.11](#) herein. In the case of a continuing delay, only one Claim is necessary.
- b. Design-Builder shall be entitled only to an extension of the Contract Time for delays or disruptions to the Project's critical path due to unusually severe weather in excess of that normally experienced at the job site, as determined from Baseline Seasonal

weather conditions incorporated into the Design-Builders project using the table in [ARTICLE V.11.6E](#). Design-Builder shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. With regard to Vertical projects with City, requests for an extension of time, pursuant to this [ARTICLE VI.3.6](#), shall be submitted to City no later than the fifteenth (15<sup>th</sup>) calendar day of the month following the month during which the delays or disruptions occurred and shall include documentation and all details reasonably available, demonstrating the nature and duration of the delays or disruptions and their effect on the critical path of the Schedule. With regard to Horizontal projects with City, upon Design-Builder reaching Substantial Completion, City and Design-Builder shall implement the following process to review and determine inclement weather days that impacted the critical path of the project.

- i. Thru its on-site Project Inspector, City and Design-Builder shall discuss inclement weather days after potential inclement weather events during each two week period and tally the events before each construction progress meeting.
- ii. A discussion of the inclement weather days will be added to the construction progress meeting agenda. If an agreement regarding the number of days cannot be reached, the Design-Builder may request the City project manager to further examine the dispute and provide a final decision by the next construction progress meeting.
- iii. Conclusion regarding the amount of inclement weather days will be documented in the meeting minutes and posted on PrimeLink.
- iv. All inclement weather days will be totaled when the project reaches Substantial Completion from the Time Impact Analysis and from the documented conclusions in the construction progress meeting minutes.
- v. The total inclement weather days counted by the previous steps for the project will be subtracted by the number of inclement weather days already factored into the project from the table provided in [ARTICLE V.11.6E](#).

Only actual inclement weather days in excess of the cumulative inclement weather days provided in the table will be considered for a time extension. Any time extension granted to Contractor for either

Vertical or Horizontal projects under [ARTICLE VI.3.6](#) shall be non-compensatory.

### **VI.3.7 INJURY OR DAMAGE TO PERSON OR PROPERTY.**

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party or an act or omission of others for whose acts such party legally is responsible (including, with respect to City, the acts or omissions of City's separate consultants and contractors), written notice of such injury or damage, whether or not insured, shall be given to the other Party within a reasonable time not exceeding three (3) calendar days after the discovery of the injury or damage. The written notice shall provide sufficient detail to enable the other Party to investigate the injury or damage.

### **VI.3.8 CHANGE IN UNIT PRICES.**

As applicable, if unit prices are stated in the Contract Documents or subsequently agreed upon by City and Design-Builder and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to City or Design-Builder, the applicable unit prices shall be equitably adjusted.

### **VI.3.9 CLAIMS FOR CONSEQUENTIAL DAMAGES.**

Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by Design-Builder and to claims by City:

- a. No consequential, indirect, incidental, punitive or exemplary damages will be allowed, whether or not foreseeable, regardless of whether based on breach of contract, tort (including negligence), indemnity, strict liability or other bases of liability.
- b. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, on estimated losses of labor efficiency, on a comparison of planned procurement of appropriate personnel to actual procurement of appropriate personnel or on any other similar analysis that is used to show total cost or other damages.

- c. Damages are limited to extra costs specifically shown directly to have been caused by a proven wrong for which the other party is claimed to be responsible.
- d. The maximum amount of any recovery for delay, to the extent damages for delay are not otherwise disallowed by the terms of the Contract Documents, shall be as is provided in [ARTICLE X](#) herein.
- e. No damages will be allowed for home office overhead or other home office charges or any Eichleay formula calculation, except or unless as expressly authorized by the Contract Documents.
- f. No profit will be allowed on any damage claim, except or unless as expressly authorized by the Contract Documents.

**VI.3.10 SUBCONTRACTOR PASS-THROUGH CLAIMS.**

In the event any Sub-consultant or Subcontractor of Design-Builder asserts a claim to Design-Builder that Design-Builder seeks to pass through to City under the Contract Documents, any entitlement to submit and assert the claim as to City shall be subject to:

- a. the requirements of [ARTICLE VI.3](#) herein of these General Conditions; and
- b. the following additional three (3) requirements listed below, all three of said additional requirements shall be conditions precedent to the entitlement of Design-Builder to seek and assert such claim against City:
  - i. Design-Builder shall:
    - have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting; or
    - have entered into a written liquidating agreement with the sub-consultant or Subcontractor, prior to the claim's occurrence, under which Design-Builder has agreed to be legally responsible to the sub-consultant or Subcontractor for pursuing the assertion of such claim against City under said Contract and for paying to the sub-consultant or Subcontractor any amount that may be recovered, less Design-Builder's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities

shall be identified in writing by Design-Builder to City at the time such claim is submitted to City and a copy of any liquidating agreement shall be included by Design-Builder in the claim submittal materials.

- ii. Design-Builder shall have reviewed the claim of the sub-consultant or Subcontractor prior to its submittal to City and shall independently have evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. Design-Builder shall inform City that Design-Builder has made a review, evaluation and determination that the Claim is made in good faith and is believed to be valid.
- iii. Sub-consultant or Subcontractor making the Claim to Design-Builder shall certify to both Design-Builder and City that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Design-Builder in the claim submittal materials.
- c. Any failure of Design-Builder to comply with any of the foregoing requirements and conditions precedent with regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.
- d. Receipt and review of a Claim by City under this [ARTICLE VI.3](#) shall not be construed as a waiver of any defenses to the claim available to City under the Contract Documents or at law.

**VI.3.11 CITY’S RIGHT TO ORDER ACCELERATION AND TO DENY CLAIMED AND APPROPRIATE TIME EXTENSIONS, IN WHOLE OR IN PART.**

Design-Builder acknowledges and agrees that meeting a Project milestone date and Substantial Completion of the Work by or before the scheduled completion date are of substantial importance to City. The following provisions, therefore, will apply:

- a. If Design-Builder falls behind the approved construction schedule for whatever reason, City shall have the right, in City’s sole discretion, to order Design-Builder to develop a schedule recovery plan to alter its work sequences or to otherwise accelerate its progress in such a manner as to achieve the Project milestone date(s) and/or Substantial Completion on or before the Contract Time completion date or such other date as City reasonably may

direct. Upon receipt, Design-Builder shall take any and all action necessary to comply with City’s order. In such event, any possible right, if any, of Design-Builder to additional compensation for any acceleration shall be subject to the terms of this [ARTICLE VI.3.11](#).

- b. In the event City agrees that Design-Builder is entitled to an extension of Contract Time and Design-Builder properly has initiated a Claim for a time extension, City shall have the right, in City’s sole discretion, to deny any portion of Design-Builder’s Claim for an extension of Contract Time and order Design-Builder to exercise its commercially reasonable efforts to achieve a Project milestone date and/or Substantial Completion on or before the contractual date established, but for the existence of the event giving rise to the Claim, by giving written notice to Design-Builder provided within fifteen (15) calendar days after receipt of Design-Builder's Claim. If City denies Design-Builder's claim for an extension of Contract Time, either in whole or in part, Design-Builder shall proceed to prosecute the Work in such a manner as to achieve a Project milestone date and/or Substantial Completion on or before the then existing scheduled completion date. If, after initiating good faith acceleration efforts and it is shown, through no fault of Design-Builder, Design-Builder fell behind on the approved construction schedule and Design-Builder is still unable to achieve Project milestone date and/or Substantial Completion with the originally scheduled Contract Time, City shall not be entitled to Liquidated Damages.
  
- c. If City orders Design-Builder to accelerate the Work under [ARTICLE VI.3.11B](#) herein, and Design-Builder would have been entitled to a time extension for a reason specifically allowed under the Contract Documents for an amount of time that would have justified approval by City if not for the need and right to complete the Project within the stipulated period, Design-Builder may initiate a Claim for schedule recovery or acceleration costs pursuant to [ARTICLE VI.3.11](#) herein. Any resulting Claim for these costs properly initiated by Design-Builder under [ARTICLE VI.3.11](#) herein shall be limited to those reasonable and documented direct costs of labor, materials, equipment and supervision solely and directly attributable to the actual recovery or acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include, but are not limited to, the premium portion of overtime pay for additional crew, shift, or equipment costs, if requested in advance by Design-

Builder and approved in writing by City. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, profit and field overhead, not to exceed the markups permitted by this Contract, will be allowed on the claimed costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING, BUT NOT LIMITED TO, HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM.** City shall not be liable for any costs related to an acceleration claim other than those described in this [ARTICLE VI.3.11](#).

#### **VI.3.12 NO WAIVER OF GOVERNMENTAL IMMUNITY.**

Nothing in this contract shall be construed to waive City's Governmental Immunity from a lawsuit, which Immunity is expressly retained to the extent it is not clearly and unambiguously waived by State law.

#### **VI.4 RESOLUTION OF CLAIMS AND DISPUTES.**

**VI.4.1** Claims by Design-Builder against City, not including Claims by City against Design-Builder alleging an error or omission by Design-Builder and Claims arising under [ARTICLE XII](#), initially shall be referred to City in writing for review and recommendation.

**VI.4.2** An initial recommendation by City shall be required as a condition precedent to mediation or litigation of all Claims by the parties arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to City with no recommendation having been rendered by City.

**VI.4.3** City shall review Claims by Design-Builder and, within ten (10) work days of receipt of the Claim, take one or more of the following actions:

- a. request additional supporting data from Design-Builder;
- b. issue an initial recommendation;
- c. suggest a compromise; or
- d. advise Design-Builder that City is unable to issue an initial recommendation, due to a lack of sufficient information.

**VI.4.4** Following receipt of City's initial recommendation regarding a Claim, City and Design-Builder shall attempt to reach an agreement as to any adjustment to the

Contract Sum and/or Contract Time. If no agreement is reached, either party may request mediation of the dispute pursuant to [ARTICLE VI.5](#) herein.

**VI.4.5** If City requests Design-Builder to provide additional supporting data, Design-Builder either shall provide a response to the request for supporting data and advise City when the response or supporting data will be furnished or advise City that no response of supporting data will be furnished.

**VI.4.6** With receipt of all information requested by City, City shall review the Claim and all received information within ten (10) calendar days of receipt of the information and shall take one of the following actions:

- a. (1) issue a recommendation;
- b. (2) suggest a compromise; or
- c. (3) advise the parties City is unable to issue a recommendation due to lack information or conflict of interest.

**VI.4.7** Upon City's action or inaction, the Parties may agree to accept recommendations made by either Party or may request mediation of the dispute pursuant to [ARTICLE VI.5](#).

**VI.4.8 WAIVER OF LIEN.**

It is understood that, by virtue of this Contract, no mechanic, contractor, consultant, sub-consultant, supplier, artisan or laborer, whether skilled or unskilled, ever shall, in any manner, have a claim or acquire any lien upon the building or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said building or any of the improvements are so erected, built or situated.

**VI.5 ALTERNATIVE DISPUTE RESOLUTION.**

**VI.5.1 CONTINUATION OF WORK PENDING DISPUTE RESOLUTION.**

Each party is required to continue to perform its obligations under this Contract pending final resolution of any dispute arising out of or relating to this Contract, unless it would be impossible or impracticable under the circumstances then present.

**VI.5.2 REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.**

Before invoking mediation or any other alternative dispute process set forth herein, the parties to this Contract agree that they first shall try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall



managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a party delivers a written notice of such dispute, then the parties shall proceed with the alternative dispute resolution process contained herein, including mediation and/or litigation. All negotiations pursuant to this [ARTICLE VI.5](#) are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

### **VI.5.3 MEDIATION.**

In the event that City or Design-Builder contend that the other has committed a material breach of this Contract, or the Parties cannot reach a resolution of a claim or dispute, as a condition preceding to filing a lawsuit either party shall request mediation of the dispute.

- a. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.
- b. In the event City and Design-Builder are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this [ARTICLE VI.5](#) shall be deemed to have occurred.
- c. The parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

**END OF ARTICLE VI**

## ARTICLE VII. SUBCONTRACTORS

### VII.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

**VII.1.1** Design-Builder shall, prior to entering into an agreement with a sub-consultant or Subcontractor, notify City in writing of the names of all proposed sub-consultant and first-tier Subcontractors for the Work.

**VII.1.2** Design-Builder shall not employ any sub-consultant, Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom City may have reasonable objection. A sub-consultant, Subcontractor or other person or organization identified in writing to City, prior to the Notice of Award and not objected to in writing by City prior to the Notice of Award, will be deemed acceptable to City. Acceptance of any sub-consultant or Subcontractor, other person or organization by City shall not constitute a waiver of any right of City to reject defective Work. If City, after due investigation, has reasonable objection to any sub-consultant, Subcontractor, other person or organization proposed by Design-Builder after the Notice of Award, Design-Builder will be required to submit an acceptable substitute. Design-Builder shall not be required to employ any sub-consultant, Subcontractor, other person or organization against whom Design-Builder has reasonable objection.

**VII.1.3** Design-Builder fully shall be responsible to City for all acts and omissions of its sub-consultants, Subcontractors, persons and organizations directly or indirectly employed by them and persons and organizations whose acts any of them may be liable to the same extent that Design-Builder is responsible for the acts and omissions of persons directly employed by Design-Builder. Nothing in the Contract Documents shall create any contractual relationship between City and any sub-consultant, Subcontractor or other persons or organizations having a direct contract with Design-Builder, nor shall it create any obligation on the part of City to pay or to see to the payment of any moneys due any sub-consultant, Subcontractor or other person or organization, except as may otherwise be required by law. City may furnish to any sub-consultant, Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Design-Builder on account of specific Work done.

**VII.1.4** The divisions and sections of the Specifications and the identifications of any Drawings shall not control Design-Builder in dividing the Work among sub-consultants and/or Subcontractors or delineating the Work to be performed by any specific trade.

**VII.1.5** All Work performed for Design-Builder by a sub-consultant or Subcontractor will be pursuant to an appropriate agreement between Design-Builder and sub-consultant or Subcontractor and which specifically binds sub-consultant and/or Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of City.

**VII.1.6 SBEDA/DBE REPORTING AND AUDITING.**

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

**VII.1.7 SMALL BUSINESS SUBCONTRACTOR SUBSTITUTIONS.**

Design-Builder shall reference SBEDA or DBE requirements in the Project's Supplementary Conditions for Substitution of Subcontractors. Failure to follow such procedures is an event of default by Design-Builder under its Contract and may be grounds for termination.

**VII.2 SUB-CONSULTANT/SUB-CONTRACTUAL RELATIONS.**

By appropriate agreement, written where legally required for validity, Design-Builder shall require each sub-consultant and Subcontractor, to the extent of the Work to be performed by each, to be bound to the Design-Builder by terms of the Contract Documents and to assume toward Design-Builder all the obligations and responsibilities, including the responsibility for safety of sub-consultant and Subcontractor's Work, which Design-Builder, by these Documents, assumes toward City. Each sub-consultant and Subcontractor agreement shall preserve and protect the rights of City under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that sub-consulting and/or subcontracting thereof will not prejudice such rights. Where appropriate, Design-Builder shall require each sub-consultant and Subcontractor to enter into similar agreements with Sub-sub-consultants and Sub-Subcontractors. Design-Builder shall make available to each proposed sub-consultant and Subcontractor, prior to the execution of the subcontract

agreement, copies of the Contract Documents to which sub-consultants and Subcontractor will be bound. sub-consultants and Subcontractors similarly will make copies of applicable portions of such documents available to their respective proposed Sub-sub-consultants Sub-Subcontractors.

### **VII.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.**

Each Subcontractor agreement for a portion of the Work is assigned by Design-Builder to City shall provide:

**VII.3.1** An assignment is effective only after termination of the Contract by City and only for those subcontract agreements which City accepts by notifying sub-consultant, Subcontractor and Design-Builder in writing; and

**VII.3.2** An assignment is subject to the prior rights of the Surety, if any, obligated under bond relating to the Contract.

**VII.3.3** Upon such assignment, if the Work has been suspended for more than thirty (30) calendar days, sub-consultant's and Subcontractor's compensation equally shall be adjusted for increase in cost resulting from the suspension.

**END OF ARTICLE VII**

## **ARTICLE VIII. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTS**

### **VIII.1 CITY’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.**

**VIII.1.1** City reserves the right to perform construction or operations related to the Project with City’s own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the Contract identical or substantially similar to these conditions. If Design-Builder claims a delay or additional cost because of such action by City, Design-Builder shall make such Claim as provided in [ARTICLE VI.3](#) herein.

**VIII.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Design-Builder” in the Contract Documents in each case shall mean the Design-Builder which executes each separate City/Design-Builder Agreement.

**VIII.1.3** City shall provide for coordination of the activities of City’s own forces and of each separate contractor with the Work of Design-Builder and Design-Builder shall cooperate with said forces. Design-Builder shall participate with City’s separate contractors and City in reviewing construction schedules when directed by City to do so. Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement with all parties. The construction schedules then shall constitute the schedules to be used by Design-Builder, separate City contractors and City until subsequently revised.

**VIII.1.4** Unless otherwise provided in the Contract Documents, when City performs construction or operations related to the Project with City’s own forces, City shall be subject to the same obligations and have the same rights that apply to Design-Builder under these General Conditions and the Contract Documents.

### **VIII.2 MUTUAL RESPONSIBILITY.**

**VIII.2.1** Design-Builder shall afford City and City’s contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall coordinate the Design-Builder’s construction and operations with theirs as required by the Contract Documents.

**VIII.2.2** If part of Design-Builder’s Work depends, for proper execution or results, upon the construction or operations by City or City’s contractors, Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to City apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Design-Builder so to

report shall constitute an acknowledgment that City’s or City’s contractors completed or partially completed construction is fit and proper to receive Design-Builder’s Work, except as to defects not then reasonably discoverable.

**VIII.2.3** Design-Builder shall reimburse City for costs incurred by City and which are payable to City’s contractors because of delays, improperly timed activities or defective construction of Design-Builder. These costs shall be considered foreseeable direct damages and are not be considered to be consequential damages. City shall be responsible to Design-Builder for costs incurred by Design-Builder because of delays, improperly timed activities and damage to the Work or defective construction of City’s contractors.

**VIII.2.4** Design-Builder promptly shall remedy any damage wrongfully caused by Design-Builder, its sub-consultants or its Subcontractors to any completed or partially completed construction or to property of City or City’s contractors.

**VIII.2.5** City’s contractors shall have the same responsibilities for cutting and patching as are described for Design-Builder in [ARTICLE V.15](#).

**VIII.3 CITY’S RIGHT TO CLEAN UP.**

If a dispute arises among or between City, Design-Builder or City’s contractors, as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, City may clean up and those clean-up costs will be allocated by City amongst those responsible.

**END OF ARTICLE VIII**

## **ARTICLE IX. CHANGES IN THE WORK**

### **IX.1 GENERAL.**

**IX.1.1** Changes in the Work may be accomplished, after the execution of the Contract and without invalidating the Contract, by Change Order, Field Work Directive/Force Account or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this [ARTICLE IX](#) and elsewhere in the Contract Documents.

**IX.1.2** A Change Order shall be based upon agreement between City and Design-Builder; a Field Work Directive requires a directive by City and may or may not be agreed to by Design-Builder; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by City.

**IX.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Design-Builder promptly shall proceed with the changed Work, unless otherwise provided in a Change Order, Field Work Directive or order for a minor change in the Work or in this [ARTICLE IX](#).

**IX.1.4** Changes resulting from Change Orders, Field Work Directives or orders for minor changes shall be recorded by Design-Builder on the As-Built record documents.

### **IX.2 CHANGE ORDERS.**

**IX.2.1** Methods used in determining adjustments to the Contract Sum may include those listed in [ARTICLE IX.3.4](#) herein.

**IX.2.2** Acceptance of a Change Order by Design-Builder shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay or acceleration damages arising from the subject matter of that Change Order. Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in that Change Order. The execution of a Change Order by Design-Builder shall constitute conclusive evidence of Design-Builder's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release of any claim applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on unchanged Work.

**IX.2.3** City shall prepare Change Orders and Field Work Directives and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which Design-Builder promptly shall carry out and record on the As-Built record documents.

**IX.2.4** Design-Builder, when self-performing the work, shall be entitled to include overhead and profit in any Change Order only as provided by Project Specifications.

**IX.2.5** If allowable by City, the maximum markup paid to Design-Builder on sub-consultant/Subcontractor work performed on the Project shall be 15%. This rate may be reduced, based on the work performed and by agreement of both City and Design-Builder. This maximum markup rate is all inclusive to include cost such as cost/fees incurred by Design-Builder and management of Change Order work fees. City will not pay sub-consultant/Subcontractor markup fees on Change Order Work.

### **IX.3 FIELD WORK DIRECTIVES.**

**IX.3.1** A Field Work Directive is a written directive signed by City directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum, Contract Time or both. City may, by Field Work Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with any changes to the Contract Sum and/or the Contract Time to be adjusted according to the terms of this [ARTICLE IX.3](#).

**IX.3.2** A Field Work Directive shall be used in the absence of total agreement between City and Design-Builder on the terms of a Change Order. City shall issue a Field Work Directive to Design-Builder with a defined not-to-exceed dollar amount for the scope of Work defined.

**IX.3.3** Upon receipt of a Field Work Directive, Design-Builder promptly shall proceed with the change in the Work involved and, in writing, advise City of the Design-Builder's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**IX.3.4** If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as applicable:

- a. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- b. prices, including unit prices, stated in the Contract Documents or subsequently agreed upon;



- c. cost to be determined in a manner agreed upon by City and Design-Builder and a mutually acceptable fixed or percentage fee; or
- d. as provided in [ARTICLE IX.3.5H](#) herein.

**IX.3.5** If Design-Builder promptly does not respond or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment initially shall be determined by City on the basis of reasonable costs and savings attributable to the change including, in case of an increase in the Contract Sum, as applicable, a reasonable allowance for overhead and profit. In such case, and also under [ARTICLE IX.3.4C](#) herein, Design-Builder shall keep and present, in such form as City may prescribe, an itemized and detailed accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this [ARTICLE IX.3.5](#) shall be limited to the following:

- a. costs of all labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;
- b. costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;
- c. rental costs of all machinery and equipment, exclusive of hand tools, whether rented by or from Design-Builder or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;
- d. expenses incurred in accordance with Design-Builder's standard personnel policy for travel approved in writing by City in advance;
- e. costs of premiums for all bonds and insurance, permit fees and allowable sales, use or similar taxes related to the Work;
- f. all additional costs of supervision and field office personnel directly attributable to the change; and
- g. all payments made by the Design-Builder to sub-consultants or Subcontractors.
- h. The amount of credit to be allowed by Design-Builder to City for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or changed Work, plus Design-Builder's allocated percent for profit and overhead, as

confirmed by City, subject to any equitable adjustment recommended and approved by City. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

- i. If City and Design-Builder agree with the determination made by City, concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### **IX.4 MINOR CHANGES TO THE WORK.**

City shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on City and Design-Builder. Design-Builder promptly shall carry out such written orders and record such changes in the As-Built drawings.

#### **IX.5 TIME REQUIRED TO PROCESS CHANGE ORDERS.**

**IX.5.1** All responses by Design-Builder to proposal requests from City shall be accompanied by a complete itemized breakdown of costs and additional time. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow City a minimum of thirty (30) calendar days after receipt by City to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Design-Builder's responses to proposal requests shall include a statement that the cost and additional time described and requested in Design-Builder's response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution or other grounds for seeking extra compensation or additional time under the Contract Documents, without reservation or further recourse.

**IX.5.2** All Change Orders require written approval by either City or City Council or, where authorized by the state law and City ordinance, by City's City Manager or designee, pursuant to administrative action. The approval process requires a minimum of forty-five (45) calendar days after submission to City in final form with all supporting data. Receipt of a submission by City does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City or City Council Resolution or administrative action. **THE TIME**

**REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Design-Builder will proceed with the work under a pending Change Order only if directed in writing to do so by CITY.

**END OF ARTICLE IX**

## ARTICLE X. TIME

### X.1 PROGRESS AND COMPLETION.

**X.1.1** Time limits stated in the Contract Documents are of the essence.

**X.1.2** By executing the Contract, Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**X.1.3** Design-Builder shall proceed with the Work expeditiously using adequate forces and shall achieve the Project milestone date(s) and Substantial Completion within the Contract Time.

**X.1.4** Nothing in this [ARTICLE X](#) shall be construed as prohibiting Design-Builder from working on Saturdays if it so desires and giving City at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday, Sunday and holidays, so that City’s representative may be scheduled to observe/inspect said Work and only if Design-Builder has performed work on the Project during the same week of the requested Saturday. Work on Sundays or holidays will not be permitted, except in cases of extreme emergency and then only with the written permission of City.

### X.2 DELAYS AND EXTENSIONS OF TIME.

**X.2.1** Neither City nor Design-Builder, except as provided for in this [ARTICLE X.2](#), shall be liable to the other for any delay to the Design-Builder’s Work by reason of fire, act of God, riot, strike or any other cause beyond City’s control. Should any of these listed factors delay the Work’s critical path, as evidenced by a Time Impact Analysis developed by Design-Builder and verified by City, Design-Builder shall receive an extension of the Contract Times equal to the delay if a written claim is made in accordance to [ARTICLE VI.3.6](#). Under no circumstances shall City be liable to pay Design-Builder any compensation for such delays. Note that any request for an extension of time due to delays or disruption caused by unusually severe weather are described in [ARTICLE VI.3.6B](#).

**X.2.2** Should Design-Builder be delayed solely by negligence or default of City and should any of these factors delay the Project’s critical path, as evidenced by a Time Impact Analysis developed by Design-Builder and verified by City, Design-Builder shall receive an extension of the Contract Time equal to the verified delay or portion thereof if a written claim is made in accordance to [ARTICLE VI.3.6](#) of the act, negligence or default of City and granted by City. In addition, Design-Builder, upon timely notice, substantiation and approval of City, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs incurred by Design-Builder to administer its Work and does not include costs associated for any tier of sub-consultant, Subcontractor or supplier to

administer their Work. Compensation for sub-consultant's, Subcontractor's and supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Design-Builder) for the particular Project delayed and for the period of the critical path delay attributable to the City-caused event. In no event will Design-Builder be entitled to home office or other off-site expenses or damages.

**X.2.3** Claims relating to time shall be made in accordance with applicable provisions of [ARTICLE VI.3](#) herein.

**X.2.4** This Contract does not permit the recovery of damages by Design-Builder for delay, disruption or acceleration, other than those described in [ARTICLE X.2.2](#) herein, provided under [ARTICLE VI.3.11B](#) herein and those justified by a Time Impact Analysis. Design-Builder agrees that it fully shall be compensated for all delays solely by an extension of non-compensatory time or as contemplated in [ARTICLE X.2.2](#).

**END OF ARTICLE X**

## **ARTICLE XI. PAYMENTS AND COMPLETION**

### **XI.1 CONTRACT SUM.**

Stated in the Design-Build Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by City to Design-Builder for performance of the Work under the Contract Documents. Design-Builder accepts and agrees that all payments pursuant to this contract are subject to the availability and appropriation of funds by the San Antonio City Council. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any Party to this Contract.

### **XI.2 SCHEDULE OF VALUES.**

**XI.2.1** A Schedule of Values for all of the Work shall be submitted and shall include quantities and prices of items which, when added together, equal the not-to-exceed contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable and allowable, overhead and profit shall be included as a separate line item.

**XI.2.2** Before the first Application for Payment, Design-Builder shall submit to City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as City may require. This schedule, unless objected to by City, shall be used as a basis for reviewing Design-Builder's Applications for Payment.

### **XI.3 APPLICATIONS FOR PAYMENT.**

**XI.3.1** Design-Builder shall submit Applications for Payment to City electronically, at minimum, every thirty (30) days throughout the duration of the project. Design-Builder electronically shall attach to its Application for Payment all data substantiating Design-Builder's right to payment as City may require, such as copies of requisitions from sub-consultants, Subcontractors and material suppliers reflecting retainage, if provided for in the Contract Documents, and reflecting a deduction for Liquidated Damages, if applicable. Applications for Payment shall not include requests for payment for portions of the Work which Design-Builder does not intend to pay to a sub-consultant, Subcontractor or material supplier, unless such Work has been performed by others whom Design-Builder intends to pay.

**XI.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by City. If approved in advance in writing by City, payment similarly may be made for materials and equipment suitably

stored off the Site at a location agreed upon in writing and verified by City. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Design-Builder with procedures reasonably satisfactory to City to establish City's title to such materials and equipment or otherwise protect City's interest. Design-Builder solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

**XI.3.3** Design-Builder warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from City shall, to the best of Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Design-Builder, sub-consultants, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **DESIGN-BUILDER SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY DESIGN-BUILDER, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER DESIGN-BUILDER, SUB-CONSULTANT(S) OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY CITY TO DESIGN-BUILDER.**

**XI.3.4** By submission of an Application for Payment, Design-Builder certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all sub-consultants, Subcontractors and Design-Builder's material men have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by City to Design-Builder; provided if any of the foregoing is not true and cannot be certified, Design-Builder will revise the certificate as appropriate and identify all exceptions to the requested certifications.

#### **XI.4 PAY APPLICATION APPROVAL.**

**XI.4.1** City will, within five (5) business days after the electronic receipt of Design-Builder's Application for Payment through PRIMELink, either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Design-Builder City's reasons for withholding approval, as provided in [ARTICLE XI.5.1](#) herein.

**XI.4.2** The certification of an Application for Payment shall constitute a representation by Design-Builder to City, based upon Design-Builder's evaluation of the Work and

the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Design-Builder's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon meeting a Contract milestone date and/or Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by City. The issuance of a Certificate for Payment further shall constitute a representation that Design-Builder is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that City has:

- a. made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
- b. reviewed construction means, methods, techniques, sequences or procedures;
- c. reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by City to substantiate Design-Builder's right to payment; or
- d. made any examination to ascertain how or for what purpose Design-Builder has used money previously paid on account of the Contract Sum.

## **XI.5 DECISIONS TO REJECT APPLICATION FOR PAYMENT.**

**XI.5.1** The Application for Payment may be rejected by City to protect City for any of the following reasons:

- a. Work not performed or defective;
- b. third party claims filed or reasonable evidence indicating a probable filing of such claims for which Design-Builder is responsible hereunder unless security acceptable to City is provided by Design-Builder;
- c. failure of Design-Builder to make payments properly to sub-consultants, Subcontractors or for labor, materials or equipment;
- d. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum and Design-Builder has failed to provide City adequate assurance of its continued performance within a reasonable time after demand;



- e. damage to City or another contractor;
- f. reasonable evidence that the Work shall not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or Liquidated Damages for the anticipated delay;
- g. persistent failure by Design-Builder to carry out the Work in accordance with the Contract Documents;
- h. the applicable Liquidated Damages were not included in the Application for Payment;
- i. billing for unapproved/unverified materials stored off Site; or
- j. a current Schedule update has not been submitted by Design-Builder.

**XI.5.2** City shall not be deemed in default by reason of rejecting Application for Payment as provided for in [ARTICLE XI.5.1](#) herein

#### **XI.6 PROGRESS PAYMENTS.**

**XI.6.1** After the final approval of the Application for Payment, City may make payment in the manner and within the time provided in the Contract Documents.

**XI.6.2** During the latter part of each month, as the Work progresses, regardless of Contract Sum, City and Design-Builder shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Design-Builder-acquired materials stored on the Project Site, and/or within off-site storage facilities either owned or leased by Design-Builder. Upon receipt of a complete and mathematically accurate Application for Payment from Design-Builder, City shall make payments, in accordance with this [ARTICLE XI](#), to Design-Builder within thirty (30) calendar days on Contracts totaling four hundred thousand dollars (\$400,000.00) or less, based upon such cost determination and at the Contract prices in a sum equivalent to ninety percent (90%) of each such invoice. The remaining ten percent (10%) retainage shall be held by City until the final completion. However, where the Contract amount exceeds four hundred thousand dollars (\$400,000.00), installments shall be paid to Design-Builder at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of City receipt of a complete and mathematically accurate Application for Payment from the Design-Builder, and the retainage held until final completion shall be five percent (5%).

**XI.6.3** City's payment of installments shall not in any way be deemed to be a final acceptance by City of any part of the Work and shall not prejudice City in the final

settlement of the Contract account or relieve Design-Builder from completion of the Work as herein provided.

**XI.6.4** Design-Builder shall, within ten (10) calendar days following receipt of payment from City, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work and shall, if requested, provide City with written evidence of such payment. Design-Builder's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract, unless Design-Builder is able to demonstrate to City bona fide disputes associated with the unpaid sub-consultant(s), Subcontractor(s) or supplier(s) and its/their work. Design-Builder shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its sub-consultants and Subcontractors as are applicable to Design-Builder hereunder, and if City so requests, shall provide copies of such subcontractor payments to City. If Design-Builder has failed to make payment promptly to its sub-consultants, Subcontractors or for materials or labor used in the Work for which City has made payment to the Design-Builder, City shall be entitled to withhold payment to Design-Builder to the extent necessary to protect City.

**XI.6.5** City shall, if practicable and upon request, furnish to a sub-consultant or Subcontractor information regarding percentages of completion or amounts applied for by Design-Builder and action taken thereon by City and Design-Builder on account of portions of the Work done by such sub-consultants or Subcontractor.

**XI.6.6** Payments to material suppliers shall be treated in a manner similar to that provided in [ARTICLE XI.6.2](#), [ARTICLE XI.6.3](#) and [ARTICLE XI.6.4](#) herein regarding sub-consultants and/or Subcontractors.

**XI.6.7** A certificate for payment, a progress payment or a partial or entire use or occupancy of the Project by City shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

**XI.6.8** Design-Builder shall, as a condition precedent to any obligation of City under this Contract, provide to City payment and performance bonds in the full amount of the Contract, in accordance with Texas Government Code Chapter 2253.

## **XI.7 SUBSTANTIAL COMPLETION.**

**XI.7.1** In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s), City may withhold payment of sums necessary to pay the estimated Liquidated Damages due City. City shall be entitled, at any time, to deduct out of any sums due to Design-Builder any or all

Liquidated Damages due City in accordance with the Contract between City and Design-Builder.

**XI.7.2** A condition precedent to Substantial Completion is the receipt by City of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. City reserves the right to occupy and use any part, phase or system of the Project when such part, phase or system substantially is completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion. Substantial completion for this Project shall be described in [EXHIBIT G. DESIGN BUILDER'S BASELINE PRE-CONSTRUCTION AND CONSTRUCTION SCHEDULES](#)

**XI.7.3** When Design-Builder considers that the Work, or a portion thereof which City agrees to accept separately, is Substantially Complete, Design-Builder shall prepare and submit to City a preliminary comprehensive list of items to be completed or corrected prior to final completion and final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents.

**XI.7.4** Upon receipt of Design-Builder's list of items to be completed or corrected, City will make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If City's inspection discloses any item, whether or not it was included on Design-Builder's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that City may occupy or utilize the Work or designated portion thereof as designed for its intended use, Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by City. In such case, Design-Builder then shall submit a request for another inspection by City to determine Substantial Completion and Design-Builder shall be responsible for all costs incurred by City and associated with the requested re-inspection.

**XI.7.5** When the Work – or designated portion thereof which City agrees to accept separately – is Substantially Complete, City shall prepare a Certificate of Substantial Completion (“Certificate of Substantial Completion”) (*Vertical Projects*) or a Letter of Conditional Approval (“Letter of Conditional Approval”) (*Horizontal Projects*) which shall:

- a. establish the date of Substantial Completion (which will be the date on which the Work met the requirements under the Contract Documents for Substantial Completion);

- b. establish responsibilities of City and Design-Builder, as agreed to by City and Design-Builder, for security, maintenance, heat, utilities, damage to the Work and insurance; and
- c. confirm the time limit by which Design-Builder shall complete all items on the list accompanying the Certificate and reach final completion.

Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or the designated portion thereof, unless otherwise provided herein or in the Certificate of Substantial Completion.

## **XI.8 PARTIAL OCCUPANCY OR USE/PROJECT MILESTONES.**

**XI.8.1** City may occupy or use any completed or partially completed portion of the Work at any stage of the Work when such partially completed portion is designated by separate agreement with Design-Builder, to include the satisfaction of a Project milestone, provided such occupancy or use is consented to by the insurer, as required and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided City and Design-Builder have accepted in writing the responsibilities assigned to each for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Design-Builder considers a portion of the Work to be Substantially Complete, or Design-Builder feels a Project Milestone has been achieved, Design-Builder shall prepare and submit a list of items to be completed or corrected prior to final completion and final payment and submit such list to City, as provided under [ARTICLE XI.8.2](#). Consent of Design-Builder to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between City and Design-Builder or, if no agreement is reached, by the decision of City.

**XI.8.2** Immediately prior to such Partial Occupancy or use, or upon Design-Builder's request for satisfaction of a Project milestone, City and Design-Builder collectively shall inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**XI.8.3** Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**XI.8.4** Upon such partial occupancy or use, upon achieving a Project milestone and upon Substantial Completion, City may assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.

**XI.8.5** Partial occupancy or use by City does not constitute Substantial Completion and does not start any warranty period(s).

**XI.9 FINAL COMPLETION AND FINAL PAYMENT.**

**XI.9.1** When all of the Work finally is completed and ready for final inspection, Design-Builder shall notify City thereof in writing. Thereupon, City shall make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has fully been performed, the final Application for Payment may be submitted. If City is unable to approve the final Application for Payment for reasons for which Design-Builder is responsible and City is required to repeat a final inspection of the Work, Design-Builder shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by City from the Design-Builder's retainage.

**XI.9.2** Design-Builder shall not be entitled to payment of retainage unless and until it submits all documents required in the retainage checklist to City. Retainage checklist shall include, but is not limited to:

- a. Evidence that payrolls, invoices for materials and equipment and other liabilities, to include Liquidated Damages connected with the Work for which City might be responsible, fully have been paid or otherwise satisfied or will be paid from final payment;
- b. releases and waivers of liens from all sub-consultants and Subcontractors of Design-Builder and of any and all other parties required by City that either are unconditional or conditional on receipt of final payment;
- c. Certificates of insurance showing continuation of required insurance coverages;
- d. such other documents as City may request; and
- e. consent of Surety to final payment.

**XI.9.3** If, after Substantial Completion of the Work, final completion thereof materially is delayed through no fault of Design-Builder or by issuance of Change Orders affecting final completion, and City so confirms, City shall, upon application by Design-Builder and certification by City and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted.

If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design-Builder to City prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**XI.9.4** Request for final payment by Design-Builder shall constitute a waiver of all claims against City except those previously made in writing to City and identified as unsettled at the time of final Application for Payment

**XI.10 ADDITIONAL INSPECTIONS.**

In addition to any Liquidated Damages accrued by and payable to City by Design-Builder, City shall be entitled to deduct from the Contract Sum amounts due to Design-Builder by City to compensate City for any additional inspections or services provided by City, provided City undertook these additional inspections or services due to the fault or negligence of Design-Builder if:

**XI.10.1** City is required to make more than one inspection to determine if Project milestone(s) and/or Substantial Completion has been achieved by Design-Builder; or

**XI.10.2** City is required to make more than one inspection to determine if final completion has been achieved by Contractor; or

**XI.10.3** The Work is not substantially complete within thirty (30) calendar days after the date established for the Work's Substantial Completion, as stated in the Contract Documents.

**END OF ARTICLE XI**

## **ARTICLE XII. PROTECTION OF PERSONS AND PROPERTY**

### **XII.1 SAFETY PRECAUTIONS AND PROGRAMS.**

**XII.1.1** Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Design-Builder shall develop a safety program applicable to each job site and to the Work to be done, review such program with City in advance of beginning the Work, and enforce such program at all times. Further, Design-Builder shall comply with all applicable laws and regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Design-Builder sub-consultants, Subcontractors and employees. City shall have the right, but not the obligation, to inspect and verify Design-Builder's compliance with Design-Builder's responsibility for protecting the safety and health of its sub-consultants, Subcontractors and employees.

**XII.1.2** Design-Builder shall notify City immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities including, but not limited to, copies of all reports and other documents filed or provided to Design-Builder's insurers and the State of Texas in connection with such injuries or fatalities.

**XII.1.3** Design-Builder has adopted or shall adopt its own policy to assure a drug and alcohol free work place while performing the Work. Design-Builder's employees, agents, sub-consultants and Subcontractors shall not perform any service for City while under the influence of alcohol or any controlled substance. Design-Builder, its employees, agents, sub-consultants and Subcontractors shall not use, possess, distribute or sell illegal, illicit and/or prescribed controlled drugs or drug paraphernalia or misuse legitimate prescription drugs while on Site or performing the Work. Design-Builder, its employees, agents, sub-consultants and Subcontractors shall not use, possess, distribute or sell alcoholic beverages while performing the Work or while on Site or performing the Work. Design-Builder shall remove any of its employees, sub-consultant or Subcontractor employees from performing the Work or from the Site any time there is suspicion of alcohol and/or drug use, possession or impairment involving such employee and at any time an incident occurs where drug or alcohol use could have been a contributing factor. City has the right to require Design-Builder to remove employees or sub-consultant or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect alcohol or drug use. In such cases, Design-Builder's, sub-consultant's or Subcontractor's employees only may be considered for return to work after Design-Builder certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Design-Builder will not employ any individual, or will not accept any sub-consultant or Subcontractor employees, to

perform the Work who either refuses to take or tests positive in any alcohol or drug test.

**XII.1.4** Design-Builder shall comply with all applicable federal, state and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988).

**XII.1.5** The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether the individual has a permit for a concealed weapon.

**XII.1.6** Both City and Design-Builder agree that these safety and health terms are of the highest importance and that a breach or violation of any of the terms of this [ARTICLE XII](#) by Design-Builder, a sub-consultant or a Subcontractor shall be a material and substantial breach of this Contract. In the event that City shall determine that Design-Builder has breached or violated the terms of this [ARTICLE XII](#), then City shall determine, immediately upon written notice to Design-Builder, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until City is satisfied that the safety provisions hereof shall not be breached or violated thereafter. If City terminates the Contract as a result of such breach or violation, City and Design-Builder shall complete their obligations hereunder to one another in accordance with [ARTICLE XVI.2](#) herein.

**XII.1.7** Nothing contained in this [ARTICLE XII](#) shall be interpreted as creating or altering the legal duty of City to Design-Builder or to Design-Builder's agents, employees, sub-consultants, Subcontractors or third parties, or altering the status of Design-Builder as an independent contractor.

**XII.1.8** Notwithstanding either of the above provisions, or whether City exercises its rights set forth herein, City neither warrants nor represents to Design-Builder, Design-Builder's employees or agents, any sub-consultant, Subcontractors or any other third party that Design-Builder's safety policy meets the requirements of any applicable law, code, rule or regulation, nor does City warrant that the proper enforcement of Design-Builder's policy shall insure that no accidents or injuries will occur. In addition, any action by City under these provisions in no way diminishes any of Design-Builder's obligations under applicable law or the contract documents.

## **XII.2 SAFETY OF PERSONS AND PROPERTY.**

**XII.2.1** Design-Builder shall take reasonable precautions for safety and training and shall provide reasonable protection, to prevent damage, injury or loss to:

- a. employees performing the Work and other persons who may be affected thereby;



- b. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Design-Builder or Design-Builder's sub-consultants, or Subcontractors; and
- c. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work.
- d. the contents of a building or structure, when Design-Builder is working in, on or around an existing/operating City facility.

**XII.2.2** Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**XII.2.3** Design-Builder shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying all City's and users of adjacent sites and utilities.

**XII.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, Design-Builder shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel. Prior to the use of any explosives, Design-Builder shall submit a written blasting plan, shall obtain City approval and shall comply with City's requirements for such use.

**XII.2.5** Design-Builder shall designate a responsible member of Design-Builder's organization at the site whose duty shall be the prevention of accidents. This person shall be Design-Builder's superintendent, unless otherwise designated by Design-Builder in writing to City.

**XII.2.6** Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

**XII.2.7** Notwithstanding the delivery of a survey or other documents by City, Design-Builder shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the property. Design-Builder acknowledges and accepts that the location of underground utilities (both public and private) reflected on any City-provided plans are not guaranteed and may not be completely accurate. Design-Builder shall locate and verify any and all utilities and associated service lines prior to beginning any Work. Design-Builder shall be responsible for and shall repair, at Design-Builder's own expense, any

damage done to lines, cables, pipes and pipelines identified and not identified to Design-Builder.

**XII.2.8** Design-Builder promptly shall remedy any and all damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). **Design-Builder also shall hold harmless and unconditionally indemnify, protect and defend City, its elected officials, employees, officers, directors, volunteers and representatives of City, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of Design-Builder and City) referred in [ARTICLE XII.2.1B](#) and [ARTICLE XII.2.1C](#) herein, but only to the extent caused in whole or in part by the acts or omissions of Design-Builder, its agents, servants, and employees, or its sub-consultant(s) and/or Subcontractor(s) and its/their agents, servants, and employees, or anyone directly or indirectly employed by Design-Builder, sub-consultant or Subcontractor, or by any other person or entity for which Design-Builder, sub-consultant or Subcontractor may be responsible under the Contract Documents in connection with the Work to be performed, services to be rendered or materials to be furnished under this Contract, including, but not limited to, violations of any statute, regulation, ordinance or provision of this Contract.** Notwithstanding anything to the contrary included herein, in no event shall Design-Builder be liable for claims arising out of accidents resulting from the sole negligence of City, all without, however, waiving any governmental immunity available to City under Texas Law and without waiving any defenses of the parties under Texas Law. The foregoing obligations of Design-Builder are in addition to Design-Builder's obligations under [ARTICLE V.19](#).

### **XII.3 EMERGENCIES.**

**XII.3.1** In an emergency affecting safety of persons or property, Design-Builder shall exercise its best efforts to act to prevent or minimize threatened damage, injury or loss. Additional compensation or extension of time claimed by Design-Builder on account of an emergency shall be determined, as provided in [ARTICLE VI.3](#) and [ARTICLE IX](#).

**XII.3.2** If Design-Builder causes damage resulting in an issue of safety and/or security to a property City, Design-Builder immediately shall repair any damage caused. If Design-Builder does not or shall not act immediately to repair the damage caused by Design-Builder to eliminate the resulting safety and/or security issue(s), City shall act to repair the damage caused and deduct all costs associated with the repair from any money due Design-Builder.

### **XII.4 PUBLIC CONVENIENCE AND SAFETY.**

**XII.4.1** Design-Builder shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by City. Sidewalks or streets shall not be obstructed, except by special permission of City. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances and fire alarm or police call boxes in the vicinity.

**XII.4.2** City reserves the right to remedy any neglect on the part of Design-Builder, in regard to public convenience and safety, which may come to City's attention, after twenty-four (24) hour notice in writing to Design-Builder. In case of an emergency, City shall have the right immediately to remedy any neglect without notice to Design-Builder. In either case, the cost of any work done by or for City to remedy Design-Builder's neglect shall be deducted by City from Design-Builder's Contract Sum. Design-Builder shall notify City, including City's Transportation Systems Management & Operations (TSM&O) division, when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be given at least forty-eight (48) hours in advance. City reserves the right to postpone and/or prohibit any closure or obstruction of any streets or thoroughfares, to the extent necessary for the safety and benefit of the traveling public. Design-Builder shall, when directed by City, keep any street or streets in condition for unobstructed use by City departments. When Design-Builder is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, Design-Builder's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

**XII.4.3** Design-Builder shall limit airborne dust and debris throughout the Project site and its duration. Design-Builder shall apply the necessary amounts of water or other appropriate substance required to maintain sufficient moisture content for dust control. For City *horizontal projects*, Design-Builder shall apply appropriate amounts of water or other appropriate substance to the base on streets under construction and on detours required to maintain sufficient moisture control in the surface layer for dust control.

**XII.4.4** City's Office of Sustainability continues to work on City's Air Quality Control Strategies Plan in its ongoing efforts to lower emissions throughout the City, including City's Project sites. In an effort to assist City in these goals, Design-Builder shall strive to:

- a. reduce fuel use by directing its employees, sub-consultants, and its Subcontractors to reduce vehicle idling, maintaining equipment

utilized on the Project and replacing or repowering equipment with current technologies;

- b. conserve electricity used to provide power to Design-Builder's offices and throughout the Project site, to include Project lighting, tools and Design-Builder's Project construction trailer; and
- c. recycle Project site materials such as asphalt, steel, other metals and concrete.
- d. all costs associated with Design-Builder's and its sub-consultants' and Subcontractors' acquisition and installation of emission control technology shall be considered incidental costs of the Project; as such, no additional compensation shall be provided Contractor by City.

## **XII.5 BARRICADES, LIGHTS, AND WATCHMEN.**

If the Work is carried on, in or adjacent to any street, alley or public place, Design-Builder shall, at Design-Builder's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, provide sufficient watchmen and take such other precautionary measures necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that shall be visible at night, and shall be illuminated by lights as required under City's Barricades Specifications. The term "lights," as used in this [ARTICLE XII.4.4](#), shall mean flares, flashers or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices also shall be erected to keep vehicles from being driven on or into any Work under construction. Design-Builder shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and/or watchmen necessary to protect the Work. Whenever evidence is found of such damage, City may order the damaged portion immediately removed and replaced by Design-Builder at Design-Builder's sole cost and expense. Design-Builder's responsibility for maintenance of barricades, signs, lights and for providing watchmen, as required under this [ARTICLE XII.4.4](#), shall not cease until the Project finally has been accepted by City.

## **XII.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.**

In case it is necessary for Design-Builder to change or move the property of City or of any telecommunications or public utility, such property shall not be touched, changed, removed or interfered with until ordered to do so by City. City reserves the right to grant any public or private utility personnel the authority to enter upon the Project site for the purpose of making such changes or repairs to their property that may become necessary during the performance of the Work. City reserves the right of

entry upon the Project site at any time and for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures and for making other repairs, changes or extensions to any of City's property. City's actions shall conform to Design-Builder's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to City by Design-Builder.

## **XII.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS.**

When existing storm sewers or drains have to be taken up or removed, Design-Builder shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Design-Builder also shall provide for all storm sewage and drainage which shall be received from these storm drains and sewers. For this purpose, Design-Builder shall provide and maintain, at Design-Builder's own expense, adequate pumping facilities and temporary outlets or diversions. Design-Builder shall, at Design-Builder's own expense, construct such troughs, pipes or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by City. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction will be adequately protected.

## **XII.8 ADDITIONAL UTILITY ARRANGEMENTS AND CHARGES.**

**XII.8.1** When Design-Builder requires the use of water in connection with the Work, Design-Builder shall make complete and satisfactory arrangements with the San Antonio Water System and shall be responsible for the cost of the water used in the performance of the Work. Where meters are required and used, the charge shall be at the regular established rate; where no meters are required and used, the charge shall be as prescribed by City ordinance; or where no ordinance applies, payment shall be based on estimates made by the representatives of the San Antonio Water System.

**XII.8.2** Design-Builder shall make complete and satisfactory arrangements for electricity and metered electrical connections with City or with any retail electric provider, in the event that separately metered electrical connections are required for the Project. Design-Builder shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by Design-Builder through a retail electric provider.

**XII.8.3** If Design-Builder elects or is required by City to place and operate out of a construction trailer or office on the Project site, for which all related costs shall be

borne by Design-Builder, Design-Builder shall provide for an electronic device to exchange data wirelessly via a local area computer network, to include high-speed internet connections (commonly known as “Wi Fi access”), for City personnel’s use while on the Project site, for the duration of the Project.

## **XII.9 USE OF FIRE HYDRANTS.**

Design-Builder, sub-consultants, Subcontractors and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to or connect anything with any fire hydrant, stop valve or stop cock, or tap any water main belonging to City, unless duly authorized in writing to do so by City.

## **XII.10 ENVIRONMENTAL COMPLIANCE.**

**XII.10.1** Design-Builder its sub-consultants and Subcontractors are deemed to have made themselves familiar with and at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances or rules of common law including, but not limited to, any judicial or administrative order, consent decree or judgment affecting the Project.

**XII.10.2** In the event Design-Builder encounters materials on the Project Site reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, Design-Builder immediately shall stop Work in the affected area and report in writing the facts of such encounter to City. Work in the affected area shall not thereafter be resumed except by written order of City and written consent of Design-Builder, unless and until the encountered material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, City shall remediate the Hazardous Substance with a separate contractor or through a Change Order with Design-Builder. If the Hazardous Substance exists in the affected area due to the fault or negligence of Design-Builder or any of its sub-consultants or Subcontractors, Design-Builder shall be responsible for remediating the condition at the sole expense of Design-Builder. If applicable,

such remediation shall be in accordance with Design-Builder’s Spill Remediation Plan. An extension of the Contract Time, for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance not due to the fault of Design-Builder, its sub-consultants or Sub-Contractors, may be granted by City and only in the event the Project’s critical path is affected and Design-Builder is not the source of the Hazardous Substance. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of [ARTICLE VI.3](#) and [ARTICLE X](#) herein.

**XII.10.3** Design-Builder shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substance brought into or onto the site by Design-Builder or any of its sub-consultant, Subcontractor or supplier. Design-Builder shall obtain any and all permits necessary for the legal and proper handling, transportation and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation and/or disposal, notify City so that City may observe the activities; provided, however, that it shall be Design-Builder’s sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities.

**XII.10.4** Design-Builder shall be responsible for complying with TCI’s Capital Project Soil Relocation Policy and Communication Plan for all capital improvement projects as set forth in Contract Documents. Design-Builder shall provide no more than three (3) soil disposal sites to the City fourteen (14) days prior to commencement of hauling any excess soil or fill material. Design-Builder shall provide required documentation regarding disposal or reuse sites, flood plain verification, storm water pollution measures information, and compliance with applicable federal, state and local regulations. Design-Builder shall not proceed with hauling activities of excess soils until they receive approval from City. Projects performed on Aviation grounds shall comply with Aviation’s Soil Management Policy.

**END OF ARTICLE XII**

## ARTICLE XIII. INSURANCE AND BONDS

### XIII.1 DESIGN-BUILDER’S LIABILITY INSURANCE.

**XIII.1.1** Prior to the commencement of any work under this Agreement, Design-Builder shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City’s TCI Contract Services Department, which clearly shall be labeled “**Babcock Road: Babcock to Laureate**” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) shall be signed by the Authorized Representative of the insurance carrier and shall include the agent’s original signature and the phone number. The Certificate(s) shall be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to City. City shall have no duty to pay or perform its obligations under this Contract until such Certificate(s) and endorsements have been received and approved by City’s TCI Department. No officer or employee, other than the City of San Antonio’s Risk Manager, shall have authority to waive this requirement.

**XIII.1.2** City reserves the right to review the insurance requirements of this [ARTICLE XIII](#) during the effective period of this Contract and to modify insurance coverage and limits when deemed necessary and prudent by the City of San Antonio’s Risk Manager based upon changes in statutory law, court decisions or circumstances surrounding this Contract. In no instance will City allow modification whereby City may incur increased risk.

**XIII.1.3** Design-Builder’s financial integrity is of interest to City; therefore, subject to Design-Builder’s right to maintain reasonable deductibles in such amounts as are approved by City, Design-Builder shall obtain and maintain in full force and effect for the duration of this Contract at Design-Builder’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A-(VII), in the following types and for an amount not less than the amount listed in the following table:



Table XIII.1.3.

TYPE	AMOUNTS
1. Worker’s Compensation. 2. Employer’s Liability	<b>Statutory</b> <b>\$1,000,000.00 / \$1,000,000.00</b> <b>\$1,000,000.00</b>
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Environmental Impairment / Impact – sufficiently broad to cover disposal liability. e. Explosion, Collapse, Underground	For Bodily Injury and Property Damage of: <b>\$1,000,000.00</b> per occurrence; <b>\$2,000,000.00</b> General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability: a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of <b>\$1,000,000.00</b> per occurrence.
5. Professional Liability (Claims-made basis)  To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	<b>\$1,000,000.00</b> per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Contractor’s Pollution Liability	<b>\$5,000,000.00</b> per occurrence; <b>\$5,000,000.00</b> aggregate.  Completed operations coverage shall remain in effect for no less than ten (10) years after the final completion.
7. Umbrella or Excess Liability Coverage	<b>\$5,000,000.00</b> per occurrence combined limit Bodily Injury (including death) and Property Damage.
8. *Builder’s Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
<i>* if applicable</i>	

**XIII.1.4** Design-Builder agrees to require, by written contract, that all sub-consultants and/or Subcontractors providing goods or services pursuant to performance on the Project obtain the same insurance coverage required of Design-Builder herein, except Subcontractors who do not have design responsibility are not required to provide Professional Liability Insurance, and provide a certificate of insurance and endorsement that names Design-Builder and City as additional insureds for the Commercial General Liability and Business Auto Liability coverages. Policy limits of the coverages carried by sub-consultants and Subcontractors shall be determined as a business decision of the Design-Builder. Design-Builder shall provide City with said certificate and endorsement prior to the commencement of any work by any sub-consultants and/or Subcontractor. This provision may be modified by the City of San Antonio’s Risk Manager, without subsequent San Antonio City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Contract. Such insurance coverage modification may be enacted by letter signed by the City of San Antonio’s Risk Manager, which shall become a part of this Contract for all purposes.

**XIII.1.5** As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of all insurance policies, declaration pages and all required endorsements associated with this Work. City may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Design-Builder shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within ten (10) calendar days. Design-Builder shall pay any and all costs incurred resulting from provision of said documents to City:

**City of San Antonio**  
**Attn: TCI Department**  
**Contract Services Division**  
**P. O. Box 839966**  
**San Antonio, Texas 78283-3966**

**XIII.1.6** If City requests a copy/copies of an insurance policy, Design-Builder promptly shall comply and Design-Builder shall mark those portions of the policy, if any, Design-Builder regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Design-Builder’s policy, City shall submit the received request, along with Design-Builder’s information, to the Texas Attorney General (hereafter referred to as “AG”) for an opinion regarding the release of Design-Builder’s policy information. Design-Builder and City agree that City will be

bound by the AG opinion/decision. Similarly, Design-Builder agrees and accepts City will provide all Design-Builder information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Design-Builder's information.

**XIII.1.7** Design-Builder agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name City, its officers, officials, employees, volunteers, and elected representatives as additional insured(s) by endorsement CG 20 26 or broader, with respect to operations and activities of, or on behalf of, the named insured performing under this Contract with City, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement reflecting the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy;
- c. Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of City.
- d. Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation or non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

**XIII.1.8** Within five (5) calendar days of a suspension, cancellation or non-renewal of insurance coverage associated with this Work, Design-Builder shall provide a replacement Certificate(s) of Insurance and applicable endorsement(s) to City. City shall have the option to suspend Design-Builder's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.

**XIII.1.9** In addition to any other remedies City may have upon Design-Builder's failure to provide and maintain any insurance and/or policy endorsements to the extent and within the time required, City shall have the right to order Design-Builder to stop work hereunder and/or withhold any payment(s) which become due to Design-Builder hereunder until Design-Builder demonstrates compliance with the requirements hereof.

**XIII.1.10** Nothing contained herein shall be construed as limiting in any way the extent to which Design-Builder may be held responsible for payments of damages to

persons or property resulting from Design-Builder's or its Sub-Design-Builders' and/or Subcontractors' performance of the Work covered under this Contract.

**XIII.1.11** Design-Builder accepts and agrees Contractor's insurance shall be deemed primary and non-contributory, with respect to any insurance or self insurance carried by City, for liability arising out of Design-Builder's operations under this Contract.

**XIII.1.12** Design-Builder understands, accepts and agrees the insurance required of Design-Builder by this Contract is in addition to and separate from any other obligation contained in this Contract and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

**XIII.1.13** Design-Builder and any Sub-Design-Builders and/or Subcontractors are responsible for all damage to their own equipment and/or property.

### **XIII.2 BUILDER'S RISK COVERAGE.**

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

- a. This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- b. Loss, if any, shall be adjusted with and made payable to Contractor or City and Contractor as trustee for the insured as their interests may appear.

### **XIII.3 PROPERTY INSURANCE**

**XIII.3.1** Contractor shall maintain property insurance to cover damage done to City property. Shall be inclusive in the Builder’s All Risk Insurance Policy.

**XIII.3.2 BOILER AND MACHINERY INSURANCE.**

If applicable, City shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by City. This insurance shall include the interests of City, Contractor, Subcontractors and Sub-Subcontractors in the Work, and City and Contractor shall be named insureds.

**XIII.3.3 LOSS OF USE INSURANCE.**

City, at City's option, may purchase and maintain such insurance as shall insure City against loss of use of City's property due to fire or other hazards, however caused.

**XIII.3.4** Contractor shall provide to City a Certificate of Insurance evidencing all property insurance policies procured under this [ARTICLE XI.3](#) and all endorsements thereto, before any exposure to loss may occur.

**XIII.3.5** Partial occupancy or use in accordance with [ARTICLE XI.8](#), shall not commence until the insurance company/companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. City and Contractor shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**XIII.3.6** Contractor shall take all necessary precautions to ensure no damage shall result from operations to private or public property. All damages shall be repaired or replaced by Contractor at no additional cost to City.

**XIII.4 PERFORMANCE BOND AND PAYMENT BONDS.**

**XIII.4.1** Subject to the provisions of [ARTICLE XIII.4.2](#) herein, Design-Builder shall, with the execution and delivery of the Contract, furnish and file with City, in the amounts required in this [ARTICLE XIII](#), the surety bonds described in [ARTICLE XIII.4.1A](#) and [ARTICLE XIII.4.1B](#), with said surety bonds in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each surety bond shall be signed by Design-Builder, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of [ARTICLE XIII.4.3](#) herein and approved by City. The surety bonds shall be accompanied by an

appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

a. Performance Bond.

A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total Cost of Work + insurance + Design Builder fee as shown in the GMP Summary, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of City. This Performance Bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by the City, or lesser or longer periods as otherwise may be designated in the Contract Documents.

b. Payment Bond.

A good and sufficient Payment Bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.

**XIII.4.2** If the Contract Sum, including City-accepted Alternates and allowances, if any, is greater than \$100,000.00, Payment Bond and Performance Bond equaling one hundred percent (100%) of the Cost of Work + insurance + Design Builder fee as shown in the GMP Summary are mandatory and shall be provided by Design-Builder. If the Contract Sum is greater than \$50,000.00 but less than or equal to \$100,000.00 only a Payment Bond equaling one hundred percent (100%) of the Contract amount is mandatory; provided, however, that Design-Builder also may elect to furnish a Performance Bond in the same amount if Design-Builder so chooses. If the Contract Sum is less than or equal to \$25,000, Design-Builder may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid by City to Design-Builder until final completion of all Work. If Design-Builder elects to provide the required Performance Bond and Payment Bond, the Contract Sum shall be payable to Design-Builder through progress payments in accordance with these General Conditions.

**XIII.4.3** 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 made and executed on City's standard forms, 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 Design-Builder 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 and on which service of process may be had in matters arising out of the suretyship.

**XIII.4.4** The person or persons, partnership, company, firm, limited liability company, association, corporation or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with City and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on City until:

- a. it has been approved as to form by City's City Attorney;
- b. it has been executed by City's City Manager (if required);
- c. the Payment Bond and Performance Bond and evidence of required insurance have been furnished to City by Design-Builder, as required by the Contract Documents; and
- d. a fully executed Contract has been delivered to Design-Builder (if required).

**XIII.4.5** The failure of Design-Builder to execute the Contract (if required) and deliver the required bonds and evidence of insurance within ten (10) days after the Contract is awarded, or as soon thereafter as City can assemble and deliver the Contract and by the time the City-scheduled Pre-Construction meeting is held shall, at City's option, constitute a material breach of Design-Builder's bid proposal and City may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices for materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to City by reason of Design-Builder's failure to execute the Contract within ten (10) days and deliver bonds and insurance by the City-scheduled Pre-Construction meeting, the filing of a bid proposal shall constitute an acceptance of this [ARTICLE XIII.4.5](#). In the event City should re-advertise for bids, the defaulting Design-Builder shall not be eligible to bid and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this [ARTICLE XIII.4.5](#).

### **XIII.5 UMBRELLA LIABILITY INSURANCE.**

Design-Builder shall obtain, pay for and maintain Umbrella Liability Insurance during the Contract term, insuring Design-Builder for an amount of not less than **\$5,000,000** per occurrence combined limit Bodily Injury (including death) and

Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. City shall be named as an additional insured, using endorsement CG 20 26 or broader. No aggregate shall be permitted for this type of coverage. The Umbrella Liability Insurance policy shall provide “drop down” coverage, where the underlying primary insurance coverage limits are insufficient or exhausted.

### **XIII.6 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS.**

**XIII.6.1** Each insurance policy to be furnished by Design-Builder shall address the following required provisions within the certificate of insurance, which shall be reflected in the body of the insurance contract and/or by endorsement to the policy:

- a. City shall be named as an additional insured on all liability coverages, using endorsement CG 20 26 or broader. When City elects to employ a Construction Manager on the Project, Design-Builder, sub-consultant(s) and Subcontractor(s) shall include the Construction Manager on all liability insurance policies, to the same extent as City is required to be named as additional insured.
- b. Within five (5) calendar days of a suspension, cancellation or non-renewal of any required line of insurance coverage, Contractor shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend Design-Builder’s performance should there be a lapse in coverage at any time during the Contract.
- c. The terms “City” or “City of San Antonio” shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of City and the individual members, employees and agents thereof in their official capacities while acting on behalf of City.
- d. The policy phrase or clause “Other Insurance” shall not apply to City where City is an additional insured on the policy. The required insurance coverage furnished by Design-Builder shall be the primary insurance for all purposes for the Project, as well as the primary insurance for the additional insured named in the required policies.
- e. All provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten with contractual liability coverage(s)



sufficient to include such obligations with the applicable liability policies.

**XIII.6.2 CONCERNING THE INSURANCE TO BE FURNISHED BY DESIGN-BUILDER, IT IS A CONDITION PRECEDENT TO ACCEPTABILITY THAT:**

- a. All policies must comply with the applicable requirements and special provisions of this [ARTICLE XIII](#).
- b. Any policy evidenced by a Certificate of Insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and City’s decision regarding whether any policy contains such provisions and contrary to this requirement shall be final.
- c. All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that otherwise are acceptable to City.

**XIII.6.3 DESIGN-BUILDER AGREES TO THE FOLLOWING SPECIAL PROVISIONS:**

- a. Design-Builder hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against City, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this [ARTICLE XIII](#).
- b. the insurance companies issuing the insurance policies and Design-Builder shall have no recourse whatsoever against City for payment of any premiums or assessments for any deductibles, as all such premiums and assessments solely are the responsibility and risk of Design-Builder.
- c. Approval, disapproval or failure to act by City, regarding any insurance supplied by Design-Builder, sub-consultant(s) or Subcontractor(s), shall not relieve Design-Builder of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by Design-Builder’s insurance company likewise shall not exonerate or relieve Design-Builder from liability.

- d. City reserves the right to review the insurance requirements of this [ARTICLE XIII](#) during the effective period of this Contract and to adjust insurance coverage and insurance limits when deemed necessary and prudent by City’s Risk Management Division, based upon changes in statutory law, court decisions or the claims history of Contractor and Subcontractors. Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either Party to this Contract or upon the underwriter of any such policy provisions. Upon request by City, Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage.
- e. No special payments shall be made for any insurance policies that Design-Builder, sub-consultants and Subcontractors are required to carry. Except as provided in [ARTICLE XIII.6.3D](#) herein, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.
- f. Any insurance policies required under this [ARTICLE XIII](#) may be written in combination with any of the other policies, where legally permitted, but none of the specified limits neither may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this [ARTICLE XIII](#) be limited or circumvented by doing so.

**END OF ARTICLE XIII**

## **ARTICLE XIV. INSPECTING, UNCOVERING, AND CORRECTING OF WORK**

### **XIV.1 INSPECTING WORK.**

City shall have authority to reject Work that does not conform to the Contract Documents. Whenever City considers it necessary or advisable, City shall have authority to require Design-Builder to inspect or test the Work in accordance with this [ARTICLE XIV](#), whether or not such Work is fabricated, installed or completed.

### **XIV.2 UNCOVERING WORK.**

**XIV.2.1** If a portion of the Work is covered, concealed and/or obstructed, contrary to City's requirements specifically expressed in the Contract Documents, it must be uncovered for City's inspection and properly be replaced at Design-Builder's expense without any change in the Contract Time or Sum.

**XIV.2.2** If a portion of the Work has been covered, concealed and/or obstructed and City has not inspected the Work prior to its being covered, concealed and/or obstructed, City retains the right to inspect such Work and, when directed by City, Design-Builder shall uncover it. If said Work is found to be in accordance with the Contract Documents, the costs for uncovering and replacement shall, by appropriate Change Order, be paid by City. If such Work uncovered is found to not be in accordance with the Contract Documents, Design-Builder shall pay all costs associated with the uncovering, correction and replacement of the Work, unless the condition found was caused by City or City's separate contractor, in which event City shall be responsible for payment of actual costs incurred by Design-Builder.

### **XIV.3 CORRECTING WORK.**

**XIV.3.1** Design-Builder promptly shall correct any Work rejected by City as failing to conform to the requirements of the Contract Documents, whether inspected before or after achieving a Project milestone, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. Design-Builder shall bear costs of correcting such rejected Work, along with all costs for additional testing and inspections, along with all compensation for City's services and incurred expenses made necessary thereby.

**XIV.3.2** In addition to Design-Builder's warranty obligations, if any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents including, but not limited to, these General Conditions, Design-Builder promptly shall correct the Work after receipt of written notice from City to correct, unless City previously has given Design-Builder a written acceptance or waiver of the

defect or nonconformity. Design-Builder's obligation to correct defective or nonconforming Work remains in effect for:

- a. one (1) year after the date of Substantial Completion of the Work or a designated portion of the Work;
- b. one (1) year after the date for commencement of warranties established by agreement in connection with a Project Milestone date and/or partial occupancy under [ARTICLE XI.8](#) hereto; or
- c. the stipulated duration of any applicable special warranty required by the Contract Documents.

**XIV.3.3** The one (1) year period, described in [ARTICLE XIV.3.2](#), shall be extended, with respect to portions of the Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual completion of the Work.

**XIV.3.4** The obligations of Design-Builder under [ARTICLE V.5](#) and this [ARTICLE XIV.3](#) shall survive final acceptance of the Work and the termination of this Contract. City shall give notice to Design-Builder after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in this [ARTICLE XIV.3](#) does not limit the ability of City to require Design-Builder to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by City at the time the Work was performed or at the time of inspection for certification of Substantial Completion or final completion. The one (1) year period also does not relieve Design-Builder from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one (1) year correction period.

**XIV.3.5** Design-Builder shall remove from the Project Site those portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Design-Builder nor accepted by City.

**XIV.3.6** If Design-Builder fails to correct any defective or nonconforming Work within what City deems a reasonable time after City gives written notice of rejection to Design-Builder, City may correct the defective or nonconforming Work in accordance with this [ARTICLE XIV.3](#). If Design-Builder does not promptly proceed with correction of any defective or nonconforming Work within what City deems a reasonable time fixed by written notice from City, City may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at Design-Builder's expense. If Design-Builder does not pay the costs of removal and storage within ten (10) calendar days after written notice by City, City may, upon ten (10) additional calendar days written notice, sell the materials and equipment at

auction or at private sale and shall account to Design-Builder for the proceeds, after deducting all costs and damages that should have been borne by Design-Builder to correct the defective work, including all compensation for City's services and expenses made necessary as a result of the sale, removal and storage. If the proceeds of such a sale do not cover the costs that Design-Builder should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to Design-Builder then or thereafter are not sufficient to cover the deficiency, Design-Builder shall pay the difference to City.

**XIV.3.7** Design-Builder shall bear the cost of correcting destroyed or damaged construction of City or City's separate contractors, whether the construction is completed or partially completed, caused by Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**XIV.3.8** Nothing contained in this [ARTICLE XIV.3](#) shall be construed to establish a period of limitation with respect to other obligations which Design-Builder might have under the Contract Documents. The establishment of the one (1) year time period, as described in [ARTICLE XIV.3.2](#), relates only to the specific obligation of Design-Builder to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time within which proceedings may be commenced to establish Design-Builder's liability with respect to Design-Builder's obligations other than specifically to correct the Work.

**XIV.3.9** Any Work repaired or replaced, pursuant to this [ARTICLE XIV](#), shall be subject to the provisions of [ARTICLE XIV](#) to the same extent as Work originally performed or installed.

#### **XIV.4 ACCEPTANCE OF NONCONFORMING WORK.**

City may, in City's sole discretion, accept Work that is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction. Upon said occurrence, the Contract Sum will be reduced as appropriate and equitable, as solely determined by City. Any adjustment will be accomplished whether or not final payment has been made

**END OF ARTICLE XIV**

## **ARTICLE XV. COMPLETION OF THE CONTRACT / TERMINATION / TEMPORARY SUSPENSION**

### **XV.1 FINAL COMPLETION OF CONTRACT.**

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond or by law, when all the Work fully has been completed, a final inspection is made by City and final acceptance and final payment is made by City.

### **XV.2 WARRANTY FULFILLMENT.**

Prior to the expiration of the specified warranty period provided for in the Contract Documents, City shall make a detailed inspection of the Work and shall advise Design-Builder and Design-Builder's Surety of the items that require correction. City shall make a subsequent inspection and, if the corrections properly have been performed, City shall issue a letter of release on the maintenance obligations to Design-Builder. If, for any reason, Design-Builder has not made the required corrections before the expiration of the warranty period, the warranty provisions, as provided for in the Contract Documents, shall remain in effect until the corrections properly have been performed and a letter of release from City to Design-Builder is issued.

### **XV.3 TERMINATION BY CITY FOR CAUSE.**

**XV.3.1** Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by City for any cause after giving ten (10) calendar days advance written notice and an opportunity to cure to Design-Builder, if applicable, including but not limited to the following causes:

- a. Failure or refusal of Design-Builder to start the Work within ten (10) calendar days after the date of the written Notice to Proceed is issued by City to Design-Builder commence Work;
- b. A reasonable belief of City that the progress of the Work being made by Design-Builder is insufficient to complete the Work within the specified Contract Time;
- c. Failure or refusal of Design-Builder to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner;
- d. City's reasonable belief that Design-Builder has abandoned the Work;

- e. City’s reasonable belief that Design-Builder has become insolvent, bankrupt, or otherwise is financially unable to carry on the Work;
- f. Failure or refusal on the part of Design-Builder to observe any material requirements of the Contract Documents or to comply with any written orders given by City, as provided for in the Contract Documents;
- g. Failure or refusal of Design-Builder promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Design-Builder in writing by City or Design Consultant;
- h. A reasonable belief by City collusion exists or has occurred for the purpose of illegally procuring the contract, a sub-consultant or a Subcontractor, or that a fraud is being perpetrated on City in connection with the construction of Work under the Contract; or
- i. Repeated and flagrant violation of safe working procedures.

**XV.3.2** When the Work or any portion of the Work is terminated for any of the causes itemized in [ARTICLE XV.3.1](#), or for any other cause except termination for convenience pursuant to [ARTICLE XV.3.6](#), Design-Builder shall, as of the date specified by City, immediately discontinue the Work or a portion of the Work as City shall designate, whereupon the Surety shall, within fifteen (15) calendar days after the written notice of termination by City for cause has been served upon Design-Builder and the Surety or its authorized agents, assume the obligations of Design-Builder for the Work or that portion of the Work which City has ordered Design-Builder to discontinue and Surety may:

**XV.3.3** perform the Work with forces employed by the Surety;

- a. with the written consent of City, tender a replacement Design-Builder to take over and perform the Work, in which event the Surety shall be responsible for and pay to the replacement Design-Builder the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or
- b. with the written consent of City, tender and pay to City in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work and compensate City for any other loss sustained as a result of Design-Builder's default.

In the event of a Termination by City For Cause involving [ARTICLE XV.3.1](#) and/or [ARTICLE XV.3.2](#), Surety shall assume Design-Builder's place in all respects and the amount of funds remaining and unpaid under the Contract shall be paid by City for all Work performed by Surety or the accepted replacement Design-Builder, in accordance with the terms of the Contract Documents, subject to any rights of City to deduct any and all costs, damages (liquidated or actual) City incurred, including, but not limited to, any and all additional fees and expenses of Design-Builder and any attorney fees City incurs as a result of Design-Builder's default and subsequent termination.

**XV.3.4** The balance of the Contract Sum remaining at the time of Design-Builder's default and subsequent termination shall become due and payable by City to the Surety as the Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If the Surety does not, within the time specified in [ARTICLE XV.3.2](#), exercise its obligation to assume the obligations of the Contract or that portion of the Work which City has ordered Design-Builder to discontinue, then City shall have the power to complete the Work by contract or otherwise, as City may deem necessary and so elects. Design-Builder agrees that City shall have the right to:

- a. take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of any and every kind, to be provided by Design-Builder for the purpose of the Work; and
- b. procure other tools, equipment, labor and materials for the completion of the Work at Design-Builder's and Surety's expense; and
- c. charge to the account of Design-Builder/Surety the expenses of completion and labor, materials, tools, equipment, and incidental expenses.

**XV.3.5** All expenses incurred by City to complete the Work shall be deducted by City out of the balance of the Contract Sum remaining unpaid to or unearned by Design-Builder. Design-Builder and Surety shall be liable to City for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work and for any other costs, damages, expenses (including, but not limited to, additional fees of City and attorney's fees) and liquidated or actual damages incurred as a result of the termination.

**XV.3.6** City shall not be required to obtain the lowest bid for the Work of completing the Contract, as described in [ARTICLE XV.3.4](#), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and all other damages, as provided in [ARTICLE XV.3.4](#). In case City's costs and damages are less than the sum



which would have been payable under the Contract if the Work had been completed by Design-Builder pursuant to the Contract, then City may pay Design-Builder (or Surety, in the event of a complete termination by City for cause) the difference, provided that Design-Builder (or Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the Work had been completed by Design-Builder pursuant to the Contract, then Design-Builder and its Surety shall pay the amount of the excess to City immediately upon written notice from City to Design-Builder and/or Surety for the excess amount owed. When only a particular part of the Work is being carried on by City, by contract or otherwise under the provisions of this Article, Design-Builder shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workers employed and provided by City.

**XV.3.7** The right to terminate this Contract for the convenience of City (including, but not limited to, non-appropriation of funding) expressly is retained by City. In the event of a termination for convenience by City, City shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Design-Builder. Upon Design-Builder's receipt of such written notice, Design-Builder immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Design-Builder then shall be paid by City, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred and not yet paid to date, the actual cost incurred and not yet paid to date of all materials installed and the actual cost incurred and not yet paid to date of all materials stored at the Project site or away from the Project site, as approved in writing by City and which cannot be returned, plus applicable overhead, profit and the actual, reasonable and documented termination costs, if any, paid by Design-Builder in connection with the Work in place which is completed and in conformance with the Contract Documents up to the date of termination for convenience, less all amounts previously paid for the Work. No amount ever shall be paid to Design-Builder for lost or anticipated profits on any part of the Work not performed.

#### **XV.4 TEMPORARY SUSPENSION OF THE WORK.**

**XV.4.1** The Work or any portion of the Work may temporarily be suspended by City, for a time period not to exceed ninety (90) calendar days, immediately upon written notice to Design-Builder for any reason including, but not limited to:

- a. the causes described in [ARTICLE XV.3.1](#);
- b. under other provisions in the Contract Documents that require or permit temporary suspension of the Work;

- c. situations where the Work is threatened by, contributes to or causes an immediate threat to public health, safety, or security; or
- d. other unforeseen conditions or circumstances.

**XV.4.2** Design-Builder immediately shall resume the temporarily suspended Work when ordered in writing to do so by City. City shall not, under any circumstances, be liable for any claim of Design-Builder arising from a temporary suspension due to a cause described in [ARTICLE XV.4.1](#); provided, however, that in the case of a temporary suspension for any of the reasons described under [ARTICLE XV.4.1B](#) through [ARTICLE XV.4.1D](#), where Design-Builder is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to City, City shall make an equitable adjustment for the following items, provided that a claim properly is made by Design-Builder under [ARTICLE VI.3](#):

- a. an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension, as determined by City;
- b. an equitable adjustment to the Contract Sum for the actual, necessary and reasonable costs of properly protecting any Work finished or partially finished during the period of the temporary suspension; provided, however, that no payment of profit and/or overhead shall be allowed on top of these costs; and
- c. if it becomes necessary to move equipment from the Project Site and then return it to the Project Site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary and reasonable cost of these moves; provided, however, that no adjustment to the Contract Sum shall be due if said equipment is moved to another Project site of City.

**END OF ARTICLE XV**

## **ARTICLE XVI. MISCELLANEOUS PROVISIONS**

### **XVI.1 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA).**

Design-Builder shall comply with the requirements of City's Small Business Economic Development Advocacy Office posted in the Project's solicitation documents and the Contract Documents.

### **XVI.2 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS.**

**XVI.2.1** This Contract shall be governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

**XVI.2.2** This Contract is entered into subject to and controlled by the Charter and ordinances of the City of San Antonio and all applicable laws, rules and regulations of the State of Texas and the Government of the United States of America. Design-Builder shall, during the performance of the Work, comply with all applicable City of San Antonio codes and ordinances, as amended, and all applicable State of Texas and Federal laws, rules and regulations, as amended.

### **XVI.3 SUCCESSORS AND ASSIGNS.**

City and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the promises, covenants, terms, conditions and obligations contained in the Contract Documents. Design-Builder shall not assign, transfer or convey its interest or rights in the Contract, in part or as a whole, without the written consent of City. If Design-Builder attempts to make an assignment, transfer or conveyance without City's written consent, Design-Builder 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 Design-Builder, except where assignment is compelled by court order, other operation of law or the terms of these General Conditions.

### **XVI.4 WRITTEN NOTICE.**

Any notice, payment, statement or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing, facsimile transmission, email, U.S. mail (postage prepaid) or by overnight delivery to an officer, management level employee or other designated representative of either party. Mailed or e-mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written

notice to the other in accordance with this [ARTICLE XVI.4](#). Mailed notices shall be deemed received as of three (3) calendar days after mailing.

#### **XVI.5 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY DESIGN-BUILDER OR CITY.**

**XVI.5.1** The duties and obligations imposed on either Party by the Contract Documents and the rights and remedies available to either Party 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.

**XVI.5.2** No action or failure to act by either Party shall constitute a waiver of a right afforded either Party under the Contract Documents, nor shall any action or failure to act by either Party constitute approval of or acquiescence in a breach of the Contract by either Party, except as may be specifically agreed in writing by Change Order, Amendment or Supplemental Agreement.

#### **XVI.6 INTEREST.**

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, subject to [ARTICLE XI](#) of these General Conditions.

#### **XVI.7 INDEPENDENT MATERIALS TESTING AND INSPECTION.**

In some circumstances, City shall retain, independent of Design-Builder, inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Project by City. Such consultants will be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties and responsibilities of any independent consultants of City will be described in the agreements between City and those consultants. The provision of inspection services by City will be for Quality Assurance and shall not reduce or lessen Design-Builder's responsibility for the Work or its duty to establish and implement a thorough Quality Control Program to monitor the quality of construction and guard City against defects and deficiencies in the Work, as required herein. Design-Builder fully and solely is responsible for constructing the Project in strict accordance with the Construction Documents.

#### **XVI.8 FINANCIAL INTEREST.**

**XVI.8.1** Officers or employees of the City shall not have financial interest in any contract of the city. Design-Builder acknowledges the Charter of the City of San Antonio and its Ethics Code prohibits a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City of 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;
- b. business entity in which the officer or employee, his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity;
- c. business entity in which any individual or entity listed above is a Subcontractor on a City contract, or
- d. a partner or a parent or subsidiary business entity.

**XVI.8.2** Pursuant to the subsection above, Design-Builder warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and/or agents are neither officers nor employees of City. Design-Builder further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City’s Ethics Code. Any violation of this [ARTICLE XVI.8](#) shall constitute malfeasance in office and any officer or employee of City guilty thereof shall forfeit his office or position. Any violation of this [ARTICLE XVI.8](#), with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with City shall render a Contract voidable by the City's City Manager or City Council.

**XVI.9 VENUE.**

This Contract shall be performed in Bexar County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Bexar County, Texas.

**XVI.10 INDEPENDENT DESIGN-BUILDER.**

In performing the Work under this Contract, the relationship between City and Design-Builder is that of an independent contractor. Design-Builder shall exercise independent judgment in performing the Work and solely is responsible for setting working hours, scheduling and/or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making Design-Builder an agent, servant or employee of City or making Design-Builder or any of Design-Builder’s employees, agents or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation which City provides to its employees.

**XVI.11 NON-DISCRIMINATION.**

As a Party to this Contract, Design-Builder 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 of San Antonio Code and further, Design-Builder shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless Design-Builder is exempted by state or federal law, or as otherwise established. Design-Builder covenants that it shall take all necessary actions to insure that, in connection with any Work under this Contract, Design-Builder, its sub-consultant(s), 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. Design-Builder also shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended.

#### **XVI.12 BENEFITS TO PUBLIC SERVANTS.**

**XVI.12.1** City may terminate this Contract immediately if Design-Builder 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.

**XVI.12.2** For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

**XVI.12.3** Notwithstanding any other legal remedies, City may require Design-Builder to remove any employee of Design-Builder, a sub-consultant, a Subcontractor or any employee of a sub-consultant and/or Subcontractor from the Project who has violated the restrictions of this [ARTICLE XVI](#) or any similar State or Federal law and City may obtain reimbursement for any expenditures made to Design-Builder as a result of the improper offer, agreement to confer or the conferring of a benefit to a City of San Antonio employee or official.

**END OF ARTICLE XVI**

## ARTICLE XVII. AUDIT

### XVII.1 RIGHT TO AUDIT DESIGN-BUILDER'S RECORDS.

By execution of the Contract, Design-Builder grants City the right to audit, examine, inspect and/or copy, at City's election at all reasonable times during the term of this Contract and for a period of four (4) years following the completion or termination of the Work, all of Design-Builder's written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Design-Builder agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under this Contract, then, such retention period shall extend until final resolution of the dispute, with full access allowed to authorized representatives of City upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

**XVII.1.1** As used in these General Conditions, "Design-Builder written and electronically stored records" shall include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Design-Builder written and electronically stored records include, but are not limited to: accounting data and reports, billings, books, general ledgers, cost ledgers, invoices, production sheets, documents, correspondences, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in City's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents.

**XVII.1.2** City agrees that it shall exercise the right to audit, examine or inspect Design-Builder's records only during regular business hours. Design-Builder agrees to allow City and/or City's designee access to all of the Design-Builder's Records, Design-Builder's facilities and current or former employees of Design-Builder, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Design-Builder also agrees to provide adequate and appropriate work space necessary for City or its designees to conduct such audits, inspections or examinations.

**XVII.1.3** Design-Builder shall include this [ARTICLE XVII](#) in any sub-consultant, Subcontractor, Supplier or vendor contract.

### END OF ARTICLE XVII

**ARTICLE XVIII. ATTORNEY FEES**

The Parties hereto expressly agree, in the event of litigation, all Parties waive rights to payment of attorneys' fees that otherwise might be recoverable, pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law or any other provision for payment of attorney's fees.

**END OF ARTICLE XVIII**



## **SPECIAL CONDITIONS FOR DESIGN-BUILD HORIZONTAL PROJECTS**

**1. ARTICLE V.2.4 is hereby ADDED to ARTICLE V.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN-BUILDER.**

**V.2.4** Upon discovery of differing site conditions, Design-Builder shall, before such discovered conditions and/or structures are disturbed, promptly notify City in writing of such differing site conditions. Differing site conditions are defined as subsurface or latent physical and/or structural conditions at the Site differing materially from those indicated in the Plans, Specifications and other Contract Documents or newly discovered and previously unknown physical conditions at the Site of an unusual nature differing materially from those geophysical conditions typically encountered in the type Work being performed and generally being recognized as not indigenous to the San Antonio, Bexar County, Texas environs.

### **END OF GENERAL CONDITIONS**

City promptly shall investigate the reported physical and/or structural conditions and shall determine whether or not the physical and/or structural conditions do materially so differ and thereby cause an increase or decrease in Design-Builder's cost of and/or time required for performance of any part of the Work under this Contract. In the event that City reasonably determines that the physical and/or structural conditions materially so differ, a negotiated and equitable adjustment shall be made to the Contract Time and/or Contract Sum and a Change Order promptly shall be issued by City.

- a.** No claim of Design-Builder under this **ARTICLE III.2.4** shall be allowed unless Design-Builder has given the written notice called for above, prior to disturbing the discovered conditions and/or structures.
- b.** No Contract adjustment shall be allowed under this **ARTICLE III.2.4** for any effects caused on unchanged work.

**2. ARTICLE XVI.7 MATERIAL TESTING.**

Appends **ARTICLE XVI.7** of City’s Design-Build General Conditions.

Materials not meeting Contract requirements or that do not produce satisfactory results will be rejected by City, unless City approves corrective actions. Upon rejection, Design-Builder immediately shall remove and replace rejected materials. If Design-Builder does not comply with these requirements, City may remove and replace defective material and all costs incurred by City for testing, removal and replacement of rejected materials shall be deducted from any money due or owed to Design-Builder.

The source of each of the materials shall be approved by City before delivery is started and, at the option of City, may be sampled and tested by City for determining compliance with the governing specifications before delivery is started. If it is found after trial that the sources of the materials previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, Design-Builder shall furnish materials from other approved sources. Only materials conforming to the requirements of the Contract Documents and approved by City shall be used by Design-Builder in the work. All materials being used by Design-Builder are subject to inspection or test at any time during preparation or use. Any material which has been tested and accepted at the source of supply may be subjected to a check test after delivery and all materials which, when retested, do not meet the requirements of the specifications will be rejected. No material which, after approval, has in any way become unfit for use shall be used in the Work.

If, for any reason, Design-Builder selects a material which is approved for use by City by sampling, testing or other means, and Design-Builder decides to change to a different material requiring additional sampling and testing by City for approval, Design-Builder shall pay for any expense incurred by City for such additional sampling and testing and the costs incurred by City shall be deducted from any money due or owed to Design-Builder.

**3. ARTICLE VI.3.8 CHANGE IN UNIT PRICES**

Appends **ARTICLE VI.3.8** of City’s Design-Build General Conditions.

Unit prices established in the Contract documents only may be modified when a Change Order or Field Work Directive causes a material change in quantity to a Major Bid Item. A “**Major Bid Item**” is defined as a single bid item that constitutes a minimum of five percent (5%) of the total contract value. A material change in quantity is defined as an increase or decrease of twenty five percent (25%) or more of the units of an individual bid item or an increase or decrease of twenty five percent (25%) or more of the dollar value of a lump sum bid item. Revised unit pricing shall only apply to the quantity of a

Major Bid Item in excess of a twenty five percent (25%) increase or decrease of the original Contract quantity.

As applicable, if unit prices are stated in the Contract Documents or subsequently are agreed upon by City and Design-Builder and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive, such that the application of such unit prices to quantities of Work proposed shall cause substantial inequity to City or Design-Builder, the applicable unit prices shall be equitably adjusted.

#### **4. ARTICLE IX.2.6 ALLOWABLE MARKUPS**

Added to [ARTICLE IX.2](#) of City's Design-Build General Conditions.

**VII.2.6** Maximum allowable markups for Change Order pricing, when said pricing is not determined through unit prices, are established as follows:

**a. Labor.**

Design-Builder shall be allowed the documented payroll rates for each hour laborers and foremen actually engaged in the Work. Design-Builder shall be allowed to receive an additional twenty five percent (25%) as compensation, based on the total wages paid said laborers and foremen. No charge shall be made by Design-Builder for organization or overhead expenses. For costs of premiums on public liability and workers compensation insurance(s), Social Security and unemployment insurance taxes, an amount equal to fifty five percent (55%) of the sum of the labor cost, excluding the twenty five percent (25%) documented payroll rate compensation allowed herein, shall be the established maximum allowable labor burden cost. No charge for superintendence will be made unless considered necessary and approved by City or a Change Order includes an extension of the Contract Time.

**b. Materials.**

Design-Builder shall be allowed to receive the actual cost, including freight charges, for materials used in performance of the Work, including an additional twenty five percent (25%) of the actual cost as compensation. When material invoices indicate an available discount, the actual cost shall be determined as the invoiced price less the available discount.

**c. Equipment.**

For Design-Builder-owned machinery, trucks, power tools or other equipment, necessary for use on Change Order work, the Rental Rate Blue

Book for Construction Equipment (hereafter referred to as “Blue Book”) rate, as modified by the following, will be used to establish Design-Builder’s allowable hourly rental rates. Equipment used shall be at the rates in effect for each section of the Blue Book at the time of use. The following formula shall be used to compute the hourly rates:

$$H = \frac{M \times R1 \times R2}{176} + OP$$

where:

- H = Hourly Rate
- M = Monthly Rate
- R1 = Rate Adjustment Factor
- R2 = Regional Adjustment Factor
- OP = Operating Costs

If Design-Builder-owned machinery and/or equipment is not available and equipment is rented from an outside source, the hourly rate shall be established by dividing the actual invoice cost by the actual number of hours the equipment is involved in the Work. City reserves the right to limit the hourly rate to comparable Blue Book rates. When the invoice specifies that the rental rate does not include fuel, lubricants, repairs and servicing, the Blue Book hourly operating cost shall be allowed to be added for each hour the equipment operates. The allowable equipment hourly rates shall be paid for each hour that the equipment is involved in the Work and an additional maximum of fifteen percent (15%) may be added as compensation.

**d. Sub-Consultant and Subcontractor Markups.**

Design-Builder will be allowed administrative cost only when extra work, ordered by City, is performed by a sub-consultant or Subcontractor. The maximum allowable payment for administrative cost will not exceed five percent (5%) of the total sub-consultant/Subcontractor work. Off-duty peace officers and patrol cruisers shall be considered as Subcontractors, with regard to consideration of allowable Design-Builder markups.

**5. IX.3.5.j FIELD WORK DIRECTIVE ALLOWABLE MARKUPS.**

Adds **ARTICLE IX.3.5.j** to City’s Design-Build General Conditions.

**IX.3.5.j** Maximum allowable markups for Field Work Directives shall follow the allowable markups established in **ARTICLE VII.2.6** herein.

**6. IX.3.5.J STANDBY EQUIPMENT COSTS.**

Added to **ARTICLE IX.3.5** of City’s Design-Build General Conditions.

**IX.3.5.j** Design-Builder shall be entitled to standby costs only when directed to standby in writing by City. Standby costs may include actual documented Project overhead costs of Design-Builder, consisting of administrative and supervisory expenses incurred at the Project Site. Standby equipment costs shall not be allowed during periods when the equipment would otherwise have been idle.

For Projects determined by City on a project-by-project basis, with Design-Builder working a six (6) day work week, with a Working Day measured from sunrise to sundown Monday through Saturday, no more than eight (8) hours of standby time shall be paid during a 24-hour day, no more than forty eight (48) hours shall be paid per week for standby time and no more than two hundred and eight (208) hours per month shall be paid of standby time. Standby time shall be computed at fifty percent (50%) of the rates found in the Blue Book and shall be calculated by dividing the monthly rate found in the Blue Book by 208, then multiplying that total by the regional adjustment factor and the rate adjustment factor. Operating costs shall not be charged by Design-Builder.

**7. XI.11 ROAD CLOSURES AND DETOUR ROUTES.**

Adds **ARTICLE XI.11** to City’s Design-Build General Conditions.

**XI.11** Design-Builder shall not begin construction of the Project or close any streets until adequate barricades and detour signs have been provided, erected and maintained in accordance with the detour route and details shown on the Project Plans. Design-Builder shall notify City forty eight (48) hours in advance of closing any street to through traffic. Local traffic shall be permitted the use of streets under construction whenever feasible.

**8. XI.12 USE OF CITY STREETS.**

Adds **ARTICLE XI.12** to City’s Design-Build General Conditions.

**XI.12** Design-Builder shall confine the movements of all steel-tracked equipment to the limits of the Project Site and any such equipment shall not be allowed use of City’s streets unless being transported on pneumatic-tired vehicles. Any damage to City’s streets caused by Design-Builder and/or Design-Builder’s equipment, either outside the limits of the Project site or within the limits of the Project site but not within the limits of the current phase then being constructed, shall be repaired by Design-Builder at its own expense and as

prescribed by City’s specifications and direction. If Design-Builder cannot or refuses to repair street damage caused by Design-Builder and/or Design-Builder’s equipment, City may perform the repairs and all expenses incurred by City in performing the repairs shall be deducted for any money due or owed to Design-Builder.

**9. XI.13 MAINTENANCE OF TRAFFIC.**

Adds **ARTICLE XI.12** to City’s Design-Build General Conditions.

**XI.13** In accordance with the approved traffic control plan and as specified in the Contract, Design-Builder shall:

- a. keep existing roadways open to traffic or construct and maintain detours and temporary structures for safe public travel;
- b. maintain the Work in passable condition, including proper drainage, to accommodate traffic;
- c. provide and maintain temporary approaches and crossings of intersecting roadways in a safe and passable condition;
- d. construct and maintain necessary access to adjoining property as shown in the plans or as directed by City; and
- e. furnish, install and maintain traffic control devices in accordance with the Contract.

The cost of maintaining traffic will be subsidiary to the Project and will not directly be paid for by City, unless otherwise stated in the Plans and Specifications. City will notify Design-Builder if Design-Builder fails to meet the above traffic requirements. City may perform the work necessary for compliance, but any action by City shall not change the legal responsibilities of Design-Builder, as set forth in the Contract Documents. Any costs incurred by City for traffic maintenance shall be deducted from money due or owed to Design-Builder.

**10. XI.14 ABATEMENT AND MITIGATION OF EXCESSIVE OR UNNECESSARY CONSTRUCTION NOISE.**

Adds **ARTICLE XI.14** to City’s Design Build General Conditions.

**XI.14** Design-Builder shall ensure abatement and mitigation of excessive or unnecessary construction noise to the satisfaction of City and as prescribed by all applicable state and local laws.

**11. XI.15 INCIDENTAL WORK, CONNECTIONS, AND PASSAGEWAYS.**

Adds **ARTICLE XI.15** to City’s Design-Build General Conditions.

**XI.15** Design-Builder shall perform all incidental Work necessary to complete and comply with this Contract including, but not limited to the following:

- a.** Design-Builder shall make and provide all suitable reconnections with existing improvements (generally excluding new connections with or relocation of utility services, unless specifically provided for otherwise in the Contract Documents) as are necessarily incidental to the proper completion of the Project;
- b.** Design-Builder shall provide passageways or leave open such thoroughfares in the Work Site as may be reasonably required by City; and
- c.** Design-Builder shall protect and guard same at its own risk and continuously shall maintain the Work Site in a clean, safe and workmanlike manner.

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**END OF SPECIAL CONDITIONS**

## **EXHIBIT D SBEDA PLAN**





# City of San Antonio Subcontractor/Supplier Utilization Commitment Form

Solicitation Name: **Prue Rd. Design-Build**

Respondent Name: J. D. Abrams, L. P.

**Please acknowledge the statements below by initialing the box:**

AS

In responding to this solicitation, I hereby affirm my firm's commitment to meet the subcontracting requirement(s) indicated in the solicitation.

AS

I understand a Minority/Women Business Enterprise (M/WBE) subcontracting goal of **twenty-two percent (22%)** applies to this solicitation

AS

I understand an African American Business Enterprise (AABE) subcontracting goal of **two percent (2%)** applies to this solicitation.

AS

I understand that to be SBEDA eligible, a Prime or Sub-consultant must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency ([www.SCTRCA.org](http://www.SCTRCA.org)) **AND** they must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area.

AS

I understand that for a Sub-consultant to count toward City required subcontracting goal(s), the Sub-consultant must be SBEDA eligible and have the same certification(s) as the City required subcontracting goal(s). Self-Performance by S/MWBE Prime respondents does **NOT** count towards the subcontracting goals.

AS

I understand that absent a Subcontracting Goal-Waiver approved by the Small Business Office, failure to include a completed, signed copy of this Commitment Form to satisfy the subcontracting goal(s) for this solicitation will render this response NON-RESPONSIVE.

AS

I understand and affirm that absent a Subcontracting Goal-Waiver approved by the Small Business Office (SBO), if asked to submit a price proposal response I will be required to submit a Subcontractor/Supplier Utilization Plan and my firm's failure to submit the Subcontractor/Supplier Utilization Plan satisfying sub-contracting goals during the price proposal response will be grounds for termination of negotiations and will allow the City to enter into negotiations with another Respondent.

AS

I understand in the absence of a Subcontracting Goal-Waiver granted by the SBO, the failure of firm to attain these subcontracting goals for S/M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and subject to penalties and/or sanctions available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Prime Consultant's Authorized Agent:

Name: Amadeo Saenz, Jr. P. E.

Sign and Date:  1-12-2018

## *Prue Rd. Design-Build*

### A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

### B. Definitions

**Affirmative Procurement Initiatives (API)** – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

**Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation

process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

**Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent’s previous experience and quality of product or services procured, and other factors identified in the applicable statute.

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

**Certification** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.

**City** – refers to the City of San Antonio, TX.

**Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

**Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

**Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

**Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.

**Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

**Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-

specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

**Good Faith Efforts** – documentation of the Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and CONTRACTORS that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

**HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

**Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

**Individual** – an adult person that is of legal majority age.

**Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

**Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently

Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

**Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

**M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.

**M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

**M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

**Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons with origins in any of the black racial groups of Africa.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16<sup>th</sup> percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

**Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

**Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

**Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

**Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

**Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

**Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

**Responsive** – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

**San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

**SBE Directory** – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.

**Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and



which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

**Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

**Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

**Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

**Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City’s issuance of a notice to proceed.

**Suspension** – the temporary stoppage of an SBE or M/WBE firm’s beneficial participation in the City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

**Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

**Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein.

Unless otherwise stated, the term “WBE” as used in this Ordinance is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY’s SBEDA Policy & Procedure Manual are in furtherance of the CITY’s efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR’s scope of work as referenced in the CITY’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR’s Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of

Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum 7of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

**M/WBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is also being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least *twenty-two percent (22%)* of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA).

**Segmented M/WBE Goal.** In accordance with SBEDA Ordinance Section III. D. 2. (e), this contract is being awarded pursuant to Segmented M/WBE Goals. CONTRACTOR agrees to subcontract at least *two percent (2%)* of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This two percent (2%) subcontracting goal will also count toward the aforementioned twenty-two percent (22%) M/WBE subcontracting goal.

The Subcontractor/Supplier Utilization Plan which CONTRACTOR submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE and AABE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE and AABE Subcontractor, and documentation including a description of each M/WBE and AABE Subcontractor's scope of work and confirmation of each M/WBE and AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain this M/WBE and AABE subcontracting goal as required in the solicitation shall render its response non-Responsive. Also, in the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain a subcontracting goal for M/WBE and AABE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

**Mentor Protégé Program:** In accordance with the SBEDA Ordinance, Section III. D. 3. (e), this contract is being awarded pursuant to the Mentor-Protégé Program, and as such, if a prime CONSULTANT is awarded any of the contracts listed below, they will be required to serve in the City's Mentor Protégé Program. If the prime CONSULTANT is already registered in the City's Mentor Protégé Program, then CONSULTANT will be required to continue their service in the Program for a two year period per the date of contract award. Please refer to the website at

<https://besanantonio.com/> or contact Janice Wehrman, Program Administrator at (210) 486-5904 for the City's Mentor Protégé Program to learn more about the application process and Program requirements if awarded one or more of the contracts requiring mentorship participation.

**Subcontractor Diversity:** The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE and AABE subcontracting goal of 22% and 2% respectively, that has been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio architecture and engineering industry, as reflected in the City's Centralized Vendor Registration system for the month of November 2017, African-American owned firms represent approximately 3.02% of available subcontractors, Hispanic-American firms represent approximately 14.51%, Asian-American firms represent approximately 1.15%, Native American firms represent approximately 0.43%, and Women-owned firms represent approximately 4.96% of available architecture and engineering subcontractors.

#### F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

#### G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's

reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

#### H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and

5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

**EXHIBIT E PAYMENT AND PERFORMANCE BOND FORMS**



**PAYMENT BOND**

**STATE OF TEXAS  
COUNTY OF BEXAR  
CITY OF SAN ANTONIO**

Know all men by these presents:

1. That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto City of San Antonio, a municipal corporation of the county of Bexar and State of Texas in the sum of

\$ \_\_\_\_\_

for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS,

the said \_\_\_\_\_

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described

as \_\_\_\_\_

(Insert Name of Project and Location)

and for the performance and observance of diverse other matters and things in connection with said work, and, interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect: and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted;

and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by City, nor by the exercise or failure to exercise by or on behalf of City any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.
5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20\_\_\_\_\_.

Contractor By: \_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Signature)

Surety By: \_\_\_\_\_  
(Typed Name)

(SEAL) \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address of Surety for Service Purposes

**PERFORMANCE BOND**

**STATE OF TEXAS  
COUNTY OF BEXAR  
CITY OF SAN ANTONIO**

Know all men by these presents:

1. That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto City of San Antonio, a municipal corporation of the county of Bexar and State of Texas in the sum of

\$ \_\_\_\_\_

for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS,  
the said \_\_\_\_\_

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described

as \_\_\_\_\_

(Insert Name of Project and Location)

and for the performance and observance of diverse other matters and things in connection with said work; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation.

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all included instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said structures, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each

member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by City, nor by the exercise or failure to exercise by or on behalf of City any right or remedy provided by the contract or specifications or by any law or ordinance.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20\_\_\_\_\_.

Contractor By: \_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Signature)

Surety By: \_\_\_\_\_  
(Typed Name)

(SEAL) \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address of Surety for Service Purposes

**EXHIBIT F DESIGN-BUILDER'S DESIGN SCHEDULE AND DESIGN FEE  
SCHEDULE**

**EXHIBIT G DESIGN-BUILDER'S BASELINE PRE-CONSTRUCTION AND  
CONSTRUCTION SCHEDULES**

**EXHIBIT H DESIGN-BUILD SCOPE OF SERVICES AND HOURLY RATE WITH  
SCHEDULE OF VALUES**





**EXHIBIT I DESIGN TASKS AND DELIVERABLES FOR HORIZONTAL PROJECTS**

## **EXHIBIT J CONSTRUCTION TASKS AND DELIVERABLES FOR HORIZONTAL PROJECTS**

### **1. CONSTRUCTION TASKS AND DELIVERABLES**

Design-Builder shall provide construction services from mobilization through Project completion and warranty period.

#### **1.1. Construction services will include but not be limited to:**

**1.1.1. Construction Design and Planning**

**1.1.2. Scheduling and Cost control**

**1.1.3. Subcontracting and Procurement**

**1.1.4. Project Coordination**

**1.1.5. Testing, Material Testing Coordination and Inspection**

#### **1.2. COORDINATION**

Design-Builder shall provide reasonable opportunities to subcontractors for the performance of their work and coordinate scheduling of activities by all subcontractors working on the Project.

### **2. CONSTRUCTION DESIGN AND PLANNING**

#### **2.1. OVERALL PHASING AND STAGING PLANS**

**2.1.1.** Prior to detailed work on construction phasing, prepare for review by City conceptual construction sequencing and traffic management plans indicating for each phase the flow of vehicular and pedestrian traffic (traffic management), temporary barricades, drainage and roadways, traffic control and protection, and project schedule milestones. Graphic drawing accompanied with descriptive text for each proposed phase of construction is a minimum requirement.

**2.1.2.** Prior to actual construction prepare for review by the City detailed construction sequencing and traffic management plans indicating for each phase the flow of vehicular and pedestrian traffic (traffic management), temporary barricades, drainage and roadways, traffic control and protection and project schedule milestones. Overall phasing plans for each phase of construction with detail notes accompanied with each disciplines' separate detail drawings prepared for each phase of construction is a

minimum requirement.

- 2.1.3.** The Project will involve significant construction improvements in a physically constrained, heavily traveled environment. Design-Builder shall meet with City to review working hour and roadway lane restriction requirements.
- 2.1.4.** Design-Builder shall develop staged construction, traffic handling and temporary -signage plans for various phases of construction. These plans shall be submitted to City for review and acceptance.
- 2.1.5.** Design-Builder shall verify that the Project is constructible and that traffic impacts are minimized and public safety is not compromised.

## **2.2. PHASING / SEQUENCING REQUIREMENTS**

### **2.2.1. Facility/Site Events**

- a.** Schedule construction operations to allow existing and adjacent facilities and businesses to remain in uninterrupted service during scheduled operations. Do not perform any construction operation prior to receiving a review and acceptance from City, which also will coordinate with the affected event organizers.
- b.** Schedule construction operations to allow existing residents continuous access to their property during scheduled operations.
- c.** Provide temporary dust proof enclosures and protection as required to sequence construction and maintain event operations.

## **2.3. REQUIREMENTS FOR ALTERNATIVES TO PHASING AND SEQUENCING OBJECTIVES**

- 2.3.1.** Design-Builder is encouraged to seek alternative approaches of phasing and sequencing that can save time and/or money that may require adjustments to the any specified City objectives.
- 2.3.2.** Design-Builder is required to meet all specified City objectives unless City gives prior written approval for alternative approaches.
- 2.3.3.** Design-Builder shall make a written request for alternative approaches prior to initiating any effort involving these alternative approaches. The request shall:
  - a.** Indicate how the alternative approaches will save time and/or money;
  - b.** Detail the operational impacts of the alternative approaches and

demonstrate the viability of any operational adjustments that are required;

- c. Convey to City the nature of alternative approaches in sufficient detail to enable the City to understand all significant implications of the alternative approaches; and
- d. Demonstrate compliance with performance criteria detailed in the Program Criteria Document and any subsequent direction provided to Design-Builder.

#### **2.4. HAUL ROUTES**

Design-Builder shall be responsible for developing construction haul routes for the Project. Design-Builder shall meet with City to discuss haul route requirements and impacts to traffic and ground transportation facilities. Design-Builder shall prepare haul route plans and submit them to City for review and acceptance.

#### **2.5. ROADWAYS AND PARKING**

The following are City objectives to be achieved in phasing sequencing of roadway and parking activities for adjacent businesses:

- 2.5.1. Electrical power shall not be disturbed to offices, entrances, exits, and lighting.
- 2.5.2. Integrity of the parking perimeter shall not be compromised.
- 2.5.3. Queuing areas must be in place for entrances and exits.
- 2.5.4. Clear signage for entry and exit of the parking shall be in place at all times.

#### **2.6. NOTICE OF CHANGES**

Establish a procedure to give adequate notice to tenants (event organizers, concessionaires, etc.) of changes that may impact them.

#### **2.7. CONSTRUCTION QUALITY CONTROL PROGRAM**

Establish a Construction quality control program organized to address as a minimum the following items:

- 2.7.1. Quality control organization.
- 2.7.2. Work progress schedule.

- 2.7.3. Submittal schedule.
  - 2.7.4. Inspection requirements.
  - 2.7.5. Quality control testing plan.
  - 2.7.6. Documentation of quality control activities.
  - 2.7.7. Requirements for corrective action when quality control and/or acceptance criteria are not met.
- 2.8. Deliverables shall include but not be limited to the following:
- 2.8.1. Overall Construction Staging and Phasing Plans
  - 2.8.2. Traffic Management Plans
  - 2.8.3. Temporary Striping and Signage Plans
  - 2.8.4. Haul Route Plans
  - 2.8.5. Construction Quality Control Program
  - 2.8.6. Procedure for Notice of Changes

### **3. PROJECT COORDINATION**

#### **3.1. EVENT PLANNING.**

- 3.1.1. Design-Builder shall assist in coordinating any official ground breaking and grand opening of major facilities.
- 3.1.2. Design-Builder shall be available to assist with any media-related stories and events that arise during the duration of the Project, such as, but not limited to, first construction and topping off ceremonies.
- 3.1.3. Design-Builder shall assign representative(s) to be actively involved in the planning committee for the event.

#### **3.2. CONSTRUCTION NOTICES**

- 3.2.1. Design-Builder shall provide necessary notices needed during the construction period that notifies passengers, tenants and stakeholders of construction-related annoyances and inconveniences. Such work includes, but is not limited to, activity that causes noise (ex. pile driving); roadway changes, detours and closures; and work activity that creates dust and debris.

**3.2.2.** Notices shall be approved by City.

**3.2.3.** If the notice is in the form of signage, such signage shall be mounted by Design-Builder approximately five (5) business days before work is set to begin and removed promptly once work is completed.

#### **4. TESTING AND INSPECTION**

**4.1.** To ensure compliance with City's construction specifications, testing/Inspection Agencies shall be employed by Design-Builder for necessary special inspections. Design-Builder shall coordinate with City as required for the following activities:

**4.1.1.** Field Testing and Inspection: the performance of all testing, observation, and inspection required by City specifications.

#### **4.2. REPORTS**

Written report of each test/inspection, including complete details of conditions, methods, and results, signed by Texas professional engineer.

#### **4.3. REFERENCE STANDARDS**

Where products or workmanship is specified by reference to a document not included in the Contract Documents, comply with the requirements of the document, except where more stringent requirements are specified compliance with the more stringent requirement is necessary.

#### **4.4. DATE OF ISSUE**

Latest edition published as of date of contract documents except where a specific date is specified herein or established by code.

#### **5. OFF-SITE STORAGE**

With prior approval by City and in the event Design-Builder elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by City.

**5.1.** Store materials in a commercial warehouse meeting the criteria stated below.

**5.2.** Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with City's representative.

- 5.3.** Inspection by City's representative is allowed at any time. City's inspectors must be satisfied with the security, control, maintenance, and preservation measures.
- 5.4.** Materials for this Project are physically separated and marked for the Project in a sectioned off area. Only materials which have been approved through the submittal process are to be considered for payment.
- 5.5.** City reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements, regardless of any previous progress payment made.
  - 5.5.1.** With each monthly payment estimate, submit a report to City listing the quantities of materials already paid for and still stored in the off-site location.
  - 5.5.2.** Make warehouse records, receipts and invoices available to City's representatives, upon request, to verify the quantities and their disposition.
- 5.6.** In the event of Contract termination or default by Design-Builder, the items in storage off-site, upon which payment has been made, will be promptly turned over to City or City's agents at a location near the jobsite as directed by City. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site

## **EXHIBIT K PROJECT MANAGEMENT TASKS AND DELIVERABLES**

### **1. PROJECT MANAGEMENT TASKS AND DELIVERABLES**

#### **1.1. COMPREHENSIVE SERVICE**

**1.1.1.** Design-Builder shall provide a comprehensive service in the execution of the Project, as defined by the Contract terms and conditions herein. City shall participate in the Project, as defined by the Contract terms and conditions, as the overall success of the Project is a shared responsibility of City and Design-Builder.

**1.1.2.** The requirements and guidelines below apply to Design-Builder. All procedures, quality control programs and deliverable requirements are to apply to all of Design-Builder's team members. Project Management Plans, Document Control Logs, team structure charts and the like shall encompass all of Design-Builder's team members together in one (1) document, not in separate documents. This shall include the work of even minor Subcontractors and Sub-Consultants.

#### **1.2. PROJECT MANAGEMENT PLAN**

**1.2.1.** Design-Builder shall provide a written Project Management Plan outlining the overall level of Project effort. Elements of this Plan shall continually be updated throughout Design-Builder process and will create both a forward looking and the key tools to track performance of the Project. At a minimum, the Plan shall be composed of the following elements summarized herein and explained in subsequent paragraphs.

- a.** Programming Document
- b.** Project Team Structure
- c.** Quality Assurance Plan
- d.** Document Control Procedure
- e.** Archiving of Program Procedure
- f.** Project Schedule
- g.** Project Cost Estimate

**1.2.2.** The first version of Design-Builder's Project Management Plan Shall be provided to City for a approval within thirty (30) calendar days of Design-Builder contract award. Design-Builder shall allow fourteen (14) calendar days for review by City.



### **1.3. PROGRAMMING DOCUMENT**

The initial Programming Document, attached hereto and made a part of this document by reference and labeled as **EXHIBIT A: PROGRAMMING DOCUMENTS**, shall be provided by City and fully be developed and updated by Design-Builder, as described in **EXHIBIT I: DESIGN TASKS AND DELIVERABLES FOR HORIZONTAL PROJECTS**.

### **1.4. DESIGN-BUILDER'S PROJECT TEAM STRUCTURE**

**1.4.1.** Design-Builder shall submit a written Identification of Project Team Structure, indicating Key Project Personnel, as provided to and accepted by City during the selection process. Design-Builder shall indicate actual lines of reporting and responsibility and shall include matrix reporting, as applicable. **Key Project Personnel** are defined as individuals that interface directly with City or cover critical technical expertise. Executive, ceremonial or figurehead positions should not be indicated; only individuals with actual authority and responsibility and who will make tangible contributions to the Project should be included in Design-Builder's Project Team Structure.

**1.4.2.** City shall be notified at least twenty (20) calendar days in advance of any proposed changes in Design-Builder's Key Project Personnel and City reserves the right to approve Design-Builder's proposed replacements.

**1.4.3.** Key Project Personnel shall be available to City during normal business hours. Design-Builder shall inform City, via e-mail, at least ten (10) calendar days in advance of any known scheduled absence of Key Project Personnel expected to exceed three (3) calendar days. For sudden or unscheduled absences, such as illnesses of Key Project Personnel, Design-Builder shall inform City by telephone, as soon as is practical, if the absent individual was expected to be available for consultation or meetings.

### **1.5. QUALITY ASSURANCE PROGRAM**

**1.5.1.** Design-Builder shall develop and submit to City an effective Quality Assurance Program outlining the methods and procedures that will be used to develop detailed Design and Construction Quality Control programs, to assure that all design work, materials and completed construction conform to all applicable City, state and federal requirements. Design-Builder's Quality Assurance Program shall describe the established and approved instructions and procedures for both design and construction of the Project. The data contained in these procedures shall include or reference acceptance or rejection criteria.

- 1.5.2.** Design-Builder shall submit the written Design Quality Control Program, indicating specific responsible parties, to City for approval within thirty (30) Calendar Days of the Contract award.
- 1.5.3.** Design-Builder shall submit the written Construction Quality Control Program, indicating specific responsible parties, to City for approval, at minimum, thirty (30) calendar days prior to the start of any of Design-Builder's production, construction or off-site fabrication.
- 1.5.4.** The Quality Control Programs shall apply to Design-Builder, its Sub-Consultants and Subcontractors. If Design-Builder's Sub-Consultants and/or Subcontractors have additional Quality Control procedures, those entities shall submit their additional Quality Control procedures to City for approval, at minimum, thirty (30) calendar days prior to the start of that Sub-Consultant's or Subcontractor's work effort.
- 1.5.5.** The Design Quality Control Program shall be organized to address, at minimum, the following items:
  - a.** Quality control organization.
  - b.** Work progress schedule.
  - c.** Submittal schedule.
  - d.** Procedures covering, as a minimum, the coordination, checking and sign-off procedures for drawings specifications, calculations and reports.
  - e.** Documentation of quality control activities.
  - f.** Requirements for corrective action when quality control and/or acceptance criteria are not met.
  - g.** Testing & Inspection procedures

## **1.6. DOCUMENT CONTROL**

- 1.6.1.** Design-Builder shall maintain a Document Control Log for all Project documents, including Contract documents, sketches and renderings, models, correspondence, reports, meeting minutes and relevant e-mail. Design-Builder shall provide this log to City monthly or more frequently, if requested by City.
- 1.6.2.** Design-Builder shall submit a written procedure for Document Control, indicating what will be logged and how to maintain the log, as well as indicating specific responsible parties (by title), to City for City's approval within thirty (30) calendar days of the award of this Contract.

## **1.7. DOCUMENT ARCHIVING**

**1.7.1.** Design-Builder shall take reasonable precautions to safeguard the Project intellectual property during the course of the Project. These precautions shall include backing-up and storing offsite all in-progress and completed project electronic documents at minimum once a week. Hard copy documents and physical objects, such as models, shall promptly be scanned or digitally photographed as soon after their creation as practicable. Design-Builder shall store the resulting electronic records along with the abovementioned Project electronic documents.

**1.7.2.** Design-Builder shall submit a written procedure for archiving of Project intellectual property, indicating specific responsible parties (by title), to City for approval within thirty (30) calendar days of the award of this Contract.

## **1.8. COST ESTIMATE/PLANNING**

**1.8.1.** As one of the first steps on the program, Design-Builder shall work with City to establish Project cost targets. After establishing a cost target for a particular program component, Design-Builder shall break it into sufficient detail, as appropriate, to provide design guidance for the design team.

**1.8.2.** Upon completion of the Schematic Design Documents (0-30%), Design-Builder shall submit a construction cost estimate that verifies the design does not exceed the design-to-budget target amount.

**1.8.3.** Upon completion of City's review of the Schematic Design Documents (0-30%) and the associated cost estimate, City shall have the right at its sole discretion to:

- a.** direct Design-Builder to proceed with progressing the design to Design Development completion;
- b.** remove the Project element from the contract and pursue other delivery methods, including, but not limited to, issuing a Request for Proposals for completion of design and construction; or
- c.** terminate the contract.

**1.8.4.** Cost Estimate/Proposal at Design Development Documents (31-70%).

**1.8.5.** Design-Builder shall submit a revised construction cost estimate/proposal verifying the design does not exceed the design-to-budget target amount and any approved changes. That submitted cost estimate/proposal may be converted to a Guaranteed Maximum Price (GMP) for construction, if

mutually agreed upon by Design-Builder and City at that time.

**1.8.6.** If City and Design-Builder cannot agree upon a GMP, City reserves the right at its sole discretion to:

- a.** direct Design-Builder to proceed with progressing the design to Construction Document completion;
- b.** remove the Project element from the contract and pursue other delivery methods, including, but not limited to, issuing a Request for Proposals for completion of design and construction; or
- c.** terminate the Contract.

1.1.1. Cost Estimate/Proposal at Construction Documents (100%).

**1.8.7.** If City and Design-Builder have not previously agreed to a GMP for completion of the Project element through construction, Design-Builder shall submit a revised construction cost estimate/proposal that verifies the design does not exceed the design-to budget target amount and any approved changes. This cost estimate/proposal could be converted to a Guaranteed Maximum Price (GMP) for construction, if mutually agreed upon by Design-Builder and City at this time.

**1.8.8.** If City and Design-Builder cannot agree upon a GMP, City reserves the right at its sole discretion to:

- a.** remove the Project element from the contract and pursue other delivery methods, including, but not limited to, issuing the design for competitive bids; or
- b.** terminate the Contract.

## **1.9. TERMINATING THE CONTRACT**

If the parties cannot agree upon a GMP for construction, and the design work is complete (100% Construction Documents), Design-Builder shall be required to provide bid-able documents. In other words, the design documents shall be in the condition of a bid set suitable for advertising and receiving competitive bids.

## **1.10. REQUIRED SUBMITTALS**

Required submittals shall include:

**1.10.1.** Project Management Plan

**1.10.2. Design-Builder's Program Team Structure**

**1.10.3. Quality Control Program**

**1.10.4. Document Control Procedure**

**1.10.5. Archiving Procedure**

**1.10.6. Proposed Action Item Log**

**1.10.7. Cost Estimate**

**1.11. REVIEW COMMENT RESPONSE**

**1.11.1.** At each submittal stage, within ten (10) calendar days, City shall provide a list of written comments. Design-Builder promptly shall respond in writing to City's comments within ten (10) calendar days of receipt, unless agreed to otherwise in writing by City. Design-Builder's responses must be thorough and specifically address City's issue(s) in question. Design-Builder shall note specific actions already taken or Design-Builder's planned actions with a completion time commitment. Such responses, such as "done" or "will comply" are not acceptable responses for Design-Builder to submit to City.

**1.11.2.** In some cases, City's comments to Design-Builder may be given in a workshop setting or as document mark-ups. In such cases, Design-Builder shall be expected to document the original comment(s), as well as respond to all such comments, as noted above.

**1.11.3.** Each review of Design-Builder's submittal shall comply with the following review durations:

- a.** Design studies, reports, drawings and specifications shall be reviewed by City and City's designated third parties, comments shall be prepared and returned to Design-Builder within ten (10) calendar days after receipt by City. City shall endeavor to better the review period of 10 Business Days as they understand that a shorter review period may improve the schedule.
- b.** Cost estimates and pricing submittals shall be reviewed by City and/or City's designated third parties, comments shall be prepared and City shall return its comments to Design-Builder within ten (10) calendar days after receipt by City. City shall work to better the review period of ten (10) calendar days, as it understands a shorter review period may improve the Project schedule.

- c. Design-Builder shall advise City how Design-Builder intends to address all comments received from City and/or City's designated third parties and return Design-Builder's comments to City within ten (10) calendar days after receipt from City.
- d. City is responsible to manage and enforce the design review durations outlined above with all third party reviewers, unless authority to do so is specifically delegated to Design-Builder.

## **2. CITY'S PARTICIPATION AND RESPONSIBILITIES**

### **2.1. CITY'S PARTICIPATION**

City reserves the right to participate in any and all design activities of Design-Builder, Design-Builder's Sub-Consultants and Subcontractors, with the exception of meetings or discussions of a contractual nature between Design-Builder and its Sub-Consultants, Subcontractors, Legal Counsel and the like. Design-Builder shall inform City of all work sessions, coordination meetings, scheduled conference calls and similar design activities, sufficiently in advance to allow City's participation.

### **2.2. DESIGN-BUILDER PROVISIONS FOR CITY**

**2.2.1.** Design-Builder shall provide City full access to all in-progress work, including access to Document Control Logs, relevant Office and Project Procedures and Project files. Design-Builder shall provide a copy of any work related to the Project to City upon City's request, whether finished or in-progress, provided that such requests do not limit Design-Builder team's completion of the Work in a timely fashion.

**2.2.2.** Similarly, City shall be allowed direct access to any key individual on Design-Builder's team performing Work related to the Project, for the purposes of soliciting information, provided such access by City does not limit Design-Builder team's completion of the Work in a timely fashion.

### **2.3. CITY'S RESPONSIBILITIES**

**2.3.1.** City has performed the programming and other early planning studies that serve as the foundation for the Program Criteria Document.

**2.3.2.** City has provided the Programming Documents, attached hereto, incorporated herein and labeled as **EXHIBIT A: PROGRAMMING DOCUMENTS**, which shall serve as the basis for Design-Builder's design.

**2.3.3.** City shall primarily be responsible for Public Affairs, Media Relations and Community Outreach concerning this Project. Design-Builder shall

provide support services for all Public Affairs, Media Relations and Community Outreach, to the extent delegated and authorized by City and based upon direction provided by City.

### **3. PROJECT COMMUNICATIONS**

**3.1.** Formal correspondence, communication and direction between City and Design-Builder shall be restricted to be between City's Project Manager and Design-Builder's Project Manager, unless specifically delegated to others in writing. If so delegated, the limits of authority to be delegated to others shall be established in writing.

### **3.2. PROJECT DATA GATHERING**

**3.2.1.** Design-Builder is experienced in the Project type it has contracted to perform and is aware of all relevant issues that must be addressed. Design-Builder shall be proactive in soliciting all necessary design information.

**3.2.2.** Requests to meet with Facility/Site or City personnel that normally are not one of Design-Builder contacts shall be coordinated with the City's Project Manager.

**3.2.3.** Provide written reports of all meetings and other data gathering exercises, whether with Facility/Site or other City personnel, or with outside entities or data sources within 10 Business Days.

### **3.3. ACTION ITEMS**

**3.3.1.** Design-Builder shall maintain an electronic Action Item Log of all "action items" that have been identified either internally or by City. An "action item" is defined as a Project issue requiring special attention, management oversight or off-project input. An "action item" is not an item or a list of things yet to be done that are a normal part of the progress of the Project. The Action Item Log shall regularly be maintained and distributed to City.

**3.3.2.** Design-Builder shall submit a sample of the proposed Action Item Log to City for City's approval within thirty (30) calendar days of the award of this contract.

### **3.4. MINUTES AND REPORTS**

Design-Builder shall take and publish coherent minutes and/or reports on every formal meeting, work session or site visit that Design-Builder, its Sub-Consultant and/or Subcontractors participates in, even if Design-Builder is not the meeting chair or coordinator. Design-Builder shall transmit minutes and/or

reports to City within ten (10) calendar days of the meeting, work session or site visit.

**3.5. OTHER PROJECT DOCUMENTS**

**3.5.1.** Design-Builder shall prepare all written Project documents, such as reports, meeting minutes, etc., using Microsoft Word, latest version, unless otherwise agreed upon by City. The utilized font shall be 11 point Times New Roman or Arial, as supplied with the latest Microsoft Windows Operating System.

**3.5.2.** All Project documents, except drawings and presentation materials, shall be on letter sized paper. Absolutely no legal-sized paper shall be utilized or is allowed.



**EXHIBIT L SCHEDULE OF VALUES; SUMMARY SPREADSHEET AND  
BACKUP DOCUMENTS; CERTIFICATE OF SUBSTANTIAL COMPLETION;  
OVERHEAD AND PROFIT PERCENTAGES**

**EXHIBIT M GMP SUMMARY AND GMP PROPOSAL**

## GMP COST SUMMARY

Item		
A	Direct Cost of Work (Labor, Material, Equipment, Warranty)	\$
B	Allowances	\$
C	Total of All Fixed Priced Proposals (Cost of Work Only)	\$
D	<b>SUBTOTAL DIRECT COST OF WORK TOTAL</b>	\$
E	General Conditions (Negotiated Lump Sum or % x Direct Cost of Work)	\$
F	<b>SUBTOTAL (INDIRECT AND DIRECT) TOTAL COST OF WORK</b>	\$
G	Design Fees (Negotiated Lump Sum or % x (Total COW + Insurances + DB Fee))	
H	Pre-construction Fees (Negotiated Lump Sum or % x Direct Cost of Work)	
I	Design-Builder Fee (= % x Total Cost of Work)	\$
J	<b>SUBTOTAL FEE + COST OF WORK</b>	\$
K	Builders Risk Insurance Construction ( % x (Total COW + Insurances + DB Fee))	\$
L	Payment & Performance Bond Construction ( % x (Total COW + Insurances + DB Fee))	\$
M	General Liability/Workmans Compenstation ( % x GMP)	\$
N	<b>SUBTOTAL INSURANCE &amp; BONDS</b>	
O	Sales Tax (If Any)	\$
P	Contingency (Per Negotiations )	\$
Q	<b>GMP TOTAL</b>	\$

### NOTES:

1	Item C is the FFP Cost of Work Values only, the GC, Fee, Bond, Insurance will be invoiced against the overall line items for GC, Fee, Bond, Insurance. For tracking purposes the specific FFP form or associated FFP Change Order will annotate the amounts of GC, Fee, Bonds, Insurance associated with each FFP. FFP will not include contingency as this will be addressed with overall contingency
2	$D = A + B + C$
3	$E = \text{Negotiated } \% \times D \text{ OR Negotiated Lump Sum Figure}$
4	$F = D + E$
5	$G \text{ (Design Fee)} = \text{Negotiated } \% \times (D + I + K + L + M) \text{ or Negotiated Lump Sum Figure}$
6	$H \text{ (Pre-con Fee)} = \text{Negotiated } \% \times D \text{ or Negotiated Lump Sum Figure}$
5	$I \text{ (Design Builder Fee)} = \% \times F$
6	$J = F + G + H + I$
7	<p>K, L % are based on the overall Construction cost to replace as Professional Services do not require Bonding/ Risk Insurance</p> <p>M % is based on total GMP</p> <p><math>K \text{ (Builders Risk)} = \% \times (F + I + K + L + M)</math></p> <p><math>L \text{ (Payment/Performance Bond)} = \% \times (F + I + K + L + M)</math></p>
8	$N = J + K + L + M$
9	P will included all negotiated contingency. If used all mark ups will be included on change orders at time of issuance
10	$Q \text{ (Total GMP)} = N + O + P$

**EXHIBIT N DESCRIPTION OF DESIGN-BUILDER'S GENERAL CONDITION COSTS**